

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

WRIT PETITION NO. 2174 OF 2014

(Kum. Kalpana Rangrao Mahitkar vs. The State of Maharashtra thr. its Secretary,
Tribal Development Department & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
MARCH 05, 2015.**

Heard Shri R.K. Mendadkar with Shri Gopal Mishra, learned counsel for the petitioner, Shri C.N. Adgokar, learned AGP for respondent No. 1 and Shri Abhijit Deshpande, learned counsel for respondent No. 2. Nobody appears for respondent Nos. 3 & 4 – employer.

The petitioner has joined the employment as Primary Teacher on 22.10.2001 and her employment is protected by this Court while issuing notice on 29.04.2014.

Shri Mendadkar, learned counsel submits that even before the constitutional recognition to Halbi as Scheduled Tribe, the caste of paternal ancestor in the case of present petitioner was recorded as Halbi at least in five documents. Thus, those documents could not have been discarded only because of earlier documents which mentioned caste as Koshti. He submits that

after receipt of Vigilance Cell Report and a notice, the petitioner submitted an explanation in detail on 20.06.2013 and in it, in para 9 pointed out how the word Koshti may have been recorded in those documents. He also relied upon a Division Bench judgment of this Court in the case of Priya w/o Pravin Parate vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur, reported at 2013 (1) Mh.L.J. 180. He further submits that in this situation, when pre-constitution documents are not tampered with or interpolated, the affinity test as applied could not have been decisive and an inquiry to find out whether Halbi Tribe to which the petitioner belongs, form part of Koshti community, could not have been undertaken. He relies upon the Constitutional Bench of the Hon'ble Apex Court in the case of State of Maharashtra vs. Milind Katware, reported at 2000 (1) Mh.L.J. 1, to urge that such an inquiry is prohibited.

Shri Deshpande, learned counsel, on behalf of the Committee submits that when the names of castes or tribes are similar and one of them is upper caste while the other is recognized socially as a backward class, merely look into documents cannot be decisive and to determine the correct status, affinity test needs to be applied. Here, Scrutiny Committee got documents which show caste recorded as Koshti and those

documents are prior to the documents on which the petitioner places reliance. In the light of these documents, an inquiry into affinity has been done and it reveals that the petitioner was not belonging to Schedule Tribe – Halibi. As all relevant material has been looked into and there is no failure to exercise discretion, he prays for dismissal of writ petition. He also submits that the judgment of this Court in the case of *Priya w/o Pravin Parate vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur*, (supra) is assailed before the Hon'ble Apex Court in Special Leave Petition, which is pending. He also adds that as the ancestors of the petitioner did not hail from the area which prior to 1976 qualifies for consideration under 1949 Presidential Order, the Committee has applied that test and even on that count, the claim is found unsustainable.

In reply arguments, Shri Mandadkar, learned counsel, submits that application of test of removal of area restriction is unwarranted. He further states that after coming into force of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, (Act No. 23 of 2001) and Rules framed thereunder, the

provisions of said Presidential Order and Area Restriction Removal in 1976, have no bearing whatsoever.

We do not wish to go into the relevance of provisions of Area Restriction Removal at this stage in this matter. The said controversy is already referred to Larger Bench and the outcome is still awaited. However, here, the petitioner has produced documents which reveal that on 15.11.1944, 25.07.1947, 02.04.1948, 06.04.1949 and 18.04.1949, caste of her paternal relatives was recorded as Halbi in relevant records. These records and entries are not found doubtful by the Scrutiny Committee. The entries pertain to pre-constitution period and, therefore, deserve some credence. Merely because in still older documents caste has been recorded as Koshti, these five documents could not have been disbelieved.

The petitioner offered an explanation on 20.06.2013 by pointing out the observations of the Division Bench of this Court in the case of *Priya w/o Pravin Parate vs. Scheduled Tribes Caste Certificates Scrutiny Committee, Nagpur*, (supra). Those observations are contained in para 10 of said judgment. The Committee has not considered that explanation at all. If the explanation is accepted, it is apparent that Koshti documents may become irrelevant and in that event the relevance

of applying affinity test may become a debatable issue. As we find that the explanation furnished by the petitioner has not been looked into, the impugned order cannot be sustained. It is accordingly quashed and set aside. The matter is placed back before Respondent No. 2 – Scrutiny Committee.

The petitioner to appear before the said Committee on 12.05.2015. The Committee shall give her necessary opportunity of hearing and complete the process of verification in accordance with law within the next six months. Interim orders granted by this Court on 29.04.2014 to continue till then and shall be subject to it. The arguments of the learned counsel for the petitioner on protection are kept open and can be looked into thereafter, if occasion therefor arises.

Writ Petition is partly allowed and disposed of. However, in the facts and circumstances of the case, there shall be no order as to costs.

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