



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

WRIT PETITION NO. 5758 OF 2022

1. Mr. Nilesh s/o. Rangrao Narnaware,
Aged about 28 years, Occ. Service,

2. Mr. Vikas s/o. Rangrao Narnaware,
Aged about 32 years, Occ. Student,

Both r/o. At Tiwsada, Post, Pandhurna,
Tahsil Ghatanji, District Yavatmal

.....PETITIONERS

...VERSUS...

1. Vice Chairman and Member
Secretary, The Scheduled Tribe
Certificate Scrutiny Committee,
Amravati, Opposite of office of
State Information Commission,
Chaprashipura, Amravati

2. Joint Director, Accounts and
Treasury Amravati Region,
Lekhakosh Bhawan, University Road,
Amravati 444 602

3. Treasury Officer, District Treasury
Office, Yavatmal, Collectorate Office
Campus, L.I.C. Square,
Yavatmal 445 001

.....RESPONDENTS

Mr. Ananta Ramteke, Advocate for petitioners,
Mr. A.A. Madiwale, AGP for Respondents /State

CORAM:- NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.

DATE : 18.01.2024

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

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Petitioners being aggrieved by the order dated 17.3.2022, passed by respondent No. 1 – the Scheduled Tribe Certificate Scrutiny Committee, Amravati (for short, “*the Scrutiny Committee*”) thereby invalidating the claim of the petitioners that they belong to ‘*Mana*’ Scheduled Tribe, have preferred this petition.

3. The petitioners claim that they belong to the ‘*Mana*’ Scheduled Tribe which is enlisted at Serial No. 18 in the Presidential Order (*Scheduled Tribe*). On 23.8.2017 and 12.2.2020, the Sub Divisional Officer, Kelapur (SDO), District Yavatmal issued certificates in favour of the petitioners that they belong to the ‘*Mana*’ Scheduled Tribe.

4. Vide order dated 8.8.2019, petitioner No. 1 was recruited as an Accountant-clerk on the post reserved for Scheduled Tribe on the establishment of respondent Nos. 2 and 3. Petitioner No. 2 is a student of Master of Arts at Amolchand Mahavidyalaya, Yavatmal. On 24.12.2019 respondent Nos. 2 and 3 forwarded the Tribe claim of petitioner No. 1 to the Scrutiny Committee for its verification along with all requisite documents. Likewise, petitioner No. 2 has also submitted his Tribe claim before the Committee on 25.8.2021. The Committee, on perusal of the documents was not inclined to accept the claim of the petitioners that they belong to the 'Mana' Scheduled Tribe, has referred the claim to the Vigilance Cell pursuant to the provisions of Sub-Rule 2 of Rule 12 of Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jati), Nomadic Tribes, Other Backward Classes, and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2000.

5. Accordingly, the Vigilance Cell has conducted an enquiry and submitted its report to the Committee on

25.10.2021. The said report was against the claim of the petitioners, therefore, on 1.11.2021, the Committee issued a show cause notice to the petitioners calling for their explanation about the report of the Vigilance Cell. Pursuant to the said notice, on 26.11.2021 petitioner No. 1 along with his father appeared before the Committee and submitted an explanation.

6. The Committee, after considering the explanation, the report of the Vigilance Cell as well as the record has passed the order impugned, being aggrieved by the said order, this petition is filed.

7. Learned counsel for the petitioners Mr. Ananta Ramteke vehemently submitted that the petitioners have produced a pre-independence document dated 31.8.1949 on record which denotes that their grandfather belongs to the '*Mana*' Scheduled Tribe. However, the Committee has ignored said document and given undue importance to the document dated 29.6.1949 pertaining to the cousin grandfather wherein

his caste is mentioned as *Mani*. To buttress his submissions, he has drawn our attention to the judgment of the Hon'ble Apex Court in the case of *Priya Pramod Gajbe Vs. State of Maharashtra and Others (2023 SCC OnLine SC 909)*, and submitted that the issue in dispute is covered under the said judgment and therefore petitioners are entitled to claim that they belong to the 'Mana' Scheduled Tribe.

8. Per contra, learned AGP Mr. A.A. Madiwale, for respondents has strenuously argued that the oldest document dated 29.6.1949 found during the Vigilance enquiry depicts that the petitioners' cousin grandfather belongs to *Mani* and not 'Mana'. Secondly, he submitted that the petitioners have failed to prove the affinity test that they belong to the 'Mana' Scheduled Tribe. In support of his submissions, he has placed reliance on the judgments mentioned in paragraph Nos. 15 and 16 of the Affidavit in reply and urged that the petitioners have failed to prove that they belong to the 'Mana' Scheduled Tribe. Hence, he prayed for the dismissal of the petition.

9. We have appreciated the submissions advanced by learned advocates for the parties.

10. Perused the impugned order, documents, records, and citations relied upon by both sides.

11. Perusal of the order impugned depicts that the Scrutiny Committee has invalidated the claim of the petitioners mainly on the following grounds:

- i) The petitioners failed to produce the documents showing that they belong to '*Mana*' Scheduled Tribe,
- ii) The petitioners failed to satisfy the affinity test conducted during the Vigilance enquiry.
- iii) The petitioners failed to prove that they originally belonged to an area where the people of the '*Mana*' Scheduled Tribe reside.

It is pertinent to note that the documents produced by the petitioners as well as found during the enquiry of the Vigilance Cell revealed the caste of the petitioners as '***Mana* or**

Mani' only. In paragraph 3 of the order, the Committee has referred total of fifty-two documents, which include the document dated 31.8.1949, wherein a caste of the ancestors of the petitioners is mentioned as '**Mana'**. However, in paragraph 6, the Committee has observed that one document dated 29.6.1949 pertains to the cousin grandfather of the petitioners and shows that he belongs to the '**Mani'** caste. It is pertinent to note that based on said document and the issue of affinity test the Committee has rejected the caste claim of the petitioners. It is pertinent to note that the issues that arose in the case at hand are covered by the judgment of the Hon'ble Apex Court in the case of *Priya Gajbe (Supra)*. We would like to reproduce paragraph Nos. 10, 11, 15, and 16 of the said judgment, which read thus:

"10. A perusal of the report of the Vigilance Committee itself would reveal that the appellant's great grandfather's birth record shows the caste as 'Mana'. The said document relates to as early as 10th March 1924, while another document of 14th April 1926 shows as 'Mani'. However, it is pertinent to note, and learned counsel for the parties also agree, that there is no caste named 'Mani'. It is thus possible that there could be some mistake in writing when the caste was written. It is to be noted that the original record is written in Marathi and not in English. As such, such an error is quite

possible.

*11. We, therefore, find that there was **no reason to discard the pre-Constitutional document** of the period as early as 1924.*

*15. It could thus clearly be seen that this Court has held that if the appellant 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. This Court has, **therefore, held that the Affinity Test cannot be applied as a litmus test.***

*16. Insofar as the contention with regard to area restriction is concerned, it could be seen that the 'Mana' Tribe is found at Entry No.18 in the Presidential Order with respect to the Scheduled Castes and Scheduled Tribes for the State of Maharashtra. It could be seen that in the said entries, there is no area restriction with regard to any of the tribes mentioned therein. Per contra, in some of the entries, restriction is imposed with regard to certain districts. **As such, the findings of the High Court with regard to area restrictions also, in our view, are not sustainable in law.** We find that the order of the Scrutiny Committee as well as of the High Court need to be interfered with and quashed and set aside on this short ground alone."*

The facts of the case in hand are identical to the facts of the case referred to above, and therefore, the dictum laid down in the said judgment is squarely applicable to the case in hand. The Committee, while invalidating the caste claim has

mainly relied upon the oldest document dated 29.6.1949 which indicates that the cousin grandfather of the petitioners belongs to the ‘*Mani*’ caste. However, on the Court query, the learned AGP has fairly agreed that there is no caste named ‘*Mani*’. Therefore, as per the observations made in the aforesaid judgment, the possibility of a mistake in writing the caste cannot be ruled out as the original record is written in the Marathi language and not in English. As such, error is quite possible as observed in the judgment referred supra.

12. The Hon’ble Apex Court has further held that the affinity test cannot be applied as a litmus test and there is no area restriction with regard to any of the tribes mentioned in entry No. 18 in the Presidential Order, and therefore, the finding given by the Committee on the point of ‘*Mani*’ caste, affinity test, and area restrictions, in our considered view, is not sustainable in the eyes of law. *Per Contra*, the same are covered by the aforesaid judgment.

13. Having regard to the aforesaid discussions as well as the document dated 29.08.1949 along with other documents clearly shows that the grandfather of the petitioners belongs to the '*Mana*' caste. Moreover, the document dated 31.08.1949 was neither disputed nor denied by the Vigilance Cell or the Committee. Thus, such a document has a greater probative value. Besides, as per the dictum laid down in the case of *Priya Gajbe* (*Supra*), the affinity test cannot be termed as a litmus test or there is no area restriction with regard to the entries of caste found at Entry No. 18 in the Presidential Order. Consequently, it seems that the findings given by the Committee are contrary to the dictum laid down in the case of *Priya Gajbe* and the facts on record, hence, said findings are not sustainable in the eyes of the law and liable to be quashed and set-side. For the aforesaid reasons, we pass the following order:

- i) The impugned order dated 17.3.2022, passed by respondent No. 1 Committee is quashed and set aside.
- ii) It is hereby declared that the petitioners belong to the '*Mana*' Scheduled Tribe.
- iii) Respondent No.1 Committee is hereby directed to

issue a caste validity certificate in favour of the petitioners as they belong to the '**Mana**' Scheduled Tribe within eight weeks from the receipt of this Judgment.

iv) Termination of petitioner no.1 vide order dated 26.4.2022 passed by respondent Nos. 2 and 3 is quashed and set aside and he be reinstated in service.

v) Needless to clarify, petitioner No. 1 was not in service from 26.4.2022 till this date, therefore, he is not entitled to claim back wages for the said period. But he is entitled to claim continuity in service for the said period.

14. Rule made absolute in the aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede