

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITIONS (WP) 5157/2015 AND 5158/2015

WRIT PETITION (WP) 5157/2015

Geeta Ramasre Yadav
Aged about 39 yrs, Occ. Service,
R/o Plot No. 34, Shriram Nagar,
Mhalginagar Ring Road, Behind
Bhole Baba Mandir, Nagpur- 440034.

..... PETITIONER

// VERSUS //

1. Divisional Caste Certificate Scrutiny
Committee No. 3, Administrative
Building No. 2, Civil Lines,
Nagpur Division, Nagpur.
2. Directorate,
Medical Education & Research,
Mantralaya, Mumbai-32.
3. Dean, Indira Gandhi Government
Medical College & Hospital,
Nagpur.
4. Secretary, Tribal Development
Department, Mantralaya,
Mumbai-32.
5. Secretary, Social Welfare Department,
Mantralaya, Mumbai-32.
**(Amended as per Court's Order
dated 16.02.2016 & 14.03.2016)**

.... RESPONDENT(S)

AND
WRIT PETITION (WP) 5158/2015

Meeradevi Ramasre Yadav
Aged about 35 yrs, Occ. Service,
R/o Plot No. 34, Shriram Nagar,
Mhalginagar Ring Road, Behind
Bhole Baba Mandir, Nagpur- 440034.

..... PETITIONER

// VERSUS //

1. Divisional Caste Certificate Scrutiny
Committee No. 3, Administrative
Building No. 2, Civil Lines,
Nagpur Division, Nagpur.
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Department, Mantralaya,
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Mantralaya, Mumbai-32.
**(Amended as per Court's
Order dated 16.02.2016)** RESPONDENT(S)

Mrs. S.R. Narnaware, Advocate for the petitioners
Mrs. Kalyani R. Deshpande, AGP for respondents 1 to 5

**CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.**

DATED : 06/02/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Heard Mrs. S.R. Narnaware, learned Counsel for the
petitioners, Mrs. Kalyani R. Deshpande, learned Assistant Government
Pleader for respondents 1 and 4.

2. The present petitions assail the orders dated 05.02.2015 (Annexure 8) and 05.06.2015 (Annexure 9) passed by respondent 1 – Divisional Caste Scrutiny Committee No. 3, whereby caste claims of the petitioners as 'Ahir', Other Backward Class (OBC) have been rejected.

3. The petitioners claim that they are belonging to 'Ahir', Other Backward Class which is recognized at serial 198 vide Government Resolution dated 18.10.2013.

A] It is the contention of the petitioner – Geeta in Writ Petition 5157/2015 that in view of the Government Resolution dated 25.05.1990, Caste Certificate dated 01.08.1992 of "Ahir" Nomadic Tribe was issued by Executive Magistrate, Nagpur and subsequently, in view of the Government Resolution dated 18.10.2013, Deputy Collector, Nagpur issued Caste Certificate dated 26.02.2014 as "Ahir" OBC. On the basis of the said certificate, she was appointed with respondent 2 vide order dated 20.09.2001. After completion of twelve years service, the petitioner was asked to prove her caste claim. Accordingly, respondent 3 referred the case of the petitioner to the respondent 1 for verification of her caste claim.

B] It is the contention of the petitioner - Meeradevi in Writ Petition 5158/2015 that in view of the Government Resolution dated 25.05.1990, Caste Certificate dated 10.07.1995 of "Ahir" Nomadic Tribe

was issued by Executive Magistrate, Nagpur and subsequently, in view of the Government Resolution dated 18.10.2013, Deputy Collector, Nagpur issued Caste Certificate dated 21.02.2014 as “Ahir” OBC. On the basis of the said certificate, she was appointed with respondent 2 vide order dated 29.05.2009. Accordingly, the proposal of the caste claim of the petitioner was submitted by respondent 3 to the respondent 1 for verification.

4. The petitioners further contended that in order to prove their caste claim, they produced pre-constitutional document of their cousin grandfather – Shri Sarjuddin Dhundilal dated 24.08.1948 issued by the Headmaster, St. John Hindi Primary School, Nagpur showing caste “Ahir” and also caste certificate of their father – Shri Ramasre Yadao dated 27.03.1992 issued by Executive Magistrate, Nagpur. However, respondent 1 – Scrutiny Committee rejected the claims of the petitioners on the ground that the petitioners failed to produce any documentary proof of “permanent residence” prior to 1961/1967. Hence, these petitions.

5. The learned Counsel for the petitioners submitted that the forefather of the petitioners are the residents of State of Maharashtra prior to 1967. The petitioners placed on record the pre-constitutional document of their cousin grandfather – Shri Sarjuddin Dhundilal dated

24.08.1948. Hence, the petitioners have established that their forefathers are the resident of State of Maharashtra prior to 1961/1967 and submitted that the petitions are liable to be allowed.

6. Learned Assistant Government Pleader for respondents 1 to 5, Mrs. Kalyani R. Deshpande, supported the impugned order passed by respondent 1 – Scrutiny Committee contending that the petitioners failed to produce documentary evidence for proof of being “permanent residents” of State of Maharashtra prior to 1961/1967. The learned Assistant Government Pleader further submitted that cut-off date for Other Backward Classes is 13.10.1967. The petitioners failed to produce any relevant document of their forefather prior to 1967 and the petitions merit dismissal.

7. We have gone through the impugned orders dated 05.02.2015 and 05.06.2015 passed by respondent 1 – Scrutiny Committee. On carefully going through the impugned orders, it reveals that respondent 1 – Scrutiny Committee invalidated the claims of the petitioners on the ground of failure to produce relevant document prior to 1961/1967. The learned Counsel for the petitioners relied upon the judgment in the case of *Kannaya Devjibhai Borisa Vs. State of Maharashtra and ors. [AIR 1990 BOM 394]*, wherein in paragraph 9 it is held that;

“9. Accordingly we declare that the Instructions regarding the grant of caste certificates with impugned endorsements to those who have migrated and have already become permanent residents in the State were invalid and unenforceable in law. The said endorsements pursuant to the said Instructions contained in the caste certificates granted to these petitioners were void ab initio and are quashed. By relying upon these impugned endorsements in the caste certificates, the respondents acted illegally in rejecting the petitioners' claims for benefits given to members of Scheduled Castes in Maharashtra State. Since their castes are specified as Scheduled Castes in relation to Maharashtra and at present they have permanent residences in this State, the petitioners ought to be considered as Scheduled Castes candidates. Because of the said impugned Instructions, the Scrutiny Committees, in case of those petitioners who were seeking admission to the educational professional institutions, had illegally refused to treat them as belonging to Scheduled Castes. Their claims ought to be considered afresh. We also make it clear that in the case of those petitioners whose certificates are yet to be processed, the Scrutiny Committee is commanded not to give effect to the endorsements in their caste certificates made according to impugned Instructions regarding the migrants to this State after the date of the Notification and/or Government order.”

8. The learned Counsel for the petitioners also relied on the judgment in the case of ***Kumar Madhuri Patil Vs. Additional Commissioner [1994 SCC (6) 241]***, wherein in paragraph 13 sub-para 5 and 7, it has been held that:-

“5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims.

The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

.....

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.”

9. The Hon’ble Supreme Court has held that where report submitted by Vigilance Officer is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained. It is also held that the Vigilance Officer may also examine the person who have knowledge of the social status of the candidate.

10. In the case in hand, upon perusal of the report of the Vigilance Cell dated 20.09.2014 in Writ Petition 5157/2015 (page 58), it reveals that the Vigilance Cell has taken note that grandfather of the petitioner i.e. Mr. Chatur Lalai Yadav, came to Nagpur in 1960 and worked as Hamal with Mr. Savai Sanghai Motilal Gulab Savji Lad and they have letter to that effect. The respondent 1 – Scrutiny Committee has not taken into consideration the note of the Vigilance Cell report of residence of grandfather of the petitioner prior to 1961. The petitioners have also produced pre-constitutional documents of their cousin grandfather – Shri Sarjuddin Dhundilal dated 24.08.1948 issued by the Headmaster, St. John Hindi Primary School, Nagpur showing caste “Ahir”. In view of the Vigilance Cell report and pre-constitutional document of cousin grandfather of the petitioners, ratio laid down by the Hon’ble Supreme Court in the case of ***Anand vs. Committee for Scrutiny and Verification of Tribe Claims [2011(6) Mh.L.J. 919]*** that higher degree of probative value ought to be given to old documents and in such cases the affinity test cannot be regarded as the litmus test for establishing the link to the claimant and also in view of the judgment of this Court in ***Kannaya Devjibhai Borisa (supra)*** and the Hon’ble Apex Court in the case of ***Kumar Madhuri Patil (supra)*** the petitioners are entitled for issuance Validity Certificate as ‘Ahir’, Other Backward Class.

11. In view of the aforesaid discussion, we pass the following order:-

(i) The petitions are partly allowed.

(ii) Orders dated 05.02.2015 (Annexure 8) and 05.06.2015 (Annexure 9) passed by respondent 1 – Divisional Caste Scrutiny Committee No. 3 are quashed and set aside.

(iii) It is declared that the petitioners have proved that they belong to 'Ahir', Other Backward Class. The respondent 1 - Scrutiny Committee shall within a period of two months from receipt of copy of this order issue validity certificates to the petitioners accordingly.

(iv) Till the petitioners receives validity certificates, they are free to refer to the copy of this order to indicate that they have been held entitled to receive validity certificate.

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

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)

SANDIP
MAHADEV
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Personal Assistant to the
Hon'ble Judge
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