



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

WRIT PETITION NO. 2062 OF 2024

Ku. Rajni Bhaskarrao Naidu,
Aged 37 years, Occupation – Service,
R/o Plot No.14, Manewada Road,
Savatribai Fule Nagar, Nagpur.

.... **PETITIONER**

VERSUS

- 1) The State of Maharashtra,
through its secretary,
Department of Social Welfare,
Mantralaya, Mumbai – 32.
- 2) The District Caste Certificate
Scrutiny Committee, Yavatmal,
through its Chairman, Yavatmal.
- 3) The Dean, Indira Gandhi
Government Medical College and
Hospital, Nagpur, Central Avenue
Road, Nagpur.

.... **RESPONDENTS**

Mr. P.J. Mehta, Counsel for the petitioner,
Mr. H.R. Dhumale, AGP, for the respondents.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**
DATED : 1st AUGUST, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith and heard by
consent of the learned Counsel appearing for the parties.

2. The challenge is to the order dated 24-09-2019 passed by respondent No.2-District Caste Certificate Scrutiny Committee, Yavatmal (for short,-“*the Committee*”) thereby invalidated the claim of the petitioner that she belongs to “*Madgi*” Scheduled Caste and the order dated 12-12-2023 passed by respondent No.3-Dean, Indira Gandhi Government Medical College and Hospital, Nagpur, (for short-“*the Dean*”) by which the services of the petitioner as Staff Nurse was terminated.

3. The petitioner claims that she belongs to the ‘*Madgi*’ Scheduled Caste. Accordingly, on 01-01-2018, the Sub-Divisional Officer, Kelapur, issued the Caste Certificate in her favour. She worked under respondent No.3 as a Staff Nurse against the Scheduled Caste reserved category. So, she submitted her Caste Certificate along with documents to respondent No.3. Respondent No.3 forwarded the same to the Committee for verification.

4. Since the Committee was dissatisfied with the documents produced by the petitioner, it forwarded them to the Vigilance Cell for a detailed enquiry. Pursuant to this, the Vigilance Cell conducted the enquiry and submitted its report to the Committee on 08-08-2019. During the enquiry, the Vigilance Cell found inconsistent entries of the ‘*Mochi*’ schedule cast.

5. After considering the vigilance cell report, documents on record, and explanation of the petitioner, the Committee invalidated the petitioner's caste claim.

6. Respondent No. 3 Dean terminated her services as a sequel to the invalidation of the caste claim. Aggrieved by both orders, the petitioner preferred this petition.

7. Mr. P. J. Mehta, learned Counsel for the petitioner, has vehemently argued that the petitioner has produced a document of the year 1930 pertaining to her great-grandfather. It is mentioned that the son was born to him, wherein his caste is mentioned as "*Madgi*". Therefore, he urged that the oldest document has more probative value, and based on said document, the petitioner is entitled to get the Validity Certificate. However, the Vigilance Cell, as well as the Committee, has discarded the said document on the ground that some interpolation appeared in the name of '*Poshatti*' in the said entry and, therefore, rejected the caste claim of the petitioner. The said finding is contrary to the record. Hence, he urged for a grant of validity.

8. As against Mr. H.R. Dhumale, learned Assistant Government Pleader has strenuously argued that the document of the year 1930 was found to be very old and pale. The entries in the names

Hushya Madgi and Poshatti have been written in different ink and handwriting. Therefore, said document creates doubt, and hence, the Committee has rejected the claim of the petitioner. During the enquiry, the Vigilance Cell found inconsistent documents regarding the 'Mochi' caste, and, therefore, passing the order by the Vigilance Cell is just and proper.

9. We have appreciated the rival contentions and perused the impugned orders, record, and documents produced on record.

10. On careful scrutiny of the record and the impugned orders, it seems that the petitioner has produced a document of the year 1930 pertaining to her great-grandfather on record. The said document is the extract of the birth register. The entry in the said document denotes that the son was born to "Hushya *Madgi*", and his name was recorded as '*Poshatti*'. The Vigilance Cell, as well as the Committee, discarded the said document solely on the ground that the said register was very old and pale, and while inspecting the said document, the Vigilance Cell assumed that the said name had been written in different ink and different handwriting by interpolation in the document. However, the original register was neither produced before the committee, nor did the committee verify the same by calling the original record. Based on a Xerox copy of the document, it appears that

the committee drew the inference that interpolation was found in the said entry.

11. It is pertinent to note that neither the Vigilance cell nor the committee are disputing the family tree given by the petitioner wherein the name of great-grandfather is shown as '**Hushya**'. Thus, her relationship with the petitioner is not disputed. In the entry of 1930, Hushya's caste is recorded as the '**Madgi**' before his name. Therefore, the said document clearly depicts that Hushya belonged to the "**Madgi**" Schedule Caste. For the sake of argument, even assuming that there is interpolation in the name of '**Poshatti**', it would not affect the claim of the petitioner that she belongs to the '**Madgi**' Schedule Caste as the Committee, as well as the Vigilance Cell, is not disputing Hushya's relationship with the petitioner. As a result, it reveals that the findings recorded by the Committee are not contrary to the record and is without ascertaining the real facts as discussed above. Based on the said finding, the order cannot be sustained in the eyes of the law.

12. *Moreover*, during the enquiry, the Vigilance Cell found some adverse entries for the "Mochi" caste. It is pertinent to note that both the "Mochi" and "**Madgi**" castes are Scheduled Castes. The "Mochi" entry is at Sr.No.11, and the "**Madgi**" entry is at Sr.No.35 of the Presidential Order. In such an eventuality, it would not affect the petitioner's claim that she belongs to a "Scheduled Caste."

13. During the argument, the learned Assistant Government Pleader canvassed that there was a delay and laches in challenging the order dated 24-09-2019; therefore, the petition is barred by law of limitation. Upon scrutinising the record, it appears that her caste claim was rejected in 2019. However, her services were terminated in 2023 by respondent No.3. So, simultaneously, she has challenged both orders in this petition. Considering the discussion above, if the delay is condoned, then it would not cause prejudice to anybody, but if it is rejected solely on the ground of delay, then it would cause prejudice to the petitioner's legitimate rights, and her meritorious claim would be thrown out of the Court. Therefore, in our view, to advance substantial justice, it would not be proper to reject the legitimate claim of the petitioner solely on the grounds of delay and laches. Besides, the petitioner shall not be deprived of her legitimate right of service with respondent No.3. Hence, we do not find substance in the argument made by the learned Assistant Government Pleader in that regard.

14. Having considered the aforesaid discussion, it seems that the petitioner, in support of her caste claim, has produced the document of 1930. In the catena of decisions, the Hon'ble Apex Court and this Court have held that "*the pre-constitutional era documents have more probative value than the subsequent documents.*" Based on the said settled position of law and documents on record, it is evident

that the petitioner has categorically demonstrated that she belongs to the '**Madgi**' Scheduled Caste. Therefore, in our opinion, the findings recorded by the Committee appear to be contrary to the settled position of law. Hence, the said findings are liable to be quashed and set aside.

15. Needless to clarify, based on the committee's order, respondent No. 3 Dean terminated the petitioner's services. Consequent to setting aside the committee's order, the termination order dated 12/12/2023 passed by respondent No.3 is liable to be set aside.

16. In the aforesaid background, we deem it appropriate to allow the petition. The writ petition stands allowed. The impugned orders dated 24-09-2019 and 12-12-2023 passed by respondent Nos.2 and 3, respectively, are hereby quashed and set aside. It is declared that the petitioner belongs to the '**Madgi**' Scheduled Caste. Respondent No.2 is directed to issue a Validity Certificate in her favour within a period of four weeks from the date of production of a copy of this judgment.

17. As a sequel to the above, the petitioner is entitled to claim reinstatement at respondent No.3-Indira Gandhi Government Medical College and Hospital, Nagpur. Needless to clarify, in such an eventuality, the petitioner is not entitled to claim back-wages for the period she was not on duty. However, she is entitled to claim continuity

in service from the date of her appointment and consequential benefits arising thereof.

18. Rule is made absolute in the terms above. No Cost.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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