

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

Writ Petition (WP) No. 788 of 2021

Mr. Rajendra S/o Premrao Hedau,
Age-43 years, Occ. Service,
Permanently residing at House No. 815
A, Near Hedau Painter's House, Navi
Vasti, Tandapeth, Nagpur-440017,
presently residing at flat No. 303, Sky
Space Co-Op Housing Society, Plot
No. 119, Sector 34, Kamothe, Navi
Mumbai-410 209.

.... Petitioner

// VERSUS //

1. The State of Maharashtra,
through its Chief Secretary, 6th Floor,
Mantralaya, Hutatma Rajguru Chauk,
Madam Cama Road, Mumbai PIN
400032.
2. Scheduled Tribe Caste Certificate
Scrutiny Committee, Nagpur, through
it's Member Secretary, Office at 2nd
Floor, Adiwasi Vikas Bhawan,
Amravati Road, Giripeth, Nagpur PIN
440010.
3. Union of India,
Through its Secretary, Department of
Post, Ministry of Communication,
Office at Postal Directorate, Dak
Bhavan, New Delhi, 110001.
4. Chief Postmaster General, Maharashtra
Circle, Office at 2nd Floor, Mumbai
GPO Old Building, Mumbai-400 001.

5. The Senior Superintendent of Post Offices, Navi Mumbai Division, Office at Panvel Head Post Office, Near Saibaba School, Sector 19, New Panvel-410206.

... Respondents

Shri Nitin Meshram, Advocate for Petitioner.

Smt. K.R. Deshpande, AGP for Respondent Nos.1 and 2.

Shri U.M. Aurangabadkar, ASGI for the Respondent Nos.3 to 5.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 09 FEBRUARY 2021

JUDGMENT : (PER:- ANIL S. KILOR, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. The present Petition is an outcome of an invalidation of a Tribe claim of the Petitioner as 'Halba', Scheduled Tribe.

3. We have heard the respective learned Counsel for both the parties.

4. The brief facts of this case are as under :

The Petitioner was appointed as a 'Postal Assistant' on 25 April 2005. The Petitioner claims to be 'Halba', Scheduled Tribe. The Tribe claim of the Petitioner was referred to the Respondent-Committee for verification. The Committee thereupon called the Police Vigilance Cell report and on receiving the same, considered it along with

documents submitted by the Petitioner in support of his Tribe claim. Whereupon the Tribe claim of the Petitioner came to be rejected, the same is assailed in the present Writ Petition.

5. The learned Counsel for Petitioner draws our attention to the impugned order dated 30 December 2020 and thereby pointed out that two documents of pre-Constitutional period namely, school leaving certificate of grand father, dated 01 June 1933, having entry as 'Halba' and school leaving certificate of great grand father, dated 31 March 1909, having entry as 'Halba', have not been considered.

6. The learned Counsel for Petitioner further argues that, the Committee has wrongly applied area restriction for denying validity to the Petitioner as 'Halba', Scheduled Tribe. He therefore, prays for quashing and setting aside the impugned order dated 13 December 2020.

7. Per contra, Smt. K.R. Deshpande, learned Assistant Government Pleader for Respondent Nos.1 and 2 and Shri U.M. Aurangabadkar, learned Assistant Solicitor General of India for Respondent Nos.3 to 5 opposed the present Petition and prays for dismissal of the same.

8. To consider the rival contentions of the parties, we have perused the record and thereupon it is revealed that on 13 July 2018 the Petitioner submitted two documents of pre-Constitutional period. One relating to his great grand father–Pandurang Ragho Hedau, having entry as 'Halba' in primary school leaving certificate dated 13 March 1909 and the other relating to his grand father–Mahadeo Pandurang Ragho Hedau,

having entry 'Halba' in primary school leaving certificate dated 01 June 1933.

9. It is further revealed that following reasons are given for not relying upon the document of the year 1909.

9.1. The Police Vigilance Cell found two school admission Registers 1-A and 1-B maintained by the school, having different entries in it.

9.2. The native of the great grand father of the Petitioner was shown as Shendurjanaghat, Dist. Amravati. On inquiry, no immovable property in the name of great grand father or grand father of the Petitioner was found in Shendurjanaghat.

9.3. No birth and death entry relating to great grand father or grand father of the Petitioner was found in the record of Municipal Council, Shendurjanaghat.

9.4. In Shendurjanaghat there were only six families of Hedau-Koshti, however, Mahadeo Pandurang Koshti belonged to none.

10. According to us, because two admission Registers were maintained by the school, it cannot be a sufficient ground to discard the document unless contrary entry is found in relation to the great grand father or grand father of the petitioner.

11. As regards, the reason that no immovable property found in the name of grand father or great grand father of the Petitioner. The same is not the requirement to establish the tribe/caste claim or to corroborate a document of pre-constitutional period.

12. As regards birth and death entry is concerned, the registration of Births and Deaths was made compulsory after the Registration of Births and Deaths Act 1969, came into force. In spite of the same a survey shows that till date only 80% people have registered their births. Therefore, we do not find the said ground as a valid ground to reject a document of pre-constitutional period.

13. The ground that there were only six families of 'Hedau-Koshti' in Shendurjanaghat and Mahadeo Pandurang Koshti belonged to none, is also not valid, in absence of any finding recorded by the Committee that the document of 1909, is found to be fabricated or forged one or not genuine. Having observed as above, we have no hesitation to hold that the approach of the Committee while assessing the document of 1909, was erroneous and not sustainable in the eyes of law.

14. Now, moving to the entry of 1933, it is stated that the police vigilance cell could not find a copy of application on the record of the school, seeking 'Transfer Certificate'. The other reason for discarding the said entry was that the complete entry was not found, because the record is very old and a small corner part of the page having entry 'Hedau' relating to grand father of the petitioner, has been pulled apart or torn.

15. The aforesaid reasons cannot be accepted as valid, while it is not the case of the Committee that the document of the year 1933 is bogus, forged or fabricated. In that view of the matter, we hold that the Committee has not assessed the documentary evidence available on record in totality and omitted to consider and appreciate the important piece of evidence in the form documents of pre-Constitutional period, which is having high degree of probative value.

16. In the case of *Anand Vs. Committee for Scrutiny and Verification of Tribe Claim*,¹ The Hon'ble Apex Court has specifically ruled that greater reliance may be placed on pre-independence documents because they furnish high degree of probative value. It is further observed that the affinity test is merely to be used to collaborate documentary evidence and it is not to be used as sole criteria for rejection of claim.

17. As regards to the aspect of area restriction, the said issue is well covered by the decision of Apex Court in the case of *Jaywant Dilip Pawar Vs. State of Maharashtra and others*,²

18. Thus, having observed as above, we are of the considered view that the impugned order needs to be set side and the Tribe claim of the Petitioner will have to be remanded back for fresh consideration. Accordingly, we pass the following order :

¹ 2011 (6) Mh.L.J. 919

² 2018 (5) ALL M R 975 SCC
C.L.Dhakate

ORDER

- i. The Writ Petition No. 788 of 2021 is partly allowed.
- ii. Order dated 30 December 2020 passed by the Committee is quashed and set aside.
- iii. The Tribe claim of the Petitioner is restored back to the file of the scrutiny Committee in light of what is stated herein above to decide afresh.
- iv. It is further directed that the Committee shall take a decision afresh within the period of six months from the date of this order.
- v. The Writ Petition is accordingly disposed of. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]