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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13994 OF 2016

SUNIL NARAYAN MADBHAVE)
Age: 51 years,)
Occupation : Service [Operator],)
Residing at :Shreekriupa Beturkar)
Pada, Kala Talao, Near Sai Vitthal)
Tower, Kalyan (West), Dist. Thane) Petitioner.

Versus

**1] DIVISIONAL CASTES CERTIFICATE)
SCRUTINY COMMITTEE NO.1**)

Navi Mumbai, Room No. 524, 5th Floor)
Kokan Bhavan, Navi Mumbai)

2] MAHAVITARAN)

a Company incorporated and fully)
owned by the State of Maharashtra,)
Prakashgadh, Bandra (East),)
Mumbai – 400 051.)

**3] THE MANAGING DIRECTOR,
MAHAVITARAN**)

Prakashgadh, Bandra (East),)
Mumbai – 400 051)

4] THE EXECUTIVE ENGINEER,)

Panvel Divsion (Rural),)
MAHAVITARAN, Bhingari, Panvel)

5] THE SUPERINTENDING ENGINEER,))

Kalyan Circle (2), Mahavitaran,)
Tejashri, Karnik Road, Kalyan (West))
District – Thane.)

- 6] THE CHIEF ENGINEER,)
Kalyan Zone, MAHAVITARAN,)
Tejashri, Karnik Road, Kalyan (West),)
District – Thane.)
)
7] STATE OF MAHARASHTRA,)
Through: The Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai – 400 038.) Respondents.

Mr. S.D. Rupawate with Mr. Milind I. Ingole, Advocates for the
Petitioner.

Mrs. R.A. Salunkhe for Respondent Nos. 1 and 7.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ.**

DATE: 8th January, 2019

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] Rule. Rule is made returnable forthwith. Respondents waive
service. Heard by consent of parties.

2] This Petition arises out of peculiar facts and circumstances.
Petitioner's forefather belonged to Village Madbhavi in District
Belgaum. Petitioner's father migrated to Kalyan (Maharashtra) in
1959. Petitioner was born on 27/08/1995 at Ambernath, District
Thane. The Petitioner's father belonged to the caste “Holer”, which is

recognized as Scheduled Caste, both in Maharashtra as well as in Karnataka. However, in the school record of the Petitioner, by mistake, his caste came to be recorded as “Hindu- Mahar”, which is a Scheduled Caste in both, Maharashtra as well as in Karnataka. On the basis of the same, he was also granted Caste Certificate belonging to Scheduled Caste. However, when the matter went before the Scrutiny Committee, the Scrutiny Committee found that the Petitioner's claim was not valid since he did not belong to the Caste “Mahar” but belonged to the Caste “Holer”. Petitioner has, therefore, approached this Court, challenging the order passed by the Scrutiny Committee.

3] In the meantime, the Petitioner, who is in employment of Respondent No.3, has been served with show-cause notice dated 06/03/2017 as to why his services should not be terminated on the ground of invalidation of his caste claim. When the matter was listed before Division Bench of this Court on 07/12/2018, Division Bench observed that the question, as to whether the Petitioner's services, in the peculiar facts, can be protected in view of the judgment of the Supreme Court in the case of *Chairman and Managing Director, Food*

*Corporation of India vs. Jagdish Balaram Bahira*¹ arises for consideration and as such, the matter was directed to be kept today.

4] As already discussed hereinabove, we find that the Petition arises out of peculiar facts. Both “Mahar” and “Holer” Castes are recognized as Scheduled Castes in the State of Maharashtra as well as in the State of Karnataka. The Petitioner originally belonged to Belgaum District in Karnataka and migrated to Maharashtra. Both Belgaum District and Ambernath were part of erstwhile Bombay State prior to reorganization. As such, in view of the Judgment of the Supreme Court in the case of *Sudhakar Vithal Kumbhare vs. State of Maharashtra*², the Petitioner would be entitled to be treated as belonging to Scheduled Caste in the State of Maharashtra also. However, on account of bonafide error in the school record, Petitioner's caste came to be recorded as “Mahar” in place of “Holer”. It is not as if the Petitioner never belonged to the Scheduled Caste. The Hon'ble Supreme Court in the case of *Chairman and Managing Director, Food Corporation of India* (cited supra), was considering the issue, as to whether the services of the persons, who were initially

1 (2017) 4 MhLJ 898

2 (2004) 9 SCC 481

employed on the basis of their claim of belonging to Scheduled Caste and Scheduled Tribe and after it was found that they did not belong to such Scheduled Caste and Tribe, can be protected or not ? As such, the case for consideration was, as to whether the persons who did not belong to Scheduled Caste or Tribe could have the benefit of protection. The Hon'ble Supreme Court answered in the negative and held that once a person was found not to be belonging to Scheduled Caste and Scheduled Tribe, his services could not be protected. In the present case, it is not concluded that the Petitioner does not belong to Scheduled Caste.

5] In the facts and circumstances of the case, we find that the following order would sub-serve the interest of justice:-

ORDER

(i) Petitioner is permitted to apply before the competent authority for grant of Certificate, certifying him to be belonging to Schedule Caste "Holer".

(ii) Petitioner shall make an application to the competent authority within a period of 15 days from today and the said application shall be decided by the competent authority within a period of 15 days from receipt thereof.

(iii) In the event, Petitioner is granted Certificate, certifying him to be belonging to Scheduled Caste, the same shall be forthwith submitted to Respondent No.3. Respondent No.3, on receipt of such Certificate shall forward the same to Respondent No.1 within a period of 15 days from the receipt of such Certificate for considering the validity thereof. Respondent No.1 shall decide the claim with regard to validity within a period of three months from receipt of the proposal from Respondent No.3.

(iv) Till the decision of the Committee and for

further period of three weeks, in the event the claim of the Petitioner is invalidated, services of the Petitioner shall stand protected from the receipt of communication of the order of Respondent No.1 to the Petitioner.

(v) Rule is made absolute in the aforesaid terms with no order as to costs.

(N.J. JAMADAR, J.)

(B. R. GAVAI, J.)