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WP 6902 OF 2019 R.odt

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

WRIT PETITION NO. 6902 OF 2019

Farooqui Urooj Fatema Anees Ul Haq
Age : 24 Years, Occu. Education
R/o. House No. 6-2-97,
Mohalla Sayyadan, Nanded,
Dist. Nanded.

... Petitioner

VERSUS

1. The State of Maharashtra
Through its Secretary
Tribal Development Department
Mantralaya, Mumbai – 32.
2. The Schedule Tribe Certificate
Scrutiny Committee, Aurangabad Division,
Aurangabad.
3. Maharashtra University of Health
Sciences, Nashik
Through its Registrar
4. Government Medical College
Latur, through its Dean.

Mr. S. R. Barlinge, Advocate for Petitioner
Mr. N. S. Tekale, AGP for Respondent Nos.1, 2 & 4
Mr. S. B. Bhosale, Advocate for Respondent No.3

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 11th JANUARY, 2024.

Judgment (Per S. G. Chapalgaonkar, J.):

Petitioner approaches this court under Article 226 of The

Constitution of India thereby assailing the order dated 09/01/2019 passed by Respondent No.2 – Schedule Tribe Certificate Scrutiny Committee thereby invalidating the caste claim of petitioner to “Tadvi Schedule Tribe”

2. Mr. S. R. Barlinge, learned Advocate appearing for petitioner would submit that the paternal cousin of the petitioner, namely Afrin Khanam has been accorded caste validity for Tadvi Schedule Tribe. Similarly, the petitioner has produced several document pertaining to the paternal relations indicating entry of caste as Tadvi. However the relying upon the entries of religion i.e. Muslim in the documents of some of the paternal relations, invalidated claim of the petitioner. Mr. Barlinge further invited our attention to the lease deed of 1350 Fasli wherein the surname of Banamiya S/o. Wahad is mentioned as Tadvi, which according to him indicates the caste. He submits that cast is referred at the place of surname as per the prevailing practice during the Nizam regime. According to him the committee has adopted hyper technical approach and invalidated the caste claim of the petitioner.

3. Mr. N. S. Tekale, learned AGP strongly opposes the petition and justifies the impugned order passed by the committee.

4. We have perused the original record from the file of the scrutiny committee it appears that petitioner is mainly relying upon validity of caste claim of Afrin Khanam who appears to be the cousin sister of the petitioner. The genealogy is placed on record along with the affidavit given by Afrin. There is no dispute that Afrin is granted validity by the committee. The committee considered aforesaid documents in its

order and observed that the father of Afrin Khanam namely Mehmood Khan Ismail Khan recorded statement before the vigilance officer that he do not have any brother or sister and he was the only child. Mr. Barlinge learned counsel submits that the validity holder Afrin Khanam has given affidavit accepting her relationship with the petitioner. We have perused the said affidavit of Afrin Khanam. The original file in respect of Afrin Khanam is also produced before us. Apparently, the signature in the supporting affidavit tendered by Afrin Khanam in the present case differs from her original signature appearing in her own caste claim. The observations of the committee that there is no acceptable evidence to conclude relationship of petitioner with Afrin Khanam appears to be correct. The committee has further observed that documents regarding school entry of the petitioner i.e. father in the year 1963 & 1971 simply records the caste as Muslim / Musalman. Mr. Barlinge would contend that entry of Muslim in the caste column cannot be construed as contra evidence since it depicts legal. He relies upon observations this court in Writ Petition No. 13356 of 2017 in case of Sabahat Sartaj Khan, through her father V/s The State of Maharashtra dated 03.05.2018. Although there cannot be any dispute regarding salutary observation of this court, it is for the petitioner to establish his claim based on positive evidence. So far as the document of lease deed is concerned, the original is not produced. Even otherwise the said document do not refer to caste at all and does not support the caste claim of the petitioner.

5. In that view of the matter we do not find any convincing evidence on record to support the caste claim of the petitioner. Further record depicts father of petitioner while admitting himself at Pratibha Niketan Mahavidyalaya, Nanded on 26.06.1973 claimed himself from

‘Economically Backward Class (EBC)’ which is inconsistent with the claim of the petitioner to be belonging to the Tadvi schedule tribe.

6. We, therefore, do not find any reason to interfere in the order of the Committee in exercise of writ jurisdiction under Article 226 of the Constitution of India. Resultantly, the petition stands dismissed.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-