



133-J-WP-2962-2018

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

WRIT PETITION NO.2962 OF 2018

Vilas S/o Pandurang Chaudhari,
Aged about 34 yrs, Occ. Service,
R/o At Post Moharli,
Tq. and Dist. Chandrapur

... Petitioner

-vs-

1. The Vice-Chairman,
Scheduled Tribe Caste Certificate
Scrutiny Committee, Gadchiroli

2. The Deputy Conservator of Forest
Wadsa, Forest Division, Wadsa,
Dist. Gadchiroli

... Respondents

Ms Himani Kavi, Advocate h/f Ms Preeti D. Rane, Advocate for petitioner.
Ms Deepali Sapkal, Assistant Government Pleader for respondents.

CORAM : NITIN W. SAMBRE AND A. J. MANTRI, JJ.

DATE : January 18, 2024

Oral Judgment : (Per : Nitin W. Sambre, J.)

Rule. Rule made returnable forthwith. Heard finally by
consent of learned counsel for the parties.

Impugned in the petition is an order dated 11/06/2013 passed
by the respondent No1-Scheduled Tribe Caste Certificate Scrutiny
Committee, Gadchiroli (for short, the Scrutiny Committee).

2. The petitioner is in the employment of respondent No.2-Forest
Department was appointed based on the caste-certificate as that of

belonging to 'Mana' Scheduled Tribe issued by the Sub-Divisional Officer, Chandrapur on 23/08/2006. Same was referred by respondent No.2 to respondent No.1-Scrutiny Committee for verification as the appointment of the petitioner was against a clear vacancy.

3. After receipt of the proposal for caste verification from the respondent No.2, the respondent No.1-Scrutiny Committee referred the matter to Vigilance Cell. Based on the report submitted by the Vigilance Cell and the available documentary evidence, the impugned order came to be passed invalidating the tribe-claim of the petitioner.

4. The contention of the learned counsel for the petitioner is that the petitioner in support of the tribe-claim has relied upon the documents in relation to his father viz. Pandurang and his uncle Vitthal in the form of primary school leaving certificate, school leaving certificate and the first page of service book. The said documents are claimed to be of the years 1936, 1955 and 1950 respectively.

5. In the aforesaid backdrop, it is clear that once the petitioner has produced documentary evidence which is of pre-constitutional era, the petitioner is entitled for grant of validity certificate as such

documents have more probative value.

6. It is the further contention of the learned counsel for the petitioner that the issue raised in the present petition is squarely covered by the judgment of the Honourable Apex Court in *Priya Promad Gajbe vs. The State of Maharashtra and ors.* **2023 SCC Online 909.**

7. While countering the aforesaid submission, the learned Assistant Government Pleader would oppose the prayer as according to her the petitioner does not belong to 'Mana' Scheduled Tribe but at the most could be termed as 'Mani Kunbi' which is the caste prevailing in Vidarbha region. She would further claim that at the relevant time when the provisions of area restrictions were in operation, the old entries suggest that the petitioner does not belong to 'Mana' Scheduled Tribe and as such it is clear that the Scrutiny Committee was justified in seeking recourse to affinity test for the purpose of determining the tribe-claim of the petitioner. She would urge that the Scrutiny Committee is justified in rejecting the claim of the petitioner.

8. We have appreciated the submissions. The documentary evidence in the form of primary school leaving certificate dated

13/02/1936 in respect of the father of the petitioner shows entry 'Mana'. The School Leaving certificate of petitioner's uncle Vitthal Choudhari dated 01/10/1950 also shows entry 'Mana' so also the entry 'Mana' reflects on the first page of service-book of the petitioner's father which is of 1955. The aforesaid entries are not a disputed question of facts.

9. Once the aforesaid entries are not disputed by the Scrutiny Committee or any of the Authorities, the fact remains that vide aforesaid documentary evidence the claim of the petitioner could be said to be substantiated as that of belonging to 'Mana' Scheduled Tribe. Pre-constitutional entry dated 13/02/1936 in relation to the father of the petitioner viz. Pandurang Chaudhari will have more probative value and can be accepted in evidence for the purpose of grant of claim.

10. In the aforesaid backdrop, the Scrutiny Committee, in our opinion, was not justified in rejecting the claim of the petitioner. Apart from above the Honourable Apex Court in *Priya Promod Gajbe* (supra) has already held that the affinity test cannot be termed as litmus test for the purpose of rejection of tribe-claim. Once the documentary evidence and the material placed on record so as to substantiate the

tribe-claim in such an eventualities the Scrutiny committee is in error in looking into for the purpose of satisfaction of affinity test in isolation. In our opinion documentary evidence could justify the case of the petitioner for issuance of validity certificate. Hence, we are left with no other option but to hold that the petitioner has proved that he belongs to 'Mana' Scheduled Tribe.

11. Accordingly, the following order is passed :

- (a) The order dated 11/06/2013 passed by respondent No.1-Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli is hereby quashed and set aside.
- (b) It is declared that the petitioner belongs to 'Mana' Scheduled Tribe.
- (c) The respondent No.1-Scrutiny Committee shall within a period of eight weeks from receiving copy of this judgment issue validity certificate to the petitioner as that of belonging to 'Mana' Scheduled Tribe.
- (d) Rule is made absolute in aforesaid terms. No order as to costs.

(A. J. MANTRI, J.)

(N. W. SAMBRE, J.)

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