

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

WRIT PETITION NO.5319 OF 2013

Milind S/o Suresh Kumbhare

..vs..

**Vice-Chairman & Joint Commissioner Scheduled Tribe Certificate
Scrutiny Committee, Gadchiroli Division, Gadchiroli and anr**

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
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Court's or Judge's order

Shri S.R. Narnaware, counsel for the Petitioner.
Shri Abhijeet Deshpande, counsel for R-1.
Shri Shaikh Majid, counsel for R-2.

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

DATE : JANUARY 20, 2015.

1. Heard.

2. Shri S.R. Narnaware, learned counsel for the petitioner, in the light of the Full Bench Judgment of this Court in the case of Arun s/o Vishwanath Sonone ..vs.. State of Maharashtra & ors, reported at 2015(1) Mh.L.J. 457 addresses the Court only on the ground of protection of the petitioner in employment by giving up his caste claim.

3. This Court has, on 3.10.2013, issued notice in the matter and protected the employment of the petitioner.

4. The petitioner is born on 7.3.1975 and his caste certificate which shows him to be of “Halba” (Scheduled Tribe) is dated 23.1.1990 i.e. obtained during his minority. On the basis of that caste certificate, he got employment as “Agriculture Officer” on 27.2.1999. The caste claim of the petitioner has been referred for its adjudication for the first time on 23.11.2004 and it has been invalidated on 12.6.2013.

5. Shri Narnaware, learned counsel for the petitioner, submits that the documents on which the petitioner placed reliance do not show any overwriting, eraser or tampering and the caste as “Halba” or “Halba-Koshti” has been recorded in those documents. He, therefore, seeks advantage of the various Judgments which are

looked into by the Full Bench Judgment cited *supra*. He also points out that this Court also has looked into prevailing confusion and then extended the protection.

6. Shri Abhijeet Deshpande, learned counsel for respondent No.1 – Scrutiny Committee and Shri Shaikh Majid, learned counsel for respondent No.2 – employer are opposing grant of any protection to the petitioner.

7. Shri Deshpande, learned counsel, submits that the Vigilance Cell enquiry found all old documents to be of caste “*Koshti*”. He submits that thus fraudulently the caste was changed and recorded either as “*Halba-Koshti*” or “*Halba*”. He also taken us through the observations of the Caste Scrutiny Committee that some fraud was played by the petitioner to obtain the benefits.

8. I have perused the order of the Caste

Scrutiny Committee. The documents produced by the petitioner show that his caste was recorded as "*Halba*" on 1.7.1980 and also on 31.7.1992. On 30.10.1973 caste of his father was recorded as "*Halba-Koshti*". The caste of his maternal uncle was recorded as "*Halba*" on 10.7.1987. The caste of his mother was recorded as "*Koshti*" (Halba) on 15.7.1965. The caste of his uncle was recorded as "*Halba*" on 1.7.1955. These documents are not found to be either interpolated or tampered by the Vigilance Cell or the Caste Scrutiny Committee.

9. No doubt that there are more old documents viz. dated 1.7.1923, 1.4.1952, 1.4.1937, and 13.8.1946 looked into by the Caste Scrutiny Committee. These documents show caste as "*Koshti*" only. In the light of these old documents later mentioning of caste as "*Halba*" or "*Halba-Koshti*" cannot be said to be

justified. However, that by itself is not sufficient to hold that the petitioner born on 7.3.1975 was privy to any such fraud or falsehood then practised.

10. In this situation, we find that the petitioner is entitled to protection in employment.

11. However, it is subject to petitioner's furnishing an undertaking, within a period of six weeks from today, that neither he nor his progeny shall claim any benefits of or status as belonging to "*Scheduled Tribe*".

12. Subject to filing of such undertaking, the services of the petitioner are protected as per the directions of the Full Bench Judgment cited *supra*.

13. The impugned order of the Scrutiny Committee dated 12.6.2013 shall not come in

his way for the said purpose.

Thus, the writ petition is thus partly allowed and disposed of with no order as to costs.

JUDGE

JUDGE

!! BRW !!