

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

WRIT PETITION NO.5786 OF 2013

(Rajendra Vitthalrao Pakhale Vs. The State of Maharashtra & 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
& S. B. SHUKRE, JJ.
DATED : 18 MARCH, 2015**

Heard Shri S. R. Narnaware, learned Counsel for the petitioner, Shri A. M. Deshpande, learned Advocate for respondent No.2-Committee and Smt. Mayuri Deshpande, learned A.G.P. for respondent No.1. Nobody for respondent No.3.

Petitioner born on 01/3/1977 got caste certificate showing that he belongs to 'Halba'-Scheduled Tribe when he was about 12 years old, i.e. on 20/11/1989. On that basis, he completed his education and got employment on 01/11/1999. His caste claim was sent for verification to respondent No.2-Caste Scrutiny Committee in the year 2002 and has been invalidated on 11/4/2005.

This invalidation was questioned by him in Writ Petition No. 2352 of 2005. In that writ petition prayer-I, which may have some bearing on the present controversy, reads as under.:

“by appropriate writ, order or direction in the nature of certiorari thereby quash and set aside the order of the respondent No.3/Caste Scrutiny Committee dated

11.4.2005 (Annexure No.XXI) being illegal, arbitrary and in violation of principles of natural justice and further give a declaration that petitioner is entitled for protection of his service in view of the judgment of the Hon'ble Supreme Court reported in (2001) Vol-I, Mh.L.J. Page 1;"

That writ petition was considered by this Court on 20/9/2005 and came to be dismissed. The petitioner has been thereafter dismissed from service on 12/01/2006.

Present petition thereafter came to be filed on 04/9/2013 claiming protection in the light of judgment of Hon'ble Apex Court in the case of Kavita Solunke Vs. State of Maharashtra and other- 2012 (5) Mh.L.J. 921 and subsequent judgments of the Hon'ble Apex Court and Division Benches of this Court.

Shri Narnaware, learned Counsel for the petitioner, in this backdrop, submits that Caste Scrutiny Committee did not find any interpolation or tampering in records of the present petitioner. The document of real uncle of the petitioner also reveals that on 01/7/1961 his caste was recorded as 'Halba'. Only because the Caste Scrutiny Committee got old documents which reveal caste of the ancestors of the petitioner as 'Koshti', the later documents have been disbelieved. He further submits that in the light of Full Bench Judgment of this Court in the case of Arun Vishwanath Sonone Vs. State of Maharashtra and others - 2015 (1) Mh.L.J. 457, the petitioner is entitled to grant of protection.

Shri Deshpande, learned Counsel for respondent No.2-

Caste Scrutiny Committee is opposing the petition. According to him, when old documents clearly show that the caste of forefathers of the appellant as 'Koshti', the petitioner could not have claimed his status as 'Halba'.

Mrs. Deshpande, learned A.G.P. for respondent No.1- the State adopts the argument of learned Advocate Shri Deshpande.

The Hon'ble Full Bench of this Court in the case of *Arun Vishwanath Sonone* (supra) has considered this controversy and in the light of contentions, has extended protection to the employment of candidates like the present petitioner. The law laid down by the Full Bench of this Court in the case of Ganesh Rambhau Kahalale Vs. State of Maharashtra and others - **AIR 2009 (Bom) 122** is not found to be a correct law.

Viewed in this backdrop, the facts before us show that consistently all school records of the petitioner describe him as candidate belonging to 'Halba'-Schedule Tribe. Even, the document i.e. School Transfer Certificate of his uncle Hiranman Ramchandra Pakhale shows caste 'Halba', recorded on 01/7/1961. This document or other documents of the petitioner are not found to be tampered with or interpolated. The Caste Scrutiny Committee has not found that the petitioner has practised any falsehood or fraud.

We have already noticed that the petitioner was only 12 years' old when he got caste certificate. The petitioner's prayer in earlier writ petition does not contain the relief of protection.

The thrust of the petitioner there was on setting aside an adverse order of Caste Scrutiny Committee and, therefore, for grant of protection. Here, he has accepted invalidation and has claimed protection in the light of Full Bench judgment mentioned supra.

In this situation, though challenge is belated, considering the fact that in 2005, when earlier petition was filed, the petitioner was only 27 years old and today he is 37 years, we are inclined to extend him benefit of protection.

Accordingly, subject to petitioner filing an undertaking with the Registry of this Court as also with his employer that neither he, nor his progeny shall claim status and benefit as 'Halba'-Scheduled Tribe in future, his service shall stand protected in terms of Full Bench Judgment of this Court mentioned supra.

After filing of such an undertaking, his termination vide order 12/01/2006 shall stand quashed and set aside and he be reinstated back in service with continuity only without any back wages within a further period of four weeks.

The Writ Petition is thus partly allowed with no order as to costs.

JUDGE

JUDGE