



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

**WRIT PETITION NO.5986 OF 2011
WITH
CIVIL APPLICATION NO.9562 OF 2023**

Vishwanath s/o Govinda Johari,
Age : 46 years, Occ : Service as
Superintendent, Govt. Pleader
Office, High Court of Bombay,
Bench at Aurangabad, at present
R/o Aurangabad, Tq. & Dist.
Aurangabad.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai-32.
2. Joint Secretary,
Law and Judiciary Department,
Maharashtra State, Aurangabad,
Dist. Aurangabad.
3. Scheduled Tribe Certificates
Scrutiny Committee, Aurangabad,
Division Aurangabad.
Through its Member Secretary.
4. Kalyan s/o Sopanrao Sonwane,
Age : 44 years, Occ : Social Work,
R/o K-40/4, N-11, Navjeevan Colony,
Hudco, Aurangabad,
Tq. And Dist. Aurangabad.
(Respondent No.4 deleted as per
Court's order dated 03.12.2024).

...RESPONDENTS

WITH
CIVIL APPLICATION NO.10438 OF 2011

Pandit s/o Sayajirao Shejwal,
Age : 48 years, Occu : Service
and Vice President of
Dr. Babasaheb Ambedkar Marathwada
University Magaswargiya Shikshketar
Karmachari Sanghthna, Aurangabad.
Having its office at University Campus,
Aurangabad.

...APPLICANT

VERSUS

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Age : 46 years, Occ : Service as
Superintendent, Govt. Pleader
Office, High Court of Bombay,
Bench at Aurangabad, at present
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...Orig.Petitioner

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...RESPONDENTS

...
Shri Mahesh S. Deshmukh, Advocate h/f Shri Ajeet B. Kale,
Advocate for the petitioner.
Ms.P.J. Bharad, AGP for the respondents/State.
...

**CORAM : MANGESH S. PATIL
&
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 18th December, 2024

JUDGMENT (Per Prafulla S. Khubalkar, J.):

(a) Civil Application No.10438/2011

None present for the applicant/ intervenor.

2. This is an application for intervention by a person,
who was not a party before the Scheduled Tribe Certificates
Scrutiny Committee.

3. Perused the application.

4. We are of the view that the presence of the applicant/ intervenor is not at all necessary for deciding the controversy in this petition. Therefore, the Civil Application for intervention is liable to be rejected.

5. The Civil Application is rejected.

(b) Writ Petition No.5986/2011

6. Heard the parties finally.

7. By the instant petition, which is admitted on 20.01.2012, the petitioner assails the order dated 30.07.2011 passed by respondent No.3 Scrutiny Committee thereby, invalidating the petitioner's claim for 'Koli Malhar', Scheduled Tribe.

8. The petitioner is an employee in the establishment of the office of Government Pleader, High Court of Bombay, Bench at Aurangabad. In the year 1998, his claim for 'Koli Malhar', Scheduled Tribe, was referred to respondent No.3 Scrutiny Committee. Initially, the petitioner's claim was

invalidated by order dated 03.06.2010, which was challenged in Writ Petition No.8202/2010 which came to be decided by order dated 30.03.2011 thereby, remanding the matter to the Scrutiny Committee. Accordingly, fresh scrutiny of the petitioner's claim was undertaken and the impugned order came to be passed on 30.07.2011.

9. A perusal of the impugned order reveals that in support of his claim, the petitioner has submitted in all 85 documents including revenue records, school records and tribe validity certificates of his paternal side blood relatives. The petitioner's claim was scrutinized by the Scrutiny Committee on the touchstone of documentary evidence as well as affinity test. By final order dated 30.07.2011, the tribe claim was invalidated with direction to confiscate the tribe certificate and to initiate the proceedings under Section 11(2) of Maharashtra Act No.XXIII of 2001. This order is subjected to challenge by way of the instant petition.

10. Advocate Shri Mahesh S. Deshmukh, the learned counsel for the petitioner, has strenuously argued that the Scrutiny Committee has utterly failed to consider ample

documentary evidence which established the petitioner's claim for grant of a validity certificate. To buttress his submissions, he has invited our attention to validity certificates granted in favour of the petitioner's paternal cousin brothers viz. Sanjay Sakham, Anil Sakham and Mohitkumar Sitaram. He has invited our attention to the genealogy which is filed along with the affidavit of Mohitkumar Sitaram dated 22.07.2008 which depicts the relationship of the petitioner with Sanjay and Mohitkumar. He has also invited our attention to the order dated 11.08.2023 in Writ Petition No.10835/2021 filed by Pallavi Sitaram, real sister of Mohitkumar, by which the said writ petition was allowed directing the Scrutiny Committee to issue a validity certificate of 'Koli Malhar', Scheduled Tribe, in favour of Pallavi Sitaram Johare.

11. The learned counsel for the petitioner further submits that in view of the validity certificates in favour of Pallavi, Mohitkumar, Anil and Sanjay, who are his cousin brothers and sister, he is also entitled for grant of a validity certificate. There is no dispute about genealogy and the relationship of the petitioner with these validity holders. It is

submitted that the reasons for ignoring these validity certificates as stated by the Scrutiny Committee in the impugned order by referring to a seniority list of the petitioner's father mentioning caste as 'Su.Koli', are not sustainable in view of the fact that the order in Pallavi's Writ Petition No.10835/2021 is not challenged.

12. The learned counsel for the petitioner then submits that the reasoning of the Scrutiny Committee regarding failure in affinity test is absolutely erroneous in view of the authoritative pronouncement of the Supreme Court of India in the matter of ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti vs. The State of Maharashtra and others, AIR 2023 SC 1657 : 2023 SCC Online SC 326***, upholding the position that affinity test is not a litmus test.

13. Per contra, Advocate Ms.Bharad, the learned AGP for the State authorities, has supported the impugned order by pointing out that the validity certificate was granted in favour of Pallavi conditionally since the Scrutiny Committee had decided to reopen few of the matters. By referring to the reasoning in the impugned order, she would submit that the validities relied upon by the petitioner are not final and conclusive and supported the

impugned order.

14. We have carefully considered rival submissions and perused the papers. There is no dispute about the genealogy. In view of the order passed by this Court in the matter of Pallavi (supra) wherein, the same documentary evidence was subject matter of scrutiny, the instant petition will also have to be decided on similar lines. Even the relationship of the petitioner with Sanjay, Mohitkumar and Anil is not disputed and in view of validity certificates in favour of these persons, we are of the view that the petitioner is also entitled for validation of his claim. It is stated that in view of validity certificates of the petitioner's blood relatives, denying his claim would create anomalous situation.

15. On perusal of the impugned order, it is clear that the reasoning of the Scrutiny Committee to ignore these validity certificates by simply referring to the seniority list of the petitioner's father mentioning his father's caste as 'Su.koli', is clearly an erroneous approach. In view of the validity certificates of the petitioner's paternal side blood relatives and the final order in the matter of Pallavi Sitaram Johare (supra), the instant petition is liable to be allowed by applying the settled

propositions of law laid down in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti (supra)*** and ***Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 Nagpur, [2010(6) Mh.L.J.401 : AIR 2010(6) Bom.R.21]***.

Hence, the following order:-

(a) The Writ Petition is partly allowed.

(b) The impugned order dated 30.07.2011 passed by respondent No.3 Scrutiny Committee is hereby quashed and set aside.

(c) Respondent No.3 Scrutiny Committee is directed to immediately issue validity certificate of 'Koli Malhar', Scheduled Tribe to the petitioner in the prescribed format without incorporating any other conditions.

(d) This validity certificate would be subject to final decision to be taken by the Scrutiny Committee in reopened matters of other validity holders.

(e) The petitioner shall not be entitled to claim equities.

(f) No order as to costs.

16. Rule is made absolute in the above terms.

(c) Civil Application No.9562/2023

17. By this Civil Application, the petitioner/ applicant has prayed for direction to respondent No.2/ Joint Secretary, Law and Judiciary Department, State of Maharashtra, to grant pension and other ancillary benefits from the date of his superannuation.

18. In view of the judgment delivered today in the petitioner's substantive Writ Petition No.5986/2011, this Civil Application is disposed of with direction to respondent No.2 to decide the petitioner's pension case accordingly.

kps

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)