



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

WRIT PETITION NO.4229 OF 2024

Jyoti D/o Ganpat Nehare,
 Aged about 34 years,
 Occupation : Service
 R/o. At Gondi Mohgaon,
 Post Zilpa, Taluka : Katol,
 District : Nagpur – 441302

.. **Petitioner**

Versus

1. The Scheduled Tribe Caste Certificate Scrutiny Committee, through its Member Secretary and Deputy Director, Yavatmal
2. Block Education Officer, Education Department, Panchayat Samiti, Pathan, Taluka : Pathan, District : Satara
3. The Chief Executive Officer, Zilla Parishad, Satara, Taluka and District : Satara

.. **Respondents**

Mr. Ashwin Deshpande, and Ms.Rashi Nagrare, Advocates for the petitioner.

Mr. N.S.Autkar, Assistant Government Pleader for respondent No.1.

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

DATED : 29/07/2024

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

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

(2) The petitioner is aggrieved by the order dated 12/06/2024 passed by respondent no.1, the Scheduled Tribe Caste Scrutiny Committee (hereinafter referred to as '**the Committee**') has preferred this petition, whereby the claim of the petitioner that she belongs to "Gond Gowari" Scheduled Tribe came to be rejected.

(3) The petitioner claims that she belongs to "Gond Gowari" Scheduled Tribe community. Accordingly, on 08/08/2019, Sub Divisional Officer, Yavatmal issued a Caste Certificate in her favour. The petitioner was appointed as 'Primary Teacher' on the post reserved for the Scheduled Tribes category vide appointment order dated 16/03/2024. Accordingly, she submitted her Caste Certificate and relevant documents through respondent No.2 and the Block Development Officer (short- 'BDO') to the respondent No.1 Committee for verification. The Committee was dissatisfied with the documents produced by the petitioner. Therefore, the same was forwarded to the Vigilance Cell for a detailed enquiry. The Vigilance Cell conducted an enquiry and submitted its report to the Committee on 20/05/2024. During the enquiry, the Vigilance Cell found adverse entries of "Gowari" in the pre-constitutional era documents submitted by the petitioner. Accordingly, the Vigilance Cell observed the said fact in its report. Pursuant to the said report, the petitioner was called upon to submit her explanation regarding the adverse entries. While submitting the

explanation, the petitioner candidly admitted that the entries in the pre-constitutional era documents depict her ancestors' caste as "**Gowari**". Having considered the Vigilance Cell report, explanation of the petitioner and documents on record, the respondent No.1 Committee vide impugned order invalidated the claim of the petitioner that she belongs to the "*Gond Gowari*" Scheduled Tribe.

(4) Mr. Ashwin Deshpande, learned Counsel for the petitioner, while assailing the impugned order, vehemently contended that the Committee has not dealt with the question of affinity test in its proper perspective. According to him, the information furnished by the petitioner in categorical terms establishes affinity with the "*Gond Gowari*" Scheduled Tribe. As such, he has claimed that apart from the documents on record, the petitioner has established affinity with the "*Gond Gowari*" Scheduled Tribe, therefore, the respondent Committee ought to have granted the validity in favour of the petitioner.

(5) Apart from the above, he further canvassed that the Committee has not considered the observations made in the case of ***State of Maharashtra and another vs. Keshao Vishwanath Sonone and another*** reported in ***2020 SCC OnLine SC 1040***, in its proper perspective and erred in holding that the petitioner failed to prove that she belongs to "*Gond Gowari*" Scheduled Tribe. He has drawn support from paras

40, 85 and 90 of the said judgment. So, to substantiate the said contention, he has drawn support from the observations in the Writ Petition No.5842/2023, which was decided on 14/12/2023 by this Court.

(6) In addition, he contends that the co-ordinate Bench of this Court, vide order dated 24/03/2023 passed in Writ Petition No.1875/2023, protected the petitioner's services until further order. Therefore, he submitted that the same analogy can be applied to the facts of the present case. Lastly, he urges that the respondent No.1 Committee, in the backdrop above, has erred in rejecting the petitioner's tribe claim. Hence, he prayed to allow the same.

(7) As against this, Mr.Autkar, learned Assistant Government Pleader, has opposed the claim on the ground that the entries in respect of pre-constitutional era documents produced by the petitioner in relation to her ancestors speak of "Gowari" caste, which the petitioner admitted in her explanation. Therefore, the petitioner has failed to discharge the burden that lies on her. He further submitted that the observations made in the case of **Keshao Sonone** (cited supra) are hardly of any use to the petitioner in support of her claim. On the contrary, in the said judgment the Hon'ble Supreme Court has categorically held that the "Gowari" and "Gond Gowari" are two distinct

and separate castes. Therefore, he urged that the pre-constitutional documents' entries support an invalidation finding. As such, he prayed for the dismissal of the petition.

(8) We have appreciated the submissions and perused the record and the judgments relied upon by the learned Counsel for the petitioner.

(9) It is pertinent to note that the petitioner is not disputing that the adverse entries found in the pre-constitutional era documents from 1940 to 1950 pertain to her father, grandfather and cousin grandfather, wherein their caste is recorded as "**Gowari**". The said documents are school records and birth and death registers. In addition to that, while explaining the notice, the petitioner has categorically admitted that the entries in the documents prior to 1950 depict that her ancestors belong to the "**Gowari**" caste. However, he urged us to consider the same while examining her claim that she belongs to the "*Gond Gowari*" caste.

(10) The Hon'ble Apex Court, while dealing with the issue of the "*Gond Gowari*" caste, in para 86 of Keshao Sonone (cited supra) case, has discussed in detail and categorically held that the caste "**Gowari**" and "*Gond Gowari*" Scheduled Tribe are two distinct and

separate castes. Para 86 of the said judgment reads thus :-

"86. The caste 'Gowari' and 'Gond Gowari' are two distinct and separate castes. We have extracted the description of 'Gowari' and 'Gond Gowari' given by Russell and Hiralal in the celebrated book, 'The Tribes and Castes of Central Provinces of India'. Russel and Hiralal have separately dealt with 'Gowari' and 'Gond Gowari' and **have categorically stated that 'Gond Gowari' have been treated as distinct castes from 'Gowari'.** We may also refer to the book published by Anthropological Survey of India, People of India, National Series Volume III on "The Scheduled Tribes", where 'Gond Gowari' have been described in the following words : -

"GOND, GOWARI They are a community of cattle herders who have been referred to by Russell and Hiralal (1916) as the Gond-Gowari and described as a small hybrid caste formed by an alliance between the Gonds and Gowaris. They have been enlisted as Gowari, a subgroup of the Gond in the Government of India list for scheduled tribes. Our findings, however, reveal that they are a discrete community and not a subgroup of any other tribe. They are distributed in the Bhandara, Amravati and Garhchiroli districts of Maharashtra and in the Balaghat and Sioni districts of Madhya Pradesh. Marathi is spoken for both inter-and intra-group communication. The Devanagari script is used. The Gowari are short and medium-statured people with a dark complexion. The main diet is rice, jowar and wheat, local pulses and seasonal vegetables. They are non-vegetarians but do not eat beef."

(11) 'The Presidential (Scheduled Tribes) Order 1950', recognized the entry "Gond Gowari" at Sr.No.18 as a Scheduled Tribe; however, the "**Gowari/Gawari**" caste is recognized as a Special Backward Class category. Thus, it is evident that "Gond Gowari" and "**Gowari/Gawari**" are two distinct and separate Castes/Tribes.

(12) Section 8 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 provides that the burden of proving a caste claim before the Competent Authority and the Scrutiny Committee is on the petitioner. The fact remains that the petitioner admitted that the four pre-constitutional documents pertain to her father, grandfather and cousin grandfather, denoting that they belong to the "**Gowari/Gawari**" caste, which is recognized as a 'Special Backward Class' and not as a 'Scheduled Tribe' category. Thus, it seems that the petitioner fails to discharge the burden that lies on her as contemplated under Section 8 of the said Act. On the contrary, it appears that her ancestors belong to the "**Gowari/Gawari**" 'Special Backward Class' category, which is an independent caste.

(13) As far as the contention of the learned Counsel for the petitioner that the Committee has not taken into consideration the fact of the affinity test while dealing with the claim of the petitioner, in that regard, we are of the view that the petitioner failed to discharge burden lies on her, so that she belongs to "**Gond Gowari**" Scheduled Tribe. So also, in a catena of judgments, the Supreme Court held that "*the Affinity test cannot be termed as a litmus Test*". Therefore, we do not find substance in the contention of the learned Counsel for the

petitioner that the Committee has not considered the question of affinity test in its proper perspective while dealing with the claim of the petitioner.

(14) No doubt, the petitioner to substantiate her claim, has relied on the judgment of the Apex Court in the case of **Keshao Sonone** (cited supra) and the judgment of this court in the case of **Ramdas Neware v/s The committee in w.p. No. 5824/2023**. However, the observations in the said judgments are hardly helpful to the petitioner in support of her claim, as the facts in both matters are differ from the case at hand. *Per contra*, the observations made in the judgment of **Keshao Sonone** (cited supra) appears contrary to the claim of the petitioner as the Hon'ble Apex Court has categorically held that "Gowari" and "Gond Gowari" are two distinct and separate castes. That being so, the law laid down in the aforesaid judgments is hardly of any use to the petitioner in support of her claim.

(15) In the backdrop above, we are of the view that there is no reason to disbelieve the pre-constitutional era documents produced on record, which depict that the petitioner and her ancestors belong to the "**Gowari/Gawari**" 'Special Backward Class' category. Those documents have more probative value than the subsequent documents.

(16) In this background, in our opinion, the petitioner cannot be said to belong to the "**Gond Gowari**" Scheduled Tribe. Rather, the Committee is justified in recording the finding that the petitioner has failed to demonstrate that she belongs to the "**Gond Gowari**" Scheduled Tribe. As such, the petition is devoid of any merit, and it is dismissed. There is no order as to costs.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]

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