



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3339/2022

Premanand S/o Pralhadrao Wankhade,
aged about 55 Yrs., Occ. Service,
R/o Vitthalwadi Kandli, Paratwada,
Tah. Achalpur, Dist. Amravati.

... Petitioner

- Versus -

1. The Vice-Chairman / Member
Secretary, Scheduled Tribe Caste
Certificate Scrutiny Committee,
Amravati.
2. The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Ltd.
O.V.M. Amravati Circle,
Shivaji Nagar, Amravati.
3. ~~The Chief Engineer,
Maharashtra State Electricity
Board, Amravati Circle, Amravati.~~

..deleted.

... Respondents

Ms. P.D. Rane, Advocate for the Petitioner.
Mr. Nitin Autkar, A.G.P. for respondent No.1/State.
Mr. A.D. Mohgaonkar, Advocate for respondent No.2.

CORAM :- SMT. ANUJA PRABHUDESAI &
MRS. VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT:- 11.12.2023

DATE OF PRONOUNCING THE JUDGMENT:- 20.12.2023

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent.

2. The petitioner has challenged the order dated 28.4.2022 passed by the Scrutiny Committee invalidating the caste claim of the petitioner of Thakur and the petitioner also seeks directions to respondent No.2 employer not to initiate any action against the petitioner in pursuance of the invalidation of the order passed by the respondent No.1.

3. The petitioner belongs to Thakur Scheduled Tribe which is enlisted at serial No.44 of Scheduled Tribes Order. The caste certificate dated 15.10.1995 is issued to the petitioner by the competent authority. The petitioner was selected on merit as

Operator from Scheduled Tribe category by the employer. The petitioner's proposal was forwarded to the Scrutiny Committee in the year 2004 along with documents as follows:-

Caste certificate of petitioner dated 15.10.1995, school leaving certificate of petitioner, extract of Kotwal Book of petitioner (1967), caste certificate of petitioner's father dated 7.4.1981, copy of sale deed in respect of great grandfather namely Basantrao dated 18.6.1925, copy of sale deed in respect of cousin grandfather namely Shivram dated 18.6.1925, extract of Kotwal Book of petitioner's uncle namely Laxman (1936), extract of Dakhal Kharij Register of petitioner's aunt namely Vimal (1945/1954/1958) dated 11.2.2021, extract of land record in respect of grandfather namely Dattu (1946), extract of Kotwal Book of petitioner's uncle namely Pandurang (1946) and family tree dated 13.2.2020.

4. The Police Vigilance Cell of the Scrutiny Committee initially conducted an enquiry in relation to caste claim of the petitioner and accordingly submitted its report on 20.5.2014. In

said vigilance report only Thakur entries were seen and no adverse entry has been procured at the relevant time. Again vigilance enquiry is conducted in the year 2021 and accordingly report dated 18.2.2021 is submitted with adverse entries. At the time of conducting enquiry the Vigilance Cell of the Committee recorded statement of petitioner for the purpose of testing affinity.

5. The Vigilance Officer of the Committee had procured documents / pre-constitutional entry of Thakur and the petitioner also submitted the same. The said documents are undisputed. Vigilance Cell had procured three adverse entries of Bhat. The petitioner possessed the pre-constitutional documents of Thakur Scheduled Tribe. Vide order dated 28.4.2022 the claim of the petitioner was invalidated on the ground of documentary evidence, affinity, area restriction and other grounds. Being aggrieved by the decision of the Scrutiny Committee the petitioner has challenged the same by filing the present writ petition.

6. The respondent employer of the petitioner is in receipt of the impugned order and the petitioner came to know from the reliable source that respondent employer is in process to initiate the action of termination of the petitioner on 11 months adhoc basis. So also in the impugned order it is directed the respondent employer to initiate the action of termination as per Section 10(1)(2) and 11(1)(1) of the Act against the petitioner as the petitioner has availed benefit of Scheduled Tribe category candidate though the petitioner does not belong to the same. The petitioner is aggrieved by the decision of the Scrutiny Committee and, therefore, has approached this Court by challenging the same.

7. The respondent Scrutiny Committee has filed reply and opposed the petition stating that after conducting a detailed enquiry the Vigilance Cell has obtained certain documents which are adverse to the claim of the petitioner. The entries found during the course of vigilance enquiry are recorded in

government official records which have a great value as they are recorded in the course of official duty. The documents are of Narayanrao (great grandfather of the petitioner), Dattu (grand father of petitioner), Pandurang Dattu (paternal uncle of petitioner), Janabai (wife of Anna grandmother of petitioner). The entries are found to be recorded as Bhat in the year 1936, 1944, 1946, 1949, 1958 and 1965. The documents are of pre-independence era and have great probative value while considering the tribe claim of the petitioner. It is submitted by the learned counsel for the respondent that in Maharashtra State different Thakur castes are there having different social status and affinity test plays an important role in caste cases. The respondent has stated that considering the adverse entries and the affinity test the Scrutiny Committee has rightly invalidated the caste claim of the petitioner.

8. Heard both sides. Perused the original record.

9. In the year 2014 vigilance enquiry was conducted. At that time the adverse entries were not found and the Vigilance

Officer was satisfied that all the entries are of Thakur. Again in the year 2021 vigilance enquiry was conducted and the adverse entries were found. Eight adverse entries were procured by the respondent. The petitioner has relied on the documents by giving family tree and has stated that all the entries are there as Thakur caste. The Scrutiny Committee has rejected the entry of one Laxman born to Dattu as the name of said Laxman is not mentioned in the family tree. Yet strangely the Scrutiny Committee has relied on the document relates to death of said Laxman having entry of Bhat. Said son of Dattu has died within a period of few days. Both the entries are of 1936. Another entry is of daughter born to Dattatray Basantrao of year 1944. Name of said person is also not there in family tree. The said document indicate that Dattu Basant i.e. Pandurang was born in the year 1946. The date of birth of Govind is also of the year 1946. It is highly improbable that the great-grandfather and great grand son would be born in the same year. All other entries of Sundarabai, Pandurang, Dattoba and birth of one Kamla to Dattatraya

Basantrao are not shown in family tree. Only because the names of cousins are not known is mentioned, all these entries are considered by the Scrutiny Committee presuming as genuine documents. The other documents which the petitioner has filed on record of Thakur caste are not disputed by the respondents.

10. The other ground for rejecting the caste claim of the petitioner is the ground of affinity. As per the judgment of the Hon'ble Apex Court in Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti V/s. State of Maharashtra and others reported in 2023(2) Mh.L.J. 785 the Apex Court has observed that the affinity test is not litmus test and caste claim cannot be rejected on that ground. The learned A.G.P. stated that in Maharashtra Thakur is also used as surname and the many people are taking disadvantage of the claim of the Scheduled Tribe. They are not migrated from the area mentioned in the Schedule. As the documentary evidence proves that the forefathers of the petitioner are from Thakur community and the affinity test is not

a litmus test the impugned order is set aside. The Committee shall issue caste validity certificate to the petitioner of Thakur Scheduled Tribe within a period of three months from the date of receipt of this judgment.

(MRS. VRUSHALI V. JOSHI, J.)

(SMT. ANUJA PRABHUDESAI, J.)

Tambaskar.