

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

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WRIT PETITION NO. 1584 OF 2017

* Mangala Shankarrao Sonwane
Aged about 39 years, occu: service
R/o Manohar Colony Road,
Ramnagar, Gondia,
Tah & Dist. Gondia(MS)

..Petitioner

versus

1. The Zilla Parishad, Gondia
Through the Chief Executive Officer
Zilla Parishad, Gondia- 441601.

2) The Education Officer (Primary)
Zilla Parishad, Gondia- 441 601.

3) The State of Maharashtra
Through the Secretary,
Tribal Development Department
Mantralaya, Mumbai - 400 032.

4) The Director/ Commissioner,
Tribal Research and Training Institute
28, Ranicha Bagh, Pune -411 001.

5) The Deputy Director/ Member-Secretary
Scheduled Tribe Certificate Scrutiny
Committee, Nagpur Division, Giripeth
Nagpur - 440 010.

.. Respondents

...

Mr. M.G. Burde, Advocate for Petitioner
Mr. A.Y. Kapgate, Advocate for Respondents 1 and 2
Ms. T. Khan, AGP for Respondents 3 to 5

CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ

DATED : 4th August, 2022.

ORAL JUDGMENT: (Per : ANIL L.PANSARE, J.)

By means of this petition, the petitioner has assailed the order dated 15th November 2010, issued by the Respondent No.3-Tribal Development Department, terminating her service. The petitioner has also assailed the communication dated 4th October 2016, issued by the respondent No.3 rejecting her representation for reinstatement in service. The petitioner has then assailed the order dated 12th August 2004 passed by the respondent no.5-Scrutiny Committee invalidating her Tribe claim as belonging to “*Binjhwar*” Scheduled Tribe. The petitioner has then sought a direction against the respondent No.3 to issue an administrative instruction under Article 162 of the Constitution of India to all the Departments concerned granting protection to the employees including the petitioner belonging to “Binjhwar/ Injhwar” community as both are the same.

2. It is the case of the petitioner that the respondent no.4 Director/Commissioner, Tribal Research and Training Institute, Pune, has intimated the respondent no.3-State of Maharashtra through its Secretary, Tribal Development Department, vide letter date 11th November 2002 that the respondent no.4 had already submitted its notes/ comments to the Government of Maharashtra vide letter dated 15th May 2001 that “Binjhwar/Injhwar” was one tribe as per the survey carried out in Bhandara and Gondia Districts by the Deputy Director, Scheduled Tribe Certificate Scrutiny Committee, Nagpur. It was also recommended in the letter that there was no objection in sending an amendment proposal with the approval of Tribal Advisory Committee to the Central Government for making changes in the list of Scheduled Tribes. It is further the case of the petitioner that the Government of Maharashtra has forwarded the recommendations for amendment to the Government of India vide its communication dated 31st May 2010, which is still pending.

3. Heard learned counsel for the respective parties at length. Rule was already issued in the matter as far back as 30th June 2017.

4. The essence of the petition is in the challenge to the order dated 12th August 2004 passed by the respondent no.5-Scrutiny Committee invalidating her Tribe claim as belonging to "*Binjhwar*" Scheduled Tribe. According to the petitioner, she was unaware so also the respondent no.2, that her Tribe claim had already been invalidated in the year 2004. Her service came to be terminated vide order dated 15th November, 2010 on the ground that she failed to submit Tribe validity certificate inspite of giving sufficient opportunity. The petitioner has then filed a writ petition being numbered 351 of 2011, seeking directions to the Scrutiny Committee to decide her Tribe claim within stipulated period and sought liberty to make representation to the Respondent no.1-Zilla Parishad, against the termination order passed by it. The Committee was directed

to decide the Tribe claim within six months and liberty sought was also granted. Thereafter, the petitioner came to know that her Tribe claim has already been rejected on 12th August, 2004. The petitioner questioned the order of termination in Writ Petition No. 5597 of 2013 on one of the grounds that neither the petitioner nor her employer was aware of such status. The co-ordinate Bench, without entering into merit, vide order dated 30th March 2016, directed the petitioner to make an appropriate representation to the employer and the employer was directed to decide the same independently. The representation has been rejected by the employer vide impugned communication dated 4th October, 2016 on the ground that her Tribe claim has been invalidated.

5. We have, with the assistance of learned counsel for both sides, gone through the order dated 12th August, 2004 passed by Respondent no.5-Scrutiny Committee. The documents submitted by the petitioner were examined by the

respondent no.5. The case was referred to the Vigilance Cell for enquiry which submitted its report on 8th October 2001. The school leaving certificate issued on 1st October 1943 in favour of grandfather of the petitioner, in which the date of birth has been mentioned as 16th July 1930 and the date of admission in the school is recorded as 1st April 1936, the entry in the column of caste was mentioned as "*Maratha*". The Vigilance Cell enquiry revealed that the caste "*Maratha*" has been deleted and replaced as 'Injhwar' in a different ink. Another entry is in respect of petitioner's uncle's father. His date of birth is recorded as 1st October 1934; the date of leaving the school is recorded as 1st July 1947, whereas the caste is mentioned as 'Injhwar'. The affinity test would indicate that the socio-cultural traits, characteristics, customs etc. as stated by the petitioner's father, do not match with those of '*Binjhwar*' Scheduled Tribe.

6. Since the findings of the Vigilance Cell did not support the claim of the petitioner, the copy of the report

was served upon her and she was asked to submit her response. The petitioner, in response, has stated that due to the difference in Hindi and Marathi pronunciation, people write 'Binjhwar' as 'Injhwar'.

7. The Respondent No.5-Committee has, on the basis of the pre-Constitutional documents which indicated the caste of ancestors of the petitioner as 'Binjhwar', invalidated the Tribe claim of the petitioner. The respondent no.5 has also opined that the documents indicating the petitioner to be belonging to 'Binjhwar' Scheduled Tribe are all issued after the year 1980. There was no evidence to substantiate the petitioner's claim as belonging to 'Binjhwar'.

8. Ms. T. Khan, learned AGP has supported the finding by contending that Binjhwar/Injhwar are two distinct castes. The petitioner failed to prove her Tribe claim. As against, Mr. M.G. Burde, learned Advocate for the petitioner submits that it is merely because of the difference in

pronunciation, the Binjhwar caste is also written as Injhwar. The learned Advocate has relied upon the inspection report dated 11th November 2002 carried out by the respondent no.4. The Inspection was conducted on the count that the tribe 'Binjhwar/Injhwar' residing at Bhandara, Gondia and Chandrapur Districts are facing difficulty in getting the tribe certificate. The Committee arrived at a conclusion on the basis of the survey conducted of sixty families that the Binjhwar tribe is later on named as Injhwar tribe and that both are the same. Accordingly, the Committee had made a recommendation to send proposal to the Central Government to make necessary amendment. It is accordingly argued that when respondent no.4 has made such a recommendation on the ground that Binjhwar/Injhwar are one and the same caste, the respondent no.5-Scrutiny Committee, could not have invalidated the tribe claim of the petitioner.

9. Mr. Burde, learned Advocate for the petitioner has relied upon the following judgments in support of his

argument that the service of the petitioner could be protected even after invalidation of her caste claim:-

- (i) *Arun Sonone vs. State of Maharashtra*¹
- (ii) *Choudhari Mohammad vs.Z.P.Aurangabad and others*²
- (iii) *Srish Kumar Choudhari v.State of Tripura & others*³
- (iv) *Nityanand Sharma & another vs.State of Bihar & others*⁴
- (v) *Uptron India ltd. vs.Shammi Bhan and another*⁵

However, the learned Advocate for the petitioner has conveniently omitted to mention the judgment of the Hon'ble Supreme Court in the case of *Chairman and Managing Director FCI & others vs. Jagdish Balaram Bahira and others*⁶, wherein the issue of protection of service after invalidation of the caste claim has been put to rest. The Hon'ble Supreme Court after taking into consideration the law laid down in the earlier era has rendered a categorical finding that where the benefit is secured by an individual such as an appointment to the post or admission to an educational institution, on the basis that the candidate

1 2015(1)Mh.L.J. 457

2 2001(4)Mh.L.J.25

3 AIR 1990 SC 991

4 AIR 1996 SC 2306

5 AIR 1998 SC 1681

6 (2017) 8 SCC 670

belongs to a reserved category for which the benefit is reserved, the invalidation of the caste/tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non-est. It is further held that withdrawal of benefits secured on the basis of caste claim which has been found to be false and invalid is a necessary consequence which flows from invalidation of the caste claim and no issue of retrospectivity would arise.

10. Thus, the argument on the point of relief of protection of service after invalidation of caste claim is not available to the petitioner.

11. So far as the other issues raised by the petitioner are concerned, the same have been dealt with by the coordinate Bench of this Court in the case of Prakash Shahare vs. State of Maharashtra and others⁷. In the said case, the claim of the petitioner as belonging to Binjhar was invalidated by the Scrutiny Committee. In that case alike

in this case, the Committee rendered a finding that the petitioner therein belongs to Injhwari caste which is not included in the list of Scheduled Tribes. The inspection report as referred to by the learned Advocate for the petitioner herein, has been considered in the said judgment. The relevant observations on the contention that Binjhwari/Injhwari castes are one and the same and that necessary amendment should be recommended to the Central Government, would find place in paragraph 5 of the judgment which reads as under :-

“5. Shri Saurabh Choudhary, the learned counsel appearing for Union of India, has placed before us the Constitution (Scheduled Tribes) Order (Second Amendment) Bill, 2011 wherein it was proposed that ‘Injhwari’ to be treated as synonym of ‘Binjhwari’ and the matter was referred to the State Government for furnishing clear recommendation. It is informed to us that the State Government by its communication dated 23rd February 2012 informed the Government of India, Ministry of Tribal Affairs that inclusion of ‘Injhwari’ is synonym of ‘Binjhwari’ is not acceptable. We are also informed that the said Bill has lapsed.”

12. The coordinate Bench has then observed that it is not permissible for the court to hold an enquiry or to let in the evidence to hold that Injhwari is the synonym of Binjhwari. The State Government has also taken a decision that inclusion of Injhwari as synonym of Binjhwari is not acceptable and therefore, the coordinate Bench held that Injhwari is not entitled to the benefits available to Binjhwari Scheduled Tribe at Sr. No.10 in the Constitution (Scheduled Tribe) Order, 1950 in relation to the State of Maharashtra. We do not find any reason to take a different view in the matter.

13. In the result, we do not find any error in the finding of the respondent no.5-Scrutiny Committee that the petitioner failed to establish a case that she belongs to Binjhwari, Scheduled Tribe. In sequel, the termination order dated 15th November 2010 issued by the respondent no.3 terminating the service of the petitioner is held to be legal and valid, so also is the communication dated 4th October 2016 issued by the respondent no.3 rejecting the

representation of the petitioner seeking reinstatement in service. In the circumstances, there is no question of issuing directions to the respondent no.3-State of Maharashtra to issue an administrative instruction as prayed for by the petitioner.

14. The petition, being sans merit, deserve dismissal which we direct. Rule discharged.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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