



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

WRIT PETITION NO.1171 OF 2018

Diwakar S/o Marotrao Kothe, Amar Asha Soc. Bhamti, Nagpur

-VS-

Saibaba Vidyalaya, Thr. Principal, Katol Road, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri M. V. Bute, Advocate for petitioner.

Shri A. A. Madiwale, Assistant Government Pleader for respondent No.2.

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

DATE : August 01, 2024

P. C.

1. Heard.

2. The petitioner sought issuance of validity certificate of belonging to 'Dhangad' Scheduled Tribe. His prayer was rejected by the respondent-Scrutiny Committee vide impugned order dated 20/12/2017.

3. Shri M. V. Bute, learned counsel appearing for the petitioner would urge that the petitioner was initially issued caste certificate dated 10/07/1989 based on which he was granted employment. The employer of the petitioner forwarded the same for verification on 09/07/2013. The learned counsel submitted that in support of the tribe-claim of belonging to 'Dhangad' Schedule Tribe, the petitioner has relied on the caste entry dated 07/07/1981 in the primary school record, entry dated 15/06/1978 in respect of his brother Vishweshwar and 07/05/1983 of himself in relation to school and college record. It is claimed that based on aforesaid documents the Committee ought to have granted validity particularly when the petitioner has satisfied the

affinity test.

4. As against above, the learned Assistant Government Pleader would oppose the prayer based on the fact that pre constitutional era entries in relation to father and uncle of the petitioner are that of 'Dhangar'

5. We have appreciated the submissions of the counsel for the parties.

6. After receipt of the petitioner's claim, Committee referred the matter for Vigilance Cell enquiry who has submitted report on 19/07/2014. The Vigilance Cell placed on record of the Committee one old document i.e. extract of admission register having entry dated 27/04/1931 of 'Dhangar' in relation to Ganpat Kashinath Kothe, father of the petitioner.

7. Apart from above, the Committee with the help of Vigilance Cell report also recorded a finding with regard to customs and traditions which are being followed and caused a notice to the petitioner thereby calling his explanation and to appear before it on 06/12/2017 for that purpose. The Committee also forwarded copy of Vigilance Cell report to the school where the petitioner is working. However, the petitioner neither submitted his explanation nor appeared before the Committee on 06/12/2017 and instead made an application on 02/12/2017 requesting for extension of two months to collect evidence in support of his caste-claim. The said request came to be rejected on the ground of limitation.

9. As such, based on the adverse entry of 'Dhangar' which is of pre constitutional era i.e. 27/04/1931 in respect of father of the petitioner,

the Committee negated the claim of the petitioner.

10. It is settled position of law that entries of pre constitutional era have more probative value. The reliance placed on the documents by the petitioner before the Committee are post promulgation of Constitution (Scheduled Tribes) and (Scheduled Castes) Orders, 1950.

11. Section 8 of the Maharashtra Schedule Castes, Schedule Tribes, De-notified Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 casts burden on the petitioner to prove his tribe-claim. Once the Committee has brought to the notice of the petitioner adverse document of pre constitutional era i.e. of 1931 in relation to father, it was for the petitioner to explain as to how the entry 'Dhangar' instead of 'Dhangad' was made in his school record. The petitioner has failed to discharge the burden cast on him. That being so, the Committee has rightly inferred that the petitioner does not belong to 'Dhangad' Schedule Tribe. The aforesaid finding is based on the principle that a person gets his caste by birth and not by subsequent entries in certain school record.

12. Once it is concluded by the Committee based on the documentary evidence that the caste of father of the petitioner was recorded as 'Dhangar', there is no reason to disbelieve the findings of the Committee that the petitioner cannot be said to be belonging to 'Dhangad' that too contrary to the record in relation to his father.

13. Apart from above, the Committee has noted that the petitioner did not cooperate by giving his explanation on Vigilance Cell report or by appearing before the Committee even though he was given an opportunity. That being so, in our opinion, there is no case made out

for causing interference in extra ordinary writ jurisdiction.

14. The writ petition accordingly stands dismissed with no order as to costs.

15. At this stage counsel for the petitioner Shri M. V. Bute would urge that in case the petitioner advances his claim for conversion of his employment on supernumerary post, the same be directed to be decided by the employer in view of existing policy of the State Government in that regard.

16. Having regard to length of service put in by the petitioner and the fact that though he is holding caste-certificate but his caste-claim as has been invalidated at belated stage, we are of the view that such prayer if so made, same shall be considered in accordance with the existing policy of the Government in that regard. Order accordingly.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)