



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9037 OF 2024

Iram Fatema Saeed Ahmad
Age : 19, Occu : Student,
R/o. 73, S. No. 14, Salar Nagar,
Mehrun, Jalgaon

.. Petitioner

Versus

The State of Maharashtra
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 400 032 and another

.. Respondents

AND

WRIT PETITION NO. 9041 OF 2024

Raza Firoz Shah Fakir
Age : 20 years, Occu : Student,
R/o. Momin Mohalla, Shendurni,
Jamner, Jalgaon

.. Petitioner

Versus

The State of Maharashtra
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 400 032 and another

.. Respondents

AND

WRIT PETITION NO. 9057 OF 2024

Shah Adnan Arif Shah
Age : 20 years, Occu : Student,
R/o. S. No. 21/1a, Plot No. 42,
Block No. 2, Ram Nagar,
Mehrun, Jalgaon

.. Petitioner

Versus

The State of Maharashtra
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 400 032 and another

.. Respondents

...

Advocate for petitioner in all WPs : Mr. A.N. Sabnis
AGP for the respondent – State : Mrs. P.J. Bharad (9037/2024, 9057/2024)
and Mr. R.S. Wani (9041/2024)

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 23 OCTOBER 2024

ORDER (MANGESH S. PATIL, J.) :

Though the petitioners are not related to one another by blood, they are all challenging similar orders of the respondent no. 2 – scrutiny committee, thereby refusing to validate their Chhaparband (14) V.J. (A) certificates, exactly for the same reasons and on the same grounds. In order to avoid repetition, we are disposing of these petitions by this common order.

2. Learned advocate for the petitioner Mr. Sabnis would submit that all these petitioners have been relying upon the certificates of validity of their near blood relatives, father / son / uncle. He would submit that the only reason, the committee has resorted to for discarding these validities, is that they were granted the certificates of validity by resorting to the government circular dated 26-06-2006, whereby all the individuals having the record as 'Musalman, 'Fakir', 'Islam; etc. were directed to be considered for grant of tribe certificates and validity certificates of 'Chhaparband'. He would submit that by the order of the High Court, that circular was quashed and set aside, and even subsequent similar circular dated 23-03-2011 was also quashed and set aside by the High Court. The committee has refused to validate petitioners' 'Chhaparband' V.J. (A) certificates even when all

the earlier validities are still holding the field and even the committee is not seeking to observe that those were obtained by fraud. He would submit that it is a matter of social status. Till the time these other blood relatives possess certificates of validity, the petitioners cannot be discriminated against. He would also seek to rely upon decision of the division bench in the matter of **Zaid S/o. Sadique Shah Vs. The State of Maharashtra and another** (writ petition no. 4575 of 2023 decided on 19-06-2024; Nagpur Bench).

3. Per contra, learned AGPs would submit that all the validity holders were granted certificates of validity only because of the circulars issued by the government which were subsequently quashed and set aside by the order of this Court and the petitioners are not entitled to derive the benefit of these validities. They had failed to produce favourable record of the period prior to the notified date i.e. 21-11-1961 and no fault can be found with the observations and the conclusion of the committee refusing to validate the tribe certificates.

4. We have carefully considered the rival submissions and perused the papers.

5. The committee in the impugned orders itself has referred to the validities of the blood relatives in each of these matters. The only ground on which the committee has refused to extend its benefit is that those were issued pursuant to the circulars issued by the state

government which were subsequently quashed and set aside by the orders of this Court. Conspicuously, none of these impugned orders expressly demonstrates about the committee having even gone through the original orders passed by the then committees in the matters of all these validity holders. It is evident that even without actually examining the reasons assigned by the then committees, the impugned orders were passed on the premise that all the validities were granted only on the ground of those circulars of 2006 and 2011 and there was no other document or evidence before the then committees.

6. Admittedly, all these validities were issued by following due process of law. No reason has been assigned or observation is made in the impugned orders about due process of law having not been followed while granting the certificates.

7. Besides, in all the three matters, the committee has illegally treated 'Musalman' or 'Muslim' entries in the school records as contrary entries to the claim of 'Chhaparband'. 'Muslim' or 'Musalman' is not a caste or tribe but a religion and could not have been treated as contrary to the claim of 'Chhaparband'. Excluding these 'Musalman' or 'Muslim' entries, there is not a single contrary entry in the matter of petitioners in writ petitions no. 9041 of 2024 and 9057 of 2024, however, there are favourable entries, may be of recent time.

8. In writ petition no. 9037 of 2024, there appears only one contrary entry of grandfather of petitioner – Babu Mehboobsha Fakir, wherein he was described in the school record as 'Fakir' which is a other backward category and would be contrary to the claim of 'Chhaparband' whic is also V.J. (A). However, in that matter also, there are favourable entries as well and such isolated contrary entry could not have been resorted to, to discard the claim.

9. In the result, the observations and the conclusions of the committee in all these three matters, refusing to extend the benefit of validities possessed by the near blood relatives are not sustainable in law and are rather, perverse and arbitrary. Even its stand of treating 'Musalman' or 'Muslim' as contrary entries to the claim of 'Chhaparband' is not legally sustainable. Its approach to discard favourable 'Chhaparband' entries without assigning any reason, only on the ground that those are of recent time and expecting the petitioners to produce some record of the period prior to 21-11-1961, is not legally sustainable. Having such a record of the prior time would certainly be having greater probative value and decisive, however, conversely, not being able to produce such record, cannot be a ground for discarding the caste or tribe claim.

10. Incidentally, in the matter ***Zaid S/o. Sadique Shah Vs. The State of Maharashtra and another*** (supra) in similar set of facts and circumstances, wherein for a similar reason, the committee had refused to extend the benefit of earlier validities, the petitioner therein was held entitled to have the benefit of such validities. The petitioners are entitled to derive the benefit of this decision.

11. In the result, all these petitions deserve to be allowed and are accordingly allowed.

12. The impugned orders are quashed and set aside.

13. Respondent no. 2 – committee shall issue certificates of validity to the petitioners of 'Chhaparband' (14) V.J.(A) forthwith.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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