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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9071 OF 2019

Kum. Padmavati Hirachand Palampalle Petitioner

V/s

State of Maharashtra and Others Respondents.

Mr. R.K. Mendadkar for the Petitioner.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. P.P. Kakade, GP
a/w Mr. Umesh Mankapure, Counsel 'A' Panel for State.

**CORAM: NITIN W. SAMBRE &
G.S. KULKARNI, JJ.**

DATE: AUGUST 19, 2019

P.C.:-

1] Petition can be conveniently disposed of finally by consent of parties at the state of admission.

2] By the order impugned passed on 06/07/2019, Respondent No.2 – Scheduled Tribe Caste Scrutiny Committee has negated claim for

grant of validity preferred by the Petitioner, as belonging to “Koli-Mahadeo” Scheduled Tribe.

3] Facts, in brief, necessary for deciding the Petition are as under:-

4] Petitioner was issued with the Caste Certificate as belonging to “Koli-Mahadeo” caste on 28/01/2013 by the Deputy Collector (Acquisition) No.2, Mumbai Suburban District.

5] Since the Petitioner was aspiring her further higher education through the seats earmarked for reserved category, requested for referring her claim for verification to Respondent No.2 – Committee. The Petitioner has produced her original Caste Certificate and other about 35 documents, including that of her father Hirachand and other relatives. The Respondent – Committee, after having received the claim, referred it to the Vigilance Cell for field investigation. The Vigilance Cell submitted its report after conducting home inquiry with an observation that the Petitioner is not belonging

to “Koli-Mahadeo” Scheduled Tribe. The Committee after receipt of the same, issued show cause notice to the Petitioner and passed an order impugned.

6] Apart from other contentions on merits, the learned Counsel for the Petitioner Mr. Mendadkar would try to make out a case for remand on the ground that the Research Officer was not associated with the Vigilance Committee. According to him, the Vigilance Cell Report having details of Tribe, its customs, traditions, traits etc. was endorsed by in-charge Research Assistant from the Office of the Committee, who cannot be recognized as a Research Officer. He would urge that the order impugned as such, is not sustainable. The learned Counsel for the Petitioner, even otherwise, submits that the oldest document which Petitioner relied on is caste entry in the record of her father Hirachand of 18/06/1971. According to him, father of the Petitioner was born on the aforesaid date and registration in the Birth and Death Register was effected on 24/06/1971. A further contention is, entry “Hindu-Koli” in the Primary School Leaving Certificate of the father of the Petitioner Hirachand, is a mistake and

proceedings were taken out at the relevant time i.e. on 21/06/1978 for correction. The learned Counsel then would urge that the validity issued in favour of father of the Petitioner Hirachand and her two cousins was illegally not relied upon while rejecting her claim.

7] The learned Counsel appearing on behalf of the Respondent – Committee, while opposing the claim, would urge that there is sufficient material relied upon by the Committee to infer that tribe claim of the Petitioner is not genuine. The learned Counsel then would try to justify the order impugned and submit that non-association of the Research Officer with the Vigilance Cell Inquiry was not objected at the time of hearing before the Committee. As such, according to him, Petition is liable to be dismissed.

8] Considered the rival submissions.

9] The learned Counsel for the Petitioner, on instructions, submits that for this year, Petitioner is not claiming any admission in view of adverse health conditions. However, she needs to pursue her claim

for validity for her future entitlement and as such, this Court in view of submissions made, may consider the case for remand to the Committee.

10] The learned Counsel for the Petitioner is justified in demonstrating that the Research Officer was not associated with the Vigilance Cell and as such, that itself would render the proceedings subsequent to the drawing of Vigilance Cell Report, illegal. Pursuant to Rule 10 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, it is mandatory that Research Officer should be part of the Vigilance Cell. The said Rule reads thus :-

“10. Constitution of Vigilance Cell.- The State Government shall constitute a vigilance cell to assist each Scheduled Tribe Certificate Scrutiny Committee for conducting enquiry which shall consist of,-

- (i) A Senior Deputy Superintendent of Police;
- (ii) Police Inspector (number of

Inspectors depending upon the number of cases);

(iii) Police Constables to assist the Police Inspector;

(iv) Research Officer.

The Police personnel shall investigate into the social status, claims by conducting school and home inquiries and other enquiry as per the reference made by the Scrutiny committee under sub-rule (2) of Rule 12.”

11] In view of the language of the said Rule, constitution of the Vigilance Cell without a Research Officer is incomplete. An Assistant Research Officer or a Research Assistant cannot be held to be equivalent to that of a Research Officer as there is distinct and specific post of Research Officer created by the Government so as to be a part of the Vigilance Cell.

12] As such, association of a Research Officer with the Vigilance Cell is mandatory as the Research Officer acts in aid of the Vigilance Cell, particularly having regard to the nature of inquiry which is

sought to be carried out by the Vigilance Cell in the matter of grant of Scheduled Tribe Certificate.

13] In the case in hand, it is a Research Assistant who was associated with the Vigilance Cell and as such, even if he has given an opinion on the Vigilance Cell Report, same cannot be stretched to the extent of inferring that the Research Assistant can be termed as Research Officer and can associate himself with the Vigilance Cell Inquiry. On this count alone, the case of the Petitioner is justified for remand.

14] The learned Counsel for the Petitioner has canvassed other issues on merits. However, in our opinion, it will be appropriate to quash and set aside the order impugned dated 06/07/2019 passed by Respondent No.2 – Scrutiny Committee on the ground of the proceedings being materially affected because of non-association of the Research Officer in the Vigilance Cell Inquiry.

15] The matter stood remanded to the Scrutiny Committee. The Scrutiny Committee shall start the proceedings afresh from the point

of drawing experts remarks i.e. of Research Officer on the Vigilance Cell Report. The Committee shall thereafter grant an opportunity of hearing to the Petitioner and shall decide the claim of the Petitioner afresh in any case within a period of nine months from the date of communication of this order to the Committee.

16] Petition stands partly allowed in the aforesaid terms.

(G.S. KULKARNI, J.)

(NITIN W. SAMBRE, J.)