

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 5858 OF 2013

Prabhakar S/o. Dnyanoba Shinde,
Age : 24 years, Occu. Student,
R/o. Samta Nagar, Tq. Ausa,
Dist. Latur.

.... Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai.
2. The Divisional Caste Scrutiny
Committee No. 2,
Aurangabad Division, Latur.
3. The Deputy Collector,
Latur, Dist. Latur.
4. The Director of Technical Education,
Maharashtra State,
3 Mahapalika Marg,
Elphinstone, Technical High School,
Post Box No. 1967, Mumbai-400001
5. The Principal,
M.S. Bidve Engineering College,
Latur Barshi Road, Latur,
Dist. Latur.

.... Respondents

.....
Shri. Anandsing Bayas, Advocate for the petitioner
Shri. G. O. Wattamwar, AGP for respondent nos. 1 to 4
.....

CORAM : SUNIL P. DESHMUKH
AND
B. U. DEBADWAR, JJ.

RESERVED ON : 28.01.2020
PRONOUNCED ON : 04.02.2020

JUDGMENT [PER B. U. DEBADWAR, J.] :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.

2. The petitioner has challenged the order dt. 01.04.2013 passed by the Scrutiny Committee, Latur, Aurangabad Division No. 2, by which his caste claim came to be invalidated.

3. Facts giving rise to the present writ petition in nutshell, are as under: -

Forefathers of petitioner were originally resident of Chandeshwar, Tq. Aurad, Dist. Bidar, now in Karnataka State. In the year 1992, his father Dnyanoba Shinde migrated to Ausa, Dist. Latur, Maharashtra State. He was born, brought up and educated at Ausa, Dist. Latur. In the year 2005, Dy. Collector, Latur issued caste certificate No. 2005/MISC/WS930 declaring him a person belonging to Mahar, which is recognized as a Scheduled Caste. In the year 1992, his caste claim was referred to the Caste Scrutiny Committee, Latur, Aurangabad Division No. 2, for scrutiny and validating the

same, by Principal of Kumarswamy Mahavidyalaya, Ausa, Dist. Latur, where he was studying. After scrutiny, the Caste Scrutiny Committee, Latur, Aurangabad Division No. 2 invalidated the same by the impugned order dt. 01.04.2013 on the sole ground that he is not original resident of Maharashtra State, therefore, not entitled for taking the benefits as a person belonging to the Scheduled Caste in the State of Maharashtra.

4. By the present petition, the petitioner has claimed the following reliefs.

- A) To quash the impugned order dated 01.04.2013 (Exhibit - "J") passed by the respondent no.2 invalidating the caste claim of the petitioner by issuing writ of certiorari or any other appropriate writ order or direction.
- B) To hold and declare that the petitioner belongs to "Mahar" Schedule Caste.

5. Undisputed facts are as under : -

- i) Forefathers of the petitioner were originally resident of Chandeshwar, Tq. Aurad, Dist. Bidar.
- ii) In the year 1972, father of the petitioner migrated to Ausa, Dist. Latur.

- iii) Prior to the re-organization of the States which took place in 1956, Dist. Bidar (Karnataka State) and Dist. Latur (Maharashtra State) were parts of erstwhile State of Hyderabad.
- iv) After re-organization of the States, Bidar district merged in Karnataka State whereas, Latur district merged in Maharashtra State.

6. The caste claim of the petitioner is rejected only on the ground that he is not originally resident of State of Maharashtra, as such not entitled to take benefits and facilities as a person belonging to the Scheduled Caste in State of Maharashtra, and not on any other ground.

7. In the case of *Sudhakar Vithal Kumbhare v. State of Maharashtra and others* [2001 (4) Mh.L.J. 475], the Hon'ble Supreme Court while dealing with the similar issue held that, members of Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Re-organization Act.

8. The ratio laid down by the Hon'ble Apex Court runs as under :

“.....It is one thing to say that the expression “in relation to that State” occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind.”

9. In the case of **Kumar Hanumant Mane Versus State of Maharashtra and others**, the Division Bench of this Court at Principal Seat vide judgment and order dt.12.10.2018 passed in Writ Petition No. 1154 of 2018, relying on the ratio laid down by the Hon'ble Apex Court in the case of Sudhakar Kumbhare (cited supra), directed the concerned Caste Scrutiny Committee to issue caste validity certificate

to the petitioner therein within the stipulated period declaring him as a person belonging to Chambhar, Scheduled Caste Community.

10. In the case of *Preeti Gopalrao Kamble Vs. State of Maharashtra and others* [2013 (2) Mh.L.J. 317], the petitioner who was belonging to Mahar, Scheduled Caste, was originally resident of place coming under Bidar district which after re-organization of the States came under Maharashtra State. Mahar caste, after enforcement of Constitution (Scheduled Castes) Order, 1950, is recognized as a Scheduled Caste in both the states. The caste claim of the petitioner in the said case was rejected by the concerned Caste Scrutiny Committee for the reason that he was not the resident of Maharashtra State. Having regard to all these facts, the Division Bench of this Court set aside the order of the Scrutiny Committee holding that, it is improper.

11. The facts of the case at hand are quite similar with the facts of both the cases referred to above, therefore the ratio laid down therein is also fully applicable to the facts of the case in hand.

12. Upon close scrutiny of the impugned order by which the caste claim of the petitioner came to be rejected, it becomes clear that

the caste claim of real brother of the petitioner was validated by the Caste Scrutiny Committee, Pune. However, Caste Scrutiny Committee of Latur coming under Aurangabad Division No. 2 declined to rely on the said declaration *inter alia* contending that the place of original residence of father and grand-father of claimant (real brother of present petitioner) was not brought to the notice of Caste Scrutiny Committee, Pune and by not bringing the same to its notice, he played fraud on the Caste Scrutiny Committee, Pune.

13. When it is amply clear that, prior to re-organization of the States, place Chandeshwar, Tq. Aurad, Dist. Bidar where forefathers of the petitioner were residing, merged in Karnataka State and place Ausa, Tq. & Dist. Latur where father of petitioner migrated, merged in Maharashtra State and a person belonging to Mahar caste recognised as Scheduled Caste in both the States, petitioner is entitled to take benefits available to the said caste in Maharashtra State where his father migrated long back. Therefore, the claim of the petitioner cannot be denied.

14. The impugned order dt. 08.04.2011 denying the caste claim of the petitioner solely on the ground that father of the petitioner was not originally resident of Maharashtra State but

originally resident of Karnataka State, is liable to be set aside, with direction to decide the caste claim of the petitioner. With this, we pass the following order.

ORDER

- [i] Impugned order dated 01.04.2013 passed by respondent No. 2 is hereby set aside.
- [ii] Respondent No. 2 is directed to decide caste claim of petitioner, as early as possible, preferably within a period of six months from the date of receipt of writ of this order and shall not reject the same on the ground on which it was earlier rejected.

15. Rule is made absolute in the above terms. No costs.

[B. U. DEBADWAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE