

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

Writ Petition No.4061/2018

Ms Swati Krushnarao Hedao,
Aged 42 years, Occ.-Assistant Teacher,
Zilla Parishad School, Motha,
R/o.-Sarmaspura, Achalpur, District Amravati. ... Petitioner

VERSUS

1. The Scheduled Tribes Caste Certificate
Scrutiny Committee through its Member Secretary,
Chaprasipura, Amravati.
2. The Zilla parishad, Amravati,
through Chief Executive Officer,
Tq. District Amravati. ...Respondents

Mr. R.S. Parsodkar, Advocate for the petitioner.
Mrs. K.S. Joshi, AGP for respondent 1.
None for respondent 2.

CORAM : Rohit B Deo & M.W. Chandwani, JJ.

DATE : 10-07-2023.

JUDGMENT (Per M.W. Chandwani, J.)

The petition challenges the order dated 02-05-2018 passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati, whereby the caste claim of the petitioner as 'Halbi' (Scheduled Tribe) has been invalidated.

2. The petitioner claims that she belongs to 'Halbi' caste included in the Scheduled Tribe. The petitioner is appointed as Shikshan Sevak on 22-10-2001 in respondent 2-Zilla Parishad school. After completion of three years service as Shikshan Sevak, she has been appointed as an Assistant Teacher. Only because her caste is invalidated, she has not been granted benefits of Assistant Teacher including salary of Assistant Teacher. However, by way of indulgence of this Court, the petitioner is getting the payment of an Assistant Teacher. The Caste Certificate of the petitioner along with documents filed by the petitioner came to be referred by respondent 2-Zilla Parishad to respondent 1-Caste Scrutiny Committee for verification of caste. The Caste Scrutiny Committee by impugned order dated 02-05-2018 invalidated the Caste Certificate of the petitioner. Feeling aggrieved with the said invalidation, the present petition came to be filed.

3. We have heard learned Counsel for the petitioner as well as learned AGP Mrs. K.S. Joshi for respondent 1. Perused the record of respondent 1-Caste Scrutiny Committee.

4. A perusal of record of respondent 1-Caste Scrutiny

Committee shows that while conducting enquiry, Vigilance Cell got two pre-constitutional documents in the name of Shivram and Vatsala their caste is shown as 'Koshti'. Claiming them as great grand father and aunt of the petitioner, respectively, the Committee held that there are contra entry, the Caste Scrutiny Committee also relied on cancellation of validation of the Caste Certificate of real brother of petitioner after the decision in case of **State of Maharashtra vs Milind Katwaria, reported in 2001 Mh.L.J. 1.**

5. We have perused the order dated 02-05-2018 passed by the Caste Scrutiny Committee. The Caste Scrutiny Committee considered almost 18 documents filed by the petitioner of herself, his father and forefather. In all these documents, their caste is shown as 'Halbi'. More particularly, the pre-constitutional documents i.e the School Leaving certificate dated 01-04-1939 of uncle of the petitioner by name Janardhan Mahadeo, School Leaving Certificate of Uttam Mahadeo Hedao the uncle of the petitioner dated 13-12-1935, School Leaving Certificate of another uncle namely Ganesh Mahadeo dated 13-04-1945 and the Birth Entry Extract of Mahadeo Shivramji Hedao, the great grandfather of the petitioner dated 16-12-1938. All these documents show the

caste of the petitioner as 'Halbi'. The documents which the Vigilance Cell got while conducting the enquiry, do not have details except the name Shivram and Vatsala. There is no other details were available with the Caste Scrutiny Committee to connect the said Shivram, as great grandfather and Vatsala as aunt of the petitioner in whose documents the caste 'Koshti' is mentioned.

6. The learned Counsel for the petitioner submits that the documents relied by the Caste Scrutiny Committee of Shivram having entry of caste 'Koshti' does not show the name of father of Shivram. According to him, said Shivram is totally different person whereas, the certificate produced by the petitioner of her great grandfather namely Shivram Mahadeo, wherein the caste of Shivram Mahadeo is shown as 'Halbi'. It is also submitted on behalf of learned Counsel for the petitioner that while replying to the vigilance report, the petitioner has specifically mentioned that the said Shivram and Vatsala have no relations with the petitioner. The Caste Scrutiny Committee unnecessary connected the relation of the said Shivram and Vastala, in whose certificate the caste 'Koshti' is mentioned. Her real aunt is Ambi Mahadeo. Therefore, the

Vigilance report ought to have been discarded by the Caste Scrutiny Committee in view of judgment of Ku. Madhuri Patil vs Additional Commissioner, reported in 1994 SCC (6) 241.

7. We find support in the argument of learned Counsel for the petitioner that since no further details except the names 'Shivram' and 'Vatsala' and their caste as 'Koshti' in the documents relied by the Caste Scrutiny Committee, are found and these persons are different, particularly, in view of the number of pre-constitutional documents of Shivram Mahadeo showing the caste 'Halbi' and coupled with the specific contention in the reply to the Vigilance Cell that Vatsala is not aunt of the petitioner. We find that having no further details, except the name of 'Shivram' and 'Vatsala', the Caste Scrutiny Committee unnecessarily connected these persons as relatives of the petitioner. Therefore, this finding of the Caste Scrutiny Committee does not sustain.

8. Another reason of the Caste Scrutiny Committee is that certificate in respect of 'Halba Koshti' issued to the real brother of petitioner is invalidated in the wake of the decision of the Constitution Bench in case of Milind Katwaria (supra). We find

that since prior to the decision of the Constitution Bench of the Hon'ble Supreme Court there are various decisions of the Caste Scrutiny Committee, as well as of, this Court whereby caste certificate of Scheduled Tribe, even in cases of 'Halba Koshti' treating the 'Koshti' as sub-caste of 'Halba' are granted. Since, at that time, the certificate of validity to caste 'Halba Koshti' also as a Scheduled Tribe caste was being granted and therefore the brother of the petitioner might not have given impetus on the caste claim "Halba", since it made no difference for him either be called as "Halba" or "Halba Koshti" as in any case she got certificate of Scheduled Tribe. That cannot be treated as hurdle in this case, particularly, when there are pre-constitutional documents of the uncles and great grandfather of the petitioner showing their caste as 'Halba'. Needless to mention that pre-constitutional documents have more probative value. The Caste Scrutiny Committee did not consider all these aspects and erroneously invalidated the Caste claim of the petitioner. Therefore, the order of invalidation passed by the Caste Scrutiny Committee is required to be set aside.

9. We declare that the petitioner belongs to 'Halba' caste. The Caste Scrutiny Committee is directed to issue the Caste

Validity Certificate to the petitioner by showing her caste as 'Halba' covered under the Scheduled Tribe within two months from the date of this order.

10. In view of above, the petition is allowed.

Judge

Judge

Deshmukh