



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

WRIT PETITION NO. 5164 OF 2022

Vinayak Marotrao Mahajan,

Aged about 64 years, Occ. Retired,
R/o Plot No. 101, Shivneri Apartment,
86, Kanfode Nagar, Ring Road,
Near Kalpvruksha Hospital,
Nagpur-440015.

.... **PETITIONER**

// VERSUS //

- 1) **Schedule Tribe Caste Certificate
Scrutiny Committee,**
Through its through its Vice-Chairman,
Adiwasi Vikas Bhavan,
Giripeth, Nagpur-440010.
- 2) **Maharashtra Jeevan Pradhikaran,**
through its Member/Secretary,
Express Tower, 4th Floor,
Nariman Point, Mumbai-400021
- 3) **Chief Account Officer,**
Add: Cidco Bhavan (South Wing),
3rd floor, Belapur,
New Mumbai -400614.

.... **RESPONDENTS**

Mr. A. A. Dhawas, Advocate for Petitioner.
Ms. K. H. Bhondge, Assistant Government Pleader for
Respondent No.1.
Mr. D. V. Mahajan, Advocate for Respondent Nos.2 & 3.

**CORAM : MRS. M. S. JAWALKAR AND
RAJ D. WAKODE, JJ.**

DATE ON RESERVING THE JUDGMENT : 06.10.2025.
DATE ON PRONOUNCING THE JUDGMENT : 12.11.2025

JUDGMENT : (Per – M. S. JAWALKAR, J.)

1. Heard. **Rule.** Rule is made returnable forthwith. Matter is taken up for final hearing at the stage of admission by consent of the parties and at the request of parties.

2. The Petitioner by this petition is challenging the order dated 29.12.2017 passed by the Respondent No. 1 Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur thereby invalidating the caste claim of the Petitioner to the 'Halba' Scheduled Tribe and further action of Respondent No. 2 of withholding the pension of the Petitioner.

3. It is contended that the Petitioner was appointed on 21.08.1981 as Junior Engineer (Mechanical) in the erstwhile Maharashtra Water Supply and Sewerage Board, now Maharashtra Jeevan Pradhikaran (Respondent No.2). The Petitioner has completed his education of Diploma in Mechanical Engineer from Government Polytechnic, Khamgaon and Government Polytechnic, Nagpur. The Petitioner was promoted as Deputy Engineer vide order dt. 16.05.1994. During the course of his service nowhere is quoted to be appointed or promoted under the reserved category i.e. Scheduled Tribe. Despite such a situation, by a letter dated 11.05.2012, the

Respondent No.2 called upon the Petitioner to submit his caste certificate and application for verification. The Petitioner was recruited in Maharashtra Jeevan Pradhikar purely on the basis of his diploma in Mechanical Engineering, however, just to obey the order of the department vide a letter dated 08.06.2012, he has submitted his proposal to Respondent No.1 along with documents.

4. In support of his tribe claim, the Petitioner submitted following documents which are prior to the year 1976:

Sr. No.	Description of Document	Caste/ Tribe	Date
1	School Leaving extract of Vinayak Maroti Mahajan (Primary School)	Halba	08.07.1963
2	School Leaving extract of Vinayak Maroti Mahajan (Secondary School)	Halba	02.07.1971
3	School Leaving extract of Prabhakar Marotrao Mahajan (Secondary School)	Koshti	26.06.1973

5. In the meanwhile, the Petitioner retired from his services on superannuation w.e.f. 31.12.2014 on completion of 58 years of age. Accordingly, the pension amount of the Petitioner was sanctioned and he was being paid the pension in his bank account. However, the Respondent No.1 by its order dated 29.12.2017, invalidated the tribe claim of the Petitioner and cancelled the caste certificate dated 07.07.1977, which is challenged in this petition. Meanwhile, the Respondent No.2 stopped the pension of the

Petitioner vide communication dated 15.01.2019, which is also challenged in this petition.

6. It is the contention of the Petitioner that he was recruited in the services of the Respondent No.2 solely on the basis of his diploma in Mechanical Engineering and not on the basis of his caste, therefore the decision of Respondent No. 2 in abruptly withholding the pension of the Petitioner, is arbitrary and illegal. The Petitioner further contended by amendment that during the pendency of this petition, the Government of Maharashtra has taken a decision in respect of grant of pensionary benefits to the employees, whose caste certificate have been invalidated and posted on super numerical post and their continuation of services till the retirement vide Government Resolution dated 14.12.2022. The Petitioner is also entitled to get the benefits of the said decision.

7. The learned Counsel for Petitioner relied on the following Citations:

- (i) ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.***, reported in ***(2013) 12 SCC 210***;
- (ii) ***Gajanan Marotrao Nimje & Ors. Vs. Reserve Bank of India & Ors.***, reported in ***(2019) 12 SCC 639***;
- (iii) ***Writ Petition No. 2397/2021, Ashok Natthuppa Shelgenwar Vs. Accountant General (A & E), II (Maharashtra), Nagpur & Ors.***, dated 27.07.2023;

- (iv) ***Writ Petition No. 248/2020, Shamrao Shrawanji Nikhare (Dead) through his legal heirs Vs. Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur & Anr., dated 29.09.2023 and***
- (v) ***Writ Petition No.1917/2018, Ku. Mangala D/o Aagmaiyya Tallewar Vs. The Scheduled Tribes Caste Scrutiny Committee, Nagpur & Anr., dated 15.12.2023.***

8. As against this, the Respondent No. 1 Committee has relied on the following documents procured by the Vigilance Cell in its inquiry, which are adverse to the claim of the Petitioner and belonging to pre-constitutional period:

Sr. No.	Document Type	Name	Relationship with the petitioner	Caste	Date
1	School document	Prabhakar Maroti Mahajan	Real brother	Koshti	1962
2	School leaving certificate	Prabhakar Maroti Mahajan	Real brother	Koshti	26.06.1973

9. The Respondent No. 1 Committee contended that the oldest documents submitted by the Petitioner were single entry documents and no corroborative documents were submitted by the Petitioner. Also, there is no decisive social, ethnic, linguistic, or other affinities between Halba Koshti sub-caste of Koshti Caste and Halba tribe in Maharashtra. The Petitioner failed to prove his caste that he

belongs to 'Halba' Schedule Tribe. The order passed by the Caste Scrutiny Committee is legal and proper therefore, the Petitioner is not entitled for any relief as claimed in the petition.

10. Heard both the parties at length. Perused the record of the Caste Scrutiny Committee with the assistance of Assistant Government Pleader and considered the citations relied on by the learned Counsel for the Petitioner.

11. For the sake of convenience, family tree is reproduced as under :



12. The petitioner in the present petition is challenging the order dated 29/12/2017, passed by respondent No.1-Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur invalidating his caste claim of Halba Scheduled Tribe. The petitioner was appointed on 21/08/1981 as a Junior Engineer in erstwhile Maharashtra Water Supply and Sewerage Board. On perusal of the appointment order,

there is no reference of any appointment on reserved category. He further promoted to the post of Deputy Engineer and accordingly, he took over the charge. In that order also there is no reference of any promotion on reserved post. In spite of this position, the respondents-Department by letter dated 11/05/2012, called upon the petitioner to submit original caste certificate and application for verification. The petitioner stood retired on 31/12/2014 on superannuation on completion of age of 58 years. Accordingly his pension was computed, gratuity payment order was passed, pension amount was sanctioned and granted and he was being paid with monthly pension. The respondent No.1 without taking into consideration the documents of the petitioner and without giving proper opportunity to produce all the best possible evidence before the Scrutiny Committee, the Committee invalidated the caste claim and also caste certificate came to be invalidated. The petitioner issued letters on 09/08/2018 and 22/09/2018 to the respondent No.2 requesting to start pension and also pointed out his grievance that all of sudden his pension has been withheld without any intimation. It is a matter of record, that during the pendency of this petition, GR dated 14/12/2022 came to be issued, wherein the Government of Maharashtra has taken a decision in respect of grant of pensionary benefits to the employees whose caste certificate have been invalidated and who are posted on

supernumerary post, they are continued in service till the retirement. The petitioner is claiming that if the person, who is holding a supernumerary post is entitled for the pension, the petitioner is also entitled for the pension. In fact, there are judgments, wherein it is held that if there is no adjudication of caste claim during the period of service of the employee, his pension cannot be withheld subsequently on rejection of his caste claim. Since 31/12/2014, the petitioner is getting pension and all of a sudden his pension was withheld by the respondent Nos.2 and 3, which is not justifiable. The learned counsel for the petitioner placed reliance on **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. (supra)**, wherein the Hon'ble Apex Court held in para-17 as under:

“17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different.”

13. The learned counsel for the petitioner also placed reliance on the judgment in **Writ Petition No.2397 of 2021 (Ashok**

Natthuppa Shelgenwar v. Accountant General (A & E) and othersm

wherein this Court in paras-5 and 6 held as under:

“5. Having heard the learned counsel for the parties and having perused the documents on record we find that though the petitioner's caste claim was referred to the Scrutiny Committee while he was in service, the same was adjudicated only on 2.11.2020 which is after his retirement on 31.10.2020. In other words, till the date of petitioner's superannuation his claim has not been invalidated. There is no order passed by any authority depriving the petitioner of his retiral benefits. As held by the Hon'ble Supreme Court in the case of *Jitendra Kumar Srivastava and another* (supra) withholding of pensionary benefits has to be supported by a statutory order in that regard. Similar view has been taken in *R Sundaram* (supra). In absence of any such order the petitioner is not liable to be deprived of his pensionary benefits.

6. We find from reading of paras 72 and 73 of the decision in *Jagdish Balaram Bahira and others* (supra) that while considering the case of a similarly situated person it was noted that the claim of belonging to Mahadeo Koli was held to be not admissible. The payment of retiral benefits already effected was not interfered with. We find that in absence of any statutory adjudication while the petitioner was in service, he cannot be deprived of his retiral benefits.”

14. The learned counsel also relied on judgment in ***Writ Petition No.248/2020 (Shamrao Shrawanji Nikhare (dead) through his legal heirs (i) Mrs.Meena wd/o Shamrao Nikhare and others v. Scheduled Tribe Caste Certificate Scrutiny Committee and one another)***, wherein this Court held in para-6 and 7 as under:

“6. In other words, till the date of the deceased petitioner's superannuation, his claim has not been invalidated. There is no order passed by any authority depriving the petitioner of his retiral benefits, as held by the Hon'ble Apex Court in the case of ***Jitendra Kumar Srivastava and another (supra)*** withholding of pensionary benefits has to be supported by a statutory order in that regard. Similar view has been taken in ***R Sundarama (supra)***. In absence of any such order, the legal heirs of the deceased employee are not liable to be deprived of the pensionary benefits.

7. We find from paragraphs Nos.72 and 73 of the decision in ***Jagdish Balaram Bahira and others (supra)*** that while considering the case of similarly situated persons it was noted that the claim of belonging to caste *Mahadeo Koli* was held to be not admissible. The payment of retiral benefits already effected was not interfered with. We find that in absence of any statutory adjudication while the deceased petitioner was in service, their legal heirs cannot be deprived of his retiral benefits.”

15. In view of all these judgments, one legal principle emerges that if there is no adjudication on the caste claim of the petitioner during his service tenure, it cannot withhold the pension of the employee-petitioner. This Court in ***Writ Petition No.1917 of 2018*** relying on the judgments of ***Shamrao Shravanji Nikhare (dead) through Legal Heirs v. Scheduled Tribe Caste Certificate Scrutiny Committee and anr.*** (supra) and ***Ashok Nathuppa Shelgewar v. Accountant General (A & E)*** (supra) held that in view of the GR dated 14/12/2022, the government employee shall not be deprived

of retiral benefits in view of the invalidation of the caste claim. In our considered opinion, there was no order of appointment against the reserved post or promotion on the reserved post. As such, in fact, there is no necessity to forward caste claim for verification by the employer-respondents. Thus, there was no necessity to refer the caste certificate of the petitioner for validation before the Scrutiny Committee. Even if, it is presumed that he claimed to be Halba, however, his appointment is not against the post reserved for Scheduled Tribe. As such, we are of the considered opinion that the reference of the certificate is itself illegal. Even if the documents produced by the petitioner and procured by the Vigilance Cell are perused, there are Halba entries of 1963, Koshti entry of 1962 again Halba entry of 1977. Thus, mixed entries of Halba and Koshti are there in the documents, some entries of Halba are prior to cut-off date, therefore, they are also required to be considered while deciding the validity of certificate. It appears that the Caste Scrutiny Committee relied on the judgment of **Shilpa Vishnu Thakur v. State of Maharashtra 2009 (3) Mh.L.J. 995**, however, it is observed by the Hon'ble Apex Court that the said judgment is impliedly overruled by the judgment of **Jaywant Dilip Pawar v. State of Maharashtra & oths., 2018 (5) ALL MR 975 (S.C.) [Civil appeal No.2336 of 2011]**. As such, the impugned order passed by the Scrutiny Committee as well as the

respondents-Jivan Pradhikaran are required to be quashed and set aside being illegal, in view of the judgments relied on by the petitioner. It is settled position of law that if there is no adjudication of caste certificate during the period of service of the petitioner, on that ground his services can neither be terminated nor pension benefits can be withheld.

16. As far as the old documents are concerned, the documents placed on record by the Petitioner comprised of one school leaving extract pertaining to primary school of the Petitioner dating back to 08.07.1963. Another school leaving extract pertaining to secondary school of the petitioner dated 02.07.1971. Both these documents show the caste of the Petitioner as 'Halba', however, the school leaving extract (secondary school) of the brother of the petitioner Prabhakar Maroti Mahajan dated 26.06.1963 shows the caste as Koshti is also submitted. On the other hand, the respondent No.1-Committee has procured two adverse documents showing the caste as Koshti pertaining to one of which is already placed on record by the Petitioner and another document pertains to a school record dating back to 1962. Considering the documents placed on record as well as procured by the respondent No.1-Committee, it is observed that they are of the same period and hence there is no reason to

discard them. It would be beneficial to refer the Judgment in **Priya Pravin Parate Vs. Scheduled Tribes Caste Certificate Scrutiny Committee, Nagpur & Ors.**, reported in **2013(1) Mh.L.J. 180**, wherein the Hon'ble Apex Court held as under :

“10. Insofar as the reliance on some of the entries pertaining to petitioners relatives from paternal side showing caste to be 'Koshti' on which Mr. Deshpande, learned Counsel relies, are concerned, perusal of the said document would reveal that though the caste of the said person is written as Koshti, the profession is also shown as weaving. As can be seen from the Gazetteer of Amravati District, that Halbi's in erstwhile Ellichpur and Anjangaon Surji in Daryapur Taluq in Amravati District were also engaged in the profession of weaving. It is common knowledge that persons engaged in the profession of weaving were called as "Koshti". A possibility cannot be ruled out that due to this, said entries might have recorded. It is also relevant to refer to some portion from the authority of R.V. Russell on Tribes and Castes of the Central Provinces of India, published in 1916, wherein while dealing with the Halba Tribe, it has been stated that "Some of these soldiers may have migrated west and taken service under the Gond Kings of Chanda, and their descendants may now be represented by the Bhandara Zamindars, who, however, if this theory be correct, have entirely forgotten their origin. Others took up weaving and have become amalgamated with the Koshti caste in Bhandara and Berar.”

Resultant to above observation, the order of the Scrutiny Committee does not sustain. Hence, we pass the following order.

17. The petition is allowed.

18. The order dated 29/12/2017 passed in Case No.सआ/अजप्रतस/नाग/III-३७६/३१/१२-१३ by the respondent No.1-Caste Scrutiny Committee is hereby quashed and set aside so also the impugned communication dated 15/01/2019 of respondent No.3 is hereby quashed and set aside.

19. It is held and declared that the petitioner has duly established that he belongs to 'Halba' Scheduled Tribe.

20. The respondent No.2-Maharashtra Jeevan Pradhikaran and respondent No.3-Chief Account Officer are hereby directed to release all the pensionary benefits if remained to be paid, including gratuity and restart the pension with immediate effect.

21. Rule is made absolute in the above terms. No costs.

(RAJ D. WAKODE, J.)

(SMT. M.S. JAWALKAR, J.)