



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1170 OF 2018

Moti S/o Mahadev Ghode, Alankar Nagar, Besa, Dist. Nagpur

-VS-

Nutan Sarswati Vidyalay Tekdi, Thr. Principal, Tq. Parseoni, Dist. Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri M. V. Bute, Advocate for petitioner.

Shri A. A. Madiwale, Assistant Government Pleader for respondent No.2.

CORAM : NTIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : August 01, 2024

P. C.

1. Heard.

2. The petitioner sought issuance of validity certificate of belonging to 'Dhangad' Scheduled Tribe. His prayer was rejected by the respondent-Scrutiny Committee vide impugned order dated 20/12/2017.

3. Shri M. V. Bute, learned counsel appearing for the petitioner would urge that the petitioner was initially issued caste certificate dated 23/06/1987 based on which he was granted employment. The employer of the petitioner forwarded the same for verification on 15/07/2013. The learned counsel submitted that in support of the tribe-claim of belonging to 'Dhangad' Schedule Tribe, the petitioner has relied on the caste entry dated 08/07/1977 in the primary school record, entries dated 23/06/1984 and 15/07/1989 in relation to school and college record. It is claimed that based on aforesaid documents the Committee ought to have granted validity particularly when the petitioner has satisfied the affinity test.

4. As against above, the learned Assistant Government Pleader would oppose the prayer based on the fact that pre constitutional era entries in relation to father and uncle of the petitioner are that of 'Dhangar'

5. We have appreciated the submissions of the counsel for the parties.

6. After receipt of the petitioner's claim, Committee referred the matter for Vigilance Cell enquiry who has submitted report on 21/10/2013. The Vigilance Cell placed on record of the Committee two old documents i.e. extract of admission register having entries dated 01/02/1938 and 07/04/1945 of 'Dhangar' in relation to Mahadeo Jungloo, father and Shankar Jungloo, uncle of the petitioner respectively.

7. Apart from above, the Vigilance Cell has recorded a finding with regard to customs and traditions which are being followed and caused a notice to the petitioner thereby calling his explanation.

8. The petitioner not only submitted his explanation but also mentioned about the customs and traditions which are followed by his family.

9. Based on those adverse entries of 'Dhangar' which are of pre constitutional era i.e. 01/02/1938 in respect of father and 07/04/1945 in respect of uncle of the petitioner, the Committee negated the claim of the petitioner.

10. It is settled position of law that entries of pre constitutional era have more probative value. The reliance placed on the documents by

the petitioner before the Committee are post promulgation of Constitution (Scheduled Tribes) and (Scheduled Castes) Orders, 1950.

11. Section 8 of the Maharashtra Schedule Castes, Schedule Tribes, De-notified Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 casts burden on the petitioner to prove his tribe-claim. Once the Committee has brought to the notice of the petitioner adverse documents of pre constitutional era i.e. of 1938 and 1945 in relation to father and uncle respectively, it was for the petitioner to explain as to how the entry 'Dhangar' instead of 'Dhangad' was made in such school records. The petitioner has failed to discharge the burden cast on him. That being so, the Committee has rightly inferred that the petitioner does not belong to 'Dhangad' Schedule Tribe. The aforesaid finding is based on the principle that a person gets his caste by birth and not by subsequent entries in certain school record.

12. Once it is concluded by the Committee based on the documentary evidence that the caste of father of the petitioner and also that of uncle was recorded as 'Dhangar', there is no reason to disbelieve the findings of the Committee that the petitioner cannot be said to be belonging to 'Dhangad' that too contrary to the record in relation to his father and uncle.

13. Apart from above, the Committee has noted that the petitioner has also failed to satisfy the affinity test. That being so, in our opinion, there is no case made out for causing interference in extra ordinary writ jurisdiction.

14. The writ petition accordingly stands dismissed with no order as to costs.

15. At this stage counsel for the petitioner Shri M. V. Bute would urge that in case if the petitioner advances his claim for conversion of his employment on supernumerary post, the same be directed to be decided by the employer in view of existing policy of the State Government in that regard.

16. Having regard to length of service put in by the petitioner and the fact that though he is holding caste-certificate but his caste-claim as has been invalidated at belated stage, we are of the view that such prayer if so made, same shall be considered in accordance with the existing policy of the State Government in that regard. Order accordingly.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)