



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

WRIT PETITION NO. 5095 of 2021

Dr. Parasram Kisan Nandankar
Aged 62 years, Occupation-Retired
R/o. A/604, Neminath Co.Op. Housing Society,
Suncity, Vasai (West),
Mumbai-401 202

..... **PETITIONER**

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

1. Vice-Chairman,
Scheduled Tribe Caste Certificate Scrutiny Committee,
Adiwasi Vikas Bhavan,
Giripeth, Nagpur-440010
2. Deputy Director (Research) and Member Secretary,
Scheduled Tribe Certificate Scrutiny Committee,
Nagpur-440010.
3. ~~Shri Vinod Patil,~~
~~Vice-Chairman of Caste Scrutiny Committee,~~
4. ~~Manoj Chavan,~~
~~Member Secretary of~~
~~Caste Scrutiny Committee, Nagpur.~~
5. ~~Pravin Latkar,~~
~~Member of Caste Scrutiny Committee~~
6. ~~Smt. Roshana Chavan~~
~~Member of Caste Scrutiny Committee, Nagpur.~~
7. State of Maharashtra through its
Principal Secretary, Tribal Development Department,
Government of Maharashtra,
Ministry of Tribal Development,
Mantralaya, Mumbai-400 032.
8. State of Maharashtra, through its
Principal Secretary, General Administrative Department(GAD),
Government of Maharashtra, Ministry of General Administration,
Mantralaya, Mumbai-400 032.
9. The Commissioner,
Tribal Research and Training Institute,
Pune-411 001.

Respondent
nos.3 to 6
deleted as per
Court's order
dated
09.03.2022
Sd/- Counsel
for petitioner

10. Union of India through Hon'ble Minister of State (Independent Charge) and Disciplinary Authority, Ministry of Earth Sciences, Government of India, Pruthvi Bhawan, Lodhi Road, New Delhi-110 003.
11. Joint Secretary, Ministry of Earth Sciences, Government of India, Pruthvi Bhawan, Lodhi Road, New Delhi-110 003.

..... **RESPONDENTS**

Shri Anil Mardikar, Senior Advocate with Shri Anil Dhawas, Advocate for petitioner.

Shri Amit Madiwale, Assistant Government Pleader for respondent Nos. 1, 2, 7 to 9.

Shri N.S.Deshpande, Deputy Solicitor General of India for respondent Nos. 10 and 11.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON : 06.09.2023

JUDGMENT IS PRONOUNCED ON : 20.10.2023

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

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

2. The petitioner claims to belong to 'Halba' Scheduled Tribe. On the basis of such claim the petitioner came to be appointed at the India Meteorological Department as Meteorologist-Grade-II 'Trainee' by order dated 13.09.1985. During the course of employment the petitioner was required to complete the process of verification. Since the petitioner superannuated while in service and his tribe claim was not verified, the services of the petitioner and various other employees of the Meteorology Centre came to be terminated. The order of termination was challenged in

Writ Petition No.5331 of 2018. By the order dated 18.12.2018 the order of termination was set aside and the claim of social status was referred to the Scrutiny Committee. In the meanwhile, the petitioner superannuated on 31.08.2018. The petitioner's pensionary benefits were however withheld. The petitioner therefore approached this Court by filing Writ Petition No. 2080 of 2019 and by the judgment dated 09.12.2019 the Scrutiny Committee was directed to decide his tribe status within a period of twelve weeks from the date the petitioner would submit a fresh application. Pursuant to this order the petitioner submitted his application and after conducting enquiry by the Vigilance Cell, the Scrutiny Committee by the order dated 11.03.2020 invalidated his tribe claim. Being aggrieved, the petitioner has challenged the order dated 11.03.2020 passed by the Scrutiny Committee in the present writ petition. As a result of the said order, the Ministry of Earth Sciences, Government of India, where the petitioner was serving proceeded with the departmental enquiry that was initiated by issuance of Articles of Charge dated 04.08.2018. As per the Articles of Charge it was stated that the petitioner had willfully and deliberately not got his tribe certificate verified from the Scrutiny Committee and had thus obtained employment on the basis of false/forged tribe certificate. At the relevant time the petitioner was holding the post of 'Scientist-F'. In view of the order passed by the Scrutiny Committee, it was held that the appointment of the petitioner was *void ab initio* since his tribe certificate was

invalidated. Hence penalty of withholding his monthly pension on permanent basis as well as gratuity payable to him came to be imposed upon the petitioner. By amending the writ petition this order is also under challenge.

3. Shri Anil S. Mardikar, learned Senior Advocate for the petitioner submitted that the Scrutiny Committee ignored the document dated 31.07.1959 which was an extract from the School Register of Lakshman Vithoba Nandankar - cousin brother of the petitioner. This document had been called by the Scrutiny Committee from the Municipal Corporation School and after verifying the same, it was found that the entry 'Halba' was appearing therein. The relevant records having been brought by the Head of the said School, there was no reason to doubt the same. Instead, the Scrutiny Committee gave importance to document of the year 1963 that was maintained by the Tax Department of the Nagpur Municipal Corporation that had the entry 'Koshti'. According to him, this document could not be the basis for invalidating the petitioner's tribe claim. In that regard, it was submitted that under the provisions of the Right to Information Act, 2005 the petitioner had sought information with regard to the reason for recording such entries in the revenue records. As per the reply dated 30.03.2021 the petitioner was informed by the Public Information Officer of the Office of the Joint Registrar, Stamps that under the provisions of the Indian Registration Act, 1908 as well as the Maharashtra Registration Rules, 1961, there was no

provision for recording the caste while registering any document. On this basis, it was urged that the petitioner's claim could not be disbelieved by relying upon this document. Since the relationship of the petitioner with other members of his family named in the family tree was duly established, there was no reason to discard the entry dated 31.07.1959. Placing reliance on the decision in **Writ Petition No.4157 of 2005** (*Vinayak Narhari Nandanwar vs. The Scheduled Tribes Caste Certificates Scrutiny Committee and others*) dated 23.07.2019 as well as the judgment in **Writ Petition No.2716 of 2022** (*Ashwin Rajendra Parate vs. State of Maharashtra*) decided at the Principal Seat on 24.06.2022 it was submitted that on the basis of a stray entry, the petitioner's claim could not be discarded. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Civil Appeal No.7117 of 2019** (*Priya Pramod Gajbe vs. State of Maharashtra and others*) decided on 11.07.2023. It was thus submitted that the order passed by the Scrutiny Committee was liable to be set aside.

As regards the order passed by the petitioner's employer it was submitted that the Scrutiny Committee did not record any finding that the tribe certificate submitted by the petitioner for verification was a forged document. In absence of any such finding being recorded by the Scrutiny Committee, the order passed by the Disciplinary Authority dated 28.10.2021 on the premise that the petitioner had submitted a forged tribe certificate was unsustainable. For this reason, the conclusion recorded by the

Disciplinary Authority was erroneous and that order was liable to be set aside.

4. Shri Amit Madiwale, learned Assistant Government Pleader appearing for the Scrutiny Committee supported the impugned order. According to him after due consideration of all relevant documents and after perusing the report of the Vigilance Cell, it was clear that the claim of the petitioner of belonging to 'Halba' Scheduled Tribe had been rightly discarded. The document of 1963 from the records of the Municipal Corporation clearly indicated that the petitioner and his family members belonged to 'Koshti' community and there was no explanation furnished by the petitioner with regard to the said document. The names referred in the said document when compared with the names indicated in the family tree would reveal that the petitioner and all his cousin brothers belonged to 'Koshti' community. The Scrutiny Committee after considering all relevant aspects rightly held that the claim of the petitioner was not proved. Since all relevant material was considered by the Scrutiny Committee, there was no reason to interfere with the order passed by the Scrutiny Committee.

Shri N. S. Deshpande, learned Deputy Solicitor General of India appearing for the respondent nos. 10 and 11 submitted that action in the Departmental Enquiry was justified in view of the order of invalidation. Though the charge-sheet was initially issued to the petitioner for failure to submit the validity certificate with the order passed by the Scrutiny

Committee, there was no reason to interfere with the punishment as ordered by the Disciplinary Authority. It was thus submitted that the impugned order did not deserve to be interfered with. The writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties and we have produced before the documents on record. The petitioner seeks to support his claim of belonging to 'Halba' Scheduled Tribe on the strength of the document dated 31.07.1959 which is entry No.3929 in the School Register maintained by the Nagpur Municipal Corporation School. The said document records that the son of Vithoba Lakshman Nandankar namely Lakshman Vithoba Nandankar had taken admission in the said School in First Standard on 31.07.1959. His date of birth was 13.03.1953 and that he had studied in the said School till 15.05.1964. The petitioner produced extract of this document before the Scrutiny Committee. Hence on 30.01.2020 the Scrutiny Committee called for the records of the said Municipal Corporation School for perusal. The relevant record was accordingly produced before the Scrutiny Committee on 18.02.2020 by the In-charge Head Master of Trimurti Nagar Municipal Corporation School. The members of the Scrutiny Committee noted the entry 'Halba' therein. During the said process the School Inspector, Nagpur Municipal Corporation as well as the Deputy Education Officer, Nagpur Municipal Corporation were also present. Perusal of this document from the record of the Scrutiny Committee

that was produced before us clearly indicates that against the name of the student Lakshman Vithoba Nandankar, the entry of 'Halba' was found. As per the family tree indicating the names of the petitioner's family, it is seen that said Lakshman Vithoba is the cousin brother of the petitioner herein. This relationship between them is not questioned. This document being the oldest document available, it is required to be given due weightage while considering the petitioner's tribe claim. Though the Scrutiny Committee in paragraph 13(d) has referred to this document, it has not given due weightage to the same on the premise that the petitioner did not submit any documents to indicate relationship with the person named in the said document. As stated above, in the family tree submitted by the petitioner the name of Laxman Vithoba is clearly seen and his relationship with the petitioner is not questioned. We therefore find that the Scrutiny Committee ought to have given due weightage to the oldest document that could be produced by the petitioner. In the statement of the petitioner and other family members it has been stated that it was only from the generation of the petitioner that the members of the family started pursuing higher education.

6. The other document that has been considered by the Scrutiny Committee is an extract from the property register dated 15.05.1963. The entry therein has been taken on the basis of a sale deed dated 01.04.1963. Against the name of the petitioner and his brothers, the word Koshti has

been mentioned. By deleting the name of the previous owner, the names of family members of Vithoba including the petitioner were inserted in the records. The records of this document were also summoned by the Scrutiny Committee and the same were examined on 18.02.2020. Since reference of the word Koshti was found there, the Scrutiny Committee has proceeded to accept this document as indicating the petitioner's social status. In reply to this document the petitioner stated that the word Koshti referred to the identity of persons who were locally identified on the basis of their occupation of weaving. The same did not indicate the petitioner's social status.

In this regard, we find that the document of 1963 finds place in the Property Rights Register of the Nagpur Municipal Corporation. The information supplied to the petitioner in this regard indicates that under the Indian Registration Act, 1908 as well as the Maharashtra Registration Rules, 1961, it was not mandatory to record the caste of the persons concerned while registering any document or taking entries in that regard. We further find that this document of 1963 is subsequent to the school record of the year 1959 which specifically records the social status of the petitioner as Halba. There is no reason whatsoever to ignore the document of 1959 that has been produced from the proper custody in preference to the document of 1963 which does not specifically indicate the significance of the word Koshti as to whether it indicated the social status or the profession of the persons

named therein. The importance to be given to old documents has been considered by the Hon'ble Supreme Court in *Priya Pramod Gajbe* (supra) since such documents have greater probative value. We may also refer to the decision in *Ashwin Rajendra Parate* (supra) wherein it has been held that merely because a document prior to 1950 is not produced, the claim of such person cannot be denied for that reason. The aspect of Koshti denoting weaving occupation has been considered in *Vinayak Narhari Nandanwar* (supra).

7. We therefore find that the Scrutiny Committee erred in not giving due weightage to the oldest document dated 31.07.1959 that was produced from the proper custody and which had the entry Halba. It is not the finding recorded by the Scrutiny Committee that there was any tampering with the school records or that there was any doubt with regard to the said document. The Scrutiny Committee therefore was not justified in ignoring this document without any justifiable and cogent reason. On the aspect of affinity, the legal position is now clear in view of the decision in *Maharashtra Adiwasi Thakur Jamat Swarkshan Samiti vs. State of Maharashtra and others [2023 (2) Mh. L. J. 785]*. The affinity test cannot be treated as a litmus test and the claim of a person cannot be disregarded solely on this basis. With the passage of time and advancement, it would not be justifiable to expect the old traits and customs being followed even today. We therefore find that

the petitioner's claim of belonging to Halba Scheduled Tribe ought to have been accepted by the Scrutiny Committee.

8. Coming to the order passed by the petitioner's employer, it is seen that the proceedings were initiated against the petitioner when he was in service. The charge was wilful and deliberate disobedience of office instructions in having the social status of the petitioner verified. On this premise, it was stated that the petitioner had produced a false/forged tribe certificate. In view of the order dated 11.03.2020 passed by the Scrutiny Committee, the Disciplinary Authority proceeded to hold that while seeking appointment in service, the petitioner had produced a false/forged tribe certificate. This resulted in committing grave misconduct. The appointment of the petitioner was thus held to be illegal, *void ab initio*. Since we have found that the order dated 11.03.2020 passed by the Scrutiny Committee is unsustainable and liable to be set aside, the consequential action taken by the employer vide order dated 28.10.2021 cannot survive since it is based on the absence of verification of the petitioner's claim. The said order therefore is also required to be set aside.

9. For aforesaid reasons, the following order is passed:

- (i) The order dated 11.03.2020 passed by the Scrutiny Committee is quashed and set aside. It is declared that the petitioner has proved that he belongs to 'Halba' Schedule Tribe.

- (ii) Since the order passed by the Scrutiny Committee dated 11.03.2020 has been set aside, the order dated 28.10.2021 passed by the Disciplinary Authority being the Joint Secretary, Ministry of Earth Sciences, Government of India does not survive. It is also quashed and set aside.
- (iii) The petitioner is entitled to his retiral benefits in accordance with the Rules. The same be released in favour of the petitioner within a period of eight weeks from today.
10. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.