

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7036 OF 2012**

Adivasi Samaj Kruti Samiti and others

... Petitioners

V/s.

Union of India,
through the Secretary and others

... Respondents

Mr. Uday P. Warunjikar, for the Petitioners.

Mr. Ravi Shetty a/w Mr. N.R. Prajapati, for Respondent Nos.1, 2, 4 to 6 -
UOI.

Ms. S.S. Bhende, AGP, for Respondent No.7.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 23rd OCTOBER, 2013

PC.

. Forthwith taken up for final hearing. Heard the learned counsel appearing for the Petitioners and the learned counsel representing Respondent Nos.1, 2, 4, 5 and 6. We have heard the learned AGP for Respondent No.7. The Petitioners claim that they are Societies/Trusts registered under the provisions of law and they are actively involved in the welfare of the Scheduled Tribe category persons.

2. The grievance made in this petition is as regards the employees appointed on the establishment of the Defence Ministry of Union of India in the State of Maharashtra. The grievance in this petition appears to be that though certain employees have been appointed on the posts reserved for the Scheduled Tribe, very few of them are holding the caste validity certificates. The other grievance is that though some of the employees have been promoted to the posts reserved for Scheduled Tribe, they are not possessing caste validity certificates. Therefore, appropriate directions are sought in this petition. It is contended that the persons who do not belong to Scheduled Tribe cannot be allowed to hold reserve posts thereby depriving benefits of reservation to those who genuinely belong to Scheduled Tribe.

3. The learned counsel appearing for the concerned Respondents pointed out that there is no such establishment described as the Respondent No.3. He states that there is an error in the names of establishments impleaded as the Respondent Nos.4, 5 and 6. He pointed out that the concerned authorities have undertaken exercise of verifying the genuineness of the caste certificates submitted by the employees. He states that if the authorities which have allegedly issued the caste certificates submit a report that the caste certificates are not

genuine, on the basis of the said reports, action will be taken against the concerned employees. He states that though in some cases, caste certificates have been referred by the employer to the Caste Scrutiny Committees, the said Committees in the State are taking inordinately long time to make adjudication of the caste claims. He submits that only because the Scrutiny Committees are taking inordinately long time, the promotion to the deserving employees cannot be denied.

4. The submission of the learned counsel appearing for the Petitioners is that there is a complete lethargy on the part of the Respondents, as a result, the employees who are genuinely belonging to the Scheduled Tribes are being deprived of the opportunity of promotion.

5. We have considered the submissions. We make it clear that the order which we are passing relates only to the employees employed on the various establishments of Defence Ministry of Union of India in the State of Maharashtra.

6. On the basis of the directions issued by the Apex Court in the case of *Kumari Madhuri Patil vs. Additional Commissioner, Tribal Development*¹, the Caste Scrutiny Committees were established in the State of Maharashtra. The said decision of the Apex Court lays

¹ (1994) 6 SCC 241

down that the caste certificates issued by competent authorities are not conclusive and the same are subject to verification by the Caste Scrutiny Committees. Directions have been also given in the said decision to take action of termination against the employees who have secured employment on a reserved post and ultimately, whose caste claim is found to be false.

7. Thereafter, a legislation in the form of the Maharashtra Scheduled Castes and Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as “the said Act”) was brought into force in the State with effect from 18th October, 2001. Even the said Act provides that the caste certificates issued by the competent authority in accordance with Section 4(1) thereof are not conclusive and the same are subject to verification by the Scrutiny Committee. It will be necessary to make a reference to Section 6 of the said Act. Sub-section (3) is relevant for all purposes which reads thus :-

“6. (1)

(2)

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions

shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions who has not obtain such certificate.”

Sub-section (3) is applicable even to the Union of India. In view of Sub-section (3) of Section 6, the appointing authority of the Central Government is under an obligation to make an application in appropriate form to the Scrutiny Committees for verification of the caste certificates of the persons selected for appointment. Thus, the appointing authority of Union of India will have to follow the mandate under Sub-section (3) of Section 6. In case, the caste claim of the concerned employee is found to be false by the Caste Scrutiny Committee, Section 10 of the said Act provides for mandatory consequences. The consequences are such as termination of employment, return of benefits received etc.

8. It is true that the appointing authority is entitled to verify whether the caste certificate produced by an employee is genuine. However, notwithstanding the process of verification of genuineness of

the Caste Certificates initiated by the appointing authority, compliance with Sub-section (3) of Section 6 will have to be made by the appointing authorities.

9. It is true that the Caste Scrutiny Committees in the State are not in a position to decide the caste claims expeditiously, considering the fact that there are large number of claims being filed before the Committees, not only by those who are seeking employment but also by the students and by those who want to contest elections on reserved posts. The appointing authority of the Union of India can always request the Caste Scrutiny Committees to expedite the adjudication of the caste claims. However, no time bound schedule can be fixed for disposal of large number of caste claims. As far as grant of promotions to the reserved posts is concerned, if the caste claim of the concerned employee under consideration for promotion is pending before the Caste Scrutiny Committee, orders of promotion can always be issued on provisional basis subject to condition of employees producing the caste validity certificates. As far as those employees who have been appointed after coming into force the said Act are concerned, mandatory consequences provided by Section 10 of the said Act must follow and the appointing authorities will have to take action in terms of Section 10 of the said Act in the event the Caste Certificate is invalidated.

10. Hence, we pass the following order :-

ORDER

- (i) We direct that all appointing authorities of the Central Government shall comply with the requirement of Sub-section (3) of Section 6 of the said Act as expeditiously as possible and in any event, within a period of three months from today;
- (ii) We make it clear that these directions will not preclude the appointing authorities from inquiring into the genuineness of the caste certificate produced by the concerned employees;
- (iii) We direct that the concerned appointing authorities/competent authorities of the Central Government shall take action in accordance with Section 10 of the said Act against the employees whose caste claim has been invalidated and/or found false;

- (iv) While promoting the employees to the promotional posts which are reserved, the appointing authorities shall ensure that the orders of promotion are issued only on provisional basis subject to all the concerned candidates obtaining caste validity certificate within a reasonable time specified thereunder. The concerned employees shall be put to the notice of the consequences provided in Section 10 of the said Act;
- (v) It is obvious that by virtue of this order, the direction issued on 8th October, 2013 in Civil Application No.2484 of 2013 will stand modified;
- (vi) The petition is disposed of on the above terms;
- (vii) Necessary compliance affidavit shall be filed in this Court on or before 10th February, 2014;

(viii) Though the petition stands disposed of, the same shall be placed for compliance of the directions on 10th February, 2014.

(ix) Civil Application No.2484 of 2013 does not survive and the same is disposed of accordingly.

(REVATI MOHITE DERE, J)

(A.S.OKA, J)

