

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

WRIT PETITION NO. 4629 OF 2013

Sharad S/o Shrihari Thakur,
Aged about 32 years,
Occupation : Peon,
District Central Cooperative Bank,
Buldana, R/o Post : Merakhurd,
Tq. Chikhali, Distt. Buldana.

..... **PETITIONER**

VERSUS

1. Scheduled Tribe Certificate Scrutiny
Committee, Amravati Division,
Irwin Chowk, Amravati, through its
Member Secretary.

2. The District Central Cooperative
Bank, Buldana, through its
Chairman, R/o Buldana,
Distt. Buldhana.

..... **RESPONDENTS**

Shri R. S. Parsodkar, Advocate for the petitioner.
Mrs. Sangeeta S. Jachak, AGP for respondent No.1/State.
Shri A. P. Chaware, Advocate for respondent No.2.

CORAM: A.S. CHANDURKAR &

G. A. SANAP, JJ.

DATED : 24/02/2022

JUDGMENT : (PER G. A. SANAP, J)

1. In this petition, the petitioner has challenged the order dated 17/04/2013 passed by the respondent No.1 - Caste Scrutiny Committee, Amravati Division, Amravati,

whereby the Caste Scrutiny Committee invalidated 'Thakur' Scheduled Tribe caste claim of the petitioner.

2. The petitioner is a permanent resident of Buldhana District. The Caste Certificate of 'Thakur' Scheduled Tribe is issued in his favour by Sub-Divisional Officer, Buldhana. In the school record of his father and other relatives, their caste is mentioned as 'Thakur'. The petitioner has relied upon all these documents. On 10/02/2003, Caste Validity Certificate has been issued in favour of Amrata, niece of petitioner being Thakur Scheduled Tribe. Similarly, the Caste Validity Certificate has been issued by the Caste Scrutiny Committee, Aurangabad in faovur of the petitioner's nephew Narendra Thakur on 21/11/2001. It is his case that this voluminous documentary evidence was not taken into consideration by the Caste Scrutiny Committee and ignoring the said evidence, his claim of caste Thakur Scheduled Tribe was invalidated.

3. On 10/10/2003, the petitioner was appointed as a Peon in the respondent No.2 - Bank. The petitioner's caste claim was referred to the Caste Scrutiny Committee. Since it was not decided in time, he was constrained to file Writ Petition No.5406/2009. This Court gave directions to decide his caste claim within six months. On 28/01/2009, the respondent No.2 - Bank terminated the services of the petitioner for non-submission of Caste Validity Certificate.

4. The Caste Scrutiny Committee has relied upon the Vigilance Cell Report which is against the petitioner. The Caste Scrutiny Committee by applying the Affinity Test, invalidated the Tribe claim of the petitioner.

5. We have heard learned Advocate for the petitioner, learned Assistant Government Pleader for respondent No.1 and learned Advocate for respondent No.2.

6. The learned Advocate for the petitioner submitted that the Caste Scrutiny Committee has not taken

into consideration the documents submitted with the report of the Vigilance Cell, wherein the caste of the blood relatives of the petitioner and his father has been mentioned as 'Thakur'. The learned Advocate submitted that the Caste Scrutiny Committee though having benefit of going through the Caste Validity Certificates issued in favour of Amruta and Narendra, has failed to take the same into consideration. Drawing the attention to the relevant part of the order of the Caste Scrutiny Committee, learned Advocate submitted that the Caste Validity Certificates of Amruta and Narendra have not been dealt with at all by the Caste Scrutiny Committee. The learned Advocate submitted that in the teeth of voluminous documentary evidence and the Caste Validity Certificates issued in faovur of blood relatives of the petitioner, unnecessary emphasis on the Affinity Test was completely unwarranted and unjustified.

7. The learned Assistant Government Pleader submitted that the Vigilance Cell conducted enquiry in the

matter and found that there was no substance in the claim of the petitioner as belonging to Thakur Scheduled Tribe. The learned Assistant Government Pleader submitted that the Caste Scrutiny Committee has taken into consideration the documents collected by the Vigilance Cell. The opinion of the Vigilance Cell was based on those documents and the enquiry conducted in the matter.

8. We have minutely perused the record and proceedings. Perusal of the order passed by the Caste Scrutiny Committee would show that there is reference to the Caste Validity Certificate dated 21/11/2001 of cousin of the petitioner Narendra is at Sr. No.15 and Caste Validity Certificate dated 10/02/2003 of niece Amruta of the petitioner is at Sr. No.17. Perusal of the order of the Caste Scrutiny Committee would show that the Caste Scrutiny Committee has not at all considered these documents while deciding the claim of the petitioner. The Caste Scrutiny Committee in our view was required to record sound reasons

for discarding these two important documents. The family tree was admittedly submitted by the petitioner. The family tree is part of report of the Vigilance Cell. Perusal of the family tree would show that Narendra and Amruta are the blood relatives of petitioner. This family tree is undisputed. Besides, the Validity Certificates in favour of Amruta and Narendra, the Vigilance Cell had an opportunity to go through the documents of other relatives and father of the petitioner. Annexure-2 is the birth entry extract of father of the petitioner from the Government record. This entry was made on 16/03/1948. It is undisputed that this is a Pre-Constitution document. Annexure-3 is the School Leaving Certificate of paternal uncle of the petitioner. He was born on 29/01/1952. In both these documents, the caste of the father of the petitioner and uncle of the petitioner is mentioned as 'Thakur'. It is nobody's case that these documents are either manipulated or created just to support the claim of the petitioner. In this case, therefore, two Caste Validity Certificates of Amruta, niece of petitioner and Narendra, nephew of petitioner cannot

be discarded. They are the blood relatives of the petitioner.

9. In the case of Apoorva d/o Vinay Nichale Vrs. Divisional Caste Certificate Scrutiny Committee No.1 and others¹, this Court has held that if the Validity Certificate is granted to the blood relative of the petitioner, the committee would be required to grant Validity Certificate to the blood relative without making further enquiry unless the previous enquiry is tainted by fraud or the same is granted without jurisdiction. In our view, this proposition would support the claim of the petitioner. The decision in Apoorva's case has been considered in the case of Prakash s/o Shrawan Deore Vrs. Scheduled Tribe Certificate Scrutiny Committee, Nashik and others². The same view has been taken in this decision. It is, therefore, seen that on the basis of documents, the petitioner has made out a case for acceptance of his claim. His claim is supported by the law laid down in the above decisions.

1 2010 (6) Mh. L. J. 401

2 2019 (5) Mh.L.J. 228

10. The Caste Scrutiny Committee has not taken this aspect into consideration. The Caste Scrutiny Committee giving weightage to the ethnic linkage by way of Affinity Test denied the claim of the petitioner. In our opinion, the ethnic linkage by way of Affinity Test could not be said to be the Litmus Test while rejecting the caste claim, if it is substantiated by other cogent and concrete documentary evidence. The Affinity Test could not be the sole basis and criteria to reject the caste claim. It may be one of the criteria, provided the claim on other counts is also doubtful. In our view, in this case, in the teeth of the documentary evidence, the Caste Scrutiny Committee would not have rejected the 'Thakur' Scheduled Tribe claim of the petitioner by applying the Affinity Test. The Scrutiny Committee has failed to take into consideration 'Thakur' Scheduled Tribe validity claim of the blood relatives of the petitioner as well as the Pre-Constitution document. In our view, therefore, the order passed by the Caste Scrutiny Committee cannot be sustained. It is required to be set aside.

11. The petitioner was appointed as a Peon in respondent No.2 - Bank on 10/10/2003. His caste claim was referred to the Scrutiny Committee for verification. There was delay on the part of Caste Scrutiny Committee to decide his claim expeditiously. Therefore, the respondent No.2 for non-submission of Caste Validity Certificate terminated the services of the petitioner. The learned Advocate for the petitioner submitted that in view of acceptance of claim of the petitioner, he would be entitled to get the reinstatement in respondent No.2 - Bank. The learned Advocate for respondent No.2 - Bank relying upon Memorandum of Understanding dated 17/03/2015 submitted that the recruitment of Class-IV employee cannot be made. The banks are required to get the said work done by outsourcing. In our view in the backdrop of the abovestated chronology of events, the reinstatement would be the consequential relief. It could not be said to be a fresh recruitment. It is undisputed that he was terminated for want of submission of Caste Validity Certificate. Now, the petitioner is found entitled to get the

Caste Validity Certificate. He has established that he belongs to 'Thakur' Scheduled Tribe. In our view, therefore, the reinstatement in service has to follow as soon as his Thakur Scheduled Tribe is held to be valid. In our view, therefore, the petitioner is entitled to this relief as well.

12. The learned Advocate for the petitioner submitted that the petitioner is out of employment and therefore, this Court may not grant back-wages. Considering this submission, we are not inclined to grant prayer made for back-wages. In view of the above, we proceed to pass the following order :-

ORDER

- i] The order dated 17/04/2013 passed by the Caste Scrutiny Committee, Amravati is set aside.
- ii] It is declared that the petitioner has proved that he belongs to "Thakur" Scheduled Tribe. The Scrutiny Committee shall issue a validity certificate to the petitioner accordingly within a period of four weeks from the production of this order.

iii] The order of termination dated 28/01/2009 which was issued by the respondent No.2 is set aside with direction that the petitioner shall be restored to his original post. Service of the petitioner shall be reinstated within a period of three weeks from today. However, he would not be entitled for any back-wages for the period from 28/01/2009 till his reinstatement. However, the aforesaid period shall be taken into consideration for giving the benefit of continuity of service and eligibility to claim all service benefits.

iv] Rule is made absolute in the aforesaid terms with no order as to costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)

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