

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

WRIT PETITION NO. 8851 OF 2022

1. Chandrakant Gokul Khairnar @ Thakur,
Age- 55 years, Occ. Service,
Presently residing at- Indranil Society,
Biba Park, Plot No.12, Gat No.343,
Near Swami Samarth Kendra, Jalgaon,
Tq, & Dist. Jalgaon ... **PETITIONER**

V/s.

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai- 32.
Through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Dhule Division, Dhule.
Through its Member Secretary.
3. The Transport Manager,
Thane Municipal Transport Undertaking,
Administrative Building,
Road No. 27 & 34, Wagle Depot,
Wagle Estate, Thane (West)-400604. ... **RESPONDENTS**

AND

WRIT PETITION NO. 8857 OF 2022

1. Himmat Gokul Khairnar @ Thakur,
Age- 50 years, Occ. Service,
Presently residing at- Indranil Society,
Biba Park, Plot No.12, Gat No.343,
Near Swami Samarth Kendra, Jalgaon,
Tq, & Dist. Jalgaon ... **PETITIONER**

V/s.

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai- 32.
Through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Dhule Division, Dhule.
Through its Member Secretary.
3. The Divisional Controller,
Maharashtra State Road Transport
Corporation Ltd., Jalgaon Division,
Jalgaon, Tq. & Dist. Jalgaon.

... **RESPONDENTS**

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Mr. S.C. Yeramwar, Advocate for the Petitioners.
Mr. S.G. Karlekar, AGP for Respondent-State
Mr. M.D. Shinde, Advocate for R/3 in WP/8857/22
Mr. L.V. Sangit, Advocate for R/3 in WP/8857/22

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 3rd October, 2023

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

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. On 28.09.2022, when this Court issued notice in these matters, it was recorded in the order as under:

“1. The petitioner has put forth prayer clauses B, C, D and E as under :-

"B) To quash and set aside the impugned decision and order dated 12.07.2022 passed by the Respondent No-Committee cancelling and recalling the Caste Certificate dated 20.07.1988; so also, the certificate of validity dated 15.04.2004 issued in favour of the petitioner by the Scheduled Tribe Certificate Scrutiny Committee, Nashik as belonging to "Thakur"- Scheduled Tribe (Exhibit J) and hold and declare that the said Certificate of Validity is legal and valid, by issuing appropriate writ, orders or directions as the case may be;

C) To quash and set aside the impugned order dated 03.08.2022 passed by the Respondent No.3 employer terminating services of the petitioner on the basis of impugned decision of the Committee dated 12.07.2022 (Exhibit K) by issuing appropriate writ, orders, or directions as the case may be;

D) To grant stay to the impugned decision and order dated 12.07.2022 passed by the Respondent No.2-Committee cancelling and recalling the Caste Certificate dated 20.07.1988; so also, the certificate of validity dated 15.04.2004 issued in favour of the petitioner by the Scheduled Tribe Certificate Scrutiny Committee. Nashik as belonging to "Thakur"- Scheduled Tribe (Exhibit J) pending hearing and final disposal of the present Writ Petition;"

E) To grant stay to the impugned order dated 03.08.2022 passed by the Respondent No.3-employer terminating services of the petitioner on the basis of impugned decision of the Committee dated 12.07.2022 (Exhibit K) pending hearing and final disposal of the present Writ Petition;"

2. Issue notice to the respondents, returnable on 17.11.2022. The learned AGP waives service of notice on behalf of respondent Nos. 1 and 2.

3. The learned advocate for the petitioner has placed on record an affidavit undertaking dated 25.09.2022, wherein, he has submitted that if he is reinstated in service pursuant to his termination dated 03.08.2022 during the pendency of this petition, he would not seek any benefit of his tribe and would not claim

promotion or any increment that may be available on account of his entry in service as belonging to the Scheduled Tribe category. The said affidavit undertaking is taken on record and marked as "X-1" for identification.

4. In view of the above, we would consider the prayer of the petitioner for interim relief during the pendency of this petition, on the next date after the pleadings are complete.

5. Let the affidavits in reply be filed at least one week prior to the returnable date in this matter.”

3. On 14.02.2023, the learned advocate for the Petitioners had prayed for interim protection and relief in the nature of reinstatement in service. However, as the issue was pending before the Hon'ble Supreme Court, we declined such interim relief by observing in paragraph 2 and 3 of the order dated 14.02.2023, as under:

“2. The learned advocate for the Management submits that an affidavit in reply has been filed. As the claim of this petitioner has been invalidated, his services have been terminated since he was appointed on the post that was reserved for the Scheduled Tribe category.

3. The learned AGP submits that granting interim relief in the nature of reinstatement in service, at this stage, would amount to granting final relief. So also, the hearing in the "Thakur", Scheduled Tribe cases in relation to the affinity test, the Honourable Supreme Court has closed the matter (Civil Appeal No.2502/2022 filed by Mah.Adiwasi Thakur Jamat

Swarakshan Samiti vs. The State of Maharashtra and others) on 09.02.2023, for delivering a judgment.”

4. The learned AGP and the learned advocates representing the Respondents have strenuously opposed this petition.

5. The Petitioners have tendered an extensive family tree which is marked as 'X-1' for identification. Both these Petitioners were earlier granted validity certificates in the year 2003 / 2004 respectively. Their cases were reopened and the committee concluded vide the impugned judgment that the validity certificates granted to these two Petitioners deserve to be quashed and set aside.

6. The Petitioner in Writ Petition No.8841/2022 is Janhavi Dnyaneshwar Thakur. This petition was being heard along with these two petitions earlier. A Coordinate Bench of this Court [**Coram: Mangesh S. Patil & Shailesh P. Brahme, JJ.**] allowed her petition vide judgment dated 06.09.2023. The committee was directed to issue a Thakur Scheduled Tribe validity certificate to her. The said Petitioner namely Janhavi Dnyaneshwar Thakur, is the daughter of Dnyaneshwar s/o Gokul Thakur. The Petitioners before us namely Chandrakant and Himmat are sons of Gokul and biological brothers of Dnyaneshwar. Janhavi is their biological niece. Her petition was heard

independently by the Coordinate Bench since the Petitioner- Janhavi made a statement which was recorded in paragraph 4 as under:

“4. The learned advocate for the petitioner would submit that all those three individuals have independently challenged the orders of the scrutiny committee and those petitions are pending. He submits that considering the grave urgency for the petitioner, she is ready to forgo her claim to the extent of her reliance on the validity certificates issued to the afore-mentioned individuals. He submits that the petitioner independently intends to substantiate her claim as belonging to Thakur scheduled tribe.”

7. The Hon'ble Supreme Court has recently delivered a judgment in **Mah. Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra & Ors.; AIR 2023 SUPREME COURT 1657** dated 24.03.2023. In paragraph 22, 23 and 24, it has been concluded by the Hon'ble Supreme Court as under:

“22. We can also contemplate one more scenario which is found in many cases. These are the cases where the applicant relies upon caste validity certificates issued to his blood relatives. Obviously, such a validity certificate has to be issued either by the Scrutiny Committee constituted in terms of the directions issued in Kumari Madhuri Patil's case (AIR 1995 SC 94) or constituted under the Rules framed under the 2000 Act. In such a case, firstly, the Scrutiny Committee must ascertain whether the certificate is genuine. Secondly, the Scrutiny Committee will have to decide whether the applicant has established that the person to whom the validity certificate relied upon by him has been issued is his blood relative. For that purpose, the applicant must establish his precise and exact relationship with the person to whom the validity certificate has been granted. Moreover, an enquiry will have to be made by the Scrutiny Committee whether the validity certificate has been granted to the blood relative of the applicant by the concerned Scrutiny Committee after holding due enquiry and

following due procedure. Therefore, if the Scrutiny Committee has issued a validity certificate contemplated in terms of I the decision in the case of Kumari Madhuri Patil, the examination will be whether the enquiry contemplated by the said decision has been held. If the certificate relied upon is issued after coming into force of the 2000 Act, the Scrutiny Committee will have to ascertain whether the concerned Scrutiny Committee had followed the procedure laid down therein as well as in the ST Rules or the SC Rules, as the case may be. For this verification, the Scrutiny Committee can exercise powers conferred on it by Section 9(d) by requisitioning the record of the concerned Caste Scrutiny Committee, which has issued the validity certificate to the blood relative of the applicant. If the record has been destroyed, the Scrutiny Committee can ascertain whether a due enquiry has been held on the basis of the decision of the Caste Scrutiny Committee by which caste validity has been granted to the blood relative of the applicant. If it is established that the validity certificate has been granted without holding a proper inquiry or without recording reasons, obviously, the caste scrutiny committee cannot validate the caste certificate only on the basis of such validity certificate of the blood relative.

23. In a given case, the Scrutiny Committee may be satisfied that the caste validity certificate relied upon by the applicant has been issued after making a lawful enquiry. But if the Scrutiny Committee is of the view that the applicant has not clearly established that the person to whom caste validity certificate produced on record has been granted is his blood relative, in terms of sub- rule (2) of Rule 12 of the ST Rules, the Caste Scrutiny Committee will have to refer the case for conducting an enquiry through Vigilance Cell. In such a case, the Vigilance Cell can be directed by the Scrutiny Committee to conduct an enquiry limited to the relationship claimed by the applicant with the person in whose favour the caste validity certificate has been issued. If, on the basis of the report of the Vigilance Cell, the Scrutiny Committee is satisfied that the person in whose favour caste validity certificate has been issued is a blood relative of the applicant and lawful enquiry has been conducted before issuing the validity certificate, the Scrutiny Committee will have to issue validity certificate even if the applicant does not satisfy the affinity test. For example, if it is established that the father or grandfather

of the applicant has been given a caste validity certificate after holding a lawful enquiry in accordance with law, the Caste Scrutiny Committee cannot hold that the grandfather or father of the applicant, as the case may be, belongs to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if the relationship as pleaded by the applicant is not established, the other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

24. As provided in sub-rule (7) of Rule 12 of the ST Rules, the Vigilance Cell's report is not conclusive. If on the basis of the report of the Vigilance Cell and other evidence on record, the Scrutiny Committee comes to a conclusion that the caste claim is genuine, a caste validity certificate can be issued. Only on the ground that the report of vigilance cell is in favour of the applicant, validity certificate cannot be mechanically granted without application of mind. If the report of the Vigilance Cell is against the applicant, his caste claim cannot be rejected only on the basis of the report of the Vigilance Cell without providing a copy of the report to the applicant and without giving him an opportunity of being heard on the report. After giving an opportunity to the applicant to make submissions on the report, the Scrutiny Committee may reject the caste claim. In a given case, the Scrutiny Committee can also record a finding that the caste claim is genuine. It all depends on the facts of each case.”

8. It is in the above backdrop that we are considering the case of these two Petitioners and more particularly in view of the law laid down in **Apporva Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others; 2010 (6) Mh. L.J. 401.**

9. In our view, considering that this Court has drawn specific conclusions based on the record available from 1927 onwards, independent of

these two petitioners whose validity certificate was in existence when Janhavi's case was decided, persuades us to follow the law laid down in **Apporva Vinay Nichale** (supra).

10. In view of the above, **both these petitions are allowed.** The impugned orders are quashed and set aside. The Competent Committee is directed to issue the Thakur Scheduled Tribe validity certificates to these two Petitioners, within 45 days from today.

11. Himmat is in service today. Chandrakant has been terminated by Respondent No.3 -Thane Municipal Transport Undertaking on 03.08.2022 on account of the impugned judgment of the committee cancelling the validity certificate granted to the Petitioner and recalling the caste certificate, vide the impugned judgment dated 12.07.2022, which we have quashed and set aside today. The learned advocate for the Petitioner-Chandrakant submits on instructions that he is willing to receive 50% of the back wages since his termination is on account of an order which has been quashed and set aside by this Court.

12. The learned advocate for the employer submits that the principle of "no work - no wages", be made applicable to Chandrakant. We are not in agreement with the contention of the learned advocate for the employer for the

reason that it was not Chandrakant who refused to perform duties or declined to work. He was in employment. He had offered himself for work. He was armed with a validity certificate which was set aside by the impugned order. In view of the judgment delivered by us today, his validity certificate is restored. In these set of circumstances, the said order of termination stands quashed and set aside. When the Petitioner fairly makes a statement that he is willing to accept 50% of the back wages, we find that the said statement deserves to be accepted. Accordingly, we direct Respondent No.3 to pay 50% back wages to Chandrakant along with 50 % increments, if any, within a period of 45 days from today.

13. Rule is made absolute in above terms.

14. Pending Civil Applications, if any, do not survive and stand disposed off.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]