



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

WRIT PETITION NO. 4469 OF 2021

Ku. Jyoti d/o. Tikadas Ninawe
(after marriage, St. Jyoti Manoj Hedau),
Aged 49 years, Occ. Service
as Assistant Teacher,
R/o. 565, Nehru Nagar, Nagpur.

.... **PETITIONER**

----- **VERSUS** -----

- 1) The Scheduled Tribe Caste Certificate
Scrutiny Committee, Complex Area,
Gadchiroli, through its Member Secretary,
Tq. District Gadchiroli.
- 2) Vidarbha Buniyadi High School and
Junior College, Om Nagar, Nagpur,
through its Headmistress.

.... **RESPONDENTS**

Mr. R. S. Parsodkar, Advocate for Petitioner.
Mr. S. M. Ghodeswar, Assistant Government Pleader for Respondent
No.1/State.

CORAM : **SUNIL B. SHUKRE AND**
MRS.VRUSHALI V. JOSHI, JJ.
RESERVED ON : **08.02.2023**
PRONOUNCED ON : **10.02.2023.**

ORAL JUDGMENT : (PER MRS.VRUSHALI V. JOSHI, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

3. The petitioner has invoked the extraordinary writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India seeking to assail the order dated 14.09.2021 passed by the Scrutiny Committee, Gadchiroli whereby her caste claim of Halba Scheduled Tribe has been invalidated.

4. The petitioner was appointed as an Assistant Teacher in the respondent No.2 – Junior College on 25.09.1996. The caste claim referred to the respondent No.1 – Caste Scrutiny Committee was invalidated. Against the order of the invalidation of her caste claim, the petitioner has filed Writ Petition No.2075/2016 and this Court set aside the order of invalidation and remanded the matter back to the Caste Scrutiny Committee for taking decision afresh on merit in accordance with law.

5. The Police Vigilance Cell conducted the police enquiry and in the said Police Vigilance Cell report, it has been clearly observed that father of the petitioner is recorded as Halba in 1946, however, a person who is not connected namely Tulshiram is shown as uncle and who is shown as Koshti whereas uncle of the petitioner is Tulsidas and not Tulshiram. Similarly, Vasudeo Gyanidas is shown as Halba on 22.12.1928 and the entry of Kamal Rushi has been wrongly shown as Koshti, whereas the real brother of Kamal namely Mangaldas Rushi is recorded as Halba. The petitioner gave her detailed reply to police

vigilance cell report pointing out that the vigilance cell report is contrary to the judgment of Hon'ble Apex Court in **Madhuri Patil's** case. Thereafter, rejecting the reply, the caste claim was invalidated on 14.09.2021.

6. Shri Parsodkar, learned Counsel for the petitioner urged that the impugned order of the Caste Scrutiny Committee is absolutely illegal and contrary to the Judgment of the Hon'ble Apex Court in Anand Katole (2012) 1 SCC 113. The Caste Scrutiny Committee has invalidated the caste claim on the ground that one Tulshiram is recorded as Koshti and is shown as uncle of the petitioner whereas Tulshiram is not in relation to the petitioner and he is not uncle of the petitioner. Tulsidas is the uncle of the petitioner and the document, which is filed on record is showing his caste as Halba Scheduled Tribe on 01.04.1948. Said entry is of pre-independence, which is undisputed. The Committee did not consider the document of grandfather Namdeo Mangru who is recorded as Halba Scheduled Tribe on 30.03.1908. The said document is sidetracked by the Caste Scrutiny Committee. Non consideration of these vital documents, illegally has resulted in invalidating the caste claim.

7. The Caste Scrutiny Committee has invalidated the claim on the ground of false recording as in the statement of Tikadas he accepted that Tulshiram is son of Namdeo and therefore, invalidated

the caste claim. It has been clearly observed in the statement of Tikadas that Tulshidas is son of Namdeo and not Tulshiram and merely because of one stranger Tulshiram is shown in serial No.4077 in Dakhal Kharij Register as Koshti, the said entry is foisted on the petitioner resulting in invalidation of the caste claim of the petitioner. The Caste Scrutiny Committee cannot make a stranger as uncle and reach the conclusion that a stranger is uncle and he is Koshti but not Halba. The pre-independence documents are not considered by the Caste Scrutiny committee which has highest probative value and only on the ground of a stray entry of Koshti, passed the impugned order of invalidation of the caste claim of the petitioner. Therefore, the impugned order passed by the respondent No.1 – Committee is liable to be quashed and set aside.

8. The learned Counsel for the petitioner placed reliance on the judgment of ***Prakash Deore Vs. STCC, Nashik*** reported in (2019) 5 MhLJ 228 and also relied on the judgment of the Hon'ble Apex Court in ***Anand Katole Vs. Committee for Scrutiny and Verification of Tribe Claims and Others*** reported in (2012) 1 SCC 113 wherein the Hon'ble Apex Court has clearly held that pre-independence document which has highest probative value was wrongly ignored by the Caste Scrutiny Committee in deciding the caste claim on the basis of affinity test which is not litmus test. The petitioner possessing any pre-independence document having highest probative value is entitled for

caste validity. Merely because there are some stray entries of Koshti found in other record, the tribe claim of the petitioner whose ancestrals are recorded as Halba Scheduled Tribes cannot said to be weakened. Learned Counsel has also placed reliance on the judgment of the Bombay High Court in the case of **Priya Parate**, in which it is held that some entry of Koshti should not be the ground for invalidation when the entries of relative as Halba are duly recorded and therefore, the order of the Caste Scrutiny Committee is liable to be quashed and set aside. This case applies to present case here.

9. The respondent No.1 has filed its reply and has supported to the order passed by the Caste Scrutiny Committee. The learned Assistant Government Pleader has stated that the petitioner has submitted eight documents in support of her caste claim. One of the documents submitted by the petitioner was of her father's certificate in the name of Tikadas Namdev Nanave of 1946 where the caste is mentioned as Koshti. It appears from the record that though the Caste Scrutiny Committee has admitted the documents of 1928 the document of Kotwal Panji of Namdev Mangru mentioned the caste as Halba. The documents which are filed by the petitioner are conceded by the respondents as mentioning the caste as Halba but has rejected the claim, on the report of the police vigilance cell when the vigilance cell has conducted the home visit and during the enquiry some of the entries are found as Koshti and on the basis of said report the caste

claim of the petitioner was invalidated. The respondent has also stated that when the petitioner was called, the show cause notice was issued on the basis of the vigilance cell report and the petitioner has submitted her reply. The reply is not considered stating that the submission of the petitioner as the information provided her was based on bookish knowledge and stated that the petitioner has not come with clean hand either before this Court or before the Scrutiny Committee and hence, prayed to reject the petition.

10. We have considered the arguments averred by both the parties and the documents filed on record. The documents which the petitioner has filed are of pre-independence period. The document which shows the date of birth of the father is of 21.12.1946 mentions the caste as Halba Scheduled Tribe. The Birth Register maintained at Talodi, the birth entry of the father of the petitioner Tikadas also shows the caste as Halba. The School Leaving Certificate of grandfather Namdeo Mangru is of dated 30.03.1908 which also mentioned the caste as Halba. The two documents School Leaving Certificates of School Sirsi in respect of the two real brother of petitioner's father Tulsidas and Gyanidas of the year 1948 and 1928 respectively, the documents do not mention the dates of admission in the School and the reason for leaving the School, hence, cannot be considered. But, the documents of grandfather and great grandfather are of Halba caste. Moreover, in its reply, the Scrutiny Committee has not denied that the

documents filed by the petitioner mention the caste Halba, but it states that they were rejected for some reasons which reasons, in our opinion, are not convincing. Though the Scrutiny Committee has considered the documents filed by the petitioner which mention the caste as Halba, it has rejected the caste claim for no valid reason. The sum and substance of the entire material on record is that the entry in the name of great grandfather has great probative value and is sufficient to show that the petitioner belongs to Halba Scheduled Tribe. Therefore, the order passed by the Caste Scrutiny Committee is illegal, illogical and liable to be set aside. Hence the writ petition deserves to be allowed.

11. In the result, we proceed to pass the following order :

- i. The writ petition is allowed.
- ii. The order dated 14.09.2021 passed by the Caste Scrutiny Committee is hereby set aside.
- iii. It is declared that the petitioner namely Ku. Jyoti d/o. Tikadas Ninawe belongs to Halba Scheduled Tribe.
- iv. The Caste Scrutiny Committee shall issue validity certificate to the petitioner within a period of six weeks from receipt of the copy of this judgment.

12. Rule is made absolute in the aforesaid terms. No orders as to costs.

(MRS.VRUSHALI V. JOSHI, JJ., J.)

(SUNIL B. SHUKRE J.)

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