

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

**WRIT PETITION NO. 2880 of 2019**

Manoj Tulsiram Khapekar,  
Aged about 52 years, Occupation-Service,  
R/o Juni Mangalwari, Nagpur.

..... **PETITIONER**

**...V E R S U S...**

1. Union of India, Ministry of Home Affairs,  
Through its Registrar General  
India, Social Study Division,  
North Wing, 1<sup>st</sup> Floor, Seva Sadan,  
New Delhi.110066.
2. Union of India,  
Ministry of Tribal Affairs,  
Through its Secretary, Shastri Bhavan,  
New Delhi 110001.
3. The Chairman,  
Planning Commission of India,  
Office at Yojna Bhavan,  
Sansad Marg, New Delhi- 110 001.
4. State of Maharashtra,  
Department of Tribal Development  
through its Secretary,  
Mantralaya, Mumbai-32.
5. State of Maharashtra,  
Department of Social Welfare Culture Affairs  
Sports and Tourism, through its Secretary,  
Mantralaya, Mumbai-32.
6. Scheduled Tribe Certificate Scrutiny Committee,  
through its Deputy Director and Member Secretary,  
Having its Office at Adiwasi Bhavan,  
Nagpur.

7. The Chief Executive Officer,  
Zilla Parishad, Nagpur.
8. The Tahsildar,  
Tah. Nagpur and District Nagpur.
9. The Tax Superintendent,  
Nagpur Municipal Corporation,  
District Nagpur.
10. The Head Master,  
Garoba Maidan Marathi Prathmik Shala,  
Nagpur Municipal Corporation,  
District Nagpur.
11. Tilak Vidyalaya, Nagpur  
through its Secretary,  
Dhantoli, Nagpur-440 012.

Corrected as per  
Hon'ble Court's order  
dated 15.11.2022  
Sd/- S.R.Narnaware,  
Advocate.  
C.F. petitioner

..... **RESPONDENTS**

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Shri S.R.Narnaware, Advocate for petitioner.  
Shri N.S.Deshpande, Deputy Solicitor General of India for respondent nos. 1 to 3.  
Shri A.S.Fulzele, Additional Government Pleader for respondent nos. 4 to 6 and 8.  
Ms Radha Mishra, Advocate for respondent no.7.  
Shri Anup Dhore, Advocate for respondent no.9.  
Shri S.K.Tambde, Advocate for respondent no.10.  
Shri H.A.Deshpande, Advocate respondent no.11.  
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**CORAM** :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.

**DATE** :- 16<sup>th</sup> MARCH, 2023.

**ORAL JUDGMENT** (Per A.S.CHANDURKAR, J.)

**Rule.** Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner came to be appointed on the post of 'Laboratory Attendant' with the respondent no.11-School on 06.07.1989. Since it was

the case of the petitioner that he belongs to 'Halba' Scheduled Tribe, his tribe certificate was sent to the Scrutiny Committee for verification. The Scrutiny Committee on 31.12.2018 invalidated the petitioner's tribe claim of belonging to 'Halba' Scheduled Tribe. Consequently, on 01.04.2019 the Head Mistress of the respondent no.11-School issued notice to the petitioner stating therein that on account of the order of invalidation his services would be terminated at the end of one month. Being aggrieved by the aforesaid, the petitioner has challenged the order of Scrutiny Committee dated 31.12.2018 as well as the notice dated 01.04.2019 issued by the Head Mistress.

3. Shri S.R.Narnaware, learned counsel for the petitioner submits that by virtue of Government Resolution dated 21.12.2019 the petitioner was entitled to be reinstated on a supernumerary post. During the pendency of the writ petition, the aforesaid Government Resolution dated 21.12.2019 has been replaced by Government Resolution dated 14.12.2022 and it has been provided therein that on invalidation of a tribe claim, the concerned employee is entitled to be reinstated on a supernumerary post. It is submitted that the petitioner is entitled for the benefit of these Government Resolutions. The petitioner has however attained the age of superannuation on 09.01.2023 and hence the only relief that now survives is with regard to notional reinstatement so as to enable the petitioner to receive pensionary

benefits.

4. Shri H.A.Deshpande, learned counsel appearing for the respondent no.11 submits that since the petitioner has attained the age of superannuation, the relief of reinstatement cannot be granted to him. However if the benefit of the Government Resolution dated 14.12.2022 is granted to the petitioner, the respondent no.11-School would take necessary steps to enable the petitioner to receive his pensionary benefits.

5. In these facts, the interests of justice would be served by granting benefit of the provisions of Government Resolution dated 14.12.2022 to the petitioner whereunder the right of reinstatement on a supernumerary post has been recognised. Since the petitioner has attained the age of superannuation, the following order is passed:

(i) In view of Government Resolution dated 14.12.2022, the notice dated 01.04.2019 issued by the respondent no.11 is set aside. It is directed that the petitioner shall be notionally reinstated on a supernumerary post for the period from 01.04.2019 to 09.01.2023.

(ii) As a consequence of aforesaid, the respondent no.11 shall forward the pension papers of the petitioner to the Education Officer (Secondary), Zilla Parishad, Nagpur, who shall consider the same and pass necessary orders thereon.

Needless to state that since the petitioner has not worked for the period from 01.04.2019 to 09.01.2023, this order would not enable the petitioner to claim back-wages either from the respondent no.11 or from the State Exchequer.

With these directions, the writ petition is disposed of. Rule accordingly. No costs.

(M. W. CHANDWANI, J.)

(A.S.CHANDURKAR, J.)

*Andurkar..*