

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 955 OF 2022

Chetan Shridhar Chordhekar. ... Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

Mr.R.K.Mendadkar for the Petitioner.
Mr.S.B.Kalel, AGP for Respondent Nos.1 and 2.
Ms.Shehnaz V. Bharucha for Respondent Nos.3 to 5.

SANJAY
KASHINATH
NANOSKAR

Digitally signed by
SANJAY
KASHINATH
NANOSKAR
Date: 2024.01.24
19:02:45 +0530

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 17 January 2024.

P.C. :

The Petitioner has filed this petition challenging the order passed by Respondent No.2- Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane dated 29 December 2021 invalidating the caste certificate issued to the Petitioner on 18 October 1994. By amendment, the Petitioner has challenged the order of dismissal from service dated 18 August 2022 passed by Respondent No.5- Employees Provident Fund Commissioner.

2. The Petitioner had applied for and was granted a caste certificate as belonging to the Koli Mahadev Scheduled Tribe by the Executive Magistrate, Shriwardhan, district- Raigad. The Petitioner

joined the services of Respondent- Employees Provident Fund Organization as Social Security Assistance on 25 January 2006 in the reserved category. The caste certificate of the Petitioner was referred to the Respondent- Scrutiny Committee for verification. Before the Scrutiny Committee, the Petitioner submitted documents pertaining to himself, his father and his cousin uncle. As per the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and the Rules framed thereunder, the report of the Vigilance Cell was called for and it was submitted. The Vigilance Committee also produced records regarding the Petitioner's father, uncle and aunt (sister of Petitioner's father) on record. A copy of the report of the Vigilance Cell was given to the Petitioner to submit his response. The Scrutiny Committee considered the evidence produced by the Petitioner, the report of the Vigilance Cell, the explanation of the Petitioner and the contentions of the Petitioner during the hearing. The Scrutiny Committee opined that there was no entry in respect of the Petitioner's paternal relatives of the period prior to 1951 as belonging to the Mahadev Koli tribe. The documents which were produced showed conflicting entries. The Scrutiny Committee noted that the report of the Vigilance Cell regarding the affinity of the Petitioner to the Mahadev Koli was in negative. Considering this position, the Scrutiny Committee passed the impugned order invalidating the caste certificate of the Petitioner.

3. In the meanwhile, a disciplinary proceeding for a major penalty was initiated against the Petitioner under Rule 10 of Employees Provident Fund Staff CCA Rules, 1971 by Charge Memorandum dated 14 October 2020. The charge against the Petitioner was that in spite of repeatedly calling upon the Petitioner to submit a validity certificate, the Petitioner failed to do so and, therefore, violated the provisions laid down under Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS Conduct Rules, 1964 read with Rule 27 of the Employees Provident Fund (Staff and Conditions of Service) Regulations, 1962. A departmental enquiry was conducted and a notice of termination dated 29 July 2020 was served on the Petitioner. Thereafter the impugned order came to be passed by the Scrutiny Committee on 29 December 2021. Pursuant thereto, the order of dismissal was passed against the Petitioner on 18 August 2022. By an ad-interim order dated 8 September 2022 passed in this petition, the order dated 18 August 2022 was stayed.

4. We have heard Mr.Mendadkar for the Petitioner, Ms. Bharucha for Respondent Nos.3 to 5-the Employer, and Mr.Kalel, AGP for Respondent Nos.1 and 2.

5. The learned counsel for the Petitioner submitted that the Scrutiny Committee has not considered the evidence produced by the Petitioner in proper perspective. He submitted that the entries in respect of Petitioner's cousin uncle Dhondo of the year 1952 in the

school register showed Hindu Koli Mahadev Koli. He also submitted that the entries in the school register in respect of Petitioner's aunt Chandrabhaga of 1959 showed the caste of Hindu Mahadev Koli. Learned counsel for the Respondents supported the impugned order.

6. The grant of issuance of caste certificate and scrutiny/ validation of such certificate are governed by the provisions of the Act of 2000 and Rules of 2003. Section 8 of the Act of 2000 states that when an application is made to the Competent Authority for issuance of the caste certificate or if any enquiry is conducted by the Competent Authority and the Scrutiny Committee or the Appellate Authority under the Act, the burden of proving that the person belongs to such caste/ tribe is upon the claimant. Therefore, the burden is cast on the claimant to demonstrate that he belongs to that caste/ tribe of which he has claimed the benefit. The law is settled right from the decision in the case of *Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development*¹ that while deciding the validity of the caste certificate issued as belonging to the scheduled tribe, the entries in the documents of the pre-constitution period that is 1950 will have greater probative value.

7. In the present case, there is no document issued having entry of Mahadev Koli of the period prior to 1950 in respect of any of the blood relatives of the Petitioner. This position is admitted even by

¹ (1994) 6 SCC 241

the learned counsel for the Petitioner who, however, contends that post-1950 there were area restrictions and during this period since benefits were not available, the entries even of post-independence be considered as in favour of the Petitioner. Even to proceed on that basis, these entries must be clear and consistent and should not admit any doubt. In the decision of the Supreme Court in the case of *Kumari Madhuri Patil*, emphasis is on the documents prior to 1950. The school leaving certificate of Petitioner's father Shreedhar Jagannath Chordhekar of 12 June 1961 showed an entry of Hindu Koli. In the case of Petitioner's uncle- Madhukar Jagannath Chordhekar, the school record is of 5 July 1957, however, it is placed on record that the entry is Hindu Maha. Koli and the word "*Maha.*" is stressed upon. Then as regards the entry in respect of Petitioner's cousin uncle Shreedhar Joma Chordhekar, the entry is Hindu Koli which is of 4 April 1951. In respect of Balaram Jagannath Chordhekar, the Petitioner's uncle, the entry is of 1955 mentioned as Hindu (Suryawanshi) Koli. In respect of Petitioner's uncle Dhondur Gopal Chordhekar, the entry of 9 October 1952 is of Hindu Koli Mahadev where the word "Mahadev" is in different ink. The entry in respect of the Petitioner's aunt- Chandrabhaga Jagannath Chordhekar is Hindu Mahadev Koli dated 18 June 1959. In the case of the Petitioner's own father, in the school leaving certificate, which is of the year 1961, showed the entry as Hindu Koli. Therefore, even assuming that the Petitioner's argument that entries post-1950 are to be accepted, it cannot be said that the Petitioner has discharged the burden as contemplated under section 8 of the Act of

2000. The Scrutiny Committee with this evidence observed that from the year 1952 to 1958, there were conflicting entries from Hindu Koli to Hindu Mahadev Koli to Hindu (Suryawanshi) Koli. The assessment of evidence by the Scrutiny Committee in this regard cannot be called as perverse. The Scrutiny Committee has followed the well-settled principles of assessment of evidence for considering the validity of the caste certificate.

7. The learned counsel for the Petitioner then contended that one Smt. K.S. Patil, a member of the Scrutiny Committee did not have requisite qualifications in the field of anthropology and sociology and, therefore, branding her as a Research Officer in the Committee will be contrary to the decision in the case of *Kumari Madhuri Patil*. The learned counsel for the Petitioner relied upon the observations of the Hon'ble Supreme Court in paragraphs 13.4 and 13.5 of the decision in the case of *Kumari Madhuri Patil*. He also relied upon the decision of the Division Bench in the case of *Padmawati Hirachand Palampalle v. State of Maharashtra*².

8. After the decision in the case of *Kumari Madhuri Patil*, the Act of 2000 has been brought into force and thereafter the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. In the case of *Kumari Madhuri Patil*, the Supreme Court has stated that the Research Officer who should have intimate knowledge about the tribe and

² WP No.9071/2019 decided by this Court on 19 August 2019

tribe communities. In paragraph 13.5, there is a reference to the examination of parents, guardians or candidates in relation to their caste and submit a report to the Directorate of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deities, rituals, customs etc. Under the Rules of 2023, the constitution of the Vigilance Cell and enquiry are provided for under Rule 10. Under this Rule, the Research Officer is part of the Vigilance Cell. In the case of *Padmavati Palampalle*, the contention of the Petitioner before the Division Bench was that the Research Officer was not associated with the Vigilance Cell. The Division Bench has relied upon Rule 10 of the Rules of 2003 and thereupon having found that the constitution of the Vigilance Cell was faulty, remanded the matter to the Scrutiny Committee.

9. In the present case it is not the contention of the Petitioner that the Research Officer was not associated with the Vigilance Cell. As far as the Research Officer in the composition of the Scrutiny Committee is concerned, the Petitioner has not placed any decision on the record. The decision was rendered to remand the matter on this ground also when the petitioner therein had not claimed any benefit of the reservation. Even assuming that the same principle is to be extended to the members of the Scrutiny Committee that cannot be an absolute proposition. Keeping the negative aspects of anthropological and ethnological traits, deities, rituals, customs etc. of the Petitioner aside, the Petitioner has not discharged the burden under section 8 of the Act of 2000. In fact,

the evidence on record is contrary to the claim of the Petitioner. No satisfactory explanation is given as to why the school record of the Petitioner's father shows the entry-Koli. In these circumstances, we find that no case is made out by the Petitioner.

10. As regards dismissal from service is concerned, first, the notice was issued to the Petitioner and then departmental enquiry was conducted against him for non-production of caste certificate. The Petitioner has occupied the post claiming to be a member of scheduled tribes. Once his caste certificate is held to be invalid, he will lose the benefit as per section 10 of the Act of 2000. In these circumstances, there is no error in the order of dismissal passed by the Respondent-employer. No case for interference under writ jurisdiction is made for out.

11. The writ petition is accordingly dismissed.

12. At this stage, the learned counsel for the Petitioner prays that the ad-interim order operating in this petition be continued for some time. The ad-interim order dated 8 September 2022 operating in this petition is continued for a period of eight weeks from the date this order is uploaded on the server.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)