

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

WRIT PETITION No. 3161/2011.

Sudhir Vasantao Dhekan

VERSUS

Joint Commissioner & Vice Chairman and others.

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

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI
& A.P. BHANGALE, JJ.

DATED : JANUARY 20, 2015.

Heard Shri S.R. Narnaware, learned
Counsel for the petitioner and Shri A.L. Deshpande,
learned Counsel for respondent no.1.

Petitioner born on 18.03.1974, got caste
certificate showing himself as belonging to "Halba
Scheduled tribe" on 22.06.1989. On the basis of this
caste certificate he secured employment as Assistant
Teacher on 29.06.1995. His tribe claim has been
invalidated by the Scrutiny Committee on 31.05.2011
and that order is questioned before this Court.

Challenge in the writ petition earlier pressed into service, in the nature of preliminary objection about the qualification of the Research Officer, was heard and found without substance by this Court vide its judgment dated 19.03.2012. However, at that time petition itself was finally disposed of.

In review, on 22.11.2013, petition has been restored back for consideration on other contentions/grounds.

In the light of judgment of Full Bench of this Court in case of Arun Vishwanath Sonone .vrs. State of Maharashtra and others (2015 (1) Mh.L.J. 457), Shri Narnaware, learned counsel appearing on behalf of the petitioner restricts the challenge only to claim protection in employment.

Shri Deshpande, learned counsel appearing for respondent no.1 Scrutiny Committee has pointed out that the petitioner though a native of Mangrul (Dastagir), Tq. Dhamangaon, District Amravati got a caste certificate from Nagpur. Thus, the Executive Magistrate at Nagpur was not the competent authority for that purpose and as basic document namely caste

certificate itself is issued by an incompetent authority, the petitioner is not entitled even to protection. He has invited our attention to findings in this respect by the Committee in its order from page no.34 onwards of the writ petition.

On merits, he has submitted that the petitioner could not place on record any document showing caste recorded as “Halba” and he relied upon his own affidavit. The Vigilance Cell Authority could find 1948 and 1949 document of his uncle, where caste was recorded as “Koshti”.

The learned Counsel for petitioner in his reply, relies upon the orders passed at Aurangabad Bench in case of Niraj Kamlakar More and others .vrs. Scheduled Tribe Certificate Scrutiny Committee and others (2012 (6) BCR 221), to urge that after the caste certificate is verified, challenge to the competence of authority issuing certificate may not be always decisive. He argues that here the Vigilance Cell authorities have carried out investigation even at Mangrul (Dastagir), and hence, consideration of status as such by the Scrutiny Committee is not vitiated.

After hearing the respective counsel, we find that the Vigilance Cell authority have enquired at Mangrul (Dastagir) and relevant data has been produced before the scrutiny committee. The scrutiny committee has invalidated the caste claim. This very fact that the caste certificate was issued by incompetent authority, cannot be decisive in the present matter and in any case is not that relevant. The invalidation has been accepted by the petitioner. Only issue to be looked into therefore, is of entitlement to protection.

Facts noted above show that a caste certificate showing petitioner belonging to Halba Scheduled Tribe, was obtained during his minority. On that basis he has joined the employment even before coming into force of the 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). He has continued in the employment for about 16 years before the order of invalidation.

The Scrutiny Committee has not found any interpolation or tampering in any of the documents placed on record by the petitioner. No observation of the scrutiny committee indicates any fraud or falsehood practiced by the petitioner.

We therefore, find the that protection as extended by the Full Bench of this Court noted above, needs to be given to the present petitioner. The petitioner shall however, furnish a written undertaking within a period of next six weeks, declaring that he or his progeny shall not claim and take advantage of any benefit flowing from the invalidated caste certificate and the present order or claim status as a person belonging to Scheduled tribe for himself or for his progeny.

In view of above discussion, Writ Petition is disposed of. No costs.

JUDGE

JUDGE

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