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

Writ Petition No.4880/2023

Vijay s/o Pundlikrao Raikwar,  
Aged about 54 years, Occ.-Service,  
Resident of Radhakrishna Nagar Patel  
Layout, Devmali, Paratwada, Tal. Achalpur,  
District Amravati.

.... Petitioner.

Versus

1. State of Maharashtra,  
through its Secretary, the Tribal Development Department,  
Mantralaya, Mumbai-400 032.
2. Scheduled Tribe Certificate Scrutiny Committee,  
Amaravati Division, Amaravati,  
through its Member Secretary, having its office  
At Sana House, Chaparashipura, Opposite, Commissionerate,  
Amaravati, Dist. Amaravati.
3. Shri Dadasaheb Tare Shikshan Sanstha  
@ The Samarth Institute of Education, Achalpur City,  
District Amaravati. .... Respondents.

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Mr. G.G. Mishra, Advocates for Petitioner.  
Mr. N.R. Patil, Assistant Government Pleader for respondent nos. 1 and 2.  
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**CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ**

**Reserved on : 14-12-2023**

**Pronounced on : 02-01-2024**

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

Heard. **Rule.** The rule is made returnable forthwith.

2. The petitioner has challenged the order dated 04-07-2023, passed by respondent no.2-Scheduled Tribe Certificate Scrutiny Committee, Amravati (for short, the "*Scrutiny Committee*"), thereby invalidating his caste claim that he belongs to '*Halbi*' (Scheduled Tribe) category, has preferred this petition.

3. The petitioner is a resident of Achalpur Taluka, District Amravati. He belongs to '*Halbi*' (Scheduled Tribe) and accordingly, his name has been entered in the documents. On 11-04-2018, the Sub-Divisional Officer, Achalpur, issued a Caste Certificate certifying that the petitioner belongs to '*Halbi*' (Scheduled Tribe).

4. On 24-07-1989, the petitioner was appointed as an Assistant Teacher under the reserved category of Scheduled Tribe, since then, he has been working on the said post. After his appointment, his caste certificate was forwarded to respondent no.2-the Scrutiny Committee for verification of his caste claim and validation of the caste certificate.

5. After receipt of the Vigilance Cell Report on 27-03-2023, a show-cause notice was issued to the petitioner. He replied the same. Thereafter, the Scrutiny Committee after considering the Vigilance Cell Report passed the impugned order dated 04-07-2023, thereby, invalidating his claim as he belongs to '*Halbi*' (Scheduled Tribe). Being aggrieved by the said order, he has preferred this petition.

6. The learned Counsel for the petitioner vehemently contended that respondent no.2-the Scrutiny Committee had ignored the pre-constitutional documents produced on record and unnecessarily given importance to the document of the year 1937, wherein the caste of the grandfather of the petitioner is shown as 'Koshti'. Also, the respondent Scrutiny Committee erred in holding that the petitioner failed to prove the affinity test. Therefore, the passing of the impugned order without considering the judgment given by the Hon'ble Apex Court in the case of Priya Pramod Gajbe vs. the State of Maharashtra and others (Civil Appeal No.7117 of 2019), Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs State of Maharashtra and others (2023 SCC OnLine SC 326) and the judgment of this Court in the case of Sou. Priya w/o Pravin Parate Vs. Scheduled Tribes Caste Certificates Scrutiny Committee and others, 2013(1) ALL MR 133. Therefore, he submitted that the passing of the impugned order by respondent no.2-Scrutiny Committee is illegal and bad in law. Hence, he prayed for quashing of the same.

7. *Per contra*, the learned Advocate for the respondents supported the finding given by respondent no.2-Scrutiny Committee and submitted that the documents produced on record are not helpful for the petitioner in support of his claim. Hence, he has prayed for the dismissal of the petition.

8. On perusal of the impugned order, it seems that the Scrutiny Committee by its order dated 04-07-2023, has invalidated the claim of the petitioner mainly on the following grounds. viz; The petitioner failed: -

- (i) to prove his caste claim, based on the documents,
- (ii) to satisfy the affinity test conducted during the vigilance enquiry,
- (iii) to prove that he originally belonged to an area where the people of '*Halbi*' (Scheduled Tribe) entry no.19, reside, and
- (iv) the discrepancy about the caste in the documents.

In view of the aforesaid finding, it is necessary to scrutinize the documents on record to ascertain the real facts in the matter.

Insofar as the finding regarding the area restriction is concerned, it could be seen that in entry no.19 there is no area restriction. As such the finding about area restriction given by respondent no.2- the Scrutiny Committee is not sustainable in the eyes of the law as observed in the case of *Priya Gajbe* (cited supra).

9. On perusal of the record, it seems that the petitioner has produced a birth extract of the Birth Register dated 22-12-1931. The said entry denotes that one baby boy was born to the grandfather of the petitioner. In the said extract, the caste of the grandfather was mentioned as '*Halbi*'. However, the said fact has not been taken into consideration by the Vigilance Cell Authority as well as respondent no.2- the Scrutiny Committee.

10. On perusal of the Vigilance Cell Report dated 28-01-2019 and the impugned order, it reveals that the petitioner has produced a School Leaving Certificate dated 01-04-1940 of Pundlik i.e. father of the petitioner, wherein the caste of his father is mentioned as '*Halbi*'. The said entry is of the year 1940. Also, the School Leaving Certificate of the year 1948 of Rambhau i.e. the uncle of the petitioner and the Sale Deed of the year 1952 executed by the grandfather of the petitioner. In all these documents, their caste is shown as '*Halbi*'.

11. It further appears that the Vigilance Cell authority has verified the document of the year 1931 and accordingly mentioned the same in the report. They have not disputed the existence of the said revenue entries. *Per contra*, in the opinion column, the Vigilance Cell Authority has observed that during the enquiry, he had verified the entry of the year 1931 from the revenue record of the Collector, Amravati, wherein the caste of the grandfather of the petitioner was mentioned as '*Halbi*'. The said opinion itself shows that the Vigilance Cell Report has not disputed the document as of the year 1931.

12. It is pertinent to note that respondent no.2- the Scrutiny Committee has not considered the document of the year 1931 while determining the claim of the petitioner, but ignored the said document and unnecessarily they have given undue importance to the document dated 02-09-1937, wherein the caste

of the grandfather of the petitioner was shown as "*Koshti*". It is to be noted that the document of the year 1931 is prior to the document of the year 1937 and as such the said document has more evidential value than the document of the year 1937.

13. Secondly, while considering the discrepancy about the entry of the caste "*Koshti*", this Court in the case of Sou. Priya Parate (cited supra), has categorically observed that "*it is common knowledge that the persons engaged in the profession of weaving were called 'Koshti'. A possibility cannot be ruled out that due to this, said entries might have recorded*".

*(emphasis supplied.)*

14. Thus it is held that "Merely because some stray entries as "*Koshti*" are recorded in respect of caste of some of the relatives of the petitioner is not sufficient to discard the voluminous documentary evidence of the pre-constitutional era which clearly certify that the petitioner's grandfather, father, uncle and other relatives are to be '*Halbi*'.

15. The third ground taken into consideration by the Scrutiny Committee was that the petitioner had not fulfilled the affinity test. However, the Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Sanrakshan Samiti* (supra) has held that "*the affinity test cannot be treated as a litmus test and cannot be the only basis for rejecting such a claim.*" Therefore, it

seems that the finding given by the Scrutiny Committee was not justified in rejecting the claim.

16. It is pertinent to note that despite granting sufficient opportunity the respondent failed to file a reply to the petition. The said fact itself shows that they have no dispute about the claim of the petitioner.

17. Insofar as the observations with regard to area restriction are concerned, it could be seen that in the said entries, nowhere mentioned about area restriction with regard to tribes. As such the finding of the scrutiny committee with regard to area restrictions also, in our view is not sustainable in the eyes of Law.

18. Having considered the aforesaid discussion, Vigilance Cell Report, and documents on record, it reveals that the petitioner is relying on the voluminous documentary evidence of the pre-constitutional era of his grandfather, father, and uncle, more particularly, he is relying on the birth extract entry of the year 1931, wherein the caste of the petitioner's grandfather was mentioned as '*Halbi*'. The said document is the oldest document of the pre-constitutional era and has the highest probative value than the documents considered by the Scrutiny Committee of the year 1937. In the Vigilance Cell Report dated 28-01-2019, the Vigilance Cell Authority has verified the documents of the year 1931 from the original record. The Vigilance Cell Report does not dispute the said document. However, respondent no.2- the

Scrutiny Committee has not considered the said document while considering the claim of the petitioner and unnecessarily given undue importance to the documents of the year 1937, wherein the caste of the petitioner was not mentioned as a "*Koshti*". In fact, "*Koshti*" was the occupation of the petitioner's family which was observed by the Vigilance Cell in their report. The Vigilance Cell Authority has also observed that they have verified the documents from the years 1940 to 1975 and they found that the caste of the ancestors of the petitioner is "*Halbi*" and their occupation was mentioned as weaving i.e. "*Koshti*". However, the said fact has not been considered by respondent no.2- the Scrutiny Committee while considering the claim of the petitioner. The Vigilance Cell Report dated 28/01/2019 and the document of the year 1931 were not controverted by the respondents. Also, the issue of the affinity test was covered by the judgment of the Hon'ble Apex Court in the case of *Maharashtra Adiwasi Thakur Jamat Sanrakshan Samiti* (supra).

19. Thus, it appears that based on the pre-constitutional document of the year 1931 and the other documents of the year 1940, 1948, and 1952 show that the petitioner belongs to the "*Halbi*" caste. The pre-constitutional document has greater probative value than the other documents. However, respondent no.2- the Scrutiny Committee has not considered the observations laid down by the Hon'ble Apex Court in the aforesaid cited authorities in its proper perspective. Respondent no.2 - the



Scrutiny Committee in its order has relied upon various judgments, however, the findings recorded in the said authorities are not helpful for them. *Per contra*, the findings given by the Hon'ble Apex Court in *Maharashtra Adiwasi Thakur Jamat Sanrakshan Samiti, Priya Pramod Gajbe, and Priya Parate (Cited supra)* are squarely applicable in the case in hand and therefore, the findings given by the respondent no.2-Scrutiny Committee appear contrary to the facts on record and law laid down by the Hon'ble Apex Court. Therefore, the order of the Scrutiny Committee needs to be interfered with and the same is liable to be quashed and set aside in the present petition. Hence, we deem it appropriate to pass the following order.

- (i) Impugned order dated 04-07-2023 passed by respondent no.2- the Scrutiny Committee is hereby quashed and set aside.
- (ii) It is hereby held and declared that the petitioner has proved that he belongs to the “**Halbi**” Scheduled Tribe category.
- (iii) Needless to state within a period of four weeks of receiving the copy of this judgment, the respondent No.2- the Scrutiny Committee shall issue a Validity Certificate to the petitioner.

(iv) On production of the Validity Certificate, the respondent no.3 shall take steps to protect the services of the petitioner, if he is otherwise not disqualified.

20. Rule is made absolute in the above terms. No order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)

*Deshmukh*