

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

WRIT PETITION NO.1556 OF 2020

Ku. Vanita D/o Chandrakant Likhari

...Versus...

**State of Maharashtra Through its Tribal Development
Department, Mantralaya, Mumbai and others**

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

Court's or Judge's orders

Shri G.G. Mishra Counsel for petitioner
Shri S.Y. Deopujari, Government Pleader for
respondent Nos.1 & 2

**CORAM : **SUNIL B. SHUKRE &
 AVINASH G. GHAROTE, JJ.****
DATE : **20/03/2020**

1. Heard Shri Mishra, learned Counsel for the petitioner and Shri S.Y. Deopujari, learned Government Pleader, who appears for respondent Nos.1 and 2 by waiving notice. We do not think it necessary to issue notice to the respondent No.3 for more than one reason.

2. By this petition, the petitioner is challenging the legality and correctness of the order of the respondent No.2-Committee invalidating her tribe claim regarding her belonging to 'Halba' Scheduled Tribe. The claim was rejected on 06/03/2020. This petition has been filed on 18/03/2020 and circulation has been sought for today stating urgency. The ground for seeking circulation is that there was urgency in the matter and if no interim relief is granted to the petitioner, the petitioner might lose her job. The petitioner claims to be working as

an Assistant Teacher. However, we have perused various documents filed as annexures to this petition and it is clear to us that there is really no urgency in the matter. There may be some directions issued to the employer of the petitioner to terminate her services but, the fact remains that the petitioner herself through her husband, has given a solemn undertaking before this Court in another Writ Petition No.1919/1992, that her husband as well as the petitioner would not claim any concessions, which were available to 'Halba' Scheduled Tribe. On the basis of such undertaking given by her husband on behalf of himself and also the petitioner, the husband of the petitioner managed to save his services and was also granted validity certificate by the Scrutiny Committee, as the husband was belonging to 'Koshti' caste, which is in the category of Special Backward Classes. This undertaking has been reflected quite in detail in the judgment of this Court rendered on 17th September, 2004 in Writ Petition No.1919 of 1992. Copy of this judgment is forming part of this petition and the petitioner very well knows the contents of this judgment and yet the petitioner has filed this petition, giving reason that there is an urgency involved in this matter. The fact, which was in the knowledge of the petitioner since 17th September, 2004 and which fact has never been disputed by the petitioner so far, would not entitle the petitioner now to say that there is a dire urgency in the matter.

3. Now, the question would be as to whether or not the petitioner can distance herself from what her husband has done in the Writ Petition No.1919 of 1992 when he gave specific undertaking on his behalf

as well as on behalf of the petitioner. Before we deal with the question, we would like to reproduce the relevant observations of this Court made in paragraph No.4 of the said judgment. These observations read thus :-

“Learned counsel contended that petitioner undertakes before the Court that neither he nor his spouse would claim any concessions which are available to “Halba” Scheduled Tribe. Petitioner undertakes that he does not belong to “Halba” Scheduled Tribe and in terms of Government Resolution dated 15.6.1995 he be treated as person belonging to Special Backward Class Category and accordingly his spouse be treated as belonging to Special Backward Category.”

4. Further reading of the judgment dated 17th September, 2004 would indicate that this undertaking has been accepted by the Court and based upon such undertaking, this Court proceeded to grant limited relief to the husband of the petitioner. It is true that in the operative portion of the judgment, reference has been only made to the undertaking given by the husband of the petitioner and not also on behalf of the petitioner. But, upon overall reading of the judgment, one can very well see that this Court acted upon the undertaking given by the petitioner's husband that neither he nor his spouse (present petitioner) would claim any concessions which are available to “Halba” Scheduled Tribe. This Court acted upon the undertaking of the petitioner's husband and that was the reason why this

Court granted relief to the petitioner in the said petition by declaring that the services of the petitioner therein would stand protected and the petitioner's husband would not be entitled to claim any benefits as may be available to the employees belonging to the Scheduled Tribe and that the husband of the petitioner would only be entitled to the benefits which would be available to the employees belonging to Special Backward Classes.

5. This judgment was never challenged or questioned in any manner by the petitioner. So far, the petitioner has not filed any application seeking review of the judgment on the ground that no undertaking, as is reflected in the said judgment was ever given by her nor any authority was given by her to her husband to furnish undertaking that even she would not claim any benefits which are available to the employees belonging to Scheduled Tribe and she would claim only the benefits as are available to the employees belonging to Special Backward Classes. Even in the present petition, there is not a single averment or even a whisper that the petitioner had never given any authority to her husband to make such undertaking before this Court. Looking to the action of her husband and the undertaking given by her husband in this Court, we are of the considered opinion that whatever has been undertaken by the husband of the petitioner before this Court in the said writ petition was under the proper authority and due consent of the petitioner and therefore, the petitioner now cannot go away from the undertaking and start making a new claim before this Court.

6. In the impugned order, there is an observation made by the Scrutiny Committee that the petitioner was married into the same caste. If this observation is to be taken as correct, it will be clear that the petitioner cannot claim to be belonging to the caste or tribe different from the one to which her husband belongs and as we have already noted that the husband claims himself to be belonging to “Koshti” caste, a special backward class, the petitioner cannot claim herself as belonging to some different caste. However, learned Counsel for the petitioner disputes this observation and he submits that the petitioner never gave any admission about intra-caste marriage. Shri Deopujari, learned Government Pleader, refutes this contention and in support, he invites our attention to the observations made at other places in the impugned order. The first observation appears in paragraph No.17 and the next observation regarding the admission appears in paragraph No. 21, internal page No.15 of the impugned order. It says that the petitioner has herself admitted that she was married within the same caste. So, the contention of the learned counsel for the petitioner that no admission was ever given in this regard by the petitioner is fallacious. This apart, there are also some documents of some relatives of the petitioner, which include her mother and other relatives from the maternal side, which show their caste as ‘Koshti’ and not as ‘Halba/ Halbi’. Admittedly, it is also never the case of the petitioner that she raised any contention before the Scrutiny Committee that while she was a person from ‘Halba’ Scheduled Tribe by birth, her husband was a person from ‘Koshti’ caste falling in special backward

class category and that theirs was an inter-caste marriage. These facts would cumulatively show that the claim now being made by the petitioner, is wholly unsustainable in law as well as from any social perspective.

7. For the reasons stated above, we find that this petition is nothing but an abuse of the process of the Court and it is liable to be dismissed with appropriate costs. These are the reasons why there is no need to issue any notice to respondent No.3.

8. The writ petition stands dismissed with costs of Rs.10,000/- (Rupees Ten Thousand Only) to be paid to the High Court Legal Services, Sub-Committee at Nagpur within a period of four weeks from the date of receipt of this order, failing which the same shall be recovered by respondent No.3 from the monthly salary payable to the petitioner.

JUDGE

JUDGE

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