



सत्यमेव जयते

राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
(भारत के संविधान के अनुच्छेद 338क के अंतर्गत एक संवैधानिक निकाय)
(A Constitutional body under Article 338A of the Constitution of India)

F. No. NCST/DEV-359/MH/13/2022-ESDW

Dated: 29.08.2022

To,

The Chief Secretary,
Government of Maharashtra,
CS Office Main Building,
Mantralaya, 6th Floor, Madame Cama Road,
Mumbai-400032 (Maharashtra)
E-Mail: chiefsecretary@maharashtra.gov.in

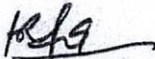
Sub: Minutes/proceeding of the Sitting/Hearing taken by Shri Ananta Nayak, Hon'ble Member, NCST, New Delhi on 08.08.2022 at 02:00 PM regarding Representation dated 27.03.2022 of Prof. Ashok Wooike, M.L.A. 77 Ralegaon, District- Yavatmal, President BJP ST Morecha, Maharashtra regarding Maharashtra Government's evasion of recruitment to the vacant reserved seats of the Scheduled Tribes.

Sir/Madam,

I am directed to enclose herewith a copy of Minutes/Proceeding of the Sitting/Hearing taken by Shri Ananta Nayak, Hon'ble Member, NCST, New Delhi on 08.08.2022 at 02:00 PM on the above mentioned subject for information and necessary action.

Encl: as Above.

Yours faithfully,


(H.R. Meena)
Research Officer

Copy for information to: -

Prof. Ashok Wooike,
M.L.A. 77 Ralegaon,
At - Ranapratap Nagar,
Arni Road, Yavatmal,
Maharashtra

National Commission for Scheduled Tribes

F. No. NCST/DEV – 359/MH/13/2022-ESDW

Minutes of the Sitting was held on 08.08.2022 under the Chairmanship of Hon'ble Member Shri Ananta Nayak on the Representation of Prof. Ashok Wooike, M.L.A, 77 Ralegaon, District- Yavatmal, President BJP ST Morcha, Maharashtra regarding the Maharashtra Government's evasion of recruitment to the vacant reserved seats of the Scheduled Tribes and inaction on Fake Caste Certificates and the deprivation of employment to the genuine ST Candidates.

Date of Sitting : 08th August, 2022
Participants : As per Annexure

- 1.) The issue involved in the present case relates to the fall out of the Hon'ble Supreme Court Judgement in Jagdish Bahira case. The petitioner, Prof. Ashok Wooike, MLA, Yawatmal, Maharashtra filed a petition before the Commission and stated that the Hon'ble High court, Bombay (Nagpur Bench) passed the judgment in writ petition no. 3140/2018 titled as Organization for Rights of Tribal versus State of Maharashtra that the reserved seats have been occupied by the non-tribal people illegally. These seats should be made vacant in order to fill the seats with the legitimate tribal people with valid Caste Certificates. With regard to this judgment, Maharashtra Government decided to fill the vacant reserved seats. The petitioner further stated that 20000 seats have been filled with people holding fake caste certificates which have been found void and these seats have to be filled with Scheduled Tribes by the Maharashtra Govt. The petitioner also stated that 11,435 reserved seats for other reserved categories have been lying vacant.
- 2.) Considering the serious issues raised in the petition, the Commission issued notice to the Chief Secretary, Government of Maharashtra. Pursuant thereto, a report dated 26.05.2022 was received. However, the report was not received in time and the same was not satisfactory. Thus, the Commission scheduled sitting dated 08.08.2022 (Monday) at its Head Quarters.
- 3.) During the course of hearing the petitioner joined through video conferencing mode and reiterated his earlier points. The Commission enquired about the issues and averments raised in the petition, to which the Chief Secretary, Govt. of Maharashtra replied that the duly Constituted Committee of the Govt. of Maharashtra found that 20000 seats are filled with people who have fake caste certificates. The petitioner reiterated the judgements of the Supreme Court and High Court and stated that till now the government has not complied with the Courts directions. The petitioner further stated that the people who possess fake caste certificates are still continuing and the authorities are not taking any action against them. The Chief Secretary, Government of Maharashtra, stated that the process of the occupancy of 20000 seats have started, and people with fake caste certificates, occupying the seats are now being given



SECRETARY
NATIONAL COMMISSION FOR SCHEDULED TRIBES
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NEW DELHI

Supernumerary positions. The Secretary also stated people with fake caste certificates have also filed appeals against this decision in the High Court, Nagpur and Aurangabad Bench.

- 4.) The Commission enquired that in the light of Jagdish Bahira Judgment passed by the Honorable Supreme Court and under section 10 and 11 of 2001 act, invalidation of caste claim upon verification would result in the appointments being rendered void ab-initio. When asked about the steps taken by the Government, the Authorities stated that resolution is issued to discharge such employees from the employment.
- 5) The Commission enquired that on 28 September 2018, the Government of Maharashtra had given undertaking to take action for making all the posts vacant against the posts meant ? The Commission enquired that as per the undertaking how many posts have been vacated till today and how many posts have been filled by reserved genuine candidates? **The Chief Secretary, government of Maharashtra, could not answer and sought for more time to file a detailed affidavit.**
- 6) The Commission pointed out paragraph number 53 of the judgment of the Jagdis Bahira case then sought for reply on issuance of Government resolution dated 21st December 2019. The Commission also enquired that by government resolution dated 29 December 2019, the Government of Maharashtra ordered to shift the services of non-genuine, imposter, bogus employees belonging to Scheduled tribe on supernumerary post. Whether it is not contrary to Section 10 of 2001 act which mandates immediate discharge from the said employment and also contrary to the reasoning given in paragraph 53 Bahira judgment of Hon'ble Supreme Court ?, the Chief Secretary, Government of Maharashtra, could not reply properly and sought for time to submit detailed affidavit.
- 7) The Commission enquired that as per paragraph 18 of the reply filed by the State, by Government resolution dated 21st December 2019 all the earlier Government Resolutions have been cancelled which were issued to give protection to the employees and officers on one hand and by appointing them on Supernumery post on the other hand is it not contrary to itself.
- 8) The Commission enquired that in paragraph 31 it is mentioned that, the government resolution dated 2nd of June 2015, whereby with regard to the vacancy of 11435 vacant post the said government resolution has imposed some restrictions on recruitment and allowed only 50% recruitment total vacancy or 4% recruitment of sanctioned cadre strength.
- 9) The Commission noted that in paragraph 19 of the reply, it is mentioned that by Government Resolution dated 21st December 2019 a time-table was fixed to vacate the post Reserved for schedule tribes which were earlier occupied by persons not belonging to scheduled tribes and filled in such vacated post from the genuine candidates by 1st February 2020. By above quoted 11435 vacant posts if we deduct 50% it amounts to 5717 posts. The Commission enquired that by 1st February 2020

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GOVERNMENT OF MAHARASHTRA
MUMBAI

how many posts out of 5717 posts you have filled, the same could not be answered by the Chief Secretary.

- 10) The Commission enquired that in paragraph 20, 24 of the Reply filed by the State it has been stated that as a result of stay orders passed by the various Benches of Honourable High Court in favour of employees whose services were transferred on Supernumery posts, post reserved for scheduled tribes could not be located. When asked as per the record, how many posts reserved for scheduled tribe could not be vacated. Whether the stay imposed by Honourable High Court was in personem or in rem, the Authorities could not answer the same.
- 11) The Commission enquired that in paragraph 21 and 22 of the reply, it has not been mentioned that Honourable High Court's order dated 4th May 2021 where 49 employees have been Deemed to be protected whose employer government did not challenge the protection order before Supreme Court delivered Bahira judgement and therefore attend finality, even if we assume 49 employees have been Deemed to be protected as their matter challenge by state of Maharashtra before Supreme Court, if we deduct 49 employees from 5717 posts, what stops the Government to fill the remaining vacant posts, the same also could not be replied satisfactorily by the State Authorities .
- 12) The Commission enquired that in paragraph 25 of the Reply filed by the State, it has not been mentioned that total number of 3898 posts reserved for scheduled tribe is vacated out of 11435 vacant posts and out of 3898 posts 2136 posts are to be filled in by direct recruitment and so far, 123 posts only have been filled. The Authorities miserably failed to reply on the point that on 6th July 2017 Bahira judgement was delivered by Supreme Court, from the said date onwards why only 123 posts have been filled and the steps taken by the Government for other posts.
- 13) The Commission enquired that how can Government Resolution dated 15th of June 2020 have constituted study group to protect non-genuine schedule tribe employees but no Government Resolution has never been issued to fill 5717 posts.
- 14) The Commission enquired that in paragraph 31 which mentions government resolution dated 2nd of June 2015, whereby with regard to the vacancy of 11435 vacant posts the said government resolution have imposed some restrictions on recruitment and allowed only 50% recruitment total vacancy or 4% recruitment of sanctioned cadre strength and the reason for restriction on recruitment is in order to control the expenditure on wages and pensions, despite this rate fact that have not fulfilled the obligation for recruiting genuine schedule tribes and despite restrictions you have created Supernumery post for non-genuine scheduled tribes without imposing your own restrictions.
- 15) The Commission enquired that paragraph 29 is contrary to Bahira Judgement and Section 10 of 2001 act whereby the non-genuine schedule tribe employees are required to be discharged from their services at one go. So, there is no question of

hampering of day-to-day administration of state government as there can be fresh recruitment of genuine schedule tribe. When the Chief Secretary was asked by the Commission "In your wisdom is it not Contempt of Supreme Court?", there was no satisfactory reply.

- 16) The Secretary also stated that the process for the recruitment got delayed because of the Covid-19 pandemic and various stay orders been issued by the Hon'ble High Courts. The Chief Secretary stated that there was a ban on recruitment but at present, the recruitment process for various posts is done on war footing.
- 17) The Secretary also stated that the process of recruitment has been started and various posts in different groups are been notified by the Maharashtra Public Service Commission for which applications are been received. The Secretary stated that the recruitment process is done on a war footing and will be completed within two years.
- 18) The Secretary also stated that there are various Caste Scrutiny Committees have been formed to check the authenticity of the Caste Certificates. He also requested the Commission to allow him to send a detailed Affidavit on the queries raised during the course of hearing and Action Taken Report on the Recommendations made by the Commission.

After hearing both the sides the Commission recommends the followings:


Recommendations:

- 1.) The Chief Secretary, Government of Maharashtra, to submit a detailed Affidavit on the points raised during the course of hearing.
- 2.) The Chief Secretary, Government of Maharashtra, to submit a detailed affidavit stating the data from class 1 to 4 as Cadre Wise (specific figures) pertaining to the vacancies as on today in all the departments of State government.
- 3.) The Chief Secretary, Government of Maharashtra, to submit by way of affidavit the pendency of caste wise claims (i.e., for example Gond, Thakur, Mannerwarlu, Koli etc.) in each scrutiny committees as constituted under the 2001 Act till August 2022.
- 4.) The Chief Secretary, Government of Maharashtra, to submit information about the present pendency of cases till today before High Court and Supreme Court of those non-genuine employees whose caste/tribes' claims have been invalidated by the Scrutiny Committees.
- 5.) The Chief Secretary, Government of Maharashtra, to furnish the information about how many Supernumerary posts (to shift and accommodate the non-genuine Scheduled Tribes have been created from Class 1 to 4 also Cadre Wise across all departments of the Government.
- 6.) The Chief Secretary, Government of Maharashtra, to submit the details of offences/FIR/Complaint cases registered against non-genuine scheduled tribes' claimants whose tribe claims has been invalidated by the Scrutiny Committee as per section 10 & 11 of the 2001 Act right from its inception and also state that in

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how many numbers of cases the recovery of payments (salary duly paid over the years) is being recovered till date.

- 7.) The Chief Secretary, Government of Maharashtra, to furnish the details and the actual final report submitted by Bhujbal Committee constituted as per GR dated 15 June 2020 of State Government.
- 8.) The Chief Secretary, Government of Maharashtra, to state and furnish by way of Affidavit the data submitted by State Govt in Supreme Court in Vijay Ghogre Reservation In Promotion Case so as to ascertain the fact that whether the non-genuine scheduled tribes employees who has been shifted to supernumerary posts have been shown as schedule tribes or any separate category is shown before the Hon'ble Supreme Court.
- 9.) The Chief Secretary, Government of Maharashtra, to state and furnish by way of Affidavit that the data or any affidavit submitted before Hon'ble Supreme Court in Vijay Ghogre reservation in promotion case have been presented by deducting the non-genuine schedule tribe employees of all departments who has been shifted to supernumerary posts.
- 10.) The Chief Secretary, Government of Maharashtra, to furnish the SIT report by Aurangabad Divisional Commissioner on fake Caste/Tribe certificate issues.
- 11.) The posts meant for the ST candidates be filled by the genuine candidates on a war footing.
- 12.) The Scrutiny of the Caste Certificate be done in a time-bound manner.
- 13.) The Commission express serious displeasure on the manner of interpretation and implementation of Hon'ble Supreme Court decision in Jagdish Bahira case and recommends due compliance of the judgment without further delay.
- 14.) The Chief Secretary, Government of Maharashtra, to submit the opinion of the Ld Advocate General of the State of Maharashtra on the issue of continuing the employment of such non-genuine Scheduled Tribes who have been shifted to Supernumery posts and also if any opinion by the Advocate General on non-removal of such employees of State Government whose caste claim has been invalidated by Scrutiny Committee or any opinion regarding protecting such employees contrary to Jagdish Bahira Judgement.
- 15.) The Detailed Affidavit by the Chief Secretary, Government of Maharashtra with Action Taken Report be sent to Commission within thirty days.


NATIONAL COMMISSION FOR SCHEDULED TRIBES
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(Annexure)

F. No. NCST/DEV-359/MH/13/2022-ESDW

Attendance Sheet of the Sitting held on 08.08.2022 at 02:00 PM in Conference Hall of NCST under the chairmanship of Shri Ananta Nayak, Hon'ble Member, NCST on the representation dated 27.03.2022 of Prof. Ashok Wooike, M.L.A, 77 Ralegaon, District-Yavatmal, President BJP ST Morcha, Maharashtra regarding Maharashtra Government's evasion of recruitment to the vacant reserved seats of the Scheduled Tribes.

S. No.	Date	Designation
1.	Shri Ananta Nayak	Hon'ble Member
2.	Shri K. Touthang	Joint Secretary
3.	Shri S.P.Meena	Deputy Director
4.	Shri H.R. Meena	Research Officer
5.	Shri Radhakanta Tripathy	Sr. Legal Advisor
6.	Shri Pratik R. Bombarde	Special Counsel
The Chief Secretary, Government of Maharashtra		
1.	Shri Manu Kumar Srivastava	Chief Secretary, Government of Maharashtra
2.	Shri Sumant Bhange	Secretary GAD
Petitioner		
1.	Professor Ashok Wooike	M.L.A, Yavatmal, Government of Maharashtra & Petitioner

