

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

WRIT PETITION (WP) 6903/2018

Savita D/o Gulabrao Dongre
Aged about 35 yrs, Occ. Service,
R/o Giri Nagar, Sandip Mangalam Road,
Behind Shivaji High School,
Yavatmal-445001.

..... PETITIONER

// VERSUS //

1. The Vice-Chairman/Member-Secretary
Scheduled Tribe Caste Certificate
Scrutiny Committee, Amravati.
2. The Commissioner, Social Welfare,
Office situated at 3,
Church Road, Pune-01.
3. The Assistant Commissioner,
Social Welfare,
Amravati.
4. The Head-mistress,
S.C. & Navbodh Girls Govt.
Residential School, Hingangaon,
Tah. Dhamangaon Rly,
Distt. Amravati.

.... RESPONDENT(S)

Ms. Himani Kavi with Ms. Preeti Rane, Advocates for the petitioner
Mrs. Kalyani R. Deshpande, AGP for respondents 1 to 3

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

DATED : 18/01/2023

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

Rule. Rule made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The challenge raised in this writ petition is to the order passed by the respondent-Scrutiny Committee dated 23.07.2018, thereby invalidating the tribe claim of the petitioner of belonging to 'Mana' Scheduled Tribe.

3. It is submitted on behalf of the petitioner that she belongs to 'Mana' community and caste certificate to that effect has been issued on 29.01.2005 by the Sub-Divisional Officer, Morshi in her name. On the basis of the said caste certificate, in pursuance of the advertisement issued by respondents 3 and 4, the petitioner applied for the post of "Assistant Teacher" from Scheduled Tribe category. The respondent 3 appointed the petitioner on the said post vide appointment order dated 28.11.2013. It is submitted that after three years of service, the petitioner is entitled for regular pay scale as Assistant Teacher but, for want of validity certificate the petitioner is not getting the same, therefore, vide communication dated 11.01.2014 her caste claim proposal for scrutiny was submitted to respondent 1 – Scrutiny Committee alongwith various supporting documents.

4. It is the case of the petitioner that she and her forefathers are belonged to 'Mana' community, which is recognized as Scheduled Tribe vide Entry 18 of the Constitution (Scheduled Tribes) Order, 1950. In support of such claim, the petitioner sought to rely upon various pre-constitutional documents before the respondent 1 - Scrutiny Committee, which are:-

- a. School leaving certificate of petitioner's cousin grandfather of 3rd Std. dt. 7.4.1988 (entries mentioned as on 1914/1920/1926).*
- b. School leaving certificate of petitioner's cousin grandfather of 5th Std dt. 26.6.2010 (date of entries mentioned as on 1925/1938/1940)*
- c. School leaving certificate of petitioner's cousin uncle of 8th Std dt. 6.4.1988 (date of entries mentioned as on 1947/1953/1959)*
- d. Extract of Dakshal Kharji Register of petitioner's uncle (1944/1951)*
- e. Extract of Dakshal Kharij Register of petitioner's cousin uncle (1947/1953)*
- f. Extract of death of grant grandfather namely Tulbhar Shambhor (1941).*

However, 23.07.2018, respondent 1 – Scrutiny Committee invalidated her caste claim of being “Mana” Scheduled Tribe on the ground that in some documents submitted by the petitioners in vigilance

report entry of “Mani” has been mentioned. Being aggrieved, the petitioner filed this petition.

5. Ms. Himani Kavi, learned Counsel for the petitioner, relied upon the various judgments of the co-ordinate Bench of this Court. In Writ Petition 5171/2018 (*Mrunali d/o Shamrao Wakade Vs. The Vice-Chairman/Member Secretary and ors.*) and other connected petitions decided on 30.08.2018 and in Writ Petition 5927/2013 (*Ashu D/o Dattuji Shrirame Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee and anr.*) decided on 29.11.2017, it has been in paragraph 11 as under:-

“In view of the aforesaid position of law and the fact that there is no separate caste, sub-caste, tribe or sub-tribe, like 'Mani' or 'Mane' prevailing in the State of Maharashtra, and that such entry like 'Mani' or 'Mane' is not included either in the lists of Vimukta Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Classes in the State of Maharashtra, we are of the view that the Committee was in error in holding that the petitioner belongs to 'Mani' or 'Mane', which is not a tribe 'Mana' in Entry No.18 in the Constitution (Scheduled Tribes) Order. In our view, the confusion prevailing in respect of entry like 'Mani'/'Mane' is absolutely clarified in all the subsequent documents pointed out earlier showing the caste of the petitioner and his blood relatives as 'Mana' in all other documents and the Committee, therefore, could not have rejected the claim of the petitioner by taking into consideration the entries showing the caste 'Mani' or 'Mane'.

6. This Court in ***Gitesh S/o. Narendra Ghormare Vs. Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others reported in 2018 (4) Mh.L.J. 933***, has held that :-

“If there are number of documents containing different kinds of entries of caste/tribe like ‘Mana’, ‘Mane’, Mani’, ‘Mana Kunbi’, Kshatriya Mana’, ‘Khand Mana’, ‘Maratha Mana’ and so on, the duty of the Court will be to ascertain the dominant entries having greater probative value and record a specific finding of conclusive nature as to whether entries can be construed as ‘Mana Scheduled Tribe’, which is an entry in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order. Merely because certain documents indicate entry of caste/tribe other than ‘Mana’ is not enough to reject the claim. What is prohibited is that the entry ‘Mana’ in Scheduled Tribes Order does not include or exclude the entries like ‘Mana Kunbi’, ‘Kshatriya Mana’, ‘Khand Mana’ ‘Maratha Mana’, ‘Kunbi Mana’ and so on, which are probably known to exist as separate caste/tribe or sub-caste/tribe. The interpretation, clarification, explanation of the entries in the Scheduled Tribes Order is not permitted. The interpretation of entries in the documents cannot be confused with the interpretation of entry in the Scheduled Tribes Order. It is not the finding of the Committee that the father of the petitioner obtained the caste validity certificate by playing a fraud or that the grant of certificate was without jurisdiction. On the contrary, the certificates indicate that the same are issued in view of the decision of the Apex Court. A merely different view on the same facts in a subsequent case of blood relative would not entitle the Committee to reject the claim. Therefore, the Committee ought to have validated the certificate in favour of the petitioner. The order passed by the Scrutiny Committee invalidating the claim of the

petitioner for 'Mana Scheduled Tribe' cannot be sustained."

It is further held that, 'the petitioner having conclusively established his claim for 'Mana Scheduled Tribe' on the basis of the documents having probative value, there was no occasion for the Scrutiny Committee, to raise a doubt and invoke the affinity test to hold that the petitioner has failed to establish his claim'.

Concept of recognized Scheduled Tribe for the purposes of giving benefits and concessions was not prevailing prior to 1950 and, therefore, only caste or community to which a person belonged was stated in the birth, school and revenue records maintained. The documents are issued in the printed formats, which contain a column under heading "Caste" and there is no separate column of 'Tribe'. While entering the name, the distinction between the caste and tribe is ignored. It is the entire 'Mana' community all over the State which is conferred a status of recognized Scheduled Tribe. No significance can be attached to the entry of 'Mana' in the 'Caste' column in the documents and to reject the claim for 'Mana Scheduled Tribe' on that count. The finding of the Committee to that extent cannot, therefore, be sustained."

7. Having heard both the sides and having considered the documents placed before us, we find that while invalidating the caste claim of the petitioner, respondent 1 - Scrutiny Committee has ignored the pre-constitutional documents submitted by the petitioner. In the decision of the Apex Court in the case of **Anand v. Committee for Scrutiny and Verification of Tribe Claims**, [2011(6) Mh.L.J. (S.C.) 919],

it is made clear in para 22 that while dealing with the documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-independence documents.

8. In the present petition, respondent 1 – Scrutiny Committee has not taken into into consideration the pre-constitutional documents of her great-grand father having entry “Mana” and also the document of her father as “Mana”. Though, the petitioner submitted extract of Register issued by the Headmistress, Zilla Parishad School, Pusala, Panchayat Samitee, Warud in which caste of Tulbhor Shyambhor, who is uncle of the petitioner, mentioned as “Mana”. Pre-constitutional document Kotwal Panji pertaining to Tulbhor Shyambhor is of 26.08.1941 issued by Tahasildar, also reflects “Mana”.

9. In these circumstances, the Scrutiny Committee ought to have granted validity certificate in favour of the petitioner, as the vigilance cell enquiry or affinity test would not be decisive in the facts of the present case. Hence, we hold that the Scrutiny Committee has fallen in a serious error in refusing to issue validity certificate in favour of the petitioner.

10. In view of the above, we are of the view that the petitioner belongs to 'Mana' Scheduled Tribe and she is also entitled to the service benefits as "Assistant Teacher" from the date of completion of three years of service. In the result, the following order is passed:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order dated 23.07.2018 is hereby quashed and set aside.

(iii) It is declared that the petitioner belongs to 'Mana' Scheduled Tribe. We direct the Respondent 1-Scrutiny Committee to issue caste validity certificate in favour of the petitioner as she is belonging to 'Mana' Scheduled Tribe within a period of four weeks from the date of receipt of copy of this order.

(iv) Respondent 2 is directed to pay regular pay scale to the petitioner as Assistant Teacher in pursuance of the completing 3 years as "Assistant Teacher" and in alternate, if the petitioner is deprived from financial benefits because of invalidation of her caste claim, it be restored.

(v) Rule is made absolute in the aforesaid terms with no order as to costs.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)

**SANDIP
MAHADEV
GATE**

Personal Assistant to the
Hon'ble Judge
Digitally signed by
SANDIP MAHADEV GATE
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