
(2016) 08 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 289 of 2016

Ku. Sonal Prakash Bakade

APPELLANT

Vs

Joint Commissioner and Vice Chairman

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Evidence Act, 1872 — Section 61
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis),
Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation
of Issuance and Verification of) Caste C

Citation : (2017) 1 ALLMR 325 : (2016) 5 MhLJ 907

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. S. R. Narnaware, Advocate, for the Petitioner; Mrs. N. Mehta,
A.G.P, for the Respondent-State

Final Decision : Allowed

Judgement

B.R. Gavai, J. (Oral)—Rule. Rule returnable forthwith. Heard finally by consent of the parties.

2. The petitioner has approached this Court, being aggrieved by order dated 15.07.2005 thereby rejecting the claim of the petitioner of belonging to Halbi-Scheduled Tribe. The learned A.G.P. has raised a preliminary objection on the ground that the petitioner has approached after a period of 10 years and as such the petition is liable to be dismissed on the ground of delay and laches alone.

3. The petitioner has given an explanation stating therein that the petitioner being a meritorious candidate, after rejection of her claim she was pursuing her studies on her own merits. It is submitted that after completion of graduate and post graduate degree, the petitioner is now pursuing her Ph.D. in the faculty of Physics. It is submitted that the petitioner would now require the caste certificate/validity certificate for applying for the job.

4. We find that merely because for the last 10 years the petitioner has not challenged the order of the Scrutiny Committee, that cannot be a ground for closing down the doors of this Court to the petitioner. In any case, it is to be noted that this Court in the case of Priya d/o Pravin Parate v. Scheduled Tribes Caste Certificates Scrutiny committee Nagpur and others; 2013 (1) Mh.L.J. 180, after relying on the judgment of the Apex Court in the case of Anand v. Committee for Scrutiny and Verification of Tribe Claims and others; 2016 (6) Mh.L.J. 919 has, for the first time, decided an identical petition on 4-10-2012. It is to be noted that the facts in the case of Priya Parate (supra) and in the present case are almost identical. The petitioner therein so also the petitioner herein belong to the same town i.e. Achalpur.

5. In that view of the matter, we find that if the petitioner comes across a judgment of this Court deciding the matter in identical facts, merely because she has approached belatedly, it should not be a ground to non suit her.

6. Learned A.G.P. fairly concedes that insofar as the merits of the matter are concerned, case of the present petitioner is similar to that of Priya Parate (supra).

7. While deciding Priya Parate's case, after taking into consideration judgment in the case of Anand, (supra) this Court has, in unequivocal terms, held that the pre-independence documents will have more probative value. It has been held that merely because a candidate fails in the affinity test, the pre-independence documents cannot be allowed to be ignored.

8. Insofar as the reasoning given by the Scrutiny Committee regarding occupation of the petitioner's forefathers being written as Weaver (Koshti) is concerned, the Division Bench relying on the Gazetteer for Amravati District as well as from the authority of R.V. Russell on Tribes and Castes of the Central Provinces of India published in 1916, found that the original Halba/Halbi who had migrated from Bastar to various parts of Berrar including Elichpur had take the profession of weaving. It was further held that merely because some stray entries as Koshti are recorded in respect of the caste, that cannot be considered contrary to their claim of belonging to Halba-Scheduled Tribe.

9. In the present case, the petitioner has placed on record the following documents, which are pre-Constitution documents in support of her claim of belonging to Halba/Halbi-Scheduled Tribe.

(i) Certificate issued in the name of Nago Baliramji Bakade (grandfather of petitioner) issued by Municipal Council Primary Marathi School, Abbaspura, Ilichpur. The said document shows the petitioner's grandfather's caste as Halbi. The said document is of the year 1929.

(ii) The second document is also issued in the name of grandfather of the petitioner which shows his date of birth to be 01.09.1918 and admission being taken on 24.09.1925. The said document also records the caste to be Halbi.

(iii) The third document is of Ramchandra Baliram Bakade (real brother of

petitioner's grandfather). The said document is TC issued by Municipal Council Marathi Primary School, Abbaspura, Achalpur. It shows that the said Ramchandra has passed 4th standard examination in the year 1940. His caste is shown as Halbi.

(iv) The fourth document also relates to Ramchandra, which shows his date of birth as 29.03.1930 and admission in the school to be of the year 1936. The said document also shows the caste to be Halbi.

(v) This fifth document is in the name of Shankar Baliramji Bakde (real brother of grandfather of petitioner). This TC was issued by Municipal Council Marathi Primary School, Abbaspura, Achalpur. It shows that the said Shankar had passed 4th standard examination in the year 1945. The caste again shown as Halbi.

(vi) The next document is also in the name of said Shankar and it shows his year of birth as 1933. Date of admission in the school is shown on 03.04.1940. This document also shows his caste to be Halbi.

It can thus clearly be seen that there are various documents pertaining to the petitioner's grandfather and his two real brothers of the period prior to 1950. As such, we find that the documentary evidence clearly establishes the claim of the petitioner. We find that the present case is squarely covered by Priya Parate (supra).

10. In view of above, the writ petition is allowed. Rule is made absolute in terms of prayer clause (i) of the petition. The respondent Committee is directed to issue Caste Validity Certificate, validating the caste of the petitioner, within a period of four weeks from today.

11. No order as to costs.