

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

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WRIT PETITION NO. 6259 OF 2006

Dhiraj Dattatraya Dharmik
Aged about 30 years, occu: service
R/o Plot No. 283, Nandanvan Layout
Nagpur.

..Petitioner

versus

1. Administrative and Establishment Officer
Maharashtra Jeevan Pradhikaran
1st floor Cidco Bhavan
Belapur, New Mumbai.

2. Scheduled Tribe Caste Certificate
Scrutiny Committee,
Adiwasi Vikas Bhawan
Giripeth, Nagpur.

.. Respondents

Mr. S.P.Bhandarkar & Ms.Sejal Lakhani, Advocates for Petitioner
Mr. D.M. Kakani, Advocate for Respondent no.1
Mrs.M.H.Deshmukh, Assistant Government Pleader for Respondent
no. 2

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CORAM: NITIN JAMDAR &
ANIL L. PANSARE,JJ
DATED :17 February 2022.

ORAL JUDGMENT: (PER NITIN JAMDAR, J.)

By this Petition, the petitioner who was working as an Assistant Engineer, Grade II, Class II with Respondent no.1- Maharashtra Jeevan Pradhikaran, on a post reserved for Scheduled Tribe category, has challenged the order passed by Respondent no.2- Scrutiny Committee dated 16 October 2004 invalidating the caste certificate issued to the Petitioner. Petitioner has also challenged the order of termination from service on 13 June 2007.

2. The background leading to this Petition is as follows :-

Petitioner applied for and was granted caste certificate on 27 July 1988 as belonging to 'Halba' Scheduled Tribe. Since the Petitioner was appointed and working on a vacancy reserved for Scheduled Tribe candidate, his claim was referred by Respondent no.1-employer to Respondent no.2-Scrutiny Committee on 8 October 2001. The Scrutiny Committee invalidated the claim by the order dated 16 October 2004. The petitioner challenged this order in Writ Petition No.5413 of 2004. Initially, an *ad-interim* order was granted in favour of the Petitioner. When the matter came up for hearing before the Division Bench on 26 June 2006, the Advocate for Petitioner sought leave to withdraw the petition with liberty to make necessary representation to the employer. The Petition was allowed to be withdrawn and was disposed of as such. Thereupon, notice was issued by Respondent no.1-employer as to why his services should not be terminated as his caste certificate was invalidated since the Petitioner was occupying a post meant for

Scheduled Tribe candidate and that the Petitioner had simpliciter withdrawn the Petition and, therefore, the petitioner cannot be continued in service. Reference was made to 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 that upon invalidation of the caste certificate all benefits will stand withdrawn. Pursuant to it, an order of termination was passed on 13 June 2007.

3. The petitioner filed this petition on 9 October 2006, challenging the notice issued by Respondent no.1-employer and seeking protection of his services. This petition came up on Board on 29 November 2007. Learned counsel for the Petitioner sought permission to withdraw this Petition, and the same was disposed of as withdrawn.

4. The Petitioner after that filed Civil Application No. 8689/2007 in the Petition for modification of the order. The Division Bench refused to modify the order, and the Civil Application was disposed of. Consequently, the order of disposal of the present petition upon withdrawal stood confirmed.

5. The Petitioner thereafter filed Special Leave Petition / Civil Appeal No. 6419/2008. The Hon'ble Supreme Court where

the Appeal was disposed of setting aside the order and remitting the matter for fresh consideration.

6. Thereupon, the Petition is placed for hearing. Meanwhile, the petitioner stood terminated from service on 13 June 2007. After that, the Petitioner has amended the petition and sought to challenge the order of termination and the order of the Scrutiny Committee dated 16 October 2004.

7. Since the Petitioner was occupying the post reserved for candidates belonging to Scheduled Tribe and that order passed by the Scrutiny Committee dated 16 October 2004 is the basis for taking action against the Petitioner, the main challenge will be to the order of the Scrutiny Committee.

8. We have heard the learned counsel for the parties on the challenge to the order of the Scrutiny Committee.

9. The Scrutiny Committee directed the Vigilance Cell attached to it to conduct an enquiry. The Vigilance Cell produced documents on record, and the Petitioner also placed the documents in support of his caste claim. The Scrutiny Committee gave an opportunity to the Petitioner to submit say to the Vigilance Cell report as well as making submissions. The Scrutiny Committee found that the Petitioner has not discharged the burden as required

under Section 8 of the Act of 2000. None of the documents showed that the Petitioner belonged to the 'Halba' community. Accordingly, the Scrutiny Committee proceeded to invalidate the caste certificate.

10. Learned counsel for the Petitioner firstly submitted that the Scrutiny Committee has not considered the genealogy and the family tree produced before the Committee along with an affidavit of one Nanaji Tulshiram Parate. As regards this contention, learned Assistant Government Pleader submitted that this document was not accompanied by an affidavit of any of the petitioner or his blood relatives as required and was not presented in the manner required.

11. Section 8 of the Act of 2000 clarifies that the burden of proving that person belonged to such a caste or tribe he claims to be, is upon the candidate. The Rules framed under the Act of 2003 lays down the procedure to be followed; the documents have to be submitted by the applicant upon a list furnished. Reference is made to the documents furnished by the Petitioner before the Scrutiny Committee. These documents produced by the Petitioner are a list of surnames in the tribe, general anthropological literature and brochures, a list of validity certificate issued to one Hemant Sidam, school leaving certificates of some other persons and 2/3 other validity certificates. There is no reference to the affidavit in support of the genealogical tree. Even otherwise, as it is settled, that for proving the caste claim, the documents, such as an extract from

school leaving certificate prior to the year 1950, referred to as the pre-Constitutional period are of value. The Scrutiny Committee found that the Petitioner did not produce any documents before 1950. The Petitioner, in fact, in the questionnaire referred to his caste as 'Maratha Halba'. Other documents were of persons not related to the petitioner in any manner. Therefore, the conclusion of the Scrutiny Committee that Petitioner has failed to discharge his burden cannot be considered perverse.

12. Learned counsel for the Petitioner submitted that the Petitioner was not allowed to cross-examine the Police officer attached to Vigilance Cell and the Headmaster and, therefore, there is a breach of principles of natural justice. Learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of *Ayaaubkhan Noorkhan Pathan vs State of Maharashtra and others*¹ to contend that if cross-examination is not allowed by the Scrutiny Committee, that will amount to a breach of principles of natural justice. Learned Assistant Government Pleader has relied upon the decision of Division Bench of this Court in the case of *Avinash Tulshiram Limje vs State of Maharashtra and others*².

13. Under the Rules of 2003 framed under the Act of 2000, the constitution of the Vigilance Cell is provided for in Rule 10,

¹ (2013)4 SCC 465

² 2007(4) Mh.L.J.305

which states that Vigilance Cell to assist each Scheduled Tribe Certificate Scrutiny Committee for conducting enquiry it consists of police officers and Research officer and they are *ex-officio* members. Rule 12 provides for the procedure to be followed by the Scrutiny Committee and submission of report by the Vigilance Cell. In the case of *Aayuuabkhan Pathan* (supra), the appellant before the Supreme Court was granted a validity certificate and Respondent no.5 therein had filed a complaint. In that context of adjudication, it appears that witnesses were examined. The appellant was not permitted to examine those witnesses. There is no reference in this decision to the Police officer attached to Vigilance Cell being cross-examined. On the other hand, this issue squarely arose for consideration before the Division Bench in the case of *Avinash Tulshiram Limje* (supra), where the specific argument that police officer or Headmaster should be allowed to cross-examine was negatived. There is, therefore, no merit in the contention that because the Police officer and Headmaster were not allowed to be cross-examined, there is a breach of the principles of natural justice. The Petitioner was given an opportunity to file a reply to the report of the Vigilance Cell, and that Petitioner was given the opportunity to present the case. Therefore, there is no breach of principles of natural justice.

14. In these circumstances, we do not find an error in the view taken by the Scrutiny Committee. The Petitioner has failed to

prove the case as required under Section 8 of the Act of 2000. The assessment of evidence by the Scrutiny Committee cannot be termed as perverse.

15. The Writ Petition is accordingly dismissed. Rule discharged.

[ANIL L. PANSARE,J.]

[NITIN JAMDAR,J.]

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