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Court : Mumbai Nagpur

Decided On : Jun-07-2016

Judge : B.P. Dharmadhikari & The Honourable Ms. Justice Indira Jain

Appeal No. : Writ Petition No. 1614 of 2003

Appellant : Dattatraya

Respondent : The Committee for Scrutiny and Verification of Tribal Claims and Another

Advocate for Pet/Ap. : Shri. Ahirrao

Judgement :

Oral Judgment: (B.P. Dharmadhikari, J.)

1. Heard Shri Ahirrao, learned counsel for the petitioner and Shri Joshi, learned AGP for the respondents.

2. The petitioner has questioned the order dated 10.02.2003 passed by Respondent No. 1 Scrutiny Committee, invalidating his caste claim as belonging to Thakur, Scheduled Tribe. This Court has issued notice in the matter on 02.05.2003 and protected his employment. It is not in dispute that the petitioner is born on 14.12.1959 and reaches the age of superannuation in the next year.

3. Shri Ahirrao, learned counsel, submits that entry 44 in the Presidential Scheduled Tribe Order envisages Thakur, Scheduled Tribe and hence distinction as higher caste Thakur and Thakur, Scheduled Tribe as used by Respondent No. 1 Scrutiny Committee in the impugned order is unsustainable. He further contends that all documents produced by the petitioner to substantiate his caste claim are found genuine and have mentioned caste as Thakur. In view of these old documents which are of pre-independence period, use of affinity test to discard those documents is not warranted. He draws support from the judgment of the Hon'ble Apex Court in the case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Ors., reported at 2011 (6) Mh. L.J. 919 and the Division Bench judgment of this Court dated 15.01.2016 in Writ Petition No.4210 of 2000 (Sudhirkumar Bhaurao More vs. State of Maharashtra thr. its Secretary, Department of Social Welfare and Ors.).

4. Shri Joshi, learned AGP is relying upon the reply affidavit. He states that the Scrutiny Committee has specifically found that caste with same nomenclature appears in Scheduled Tribe as also in upper caste. This fact is not in dispute. Hence, the Scrutiny Committee cannot go only by the documents and, therefore, has relied upon affinity test. He states that the judgment of the Hon'ble Apex Court in the case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Ors., (supra) does not overrule relevance of affinity test in such circumstances. He, therefore, prays for dismissal of writ petition.

5. In reply, Shri Ahirrao, learned counsel reiterates his contentions. Without prejudice and by way of abundant precautions or in the alternative he submits that as the petitioner has joined employment way back in the year 1983, he is entitled to protection of his employment in view of Full Bench judgment of this Court in the case of Arun Vishwanath Sonone vs. State of Maharashtra and Ors., 2015 (1) Mh.L.J. 457 (FB).

6. With the assistance of the learned counsel, we have perused the impugned order. The impugned order no doubt finds that there are four documents of pre-independence period in which caste has been recorded as Thakur. Thereafter it refers to Vigilance Cell inquiry and statement of Smt. Shakuntalabai Shriram

Pawar, who according to the petitioner, is mother-in-law. The affinity test has been relied upon on the basis of said statement. In para 15(B), Scrutiny Committee has found that the test of old documentary entries cannot be applied in the facts before it because in upper caste also, the same caste entries are found to be recorded. Thus, similarity in nomenclature warranted use of affinity test. The fact that the caste with same name appears in upper caste is not in dispute.

7. The judgment of the Hon'ble Apex Court in the case of Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Ors., (supra) in para 18 observes that genuineness of a caste claim needs to be considered not only on a thorough examination of documents submitted in support of the claim but also on the affinity test which would include the anthropological and ethnological traits etc. of the candidate. The Hon'ble Apex Court further states that it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim.

8. In facts before the Division Bench of this Court, which deciding Writ Petition No. 4210 of 2000, the controversy that caste with same nomenclature appears as upper caste 'Thakur' has not been argued and has not been gone into. The said judgment does not, therefore, hold that affinity test cannot be applied in case of 'Thakur', Scheduled Tribe candidates. When caste with name 'Thakur' is available as Scheduled Tribe and also as a upper caste, mere scrutiny of documents will never be sufficient to determine the real status.

9. We, therefore, find that in the present facts, the Scrutiny Committee has rightly applied affinity test and found that the petitioner failed to satisfy the same. The finding that the petitioner, therefore, does not belong to Thakur, Scheduled Tribe is not without jurisdiction and also not perverse.

10. However, the facts show that the petitioner born on 14.12.1959, got caste certificate on 07.10.1993 and got employment on 01.02.1983. It is apparent that at that time he did not possess a caste certificate issued by the Executive Magistrate. A perusal of the impugned order reveals that he got the caste certificate 10 years thereafter i.e. on 07.10.1993.

11. The controversy about this Scheduled Tribe has been engaging the attention of this Court and the Hon'ble Apex Court for quite some time. In this situation, the principles laid down by the Full Bench of this Court in the case of Arun Vishwanath Sonone vs. State of Maharashtra and Ors., (supra), for extending benefit of protection in employment are clearly attracted. We, therefore, find that the petitioner is entitled to grant of protection of his service.

12. Though, we uphold the order of Scrutiny Committee dated 10.02.2003, we declare that the employment of the petitioner shall not be dispensed with if he files an undertaking with his employer, with the Registry of this Court and with the Scrutiny Committee that neither he nor his progeny shall claim the benefit or status as 'Thakur', Scheduled Tribe, within a period of 12 weeks from today.

13. Thus, with this protection to the petitioner, we dispose of the present writ petition. Rule discharged.

However, in the facts and circumstances of the case, there shall be no order as to costs.

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