

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

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WRIT PETITION NO. 3646 /2016

Vasant s/o Vitthal Vihirghare
Aged about 46 years
occupation Service
R/o Jatpura, Ward No.2
Chhota Bazar, Chandrapur.

..PETITIONER

v e r s u s

- 1) Schedule Tribe Caste Certificate
Scrutiny Committee
Through its member Secretary
Gadchiroli.
- 2) State Secretary
Maharashtra State Bharat Scouts & Guides
79, F-Road, Marine Drive, Mumbai.
- 3) District Secretary
Gondia, Bharat Scouts & Guides
District Office, Nagar Parishad
Marathi Primary School, Civil Lines, Gondia.

...RESPONDENTS

.....
Mr. S.D.Khati, Advocate for petitioner
Mrs.Kalyani Deshpande, Assistant Government Pleader for
Respondent No.1
Mr. A.K. Bangadkar, Advocate for Respondent nos.2 and 3
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CORAM: **SMT. VASANTI A. NAIK &**
MRS. SWAPNA JOSHI, JJ.

DATED : **21st July, 2016**

ORAL JUDGMENT: (PER SMT.VASANTI A. NAIK, J.)

Rule. Rule made returnable forthwith. The petition is heard finally at the stage of admission, with the consent of the learned counsel for the parties.

By this Writ Petition, the petitioner seeks the protection of his services on the post of peon/Sepoy, in view of the judgment of the Full Bench of this Court, in the case of Arun Sonone vs. State of Maharashtra and others reported in 2015 (1) Mh.L.J. 457.

The petitioner was appointed as a Peon/Sepoy by the respondent no.2, on 21.6.1998, on a post that was earmarked for the Scheduled Tribe. The petitioner claimed to belong to 'Halba' Scheduled Tribe and the caste claim of the petitioner was referred to the Scrutiny Committee for verification. The Scrutiny Committee has invalidated the claim of the petitioner by the order dated 30.3.2016. The petitioner has not challenged the said order in the instant petition but has only sought the protection of his services in view of the judgment of the Full Bench. After the caste claim was invalidated, by the impugned order dated 21.06.2016 the petitioner was reverted to the post of Sepoy from the post of Senior Clerk, to which he was promoted. The petitioner has not challenged the order of his reversion but has only challenged a part of the order that directs the petitioner to return the

difference in salary that was paid to the petitioner for the post of Junior Clerk/ Senior Clerk.

Shri S.D. Khati, the learned counsel for the petitioner submitted that the petitioner is not aggrieved by the order of the Scrutiny Committee or by the order that reverts the petitioner to the post of Sepoy, on the invalidation of his caste claim. It is stated that he has given up his caste claim and the only prayer made by the petitioner is that the respondents should not withdraw the salary that was paid to the petitioner on the promotional posts of Junior Clerk and Senior Clerk.

On hearing the learned counsel for the parties and on a perusal of the judgment of the Full Bench, reported in 2015 (1) Mh.L.J. 457, we find that it would be necessary to grant the prayer made by the petitioner. Since the petitioner was appointed before the cut off date and there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently secured the benefits meant for the 'Halba' Scheduled Tribe, the respondents would not be entitled to recover the salary that was paid to the petitioner, while he worked on the post of Junior Clerk and Senior Clerk. We find that since the caste claim of the petitioner was invalidated as he was not able to prove his caste claim on the basis of documents and affinity test, it would be necessary to restrain the respondents from recovering the salary that was paid

to the petitioner while he performed his duties as Junior Clerk and Senior Clerk.

Hence, for the reasons aforesaid, the Writ petition is allowed. As the petitioner has not challenged the order of reversion, we direct the respondents not to recover the amount that was paid to the petitioners toward salary while he worked as junior Clerk and Senior Clerk, merely because his caste claim is invalidated.

Rule is made absolute in the aforesaid terms, with no order as to costs.

JUDGE

JUDGE

sahare

C E R T I F I C A T E

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.”

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