



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9061 OF 2019

Kumari Rutuja d/o Narsing Wanapwad Petitioner
Vs.

The State of Maharashtra & Ors. ... Respondents

Mr. Madhur A. Golegaonkar for Petitioner.

Mr.A.A. Kumbhakoni, Advocate General with Mr.P.P. Kakade,
Government Pleader with Mr. V. S. Gokhale, Counsel 'B' Panel for State.

**CORAM : NITIN W. SAMBRE AND
G.S. KULKARNI, JJ.**

DATE : 22nd AUGUST, 2019

P.C.:

1. Heard.

2. The claim of the Petitioner as belonging to 'Mannervarlu', Scheduled Tribe, is rejected by the order impugned dated 29th July 2018. The learned counsel for the petitioner while questioning the legality of the order impugned, would invite attention of this Court to the school admission entry dated 26th July, 1952 of one Piraji Poshti Wanapwad. According to the learned counsel said entry is very closed to the date of issuance of Scheduled Tribe order of 1950, where in caste entry of grand father is recorded 'Mannervarlu' which has more weightage and probative value being of 1952.

3. The learned counsel further submit that the initial entries of 'Manurwar' in the school record of the father of petitioner namely Narsing and uncle Ganpat of 1977 and 1975 respectively was corrected

to 'Mannervarlu'. As such the claim of the committee that there is unauthorised insertion by different ink is not sustainable. Submission of the learned counsel for the petitioner is correction in the school record about the caste of father and uncle of the petitioner is based on the caste entry of 1952 of Grand-father Piraji. The learned counsel would also draw attention of this Court to the entries effected in the various record of the blood relations of the petitioner, so as to substantiate his claim that the petitioner belongs to 'Mannervarlu' Scheduled Tribe.

4. While resisting the aforesaid claim Shri. Gokhale, learned counsel appearing for the committee would produce before us original record of Central Primary School Malegoan, Taluka - Degloor and Zilha Parishad Central Primary School, Malegoan. According to him in both these registers the name of the grandfather - Piraji is reflected at Sr. No. 144 and as such these entries raised serious doubt about the very admission of Piraji in two different schools at same time. Shri. Gokhale would urged that findings on the issue of affinity coupled with the aforesaid doubtful entry and the interpolation in the caste column of father and uncle in 1977 and 1975 respectively has been relied upon for rejection of claim. As such according to him the petition is liable to be dismissed as the claim of the petitioner is not genuine.

5. Considered the rival submissions.

6. With the assistance of Shri. Gokhale and the learned counsel for the respondent, we have perused both the admission register referred above and verified the entries at Sr. No. 144 in regard to admission of Piraji's. In both these register the information furnish about Piraji appears to be identical and entry in caste column reflects as that of 'Mannervarlu'.

7. The vigilance cell has doubted the said entry only on the count that the admission is shown for the same period in two different school.

8. The fact remains that the information in the admission register about Piraji, grand-father of the petitioner, a blood relative within the meaning of Rule 2(1)(h) 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 rules in categorical terms speaks of 'Mannervarlu'. No over writing or tampering could be noticed in both these registers relating to admission of Piraji in the school. That being so in absence of any adverse evidence it will be difficult for this court to reject the said piece of evidence as adverse to the interest of petitioner by accepting the contention of Shri. Gokhale learned counsel for the committee. The important issue of which this court is required to take note is the Tribe entry of 1952 is the nearest entry to the date of Promulgation of Constitution Scheduled Tribe order of 1950 and as such the said entry has more evidential and probative value.

9. It is settled law that a person gets his caste by birth and in the present case after the grand-father, the father and real uncle namely Narsing and Ganpat were entitled to succeed with the same caste as 'Mannervarlu'. In the admission register of 1977 and 1975 of father Narsing and uncle Ganpat even though insertion letters 'LU' to the existing caste entry of 'Mannerwar' is brought on record by the vigilance cell, still said insertion is required to be read in continuation to the entry of caste as 'Mannervarlu' in the admission register of grand-father Piraji. But for the insertion of word 'LU' no other adverse evidence is available on record, so as to discard 1952 school admission entry of 'Mannervarlu'

of Piraji, grand-father of petitioner.

10. Once the evidence in the form of document of 1952 reflect that petitioner belongings to 'Mannervarlu' Scheduled Tribe, the reliance placed by the scrutiny committee on the affinity test so as to reject the tribe claim of the petitioner is also not justified. In support of above observations appropriate support can be drawn from the judgment of Apex Court in the matter of *Anand Vs. Committee for Scrutiny & Verification of Tribe Claims & Ors.* reported in (2012) 1 SCC 113.

11. In the aforesaid background in our opinion the order impugned dated 29th July 2018 passed by the respondent Scrutiny Committee is not sustainable in law and as such is hereby quashed and set aside. The respondent committee is directed to issue the validity certificate to the petitioner forthwith.

[G.S. KULKARNI, J.]

[NITIN W. SAMBRE, J.]