



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 3790 OF 2021**

Pyam Baburao Suryawanshi,
Aged 46 years, Occ. Service,
Residing at c/o. Jeejabai Tanaji Suryavanshi (Thakur),
Thakur/Nhavi Galli,
Near Dharmaraj Maharaj Temple Deur Budruk,
Taluka and District Dhule. ..Petitioner

Versus

1. The State of Maharashtra through its Secretary, General Administration Dept., Mantralaya, Mumbai: 400 032.
2. Scheduled Tribe Caste Certificate Scrutiny Committee, Nandurbar, Division Through its Deputy Director, and Member Secretary having its office Near RTO, Sakri Road, Nandurbar.
3. Deccan Education Society, through its Secretary, having its office at Furguson College Compound, Pune-411 004. Dist. Pune.
4. Joint Director of Higher Education, Pune Division, Pune: 411 001. ..Respondents.

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Mr. R. K. Mendadkar h/f. Mr. Anandsingh Bayas, Advocate for the Petitioner.

Mr. P. S. Patil, Addl. GP for Respondent Nos.1, 2 and 4.

Mr. V. P. Patil, Advocate for Respondent No.3.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 23rd FEBRUARY 2024.

JUDGMENT PRONOUNCED ON :- 06th MARCH 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India assailing order dated 27.01.2021 passed by respondent no.2-Scheduled Tribe Caste Scrutiny Committee, Nandurbar, by which caste claim of the petitioner has been invalidated. The petitioner has also assailed the show cause notice dated 18.02.2021 issued by respondent no.3/Employer. By way of amendment, the petitioner challenges the order dated 27.02.2021, by which services of petitioner have been terminated by respondent no.3 in pursuance of show cause notice dated 18.02.2021 and seeks consequential relief of reinstatement in service and back-wages.

3. The petitioner contends that he belongs to '*Thakur*', Scheduled Tribe. The Competent Authority granted him caste certificate that was referred to respondent no.2-Scrutiny Committee for verification. The petitioner's caste claim was accompanied by, documents like, Birth entry record of the cousin uncle, dated 13.09.1993, Death entry record of Parbat Tanaji, cousin grandfather, dated 27.07.1940 and Birth entry of Laxman Gajamal Parbat, cousin brother, dated 19.11.1942. The petitioner has also filed post-Constitutional documents relating to his father, uncle, cousin brothers which records caste as '*Thakur*'. The petitioner has also filed on record the affidavit of Shri. Shriram Vitthal Suryawanshi. The Committee ignoring the voluminous documents justifying caste claim of the petitioner to be belonging to '*Thakur*', Scheduled Tribe, declined to grant caste validity to the petitioner. Consequently, respondent no.3 terminated services of the petitioner vide order dated 27.02.2021. Hence, this Writ Petition.

4. Mr. Mendadkar, learned Advocate appearing for the petitioner submits that the Committee ignored Pre-Constitutional documents of the petitioner's relatives from paternal side, observing

that the revenue documents to establish relationship with them have not been filed. He would point out that the genealogy with affidavit of the relatives was tendered before the Committee. Mr. Mendadkar, further invited attention of this Court to the Post-Constitutional documents in relation to the father, uncle and cousin brothers of the petitioner i.e. school admission entries during the period from 1959 to 1966 depicting caste as '*Thakur*'. He would submit that Committee could not have applied area restriction placed by presidential order of 1950, that has been removed since 1976 by amendment in the Schedule Tribe order. He would submit that the affinity test cannot be treated as litmus test in the matter of caste verification. He would, therefore, submit that the Committee failed in gross error while invalidating claim of the petitioner.

5. Mr. Patil, the learned Addl. G.P. appearing for respondent nos.1, 2 and 4 submits that although the petitioner has relied upon the Pre-Constitutional documents, failed to establish his relationship with those persons. He would submit that in absence of the documentary evidence, the Committee has rightly applied affinity test and also made observations regarding original place of residence of the petitioner's forefathers. Mr. Patil would further submit that mere entry of '*Thakur*' in the Pre-Constitutional record would not be sufficient to conclude that the petitioner belongs to the '*Thakur*', Scheduled Tribe recognized in State of Maharashtra. He would, therefore, justify the decision of the Committee.

6. Mr. V. P. Patil, learned Advocate appearing for respondent no.3-Deccan Education Society justifies termination of the service of the petitioner in view of the invalidation of the caste claim, since the appointment of the petitioner was made on post reserved for 'Scheduled Tribe'.

7. Having considered submissions advanced by the learned Advocates appearing for the respective parties and after perusal of the documents tendered into service, it can be gathered that petitioner claims himself belonging to '*Thakur*', Scheduled Tribe as recognized in the State of Maharashtra. Admittedly, the petitioner relied on birth extract (entry dated 13.09.1933) in relation of Ananda Chintaman Mahadu, cousin uncle from paternal side, death extract (entry dated 27.07.1940) of Parbat Tanaji, cousin grandfather from paternal side and birth extract (entry dated 19.11.1942) in relation to Laxman Gajamal Parbat, cousin brother from paternal side. All such entries shows their caste entry as '*Thakur*'. The genealogy of the petitioner's family right from great-great-grandfather is placed on record, supported by the affidavit of the petitioner. The Committee discarded the aforesaid evidence observing that petitioner could not establish that his forefathers are migrated from original geographical area of residence of '*Thakur*', Scheduled Tribe. It is further observed that the entries of '*Thakur*' can be seen in the record of the many non-tribals. The Committee further observed that petitioners blood relatives were admitted in the schools right from year 1933, converse to characteristics of '*Thakur*' tribes. The Committee also discarded petitioners caste claim due to failure in affinity test.

8. It is difficult to countenance with the observations of the Committee. It is trite that, Pre-Constitutional documents assumes great probative value and significance for the purpose of deciding caste status, since those are not entries made with obvious purpose. Once such documents are found to be genuine, there is no reason to discard the claim made, based on such documents. Perusal of the vigilance enquiry report depicts that the authenticity of the aforesaid documents is not doubted. The genealogy placed alongwith affidavit of the blood relatives resembles with petitioners claim regarding his relationship

with persons named in old record. In absence of the contra material, there is no reason to discard the affidavit and genealogy only because revenue record depicting relationship could not be made available by petitioner. The approach of the Committee while discarding important documentary evidence appears to be hyper-technical.

9. The Supreme Court of India in the matter of ***Kumari Madhuri Patil and Another Vs. Addl. Commissioner, Tribal Development and Others***¹ observed that ‘the documents of Pre-Constitutional era, showing caste of ancestors have got highest probative value. If the applicant is able to produce authentic and genuine document of Pre-Constitutional period, showing that he belongs to tribal community, there is no reason to discard his claim, as prior to 1950, there was no reservations provided to the tribes, now included in Scheduled Tribe order. In such case, the reference of the vigilance cell is not warranted at all.”

10. So far as affinity test is concerned, the Supreme Court of India in case of ***Mah. Adiwasi Thakur Jamat Swarkshan Samiti Vs. State of Maharashtra and Others***² observed in paragraph no.25 as under:-

“25. Now, we come to the controversy regarding the affinity test. In clause (5) of Paragraph 13 of the decision in the case of *Kumari Madhuri Patil MANU/SC/0022/1995 : (1994) 6 SCC 241* it is held that in the case of Scheduled Tribes, the Vigilance Cell will submit a report as regards peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, methods of burial of dead bodies etc. in respect of the particular caste or tribe. Such particulars ascertained by the Vigilance Cell in respect a particular Scheduled Tribe are very relevant for the conduct of the affinity test. The Vigilance Cell, while conducting an affinity test, verifies the knowledge of the applicant about deities of the community, customs, rituals, mode of marriage, death ceremonies etc. in respect of that particular Scheduled Tribe. By its very nature, such an affinity test can never

1 (1994) 6 SCC 241.

2 2023 SCC OnLine Sc 326.

be conclusive. If the applicant has stayed in bigger urban areas along with his family for decades or if his family has stayed in such urban areas for decades, the applicant may not have knowledge of the aforesaid facts. It is true that the Vigilance Cell can also question the parents of the applicant. But in a given case, even the parents may be unaware for the reason that for several years they have been staying in bigger urban areas. On the other hand, a person may not belong to the particular tribe, but he may have a good knowledge about the aforesaid aspects. Therefore, Shri Shekhar Naphade, the learned Senior Counsel, is right when he submitted that the affinity test cannot be applied as a litmus test. We may again note here that question of conduct of the affinity test arises only in those cases where the Scrutiny Committee is not satisfied with material produced by the applicant.”

11. In case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claim and Ors.**³, the Supreme Court of India laid down broad parameters to be kept in view while dealing with the caste claim, which reads as under:-

“22. It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its varacity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with the Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

12. Similar view is reiterated by the Supreme Court of India in case of ***Priya Pramod Gajbe Vs. State of Maharashtra and Ors.***⁴.

13. Keeping in view the aforesaid principles of law espoused by Supreme Court of India and after considering the uncontroverted Pre-Constitutional birth and death entries of paternal relatives of the petitioner, it is abundantly clear that the petitioner belongs to 'Thakur', Scheduled Tribe. Pertinently, even the school register entry of the petitioner's father dated 08.06.1959 also refers caste as 'Thakur'. The vigilance enquiry report nowhere depicts any contra material by which the petitioner's claim can be discarded. The petitioner has also relied upon affidavit of Shri. Shriram Vitthal Suryawanshi, who is conferred with the Caste Validity Certificate. In his affidavit, he states that the petitioner's great grandfather namely Mahadu and cousin great grandfather Tanaji were real brothers. Shri. Shriram Vitthal Suryawanshi belongs to the branch of Tanaji, whereas the petitioner belongs to the branch from Mahadu. It is true that, the petitioner could

not bring revenue record to establish the said relationship. However, in absence of contra evidence, there is no reason to discard the genealogy supported by the affidavit of validity holders. Considering the evidence and material as relied upon by the petitioner, we have no hesitation to hold that the Committee decided the petitioner's caste claim on erroneous consideration.

14. It appears that, the petitioner was appointed on 23.02.1993 on the post of Clerk with respondent no.3-Deccan Education Society. He was appointed on post reserved for Scheduled Tribe. However, for non-submission of the caste validity, he was served with show cause notice. Consequently, his services were terminated vide order dated 19.11.2020 relying upon the Government Resolution dated 21.12.2019. However, this court in Writ Petition (Stamp) No.96202/2020, filed by petitioner, set aside the order of termination and issued direction to reinstate him in the service. Thereafter, when the petitioner's claim was invalidated by the Committee vide order dated 13.02.2021, the petitioner was served upon show cause notice dated 18.02.2021 as to why his services should not be terminated. Pertinently, present writ petition raises challenge to Committee's order dated 19.02.2021 and consequential show cause notice dated 18.02.2021 issued by employer. By the time this Writ Petition could be heard for admission, respondent no.3 terminated petitioner's services vide order dated 27.02.2021. Consequently, petitioner amended the petition and raised challenge to the termination order.

15. Perusal of the termination order would depict that relying upon the judgment of the Supreme Court of India in case of ***Chairman and Managing Director, FCI Vs. Jagdish Balaram Bahira***⁵, services of the petitioner have been terminated in sequel of invalidation of his caste claim by the Committee. However since we have concluded

⁵ AIR 2017 SC 3271.

to uphold petitioners Tribe claim for '*Thakur*' Scheduled Tribe, we are inclined to set aside the termination order and direct the reinstatement of the petitioner. Hence, we proceed to pass the following order:-

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 21.01.2021 passed by respondent no.2-Scheduled Tribe Caste Certificate Scrutiny Committee is hereby quashed and set aside. The respondent no.2-Committee is directed to issue caste validity certificate in favour of the petitioner to be belonging to the '*Thakur*', Scheduled Tribe within a period of one month from the date of this order.
- c. The termination order dated 27.02.2021 passed by respondent no.3-Deccan Education Society is hereby quashed and set aside. The respondent no.3 is directed to reinstate the petitioner on his post with consequential benefits as permissible under law.
- d. Writ Petition is disposed of.
- c. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/March-2024