

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6705 OF 2020

Leena d/o. Krishna Mokul alias
Sow. Khushali w/o Pankaj Nehare,
Age 42 years, Occu. Service,
R/o. Bhusawal, Taluka Bhusawal,
District Jalgaon;
Presently residing at Ganesh Chowk,
Room No. 877, Phule Nagar, Mohane,
Kalyan, District Thane.

.. Petitioner

Versus

1. The State of Maharashtra
through its Principal Secretary,
Tribal Development Department
Mantralaya, Mumbai
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Sakri Road, Nandurbar,
through its Member Secretary
3. The Administrative Officer,
Office of Seth V. C. Gandhi and
M.A. Vora Municipal Corporation
General Hospital, Rajwadi,
Ghatkopar (West), Mumbai
4. The Medical Superintendent,
Office of Seth V. C. Gandhi and
M.A. Vora Municipal Corporation
General Hospital, Rajawadi,
Ghatkopar (West), Mumbai
5. The Executive Health Officer,
Brihanmumbai F. South Parel,
Mumbai

.. Respondents

...

Mr. S. R. Barlinge, Advocate for petitioner
Mr. S. B. Yawalkar, AGP for respondents no. 1 and 2 – State
Mr. A. K. Tiwari, Advocate for respondents no. 3 to 5

...

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 18TH NOVEMBER 2021

JUDGMENT : (PER : RAVINDRA V. GHUGE, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has putforth prayer clauses “A” “B” “C” and “D”, as under :

“A) By a writ of Certiorari, or any other appropriate writ, or order or directions in the like nature, the impugned judgment and order dated 22.05.2020 passed by the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar – respondent No. 2, may kindly be quashed and set aside.

B) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondent No. 2 Scrutiny Committee may kindly be directed to issue validity certificate in favour of the petitioner as belonging to Mannewar Scheduled Tribe.

C) Pending hearing and final disposal of this Writ Petition, the operation and execution of the impugned judgment and order dated 22.05.2020, passed by the respondent No. 2 Committee may kindly be stayed.

D) Pending hearing and final disposal of this Writ Petition, respondent Nos. 3 and 4, their agents, servants or any other person/s acting on their behalf may kindly be

restrained from taking any adverse action against the petitioner on the basis of the impugned judgment and order dated 22.05.2020 passed by respondent No. 2 Committee.”

3. The petitioner is an employee of respondent Nos. 3 to 5. She was appointed as a Staff Nurse on 26-08-1998 on a vacancy, which was reserved for a candidate belonging to the scheduled tribes. The petitioner claims to be belonging to ‘Mannewar’ tribe, which is said to be a scheduled tribe. She has a tribe certificate issued by the Competent Authority, which was presented to the Competent Committee for seeking validation of her claim. By the impugned order, her claim has been invalidated by the Committee with the conclusion that she does not belong to the ‘Mannewar’ tribe.

4. Having considered the strenuous submissions of the learned counsel for the respective sides, we have gone through the petition paper book and have carefully perused the documents which are germane to the cause of action.

5. The issue before us is, that while causing judicial scrutiny of the conclusions drawn by the Committee in the impugned judgment, whether there is any material before us, which would indicate that the petitioner or her earlier generation from the paternal side, belong to any other tribe so as to disbelieve the claim made by the petitioner. The Vigilance Report indicates that the petitioner has failed the affinity test.

6. It is in this backdrop that we have perused the documents placed before us, keeping in view the contention of Shri Barlinge that the petitioner has recently stumbled across some more documents, which would support her claim and which were not produced before the Committee as they were not noticeable earlier. These are as under:-

(a) At page No. 16 is a School Leaving Certificate issued by National Rayon Corporation Colony School, Mohane, Kalyan dated 10-08-1994, which indicates the tribe of the petitioner as 'Hindu - Mannewar'. She had sought admission in the School on 01-06-1986 and left the School after passing the SCC Examination.

(b) The College Leaving Certificate has been produced by the petitioner dated 05-07-1994 under the signature of the Principal, Birla College of Arts, Science and Commerce, Kalyan which indicates that tribe of the petitioner as 'Hindu – Mannewar'.

(c) Primary School Admission Register which indicates that the petitioner was admitted in NRC Marathi Primary School, Kalyan on 21-06-1982 and her tribe was shown as 'Hindu Mannewar'.

(d) The School Leaving Certificate of paternal uncle of the petitioner issued by the Headmaster of the Municipal Council School, namely, M.N.Pa. Primary Marathi School Ramdas Peth, Akola dated 21-02-2009, indicates the tribe as 'Hindu Mannewar'.

(e) The caste certificate of the paternal cousin sister, namely, Aarati Chandrakant Mokal dated 16-06-1992 indicates the tribe as 'Mannewar'.

(f) The School Leaving Certificate of the cousin brother from paternal side, namely, Samir Chandrakant Mokal is placed on record, which indicates the tribe as 'Hindu Mannewar'.

7. Besides the above, the Vigilance Report dated 30-09-2016 has considered some of the documents placed on record by the petitioner. The caste certificates and School Leaving Certificates of the petitioner, her grand-father, her paternal uncle and her paternal cousin indicate that all of them belong to 'Mannewar Tribe'.

8. The caste certificate of the father of the petitioner is contradicted on the ground that his School Leaving Certificate mentions the tribe as "Hindu" and which is obviously not a caste, but a religion. So also, Tribe Certificate of her paternal uncle Ramesh Mokal is contradicted on the ground that the School Leaving Certificate indicates his tribe as "Telagu", which is neither a caste nor a religion, but a language.

9. The petitioner has failed the affinity test for the reason that she was unaware of the entire religious rites, traits, customs and traditions, which are synonymous with the tribe 'Mannewar'. There is no dispute that the petitioner was educated in Kalyan, District Thane, and all the while been away from her birth place Bhusawal, District Jalgaon.

10. The learned AGP has strenuously opposed the petition on the ground that there was one pre-constitutional document viz. the School Leaving record of paternal uncle of the petitioner, namely, Ramesh Mokal, whose date of birth is shown as 29-12-1944, which indicates his

tribe to be a 'Telagu' and the School Leaving record of the father of the petitioner, who has born on 14-06-1961 indicates his caste/tribe as 'Hindu'. He then refers to the report of the Vigilance Officer, wherein it is concluded that the documents do not support the claim of the petitioner that she belongs to 'Mannewar' Scheduled Tribe.

11. The learned advocate for the petitioner submits that there were certain documents before the Committee. He concedes that the petitioner may not have fully focussed on her claim. The documents discussed by this Court in the forgoing paragraphs, which are filed in this petition paper book from page Nos. 16 to 24, were not placed before the Competent Committee.

12. In view of the above, we do find that, on the one hand, the Competent Committee cannot be blamed for having arrived at the impugned conclusion since the above documents discussed in clauses "a" to "f" in paragraph No.6 were not placed by the petitioner before the Committee. Naturally, the Vigilance Officer had no material before him, on the basis of which, he could form an opinion in favour of the petitioner.

13. Having considered this petition and the material placed before us, we find that, as on the date, there are no such documents which would indicate that the petitioner or her relatives from the paternal side may have belonged any other tribe so as to disprove the claim of the petitioner. It is apparent that the petitioner did not wholeheartedly

support her claim by producing relevant documents. In these circumstances, if this petition is to be rejected, the petitioner would not be able to protect her employment as she was recruited in service in 1998 on the post reserved for scheduled tribes category. In view of the Judgment delivered by the Honourable Supreme Court in the case of ***Chairman and Managing Director Food Corporation of India and others versus Jagdish Balaram Bahira and others, (2017) 8 SCC 670***, all the benefits derived by the petitioner on the basis of such tribe claim will have to be taken away and the petitioner would lose her employment. It appears that the petitioner was not conscious of these consequences following the rejection of her claim.

14. Considering the material that was placed before the Committee and the documents placed before us, which the petitioner did not cite before the Committee, remanding the matter to the Committee would serve the ends of justice. So also, since precious time of the Committee and it's services have been utilized by the petitioner and the same exercise will now have to be repeated, this would be a fit case where costs will have to be imposed on the petitioner. She is a Staff Nurse, presently serving at Mumbai in the office of Seth V.C. Gandhi and M.A. Vora Municipal Corporation, General Hospital, Rajawadi, Ghatkopar (West), Mumbai. The learned advocate for the petitioner submits that the petitioner would volunteer to pay cost of Rs.25,000/- which shall be deposited with respondent No. 2 - Committee at it's office at Nandurbar within a period of four weeks from today.

15. In view of the above, this petition is partly allowed in terms of prayer clause "A", reproduced above. The petitioner shall deposit the amount of Rs.25,000/- with respondent No.2 - Committee on or before 20th December, 2021. We remit the matter bearing No. CVCNDB/SER/1615/CR-214/DII(2) to the office of respondent No. 2. The petitioner shall appear before the said Committee on 14th January, 2022 and shall produce all the documents that she desires to produce alongwith an index and proper pagination, with number of copies as is normally required. Thereafter, the petitioner would abide by the dates that would be granted by the Committee in the said proceeding. She shall wholeheartedly participate in the said proceeding and render her fullest co-operation to the Committee. The respondent-Committee shall decide the proceeding, as expeditiously as possible, and in any case, on or before 31-12-2022.

16. Needless to state that the respondent employer would not take any coercive steps against the petitioner until 31-12-2022 or till the date on which the proceedings are decided, whichever is earlier.

17. Rule is made absolute in the above terms.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]