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wp 5725.19 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5725 OF 2019

Vasundhara D/o. Nagnathrao Padalwar,
Age : Minor, Occ. Education,
R/o. Eklara, Tq. Mukhed,
Dist. Nanded,
through father & natural guardian
Nagnath s/o. Maroti Padalwar,
Age 43 years, Occ. Service
R/o. As above.

.. Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
Social Justice Department,
Mantralaya, Mumbai
2. The Scheduled Tribes Certificate Scrutiny Committee
Verification Committee, Aurangabad,
through its Member Secretary,
Aurangabad.

.. Respondents.

Mr. S.M. Vibhute, Advocate for the petitioner
Mr. V.M. Jaware, AGP for respondents.

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

RESERVED ON : 17th January, 2024.
PRONOUNCED ON : 24th January, 2024.*

Judgment (per S. G. Chapalgaonkar, J.) :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of learned advocate appearing for the parties.

2. The petitioner approaches this court under Article 226 of the Constitution of India impugning the order dated 20.7.2018 passed by the Scheduled Tribes Certificate Verification Committee, Aurangabad (respondent No.2) thereby invalidating the tribe claim of the petitioner for “Mannerwarlu” Scheduled Tribe. The petitioner further seeks writ of Mandamus against the committee to issue validity certificate in his favour.

3. Mr. Vibhute, learned counsel for the petitioner submits that the petitioner was pursuing education and she has been granted Tribe certificate dated 21.6.2013 by the competent authority. Her caste claim was referred to the Committee for verification. The petitioner supported her claim by caste validity certificates of her father Nagnath Padalwar dated 28.7.2011, her paternal aunt Sarojana Maruti Padalwar dated 15.2.2011, cousin uncle Ramrao Narsingh Padalwar dated 24.10.2001 and one more blood relative Veerbhadra Vyankatrao Padalwar dated 29.8.2002.

4. Mr. Vibhute would submit that the proposal of the petitioner was referred to the Vigilance Cell, who submitted inquiry report dated 6.7.2018. The petitioner was not given opportunity to explain the adverse remarks in the vigilance report. Consequently, petitioner’s claim has been erroneously invalidated.

5. Mr. V.M. Javare, learned AGP appearing for respondent Nos. 1 and 2 supported the impugned order. He would submit that validity certificate of petitioner’s father was obtained by suppressing contra entries in respect of the blood relations. Therefore, no reliance can be

placed on such validity certificate. The committee has recorded adequate reasons while discarding the claim of the petitioner.

6. We have given anxious consideration to the submissions advanced by respective parties. We have perused the documents annexed alongwith the writ petition as well as the original file received from the committee. Apparently, the petitioner placed her reliance on the Validity Certificate dated 28.7.2011 granted in favour of her father and validity certificate dated 15.2.2011 granted in favour of aunt Sarojana Maruti Pawalwar. It is not in dispute that both the validities are holding the field or subsisting as on date and not subjected to cancellation or recall. Pertinently, the validity in respect of paternal aunt Sarojana was granted after the matter was remanded back to the committee by this Court vide order dated 9.8.2010 passed in W.P. No. 4223 of 2007. The Committee while appreciating the evidence in form of validity certificate granted in favour of petitioner's father and aunt observed that while obtaining the aforesaid validities, the contra entries were suppressed. Similarly, Mr. B.V. Shivurkar was the disqualified to hold post of Chairman of the Committee who issued said validity. The Committee further observed that during the Vigilance Inquiry, many contra entries have been surfaced.

7. Pertinently there are no specific findings by the Committee that while obtaining caste validity, the father of the petitioner or her aunt have indulged into fraudulent activity or they have acted in such a manner that can be treated as misrepresentation. The Committee merely observed that the contra entries those are surfaced during the Vigilance Inquiry in the present case were not brought to the notice of the Committee, when the claim of the petitioner's father and aunt was under

consideration. Such observation itself would not be sufficient to constitute fraud or mis-representation. However, we would refrain ourselves from making further observations in this regard. Suffice to say that we do not find any cogent reason for discarding the caste validity granted in favour of the petitioner's father and aunt at the threshold. The committee could have supplied better reasons when it discards the caste validity granted in favour of the nearest blood relations of the petitioner. So far as the Vigilance Cell report is concerned, the learned counsel for the petitioner submits that it was never served upon the petitioner and he was never offered an opportunity to explain the contra entries or observations. The learned AGP could not point out from the record that the petitioner was served with a show cause notice or he was given sufficient opportunity to explain or put forth his stand as regards the observations in the Vigilance Report.

8. For the aforesaid reasons, we find it appropriate to set aside the impugned order and remit the matter back to the Committee with an opportunity to the petitioner to submit his explanation as regards the report of the Vigilance Cell. We expect that the Committee would take into consideration the explanation tendered by the petitioner and apply its mind afresh to the entire material available on record and pass appropriate order. It is made clear that the observations made herein above are based on prima facie consideration of the material. The Committee shall take fresh decision without influenced by the aforesaid observations. Hence, we pass the following order :-

ORDER

- [a] The writ petition is partly allowed;
- [b] The impugned order dated 20/7/2018 passed by the Committee is quashed and set aside;

- [c] The matter is remitted back to the respondent No.2 Committee for fresh decision after affording an opportunity of hearing to the petitioner after tendering explanation regarding adverse material surfaced during the Vigilance Inquiry;
- [d] The committee shall take fresh decision within a period of one year from the date of this order.
- [e] Rule made absolute in above terms with no orders as to costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-