

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

WRIT PETITION NO. 3355 OF 2020

WITH

WRIT PETITION NO. 3465 OF 2020

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WRIT PETITION NO. 3355 OF 2020

Mr. Mahendra S/o Manoharrao Hedau,

Age- 52 years, Occ. Assistant Teacher,

R/o Plot No. 136, Shesh Nagar,

Near Gate No. 2, Bhawans Vidya Mandir

School, Shrikrushna Nagar, Nagpur-440009. **PETITIONER**

// **VERSUS** //

- 1) **The State of Maharashtra,**
through its Chief Secretary,
6th Floor, Main Building, State
Secretariat, Mumbai 400032, Telephone
Nos. 022-22025042, 022-22028762
Email Id: chiefsecretary@maharashtra.gov.in
- 2) **Scheduled Tribe Certificate Scrutiny
Committee, Nagpur Division, Nagpur.**
through its Member Secretary,
Adiwasi Vikas Bhawn, Amravati Road,
Giripeth, Nagpur 440001,
Phone No. 07122560031,
Email Id: tcscngp.mah@nic.in
- 3) **Zilha Parishad Nagpur,**
through Chief Executive Officer,
Office at Zilha Parishad Nagpur,
Civil Lines, Nagpur 440001.
- 4) **District Education Officer (Primary),**
Zilha Parishad Nagpur, Civil Lines,
Nagpur 440001.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 3465 OF 2020

Ms. Varsha D/o Sudhakar Rao Hedau,
after marriage Mrs. Varsha W/o Vilas
Dhanorkar, age - 46 years,
Occ. Assistant Teacher,
R/o. Vikas Nagar, Kondhali,
Tahsil Katol, District Nagpur.

.... **PETITIONER**

// VERSUS //

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Zilha Parishad Nagpur, Civil Lines,
Nagpur 440001.

.... **RESPONDENTS**

Mr. A. S. Mardikar, Senior Counsel assisted by Mr. S. D.
Borkute, Counsel for the Petitioners.

Mr. N. R. Patil, Assistant Government Pleader for the
Respondent Nos.1 & 2.

Mr. D. M. Kale, Advocate holding for Mrs. Usha Gujar,
Advocate for the respondent Nos.3 and 4.

**CORAM : MRS. M. S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**

DATE ON RESERVING THE JUDGMENT : 20/04/2026
DATE ON PRONOUNCING THE JUDGMENT : 04/05/2026

COMMON JUDGMENT : (Per – M. S. JAWALKAR, J.)

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

2. The facts and circumstances arising in Writ Petition No. 3355/2020 and Writ Petition No. 3465/2020 are similar, further the Petitioners in both these petitions are related. Furthermore, the Respondent Scrutiny Committee, Nagpur has passed a common impugned order of invalidation in both the aforementioned petitions and therefore, both these petitions are decided by this common judgment and Writ Petition No. 3355/2020 shall be treated as lead petition.

3. The Petitioners, by these petitions, are challenging the order dated 29.09.2020 passed by the Respondent No. 2 Caste Scrutiny Committee, Nagpur thereby invalidating the tribe claim of the Petitioners to the 'Halba' Scheduled Tribe enlisted at

Sr. No. 19 of the Constitution (Schedule Tribe) Order, 1950. The petitioner in W.P. Np. 3355/2020 is further challenging the order dated 27.12.2019 issued by Respondent No. 3- Zilla Parishad, Nagpur, wherein the Petitioner was appointed on supernumerary post for 11 months as per Government Resolution dated 21.12.2019.

4. The petitioner came to be appointed as Assistant Teacher on 19.11.1996 and he is currently posted at Zilha Parishad Primary School, Ajangaon, Teh. Mauda, District Nagpur. The tribe claim of the Petitioner was submitted to the Respondent No. 2 Committee along with all the relevant documents on 26.07.2013.

5. The Petitioner has submitted various documents in support of his tribe claim. Among the documents submitted by the Petitioner, following are the documents before the constitutional order of 1950:

Sr. No.	Description of Document	Caste/ Tribe	Date
1	School Leaving Certificate of father of the Petitioner (Manohar Gopalrao Hedao)	Halba	13.09.1951 (DOB: 05.10.1935)
2	School Admission Extract of grandfather of Petitioner (Gopal Ganpati)	Halba	01.08.1904

3	School Leaving Certificate of grandfather of Petitioner (Gopal Ganpati)	Halba	25.05.1909
4	Gift Deed in possession of local “Bhat” containing genealogical information of the family of Petitioner	Halbi	27.04.1914

6. The Respondent Committee has ordered Vigilance Enquiry and the Vigilance Report was submitted on 05.10.2017. Thereafter, the Petitioner was called for hearing, and the Petitioner submitted his written explanation/reply on 30.11.2017.

7. During the pendency of the caste claim of the petitioner, the Respondent No. 3 - Zilha Parishad, vide its impugned order dated 27.12.2019 terminated the services of the Petitioner and appointed him on supernumerary post for 11 months as per Government Resolution dated 21.12.2019. Owing to this order dated 27.12.2019, the petitioner had approached this Court by filing Writ Petition No. 1083/2020 and sought direction to Respondent No. 3 - Scrutiny Committee, Nagpur to finalize the Claim of Tribe/Caste Validity of the petitioner expeditiously and till finalization of her Scheduled Tribe claim, sought the protection of her service. This Court, in Writ Petition. No. 1083/2020 issued notices to the respondents returnable on

21/04/2020 and directed the Scrutiny Committee to decide the caste claim of the Petitioner before the returnable date.

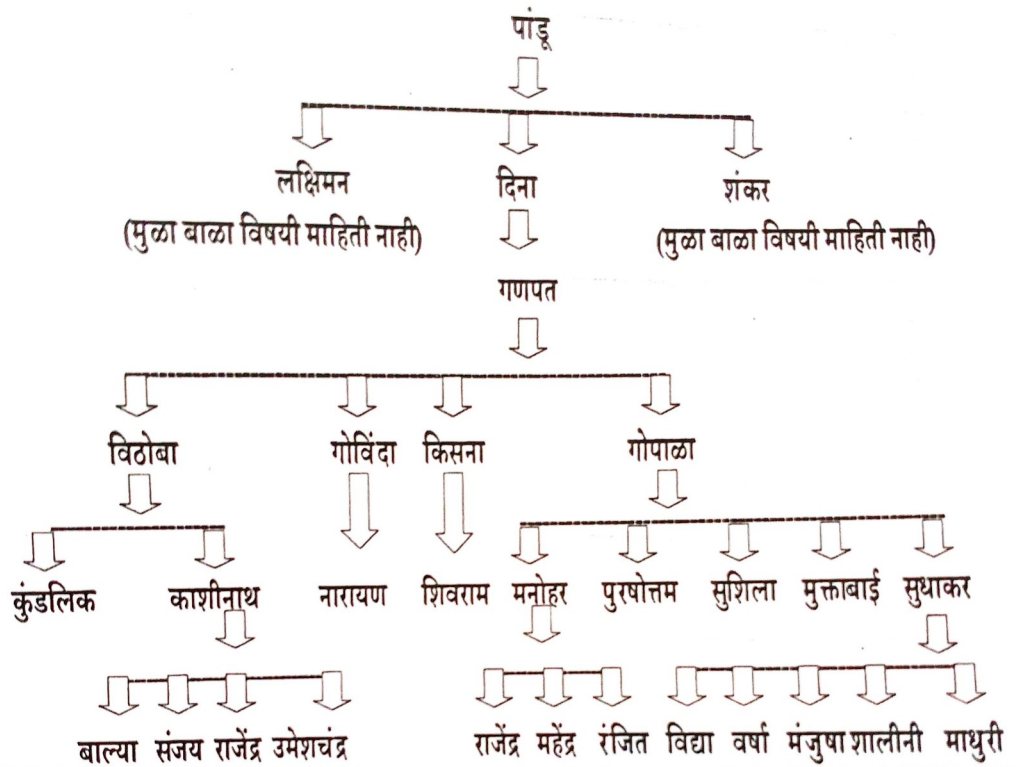
8. *Per Contra*, the Respondent No. 2 Committee in its reply, submitted that the Petitioners failed to properly explain the documents procured by the Vigilance cell, which contradicts the claim of the Petitioners. It is further contended that the Petitioners failed to establish socio-cultural affinity with the 'Halba' Scheduled Tribe. Therefore, the Respondent Committee has rightly rejected the caste claim of the Petitioners.

9. The Respondent Committee, in Writ Petition No. 3465/2020, has relied upon following contra-entries obtained by the Vigilance Cell in its inquiry:

Sr. No.	Document	Name	Relation with the Petitioner	Recorded Caste	Year
1	Copy of Admission Register Extract	Mulidas Manohar Gopal	Petitioner's Cousin uncle	Koshti	1943
2	Copy of Admission Register Extract	Muktabai Gopal Hedau	Petitioner's paternal aunt	Koshti	1945
3	Copy of Admission Register Extract	Sudhakar Gopal	Petitioner's Father	Koshti	1950
4	Copy of Admission Register Extract	Mahendra Manohar Gopal	Blood Relative	Halba	1975
5	Copy of Admission Register Extract	Varsha Sudhakar-rao Hedau	Petitioner in W.P. No. 3465/2020	Halba	1982

10. Heard learned Counsel for the respective parties at length. Perused the record and proceedings with the assistance of the learned Assistant Government Pleader and considered the authorities relied upon by their respective counsels.

11. For the sake of convenience, the Genealogy/Family Tree submitted by the Petitioner is reproduced as under:



12. We treated the Writ Petition No.3355/2020 as a lead petition and considered the facts involved therein. The Petitioner's proposal was forwarded for verification on 26.07.2013, thereafter, vigilance enquiry was conducted on

05.10.2017. The Scrutiny Committee issued a show-cause notice to the Petitioner on 27.10.2017. The Petitioner submitted his explanation and reply on 30.11.2017. During the pendency of caste claim of the Petitioner, The Chief Executive Officer, Zilla Parishad, Nagpur terminated the services of the Petitioner vide its order dated 27.12.2019 and appointed on supernumerary post for 11 months, as per Government Resolution dated 21.12.2019. Therefore, the Petitioner approached to this Court by filing a Writ Petition No.1083/2020, seeking protection of his service. This Court pleased to issue notice to the respondent returnable on 21.04.2020 with direction to the Scrutiny Committee to take decision on the caste claim of the Petitioner.

13. It appears that there is no consideration to the reply filed by the Petitioner. It also appears that the vigilance cell submitted its report in the month of September 2017, wherein it had procured 3 entries of 'Koshti'. The said report was forwarded to the Petitioner and the Petitioner filed his reply on 30.11.2017. In reply, the Petitioner has submitted that there may be some entries of 'Koshti', however, that is due to illiteracy of the forefather of the Petitioner. It is further submitted that the

person belonging to 'Halba' tribe also adopted profession of weaving and therefore, there is mention of 'Koshti', however, the reliance is placed on the old documents i.e. 1904, 1909, 1914 and 1951 wherein the caste of the forefather of the Petitioner is shown as Halba/Halbi. The vigilance cell also procured documents wherein the caste is shown as 'Halba' for the years 1975 and 1982.

14. It is brought to our notice that while deciding the Appeal in respect of applicants – Shri Saumya Mahendra Hedau and Shri Gunjan Ranjit Hedau, nephew of the Petitioner, the Scrutiny Committee has specifically observed in respect of document of 1904 that the great grandfather of the applicants i.e. Gopal Ganpati, in whose school record, the caste of Gopal Ganpati is shown as 'Halba' and same was verified by the Appellate authority from the original record. On the basis of this document and other documents pertaining to year 1951 to 2018, the Committee has allowed the appeal and directed to issue Caste Certificate to those nephews of the Petitioners and it was subject to verification by the Committee. Thus, there is no dispute in respect of document of 1904, which clearly shows the

entry of 'Halba'. This document is also produced by the present Petitioner. In spite of this position, that the document of 1904 was duly verified from the original record by the Appellate Authority, the Scrutiny Committee has observed with regard to this document that there is a difference in ink and handwriting.

15. The Scrutiny Committee has referred as many as 12 documents alleging that these are persons who are in relation with the Petitioner showing their caste as 'Koshti'. However, on perusal of the vigilance report, it reveals that there are only 3 documents pertaining to 'Koshti' and 2 documents pertaining to 'Halba' were procured by Vigilance Cell. As such, there is no opportunity to the Petitioner to file his reply to the said documents. May that as it may be, the oldest documents is of 1904, 1909 and 1914, which duly verified by the Appellate Authority of Caste Scrutiny Committee from the original record. The documents which are 12 in number were never supplied to the Petitioner along with show cause notice, only vigilance report was forwarded, wherein there is no reference of these documents of Sr. No.1 to 12 (page-7 of the impugned order). There were only 5 documents mentioned in the vigilance report,

out of which, 3 documents pertaining to 'Koshti' and other 2 documents pertaining to 'Halba' caste.

16. It is also contention of the Petitioner that due to illiteracy, they have mentioned caste as 'Koshti' as their profession was weaving. However, the oldest document of 1904, grandfather of the Petitioner is shown as 'Halba' and which is duly verified by the Caste Scrutiny Committee. It appears that no consideration is given to this aspect. So far as affinity and area restriction are concerned, no parameters were supplied as demanded by the Petitioner to gauge the affinity connection of the Petitioner to the caste Scheduled Tribe. The Petitioner also pointed out that the caste validity certificates obtained by his cousin Shalini Hedau, Madhuri Hedau and nephew Pratik Hedau were obtained without there being any vigilance. Those certificates were declared as illegal and therefore, their certificate holding them as 'Koshti' HBC cannot be considered in the present matter.

17. It is submitted that there is no proper enquiry conducted by the Research Officer, it was conducted through the Police Superintendent, who is not having any knowledge in this

subject. The Petitioner relied on the observation made in case of **Madhuri Patil vs. Additional Commissioner, Thane** reported in **SCC 1994 (6) 241** wherein it is held as under :

(i) *While dealing with documentary evidence, greater reliance may be placed on pre Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;*

(ii) *While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe,*

cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

18. The Petitioner also placed reliance on "Tribes and Castes of the Central Provinces of India" Vol – III, page 188, wherein it is held that:

"Subsequently the Halbas served as soldiers in the armies of the Ratanpur kings and their position no doubt considerably improved, so that in Bastar they became an important landholding caste. 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."

19. It is submitted that in the Maharashtra, the person having profession weaving used to be called as 'Koshti', but there was no caste as 'Koshti' at the relevant time before 1950, therefore, it has to be treated as profession 'Koshti' and most important that oldest entry of 1904, which is duly verified from the original record, it prevail over of the subsequent entries.

20. The document of 1904 is certified copy as well as duly verified by the then Committee from its original record. As such, it has presumptive value as per Section 79 of the Indian Evidence Act, 1872. The observation passed against this document is patently perverse and erroneous. It also needs to be noted here that the Petitioner placed on record copy of School Leaving Certificate dated 25.05.1909, obtained from Zilla Parishad School, Digras (Bk.) pertaining to Gopala Ganpati, the grandfather of the Petitioner, wherein distinctly mentions the Tribe or Tribal community of Gopala Ganpati as 'Halba'. He was student in Digras school from 01.08.1904 to 25.05.1909. It is mentioned in the petition that the said school of Digras is for just 2 km. away from the native place of Gopala i.e. Yerla. The Digras school was established in the year 1865 and Yerla's school was established in the year 1909.

21. The Petitioner also placed on record document dated 27.04.1914, the Gift-deed, which was in possession of the local *Bhat*. The Petitioner has learnt the historical evidence of his family genealogy was being prepared and maintained by the local *Bhat* for last 4 to 5 generations i.e. for about 200 to 300

years, on the piece of leaf (*Tadpatri*), therefore, the said *Bhat* duly sworn the affidavit before the Competent Authority having crucial bearing in an enquiry of the Petitioner, whether she is a person of tribes or tribal communities or part of or groups within tribes or tribal communities of Scheduled Tribes. The said affidavit of Bhagwat Ghanshyam Wagh, a local *Bhat* is placed on record, which is pertaining to a piece of archaeological material and verified by Archaeological Survey of India (ASI) is presently in possession of the local *Bhat* by virtue of Gift-deed dated 27.04.1914 made by Vishwnath Bhagwanji Gurav, the original *Bhat*. The said Gift-deed dated 27.04.1914 is annexed with the petition and it is also part and parcel of the record.

22. The Letter of verification by the Assistant Director, Archaeological Department, Nagpur was also placed on record. From this document of 1914, it reveals that by way of gift-deed Vishwanath Bhagwanji Gurav “Pustaki” gifted to one Sarubai w/o Ishramji Pustki caste Gurav. He has maintained the genealogy (family tree) in respect of Koshti @ Halbi in 38 Granthas written on *Tadpatri*. This document itself shows that there is a reference of Halbi @ Koshti. Therefore what is claimed

by the Petitioner is having substance that the 'Koshti' entry in the record of some of the relatives needs to be treated as profession as his forefathers chose to adopt the profession of weaving.

23. It also needs to be noted here that there was no caste 'Koshti' recognized till 1995 as SBC. In view thereof, even there is an entry of 'Koshti' in some of the documents, it has to be treated as profession. At any rate, the oldest document of 1904, which was duly verified from the original by the then Committee, which cannot be doubted and questioned and its genuineness is already tested. The document of 1904 wherein the caste is shown as 'Halba' even the document of 1909 the caste is shown as 'Halba'. The Gift-deed of 1914 makes it clear that the person *Bhat* who used to maintain the lineage of 'Halbi' tribes specifically written as Halbi @ Koshti in the registered gift-deed. It has evidentiary value because it is an archaeological piece of evidence, which was duly certified by the Competent authority of Archaeological department.

24. The Scrutiny Committee has not discussed about these documents at all. This material piece of evidence was not considered by the Committee specifically oldest documents will

prevail over the subsequent documents. Even if there is an entry of 'Koshti', the affidavit of said *Bhat* was simply brushed aside on the ground that affidavit is not evidence. However, the Scrutiny Committee failed to appreciate that the affidavit in respect of the document, there is a certification of the Archaeological Department, which is having a great probative value. Moreover, the said gift-deed is registered on 27.04.1914.

25. As such, we are of the considered opinion that the Petitioner have duly established that they are Halba/Halbi, as their profession was weaving. The said Gift-deed of the *Bhat* is registered one, it was duly registered in the year 1914. As such, it is more than 100 years old document and, therefore, its genuineness cannot be doubted.

26. As such, the impugned order passed by the Caste Scrutiny Committee is patently erroneous, perverse and are liable to be set aside. Accordingly, we proceed to pass following order :

- (i) Both the Writ Petitions are allowed.
- (ii) The impugned order dated 29.09.2020, passed in case No. सआ/अजप्रतस/नाग/III/११३४/३१/२०१३ and in case No.

सआ/अजप्रतस/नाग/III/११३३/३१/२०१३, passed by the Respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee, Nagpur is hereby quashed and set aside.

- (iii) It is declared that the Petitioners duly established that they belong to “Halba” Scheduled Tribe.
- (iv) The Respondent No.2 – Scheduled Tribe Certificate Scrutiny Committee, Nagpur is hereby directed to issue the validity certificates of “**Halba**” Scheduled Tribe to the Petitioners within a period of four weeks.

27. Rule is made absolute in the above terms. No order as to costs. Pending application(s), if any, stand(s) disposed of.

(NANDESH S. DESHPANDE, J.)

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