

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11607 OF 2019

AYUBKHAN JAMILKHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Vibhute Sunil M.
AGP for Respondents No. 1 & 2 : Mr. P. G. Borade
Advocate for Respondents No. 3 & 4 : Mr. S. B.
Bhosle h/f. Mr. V. D. Gunale

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CORAM: S. V. GANGAPURWALA &
SMT. VIBHA KANKANWADI, JJ.

DATE: 14th OCTOBER, 2019

PER COURT:

1. The petitioner is appointed from reserved category by respondents no. 3 and 4.

2. The proposal of the petitioner was referred by the employer to the committee. The petitioner filed an application with the affidavit on 26.02.2016 that he does not wish to take benefit of the Naikda, Scheduled Tribe and has given up his tribe claim. Pursuant to the affidavit filed by the petitioner, the committee closed the file and cancelled the certificate.

3. Mr. Vibhute, learned counsel for the petitioner submits that under misconception the affidavit was filed.

4. Mr. Vibhute, learned counsel for the petitioner submits that the petitioner was under impression that because of the policy of the Government the petitioner would not be required to submit the validity certificate.

5. We have heard the learned A.G.P. and the learned Advocate for respondents no. 3 and 4.

6. The policy, that existed at the relevant time was granting protection to those who have been employed prior to the year - 1995. The petitioner was employed after the year - 1995.

7. Even otherwise, in view of judgment of the *Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and others reported in (2017) 8 SCC 670*, in case the tribe claim is invalidated all the benefits received by the person on the basis of the tribe certificate have to be revoked and cancelled.

8. The petitioner cannot claim the benefit of reservation without getting the validity of his tribe claim and if his tribe claim is invalidated then the action can be taken against the petitioner for the same.

9. Considering the fact that the petitioner claims that it was his bonafide mistake in not prosecuting the proceeding and the fact that the matter involves the social status of the petitioner, we are inclined to grant one more opportunity to the petitioner, however the petitioner deserves to be mulct with costs.

10. The impugned order is quashed and set aside. The parties are relegated before the scrutiny committee on condition that the petitioner deposits costs of Rs.25,000/- (Rs. Twenty Five Thousand only) in this Court on or before 06.11.2019. The petitioner shall appear before the committee on 06.11.2019. If the petitioner deposits costs as directed above, the committee shall decide the validation proceeding within six (06) months from the date of appearance of the

petitioner. The petitioner shall cooperate in expeditious disposal of the proceeding and shall not seek any adjournment. The employer shall be entitled to take further course of action depending upon the judgment that will be delivered by the committee in the validation proceeding. The deposit of costs is a condition precedent. The costs shall be deposited with the High Court Bar Association, Aurangabad.

11. Writ Petition stands disposed of accordingly.
No costs.

[SMT. VIBHA KANKANWADI, J.] [S. V. GANGAPURWALA, J.]

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