

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.6050/2023

Shailesh s/o Onkarrao Bhagwat,
Aged about 39 years, Occ.-Typist cum Computer Clerk,
Mumbai Port Trust, R/o. Sarmaspura,
Tah. Achalpur, District Amravati.

.... Petitioner.

Versus

1. The State of Maharashtra
through its Secretary,
Tribal Development Department, Mantralaya, Mumbai-32.
 2. The Commissioner, Tribal Research and Training Institute,
Maharashtra State, 28, Queens Park, Pune-440001.
 3. The Scheduled Tribe Caste Certificate Scrutiny Committee,
Amravati, through its Chairman/Member Secretary,
Irwin Chowk, Amravati.
 4. The Chairperson,
Mumbai Port Authority, Port House, 2nd Floor,
S.V. Marg, Ballard Estate, Mumbai-400001.
 5. The Secretary,
Mumbai Port Authority, General Administration Department,
Port House, 2nd Floor, S.V. Marg, Ballard Estate,
Mumbai-400001.
- Respondents.

Mr. R.N. Ghuge, Advocate for the petitioner.
Mr. N.R. Rode, AGP for the respondent nos.1 to 3.
Mr. Rohit Joshi, Mr. Amit Meharia, Ms. Parimata Banarjee, Mr. S. Sawant i/b Meharia
and Company for the respondent nos.4 and 5.

CORAM : A.S. Chandurkar & Abhay J. Mantri, JJ
DATE : 03-11-2023.

J u d g m e n t (Per Abhay J. Mantri, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. The petitioner has challenged the order dated 18-08-2023, passed by the respondent no.3/Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati (for short, the '*Scrutiny Committee*'), thereby invalidating the claim of the petitioner belonging to "*Halbi*" (Scheduled Tribe)" as well as the order dated 04-09-2023, issued by the respondent no.5 in pursuance of the invalidation of the validity certificate.

3. The petitioner submits that he belongs to '*Halbi*' (Scheduled Tribe)' and accordingly his name has been entered in the documents. On 30-06-1997, a Competent Authority i.e. Sub-Divisional Officer, Achalpur, District Amravati issued a caste certificate to the petitioner belonging to '*Halbi*' (Scheduled Tribe). On 30-12-2006, the petitioner was appointed to the post of Typist-cum-Computer Clerk in the Mumbai Port Trust. In the month of January 2007, he joined the service and was confirmed in the service. After the appointment of the petitioner, his caste certificate was forwarded to respondent no.3-Scrutiny Committee for verification of his caste claim and validation of the caste certificate. In the meantime, in the year 2017, the petitioner was

promoted to Junior Assistant and worked in the said post for two years. In the year 2019, he was reverted for want of a caste validity certificate.

4. During the enquiry, the Vigilance Cell submitted its report on 14-02-2023 before the Scrutiny Committee. In pursuance of the said report, a show cause notice was issued to the petitioner on 22-02-2023 calling upon him to justify his claim and also explain the documents dated 11-11-1945 and 18-12-1946 in respect of one Shankar Januji and Ukarda Januji. After verification of the documents, the Scrutiny Committee vide its order dated 18-08-2023, had invalidated the claim of the petitioner mainly by relying on some stray entries in two documents as 'Koshti', in respect of the caste of one Shankar and Ukarda s/o Januji alleged to be the relatives of the petitioner from his paternal side. In pursuance of the said order, respondent nos. 4 and 5 had terminated the services of the petitioner as 'Typist-cum-Computer Clerk' vide order dated 04-09-2023 without even issuing a show cause notice or giving any opportunity of hearing

to him. Being aggrieved by the said order, the petitioner has preferred this petition.

5. The learned Counsel for the petitioner vehemently contended that the rejection of the claim of the petitioner as 'Halbi' schedule tribe only on the ground that the petitioner has failed to prove the affinity test as well as wrongly relied upon the documents of one Shankar and Ukarda with whom the petitioner has no concern. They were not relatives of the petitioner. Therefore, respondent no.3 erred in rejecting the claim of the petitioner. It is further canvassed that the petitioner has produced voluminous documents from his paternal side prior to pre-independence showing the caste of his great-grandfather and grandfather to be 'Halbi'/'Halba', however, the Scrutiny Committee ignored the same and by erroneously applying the affinity test, his claim has been invalidated. Also, the Scrutiny Committee failed to consider the other voluminous documents produced on record in its proper perspective. Therefore, the passing of the order by the Scrutiny Committee is illegal and bad in law. The said order is not sustainable in the eyes of the law.

Hence, he has prayed for setting aside the same. During the argument, he has taken us through the documents on record.

6. *Per contra*, the learned Counsel for the respondents submitted that passing of the order by the Scrutiny Committee is just legal and proper and no interference is required in it. He further submitted that during the enquiry, Vigilance Cell noticed that one Shankar and Ukarda were the relatives of the petitioner, however, the petitioner concealed the said fact from the Scrutiny Committee. During the enquiry, it was revealed to them, that their caste has been mentioned as a '*Koshti*'. The said documents are of the years 11-11-1945 and 18-12-1946 and therefore the rejection of the caste certificate by the Scrutiny Committee is just and proper.

7. Having heard and perused the record and proceedings, it can be seen that the petitioner has relied upon the documents of his grandfather namely Motiram for the year December 1932 and the documents pertain to his great-grandfather Kisan Januji for the years 14-09-1937, 09-07-1941 and other documents along with family tree. All those

documents mentioned above are from the pre-constitutional era which clearly goes to show that the petitioner's grandfather and great-grandfather belong to the '*Halbi*' Schedule Tribe. Moreover, those documents are prior to 11-11-1945. However, the Scrutiny Committee has not considered those documents in its proper perspective and ignored them.

8. It is pertinent to note, that these documents have been verified by the Vigilance Cell. However, they have not disputed those documents. Furthermore, it is nobody's case that the aforesaid documents are either fraudulent or fabricated. *Per contra*, in the report of the Vigilance Cell, the Scrutiny Committee has not doubted the veracity and genuineness of these documents. In view of the documents of the pre-constitutional era, which according to the judgment of the Hon'ble Apex Court, have a greater probative value, and therefore the claim of the petitioner could not have been rejected on the said ground. Thus, it can be said that on the basis of pre-constitutional documents, having the entry of caste '*Halba*'/'*Halbi*' (Scheduled Tribe), the

claim made by the petitioner on the basis of documentary material stands sustained.

9. Insofar as the contention of the Vigilance Cell and the Scrutiny Committee in respect of one Shankar and Ukarda were the blood relatives of the petitioner and their castes have been shown as 'Koshti' and the said fact was suppressed by the petitioner. It appears, that the petitioner in its petition in paragraphs 8 and 11 categorically averred that Shankar Januji and Ukarda Januji who were shown to be the blood relatives of the petitioner were incorrect. They were not his relatives. The said averment was neither denied nor disputed by the Scrutiny Committee. Besides that, the Scrutiny Committee failed to consider the existence of 4 to 5 crucial documents prior to the documents about Shankar and Ukarda in which the entries of their caste were shown as 'Koshti'. Assuming for the sake of argument that they are the relatives of the petitioner, however, merely because some stray entries as '*Koshti*' have been recorded in respect of the caste of them could not falsify the other voluminous documentary evidence of pre-constitutional era

which clearly certifies the petitioner's great-grandfather and grandfather belong to 'Halbi' (Scheduled Tribe). The Scrutiny Committee could not have lightly brushed aside the said documents without any reason.

10. As far as the aspect of the affinity test is concerned, the said issue has now been settled by the Larger Bench of the Hon'ble Apex Court in the case of **Maharashtra Adiwasi Thakur Jamat Sanrakshan Samiti Vs. State of Maharashtra and others** reported in **AIR 2023 SC 1657**, wherein it has been held that “*the affinity test cannot be treated as a litmus test and cannot be the only basis for rejecting such a claim.*” Therefore also, the finding given by the Scrutiny Committee is not sustainable in the eyes of law.

11. Besides, the Scrutiny Committee vide show cause notice dated 22-02-2023 called upon the petitioner to explain about the documents pertaining to Shankar and Ukarda. In response, the petitioner replied to the said notice on 08-03-2023, wherein he categorically stated that he has no concerns with Shankar and Ukarda and that they were/are not in his blood

relations. However, while considering the said fact, the Scrutiny Committee has not given any findings on the said reply nor made any discussion about the same as to how the explanation given by the petitioner is incorrect. Therefore, in our view, the Scrutiny Committee has grossly erred in rejecting the caste claim of the petitioner.

Per contra, on perusal of the Vigilance Cell report and considering the overall material on record, it reveals that the petitioner is relying on the voluminous documentary evidence of his grandfather and great-grandfather of the pre-constitutional era, wherein the caste has been recorded as 'Halbi/Halba'(Scheduled Tribe). But the Scrutiny Committee has given undue importance to the documents in the names of Shankar and Ukarda which were of the year 11-11-1945 and thereafter erred in discarding the other voluminous documents produced by the petitioner on record. In fact, those documents have greater probative value than those two documents and therefore on that count alone, the claim of the petitioner could not have been rejected. Thus, it seems that the finding given by

the Scrutiny Committee is unsustainable in the eyes of the law and liable to be set aside in the writ jurisdiction.

12. For the aforesaid reasons, the order passed by the Scrutiny Committee dated 18-08-2023 is hereby set aside. It is declared that the petitioner had proved that he belongs to the '*Halbi*' Scheduled Tribe. Within a period of four weeks of receiving a copy of this judgment, the Scrutiny Committee shall issue a validity certificate to the petitioner. Since the services of the petitioner on the post of 'Typist-cum-Computer Clerk' with the respondent nos.4 and 5 have been set aside on the ground that his tribe claim has been invalidated, the said order dated 04-09-2023 is set aside.

13. The petitioner is entitled to be reinstated in service. He would be eligible to claim continuity of service. However, he is not entitled to any back-wages for the period from 04-09-2023 till his reinstatement.

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14. Rule is made absolute in aforesaid terms with no order as to costs.

(Judge)

(Judge)

Deshmukh