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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO.5598 OF 2020
WITH
CIVIL APPLICATION NO.3676 OF 2023
IN WP/5598/2020

Vinayak S/o Baburao Dugmod,
Age: 29 years, Occ. Service,
R/o: Near Ujwal Gas, Maganpura,
Nanded, Tq. Nanded,
Dist. Nanded

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary to Tribal Development
Department, Mantralaya, Mumbai
2. The Schedule Tribe Certificate
Verification Committee, Aurangabad,
Through its Deputy Director [R]
Aurangabad
3. The Registrar,
Vasantrao Naik Krishi Vidhyapeeth,
Parbhani, Dist. Parbhani

...RESPONDENTS

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Mr R. B. Dhakne and Mr S. G. Jayewar, Advocates for Petitioner;
Mr S. K. Tambe, A.G.P. for Respondent No.1
Ms Rani Bora, Advocate h/f Mr S. S. Bora, Advocate for
Respondent No.3

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 24th March, 2023

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.) :-

1. By consent of the parties, the civil application is allowed. Addition of paragraph No.12-A and prayer clause (B-1) in the writ petition, be carried out forthwith.

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

3. The Petitioner's biological elder brother, namely, Sainath Baburao Dugmod was in the employment of Respondent No.3/University. He was in permanent service and he died while in service on 27/12/2008. His father and mother were aged persons. The Petitioner, unmarried and being the biological brother of the deceased Sainath, was appointed as a 'Labourer' on compassionate basis by the University in a Cotton Research Centre, Nanded on 09/09/2014. He is still in employment. A statement is made on instructions that the Petitioner is now in permanent service.

4. The deceased brother of the Petitioner secured employment on the basis of his claim that he belongs to the 'Mannervarlu' Scheduled Tribe category. He tendered a validity

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certificate, dated 17/03/2007, which establishes that he belongs to the 'Mannervarlu' Scheduled Tribe category.

5. The issue is, as to whether the Petitioner can be deemed to be belonging to the 'Mannervarlu' Scheduled Tribe category, in the light of the **Apoorva 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.**

6. The Petitioner has relied upon a Full Bench judgment of this Court, dated 22/07/2022, delivered in Writ Petition No.6750/2022, filed by Om s/o Bhagwanrao Anjanwad Vs. State of Maharashtra and in Writ Petition No.6771/2022, filed by Shital d/o Govindrao Bainwad Vs. State of Maharashtra, wherein this Court concluded in paragraph No.46, as under :-

“46. Before parting, we make two things clear. First, if the parent of the compassionate appointee during his service tenure had submitted the validity certificate as proof of belonging to the particular backward category for which the post was reserved, the compassionate appointee may not again be required to produce the validity certificate. This is because the compassionate appointee inherits the caste/tribe of his/her parent and should not be asked to prove his/her caste/tribe status twice over. Secondly, if the deceased employee had not submitted the validity certificate as proof of belonging to the particular backward category

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for which the post was reserved, it shall be the duty of the employer, while calling upon the compassionate appointee to produce the validity certificate, to indicate with sufficient degree of clarity and reliable material that his/her parent obtained entry in public service on a post reserved for the backward category. This direction is made bearing in mind cases where the deceased employee, despite participating in the process as a candidate belonging to a backward category, might have secured appointment competing with open category candidates on his/her own merit and appointed against an open/unreserved vacancy and not against the reserved vacancy but the service book records that he/she belongs to a particular caste/tribe. Merely because of such an entry, production of validity certificate in such cases should not be insisted upon and the compassionate appointee harassed.”

7. The learned A.G.P. submits that, there is a possibility that the case of the deceased brother could be reopened if it is noticed that any fraud was played on the Committee.

8. The learned Advocate for the Petitioner submits that there are about six validity holders amongst the paternal blood relatives of the Petitioner and there is no invalidation amongst any of the paternal relatives. So also, the case of his brother cannot be reopened since he has passed away. He tenders a list of paternal blood relatives, who have been granted validity certificates, either by the Committee or by the High Court, as under :-

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Sr. No.	Name of the relative	Relation
1.	Sainath Baburao Dugmod	Real brother
2.	Anuradha Baburao Dugmod	Real sister
3.	Suresh Hanmanlu Dugmod	Real Uncle
4.	Shivkumar Ganpat Dugmod	Cousin brother
5.	Shivani Suresh Dugmod	Cousin sister
6.	Shruti Suresh Dugmod	Cousin sister

9. In view of the above, this petition is allowed in terms of prayer clauses (B) and (B-1), which read as under :-

“B) The impugned order dated 22/07/2020 issued respondent no. 3 classifying the services of the petitioner on supernumerary post for the tenure of 11 months, pursuance to the Government Resolution dated 21/12/2019, may kindly be quashed and set aside.

B-1) By issuing the direction or any other appropriate writ, it be held that the present post of the compassionate appointment of the petitioner is secured post (as the deceased brother has placed on record its Tribe Validity Certificate on record, and its entry has taken in the service record of the employer during the lifetime of the deceased.) and the petitioner has need not to place on record the tribe validity certificate of its own.”

10. Needless to state, in the event, any of the paternal blood relatives of the Petitioner suffers invalidation after

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reopening of their cases, the Petitioner would have to initiate steps for obtaining a validity certificate to clear himself.

11. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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