

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6348 OF 2022

Smt Latabai Anil Padalkar,
Age-43 years, Occu-Household,
R/o Panwadod Bk, Tal. Sillod,
District - Aurangabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai,

2. Education Officer (Primary),
Zilla Parishad, Jalna,

3. Zilla Parishad, Jalna,
Through Chief Executive Officer

-- RESPONDENTS

Mr.Mahesh S.Deshmukh, Advocate for the petitioner.
Mr.S.P.Tiwari, AGP for respondent/State.
Mr.S.S.Tope, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE AND
ANIL L. PANSARE, JJ.)

DATE : JUNE 24, 2022

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

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

2. The petitioner is a widow, who lost her husband on 21.05.2019. He was appointed as an "Assistant Teacher" from the ST category by the respondent/Zilla Parishad. His tribe claim for validation was forwarded by the proposal dated 30.07.2013. Prior to his demise, he could not succeed in getting a validity certificate and the proceedings were pending on the date of his demise. Issue raised is about payment of retiral benefits and regular family pension.

3. The petitioner has put forth prayer clause "B" as under :-

"B. The respondents may kindly be directed to forthwith disburse retirement benefits and permanent regular family pension in favour of the petitioner without insisting for Tribe Validity certificate of her deceased husband, Anil Padalkar."

4. The learned Advocate representing the Zilla Parishad places reliance upon Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, which reads as under :-

"10. Benefits secured on the basis of false caste certificate to be

withdrawn. -

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such castes, tribes or classes, or secures any appointment in the Government, local authority or in any other company or corporation, owned or controlled by the Government or in any Government-aided institution or co-operative society against a post reserved for such castes, tribes or classes by producing a false caste certificate shall, on cancellation of the caste certificate by the Scrutiny Committee, be liable to be debarred from the educational institution concerned, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any degree, diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a caste certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such caste certificate, by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any

statutory body if he has contested the election for local authority, cooperative society or any statutory body on the seat reserved for any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false caste certificate as belonging to such caste, tribe or class on such false caste certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

5. It calls for no debate that a person, who has succeeded in getting employment on a post reserved for a particular backward category, has to submit a validity certificate. If the said validity is refused or if the certificate is cancelled by the Scrutiny Committee, such candidate is liable to be debarred from the Educational Institution and if it is a case of employment, he would be discharged from such employment forthwith. Benefits achieved and derived by him by virtue of such recruitment would also stand withdrawn.

6. The above issue has been dealt with by the Hon'ble Supreme Court in **Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others [2007 AIR SC 3271]**

and in a subsequent order delivered in **Vijay Kishanrao and another Vs. State of Maharashtra and others [2020 AIR SC 3715]**.

7. In the instant case, the brother in law of the petitioner i.e. the real brother of the deceased had also moved his proposal for validation. It is undisputed that the said brother namely Raju Malhari Padalkar has been granted certificate of validity on 09.01.2007 for belonging to the Koli Malhar, ST.

8. The GR dated 22.08.2017 mandates that if any blood relative from the paternal side family tree has been granted validity certificate, the said certificate would be a strong evidence in support of the claimant's pending claim and as such, on the basis of such validity which is unquestioned, the claimant can also be granted a validity certificate. This Court has held in **Apporva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 Nagpur [2010(6) Mh.L.J.401 : AIR 2010(6) Bom.R.21]**, in paragraph Nos.7 to 9 which reads as under :-

"7. We thus come to the conclusion that when during the course of enquiry the candidate submits a caste validity certificate granted earlier certifying that a blood relation of the candidate belongs to the same

caste as that claimed by the applicant, the committee may grant such certificate without calling for Vigilance Cell Report. However, if the committee finds that the earlier caste certificate is tainted by fraud or is granted without jurisdiction, the Committee may refuse to follow and may refuse to grant certificate to the applicant before it.

8. Mr.Manohar, amicus curiae who assisted in the matter, submitted that the decision on the caste claim does not affect that person alone but has an impact on the future generation where the caste claim has been wrongly accepted or rejected. He, therefore, submitted that the committee must in all cases issue notice to the blood relatives who have wrongly or fraudulently obtained the caste certificate or obtained the certificate without jurisdiction in the committee to grant it and initiate proceedings to cancel that certificate. Referring to the decision in [Indian Bank v. Satyam Fibres \(India\) Pvt. Ltd. - \(1996\) 5 SCC 550](#) where the Supreme Court while dealing with a case under [Consumer Protection Act, 1986](#) and the power of National Commission held that the Commission has inherent power to recall the judgment and order obtained by fraud.

The Supreme Court further observed vide para 20 of the aforesaid judgment thus :

" This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraus et jus

nunquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent)."

The position of law pointed out by the learned amicus curiae is undoubtedly correct but we are not called upon to decide whether the committee ought to have exercised such power in the present case.

9. In the present case, we find that the committee has disbelieved the petitioner's case that she belongs to Kanjar Bhat after calling the school leaving certificate of petitioner's father and noticing that the original caste written on it was 'Thakur' and that was subsequently changed to Kanjar Bhat. The committee observed that the caste has been changed without complying with the procedure prescribed by Section 48(e) and 132(3) of Mumbai Primary Education Act. In fact, the caste has been changed on the basis of the affidavit. From the findings of the committee it appears that the committee has observed that the change of caste has been done illegally. Obviously, the committee which decided the caste claim of the petitioner's sister did not hold the same view, otherwise it would have refused to grant validity. In the circumstances, we are of the view that the committee which has expressed a doubt about the validity of caste claim of the petitioner and has described it as a mistake in its order, ought not to have arrived at a different conclusion. The matters pertaining to validity of caste have a great impact on the candidate as well as on the future generations in many matters varying from marriage to education and enjoyment, and therefore where a committee has given a finding about the validity of the caste of a candidate another committee ought not to refuse the

same status to a blood relative who applies. A merely different view on the same facts would not entitle the committee dealing with the subsequent caste claim to reject it. There is, however, no doubt as observed by us earlier that if a committee is of the view that the earlier certificate is obtained by fraud it would not be bound to follow the earlier caste validity certificate and is entitled to refuse the caste claim and also in addition initiate proceedings for cancellation of the earlier order. In this view of the matter, we are of the view that the petition must succeed. Rule is made absolute in above terms. The Caste Scrutiny Committee is directed to furnish the caste validity certificate to the petitioner."

9. This Court (to which one of us Ravindra V. Ghuge, J. is a party) has dealt with a similar case vide judgment dated 20.07.2021 delivered in WP No. 6485/2020 filed by Sunita w/o Pradip Thakar Vs. The State of Maharashtra and others. So also this Court (Coram : Hon'ble The Chief Justice Dipankar Datta and Mangesh S. Patil, JJ) has delivered an order on 01.10.2021 in WP No.4624/2021 filed by Kamlabai w/o Shaphadu Salve Vs. The State of Maharashtra and others. In Kamlabai (supra), this Court considered the scope of Section 10 of the 2000 Act and has held in paragraph Nos. 5 to 15 as under :-

"5. The provisions of Act No. XXIII of 2001 in general and section 10 in particular have been considered by the Supreme Court in a decision of

recent origin reported in (AIR 2017 SC 3271) (Chairman and Managing Director, Food Corporation of India and others v. Jagdish Balaram Bahira and others).

6. Mr. Patil, learned AGP appearing for the respondent No. 1 has invited our attention to paragraphs 54, 55, 62, 65 and 87 of the said decision to support his contention that without validation of the tribe claim of the teacher, the petitioner is not entitled to any 'financial benefits' as referred to in sub-section (2) of section 10. The aforesaid submission of Mr. Patil has been adopted by Mr. Mahajan, learned advocate for the respondents 2 and 3.

7 . Let us now consider whether in terms of section 10 of Act No. XXIII of 2001, as interpreted in Jagdish Balaram Bahira (supra), the action of the respondents in withholding payment of death gratuity to the petitioner is justified. Since the scheme of Act No. XXIII of 2001 has been discussed in detail by the Supreme Court in Jagdish Balaram Bahira (supra), it is considered unnecessary for the purpose of a decision on this writ petition to repeat the same. However, we may note that so far it is relevant here, the ratio of the decision is that if any appointment under the Government/Public Authority is obtained by an individual on a vacancy earmarked for a reserved candidate on the basis of a caste/tribe certificate, which in terms of the procedure envisaged in Act No. XXIII of 2001 subsequently turns out to be false, such individual would have no right to continue in service and any benefit enjoyed or derived by virtue of such appointment shall be withdrawn forthwith. That seems to be the plain and clear intention of the statute and there can be no quarrel on this score. We have, however, not noticed any observation made by the Supreme Court in

Jagdish Balaram Bahira (supra) that the expression "any other benefits" as employed in sub-section (1) of section 10 that could be withdrawn, or, the expression "other financial benefit" that could be recovered as arrears of land revenue, would include death gratuity. In fact, the facts and circumstances giving rise to the proceedings before the Supreme Court did not require a pronouncement in that regard. In a way, Mr. Patil, learned advocate for the petitioner, is right in contending that the decision in Jagdish Balaram Bahira (supra) is distinguishable on facts and the ratio laid down therein inapplicable to the facts of the present case.

8 . The precondition for attracting section 10 of Act No. XXIII of 2001 is that an individual must have obtained admission for a seat in an institution or appointment on a public post, reserved for the socially and economically backward classes, by falsely projecting that he/she belongs to the reserved category. In this case, although there is no clinching evidence that the teacher was appointed on a post which according to the 100-point roster was supposed to be filled by a reserved candidate, we shall assume the same in view of production of Exhibit 'X' before us.

9 . The next situation that would emerge and call for consideration on reading section 10 is what happens to an individual who obtains a degree, diploma or any other educational qualification on the basis of a caste/tribe certificate which is subsequently proved to be false. The answer is in sub-section (3) of section 10. The non-obstante clause therein would render such degree, diploma or any other educational qualification inoperative. However, significantly, there is no such express provision in Act No. XXIII of 2001 or the rules framed

thereunder, or at least no such provision has been brought to our notice on behalf of the respondents, empowering the State to recover any amount which is part of a retirement benefit like 'gratuity' from an employee. Law is well-settled that attention has to be devoted to what has been said by the Legislature and also to what it has preferred not to say.

10. The point that would now engage our consideration based on Mr. Patil's contention is, whether death gratuity can be comprehended to be covered by the expression "other financial benefit", which is recoverable from an individual who joined service on the basis of a false caste/tribe certificate, as arrears of land revenue. We need not deal with "any other benefits" in sub-section (1) of section 10 since withdrawal of 'any other benefits' would be the follow-up action of debarment from serf vice which, in this case, has not occasioned because the teacher died-in-harness. The other incidental point that would require a decision from us would be, whether the State should be allowed to reap the benefit of the Scrutiny Committee's fault or lapse, as the case may be, in not completing the process of rendering a final decision in the proceedings that have been initiated in regard to validation of the teacher's tribe certificate.

11. No doubt, 'gratuity' is a retirement benefit but such benefit is not granted as if it were a bounty or charity by the employer. Gratuity, for all intents and purposes, is offered by the employer (a State within the meaning of Article 12 of the Constitution, as in the present case) in terms of statutory rules that are framed in exercise of power conferred by the proviso to Article 309 of the Constitution in recognition of meritorious past services rendered by its employee. In the present case,

we are informed that 'gratuity' is payable to the petitioner, if at all, in terms of the Maharashtra Civil Services (Pension) Rules, 1982. It has not been shown from such Rules that 'death gratuity' can be withheld on the ground of pendency of proceedings before the Scrutiny Committee. We are not persuaded to agree with Mr. Patil that 'death gratuity' on which the petitioner has laid claim would be covered by the expression "other financial benefit" in sub-section (2) of section 10 of Act No. XXIII of 2001. The expression "other financial benefit" has been used alongside the words "scholarship, grant, allowance". By application of the principle of ejusdem generis, the general words "other financial benefit" must be construed in the light of the distinct category or genus, i.e. "scholarship, grant, allowance". So construed, 'gratuity', by no stretch of imagination, can be equated with a financial benefit that is extended to an individual as a scholarship, grant or allowance. Viewed from this perspective, there can be no doubt that sub-section (2) of section 10 cannot be pressed into service for denying the petitioner the amount of death gratuity that accrued in favour of the teacher.

12. The problem can be viewed from one other perspective. As on date the teacher passed away, the proceedings before the Scrutiny Committee initiated on the basis of the reference made by the respondent No. 2 were in excess of six years old. It could be so, as submitted, that the Vigilance Cell has not been able to complete its inquiry and place a report in that regard before the Scrutiny Committee. However, the fault or lapse, as the case may be, cannot be attributed either to the petitioner or to the teacher. The obvious consequence of lack of the requisite vigilance report is that the tribe

certificate, which the petitioner might have produced at the time of joining service, has not yet been invalidated. Given this situation, there is no positive material on the basis of which the respondent No. 2 could have even inferred that the tribe certificate dated 3 July 1991 is false. No doubt, Act No. XXIII of 2001 has been enacted with the noble purpose of preventing the menace of dishonest people seeking admission in educational institutions or public employment on the basis of false caste/tribe certificates against vacancies reserved for the socially and backward classes. However, the law cannot be distorted to such an extent that even in cases where the Scrutiny Committee, constituted under the relevant enactment, takes abnormally long time to decide the issue of validity of a caste/tribe certificate, the delay in conclusion of the proceedings would operate to the utter detriment and prejudice of a distressed woman like the petitioner.

13. Pertinently, section 11 of Act No. XXIII of 2001 provides for offences and penalties. Assuming that the teacher was alive and if indeed the Scrutiny Committee had invalidated his tribe certificate, he would have exposed himself to criminal prosecution. Now that the teacher is no longer in this world, there can be no prosecution. However, if at all, it is only the civil consequence of withdrawal of benefits that would survive. Law is again well-settled that any action of a public authority entailing civil consequences must be preceded by observance of the audi alteram partem rule. With the death of the teacher, no action leading to civil consequences can be taken. This is one other reason why we hold the action of the respondents to be unsustainable in law.

14. Besides, we must not be oblivious of the realities of life and the penurious condition that is ordinarily brought about by sudden demise

of the sole bread earner for the family, in our country. It is with the terminal benefits that the family of the bread earner has to survive and if such benefits, which are aimed at providing succor to the family members of a deceased individual in times of distress, are sought to be withheld in the manner the respondents have taken recourse, the Court cannot and ought not to be a silent spectator. In the present case, by denying the amount of 'death gratuity' to the petitioner, the State would be failing in its obligations as a welfare state as provided in Part IV of the Constitution.

15. For the reasons aforesaid, we find sufficient force in the petitioner's contention that the action of the respondents is unjustified. Accordingly, we direct the respondents to immediately, but not later than sixty days from date, release in favour of the petitioner the said amount of Rs. 10,53,250/-. Should there be any remissness to release the said amount within the time stipulated, the same shall carry interest @ 9% per annum till such time it is ultimately released in favour of the petitioner."

10. Considering the above and in view of the fact that the blood relative (biological brother) of the deceased has been granted validity certificate, the GR dated 22.08.2007 would apply to case of the petitioner.

11. Consequentially, this petition is allowed in terms of prayer clause "B".

12. The respondents shall initiate appropriate steps and shall ensure that regular family pension is paid to the petitioner and arrears of pensionary benefits as well as retiral benefits are paid, as expeditiously as possible and in any case on or before 30.09.2022.

13. Rule is made absolute in the above terms.

(ANIL L. PANSARE, J.)

(RAVINDRA V. GHUGE, J.)