

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

WRIT PETITION NO.2938 OF 2021

PETITIONER :- Jivan Shamrao Shrirame, aged 42 years,
Occup. Service, R/o Kamatwada, Tah.
Darwah, District, Yavatmal.

...VERSUS...

RESPONDENTS :-

1. The Vice-Chairman/Member Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The Zilla Parishad, through its Chief
Executive Officer, Yavatmal.
3. The Block Development Officer
Panchayat Samiti, Babhulgaon, District
Yavatmal.

WRIT PETITION NO.2900 OF 2021

PETITIONERS :- Pinkoj Shamrao Shrirame, aged about 37
years, Occup. Service, R/o Kamatwada,
Tah. Darwah, District, Yavatmal.

...VERSUS...

RESPONDENTS :-

1. The Vice-Chairman/Member Secretary,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The Assistant Commissioner, Social
Welfare Office, Yavatmal.
3. The Secretary, Late Chandrabhan Patil
Shikshan Sanstha, Shivaji Nagar,
Yavatmal.

4. The Headmaster, late Chandrabhan Patil V.J.N.T. Secondary Ashram School, Ramnagar (Yavali), Tah. & District:Yavatmal.

Ms.Preeti Rane, counsel for the petitioners.
Ms.S.S.Jachak, AGP for respondent Nos.1 to 3 in WP No.2938 of 2021 and for respondent Nos.1 and 2 in WP No.2900 of 2021.

**CORAM : A.S.CHANDURKAR &
MRS.VRUSHALI V. JOSHI, JJ.**
DATED : 31/01/2023

J U D G M E N T (Per :Mrs. Vrushali V. Joshi, J.)

(1) The petitioners in both the writ petitions are the real brothers and their claims are invalidated on same grounds. They have submitted same documents and the grounds for rejection are same and therefore, the common order is passed.

(2) Heard Mrs. P. D. Rane, learned counsel for the petitioners and Mrs. S.S. Jachak, learned Assistant Government Pleader for the respondent nos.1 to 3/State. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the rival parties.

(3) The challenge in these writ petitions is to the order dated 5/7/2021 passed by the respondent No.1 – Vice-Chairman/

Member Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati invalidating the claim of the petitioners for Mana Scheduled Tribe category and consequently cancelling the certificates dated 12/8/2016 issued in the name of petitioners as belonging to Mana Scheduled Tribe, which is at entry No.18 in the Constitution (Scheduled Tribes) Orders, 1950. The petitioner Jivan was appointed as Gram Sevak from Scheduled Tribe category on 01/7/2016 and the petitioner Pinkoj was appointed as Kamathi from Scheduled Tribe category on 1/09/2006. Petitioner Jivan has completed his ad hoc service of three years as Gram Sevak. While submitting the proposal for verification of their caste claim before the Scrutiny committee on 23/05/2017 and 15/01/2018 petitioners have submitted the documents like their caste certificates, school leaving certificates extract of Dakhal Kharij Register, extract of service-book, extract of service book of petitioner's father, extract of birth of daughter born to great grandfather (Jayamana/Jayram) (1920), extract of birth of petitioner's parental aunt, namely Shubhadri (born on 20.12.1943), extract of birth of elder uncle namely Ananda (1935), school leaving certificate of petitioner's brother dated 09/06/2000, school leaving certificate of petitioner's sister of 10th dated 24/06/2003, sale-deed in respect of grandfather (1964) and

family tree of petitioner's family dated 8.11.2016. The report of the Vigilance Cell is also submitted by the petitioner.

(4) The petitioners have approached this Court by filing Writ Petition N0.7610/2018 and Writ Petition No.7612/2018 seeking direction to the Committee to decide the caste claim of the petitioners and prayed to protect the service of the petitioners. The petitioners were employed on ad hoc basis for 11 months and the petition was withdrawn by the petitioners. Thereafter, petitioner Jivan has again challenged his ad hoc appointment of 11 months in Writ Petition No.112/2020. The said petition is pending and it is transferred to Aurangabad Bench, as the issue of ad hoc appointment for 11 months is involved in other cases.

(5) The vigilance Cell of the Scrutiny Committee conducted an enquiry. Though the pre-constitutional documents of year 1920, 1924 and 1943 were submitted having entry of Mana, the Vigilance Committee by an order dated 05.07.2021 invalidated the caste claim of the petitioners mainly on the ground of the documentary evidence, affinity test and area restriction. The respondent/employer is in receipt of the impugned order and the petitioners came to know that the respondent/ employer is in the

process to initiate action of termination against the petitioners, therefore, the petitioners have filed this petition for setting aside the order passed by the Scrutiny Committee and with a prayer for protection of their service.

(6) The counsel for the petitioners has submitted that the petitioners submitted oldest documents of year 1920 in respect of great grandfather, namely, Jayram Mana to whom daughter was born. The said entry is of the year 1920. Similarly, they have also submitted the document of the year 1920, which is extract of birth of daughter. Both the said documents being prior to 1950 have greatest probative value in the eyes of law, but same are not considered by the Scrutiny Committee. The Vigilance Officer of Scrutiny Committee has procured entries of Mana Kunbi as far as the entry in respect of one Jayram is concerned. The petitioner in this respect has stated that one Shri Jayram having entry as Kunbi is not related to the petitioner. Jayram, who is related to the petitioner is having entry as Mana in document, which is in respect of birth of daughter born to great grandfather and therefore he has denied the said entry. The only adverse entry is of Mane of the year 1935, 1938 and 1943 and Mane ku of year 1942. In this respect the petitioners have submitted their reply.

The learned counsel for the petitioners has specifically submitted in reply that the document of the year 1940 in respect of Jayram is not related to the petitioners. Further in respect of entries of Mani, Mane and Mana Kunbi, the petitioners have relied upon the decision of this Court in *Gajanan s/o Pandurang Shende, Vs. Headmaster, Govt. Ashram School, Dongargaon Salod and ors, reported in 2018(2) Mh.L.J.460*.

(7) The respondents have filed their reply and stated that this is third round of litigation filed before this Court. Writ Petition No.7610/2018 was filed and the direction was given to the petitioner Jivan and he was continued as ad hoc for 11 months. Thereafter he has filed Writ Petition No.112 of 2020. The adverse entries were suppressed by both the petitioners, wherein the caste is recorded as Mana Kunbi, Mani, Maneku, Mane, Ma. kunbi and Mane Kunbi in the year 1914, 1935, 1938, 1942, 1943, 1944, 1950, 1953, 1963, 1965, 1969 and 1975-1976. These entries were merely related with pre- independence era and also having great probative value while deciding the tribe claim of the petitioners, hence, argued that the Committee has rightly discarded the documents submitted by the petitioners of the year 1924. In view of contra material procured by the vigilance cell after examining

all the documents, evidence and information given by the petitioners at the time of hearing and by providing ample opportunity of hearing to the petitioners, the respondent Committee has rightly invalidated the tribe claim of the petitioners against Mana Scheduled Tribe on 31.01.2022 by passing a reasoned and detailed explanatory order.

(8) We have considered the arguments made by both the parties and perused the record produced by Scrutiny Committee. The petitioners have challenged the legality and correctness of the impugned order dated 05/07/2021, passed by the Scrutiny Committee invalidating the tribe claim of the petitioners as belonging to Mana. The petitioner mainly relied on two documents which were of the year 1920 and 1943, of the blood relatives of the petitioners from paternal side. The record shows that they are from Mana community. The document on which the Committee has relied is of one Jayram Mana. The relationship is denied by the petitioners with said person. The documents of the year 1914, 1935, 1938, 1942, 1943, 1944, 1950, 1953, 1963, 1965, 1969 and 1975-76 show the caste Mana Kunbi Mani, Maneku, Mane, Ma. kunbi and Mane Kunbi. The division bench of this court in the case Gitesh s/o Narendra Ghormare Vs.

Scheduled Tribe Certificates Scrutiny Committee, Nagpur and ors.

Reported in 2018 [4] **Mh.L.J.933** has held that :

“The Committee files its response to this order in writing in Marathi. In the school records of the blood relatives, the entry 'Mana' is consistent and there is no entry other than 'Mana'. The learned AGP for the Committee confirms its stand that there is no separate caste or tribe called as 'Patil Mana', and 'Patil' is the suffix to the surname in the birth and death extracts, which is followed by the caste or tribe 'Mana'. Thus, the significance of 'Patil Mana' to reject the claim is lost. In respect of the entries like 'Mane Ku', 'Mana Ku', 'Ku Mana', 'Ku Mane', etc., in the revenue records, the letter of the Deputy Superintendent, Land Records, clearly shows that prefix or suffix 'Ku' to the entry 'Mana', 'Mani' or 'Mane' is indicative of the name of Village Kumbhali, which is the place of residence of the petitioner or his blood relatives. The significance of these entries to reject the claim is also lost. After taking instructions from the Committee, the learned AGP states that there is no separate caste or tribe by name 'Mana Kunbi' included in the list of Scheduled Caste, Scheduled Tribe, Other Backward Class or Special Backward Class category, in the State of Maharashtra.”

(9) It appears that the Committee has overlooked the judgment of this Court in the case of **Gitesh Ghormare** (supra), by discarding the pre-independence documents showing the caste of petitioner's forefathers as Mane. In view of undisputed factual position on record and availability of document having probative value of pre- independence period, we are of the view that the Committee was in error in rejecting the claim of the petitioners for

Mana Scheduled Tribe. The order therefore needs to be set aside with a direction to the Committee to issue a caste validity certificate in the name of the petitioners as belonging to Mana Scheduled Tribe which is entry no.18 in the Constitution Scheduled Tribe Order 1950. In the result, the writ petitions are allowed.

(10) The order dated 05.07.2021 passed by the Respondent No.1 Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati is hereby quashed and set aside.

(11) It is held that the petitioners have established their claim of belonging to “Mana” Community, entry of which is at Sr.No.18 in the Constitution Scheduled Tribe Order 1950.

(12) The Scrutiny Committee is directed to issue validity certificate in the name of the petitioners accordingly within a period of one month from today.

(13) Rule is made absolute in the above terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J) (A.S.CHANDURKAR, J)