

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1629 OF 2011

Santosh S/o. Madhavrao Sonone,
Age: 62 Years, Occupation: Nil,
R/o. Utran, Gujar Hadd, Tq. Earandol,
District: Jalgaon. ..PETITIONER

VERSUS

- (1) The State of Maharashtra,
Through the Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
- (2) The Scheduled Tribe Certificate,
Scrutiny Committee,
Amravati Division, Amravati. ..RESPONDENTS

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Mr. Anandsingh Bayas, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for Respondent Nos.1 and 2.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

Closed for Orders on : 14.01.2019.

Order Pronounced on : 05.02.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The tribe claim of the petitioner as Malhar Koli, Scheduled Tribe is invalidated. Aggrieved thereby the present petition.

2. Mr. Bayas, learned counsel for the petitioner submits that the petitioner had filed voluminous documents showing the caste of the

petitioner, his paternal relatives recorded as Malhar Koli. However, the committee took a very hyper technical approach while rejecting the tribe claim of the petitioner. Only because in the service book of the petitioner's father caste was entered as Koli Hindu that in itself would not be sufficient to negate the case of the petitioner. According to the learned counsel, the pre-independence documents of the paternal uncle of the petitioner clearly records caste as Malhar Koli, Scheduled Tribe. The pre-independence documents will have more probative value. It is only because, the stigma attached to Scheduled Tribe community, many times the caste was recorded as Koli. However, that would not be sufficient to hold the petitioner as not belonging to Scheduled Tribe.

3. The learned counsel further submits that the area restriction has been removed, as such the finding of the committee that the Malhar Koli community was recognized in Thane District only and the person residing in Jalgaon or Amravati Division would not be entitled to the certificate of Malhar Koli, Scheduled Tribe is erroneous and against the legal position. The learned counsel further submits that the school record of the brother of the petitioner namely Ratan of the year 1965 records caste as Malhar Koli. The school record of the paternal uncle of the petitioner namely Dagadu

Hari of the year 1937 records caste as Malhar Koli. The school record of the petitioner of the year 1965 records caste as Malhar Koli. All these documents are old documents and would have more probative value. These documents ought to have been given credence while considering the validation proceedings of the caste claim of the petitioner. The learned counsel submits that the committee has not scanned the documents in a proper manner.

4. The learned A.G.P. supports the judgment of the Tribunal and submits that the school record of the father of the petitioner namely Mahadu of the year 1932 records caste as Hindu Koli, so also one of the paternal uncle namely Sukdeo's school record also records caste as Hindu Koli. The school record of the petitioner himself of the year 1959 records caste as Maratha. All these evidence has been considered by the committee and the committee has rightly arrived at the conclusion that the petitioner could not establish his claim.

5. We have considered the submissions canvassed by the learned counsel for the respective parties. We have also gone through the judgment delivered by the committee, so also the record.

6. There cannot be any dispute that the pre-constitutional documents will have more probative

value. The said preposition itself would go against the petitioner. The petitioner would get his caste from his father. The school record of the father of the petitioner namely Mahadu of the year 1932 records caste as Hindu Koli. The school record of his paternal uncle namely Sukadeo of the year 1932 records caste as Hindu Koli. One school record of the petitioner of the year 1959 records caste as Maratha. The school record of the real brother of the petitioner namely Ratan of the year 1964 records caste as Maratha. The school record of the another real brother of the petitioner namely Krushna of the year 1970 records caste as Koli. One of the real brothers of the petitioner namely Arun has the caste recorded as Koli Malhar in his school record in the year 1971. Whereas, one school leaving certificate of the petitioner of the year 1965 records caste as Hindu Malhar Koli. The father of the petitioner was serving in Maharashtra State Electricity Board. The first page of his service book records caste as Koli (Hindu). He never claimed the status of Koli Malhar, Scheduled Tribe. The school record of the petitioner, his father and his real paternal uncle does not support the case of the petitioner. In fact, there is contra evidence on record sufficient to negate the claim of the petitioner of belonging to Malhar Koli, Scheduled Tribe. The documentary evidence has been considered in toto by the committee. Even 7/12 extracts of the land

possessed by the petitioner's ancestor does not record that the same is tribal land. The same may not be the sole criteria. However, all the evidence considered in totality would not prove the case of the petitioner as belonging to Malhar Koli, Scheduled Tribe.

7. In view of the contra evidence on record the committee has not committed any error in rejecting the tribe claim of the petitioner as Koli Malhar, Scheduled Tribe.

8. The petitioner has retired from service. The petitioner was appointed on compassionate ground, as such cannot be said to have taken the benefit of caste in his employment. The invalidation of the tribe claim of the petitioner certainly would not affect his service benefit.

9. Writ Petition as such is dismissed, however, with no order as to costs. The record submitted by the learned A.G.P. of the committee is returned back to learned A.G.P..

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE