

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

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**WRIT PETITION NO. 6622/2016**

Vijay s/o Madhav Nikhare  
Aged 45 years, occu: service  
R/o Sheshnagar, Sawarkar Layout  
Behind Nag Mandir, Brahmapuri  
Tq.Brahmapuri  
Dit.Chandrapur -441206

**..PETITIONER**

**versus**

- 1) The Scheduled Tribe Caste Certificate  
Scrutiny Committee  
Through its Member-Secretary  
Complex Area, Near Zilla Parishad,  
Gadchiroli, Distt. Gadchiroli.
- 2) Newajabai Hitkarni Education Society  
Through its Secretary  
Bramhapuri, Dist.Chandrapur -441206.
- 3) Headmaster,  
Newajabai Hitkarni Girls High School  
Bramhapuri  
Dist.Chandrapur 441 206.
- 4) The Education Officer (Secondary),  
Zilla Parishad, Chandrapur.

**...RESPONDENTS**

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Shri S.D. Khati, Advocate for petitioner  
Shri A.A. Madiwale, Assistant Government Pleader for Respondents 1 & 4  
Shri S.V.Ingole, Advocate for Respondent nos. 2 and 3  
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**CORAM:** **SMT. VASANTI A. NAIK &**  
**MRS. SWAPNA JOSHI, JJ.**  
**DATED :** **9<sup>th</sup> December, 2016**

**JUDGMENT: (PER MRS. SWAPNA JOSHI, J.)**

**Rule.** Rule made returnable forthwith. The petition is heard finally at the stage of admission, with the consent of the learned counsel for the parties.

2. By this Writ Petition, the petitioner seeks a direction against the respondent nos. 2 to 4 to protect the services of the petitioner, in view of the judgment of the Full Bench, in the case of Arun Sonone vs. State of Maharashtra.

3. Brief facts of the case are that, the petitioner was appointed as an Assistant Teacher by the Headmistress of the respondent no.3-School, vide appointment order, dated 11.02.1999. The petitioner claimed to belong to 'Halba' Scheduled Tribe. The caste claim of the petitioner was referred to the respondent no.1-Scrutiny Committee, for verification. However, the Scrutiny Committee invalidated the caste claim of the petitioner by the order dated 31.12.2015. The petitioner is simply seeking the protection of his services from the respondent nos.2 to 4.

4. Learned counsel for the petitioner, Shri S.D. Khati, contended that the services of the petitioner need to be protected, in view of the judgment of the Full Bench, in the case of Arun Sonone vs. State of Maharashtra, reported in 2015(1) Mh.L.J. Page 457. He submitted that as per the directions in the said judgment, it is necessary that the petitioner is to be appointed before the cut off date i.e. 28.11.2000 and there should be no observation that the petitioner

had fraudulently secured the benefits meant for 'Halba' Scheduled Tribe. Shri Khati, the learned counsel, further submitted that the petitioner has fulfilled both these conditions. The petitioner was appointed on 11.02. 1999 and caste claim of the petitioner is rejected by the Scrutiny Committee, as the petitioner could not prove the same on the basis of the documents required to prove that he belongs to 'Halba' Scheduled Tribe as well as the affinity test.

5. Learned Assistant Government Pleader, Shri A.A.Madiwale, for the respondent nos. 1 and 4 and Shri S.V. Ingole, learned counsel for respondent nos.2 and 3 do not dispute the settled position of law, as laid down in the judgment of the Full Bench (*supra*). It is fairly admitted that in the order of the Scrutiny Committee, there is no observation that the petitioner had fraudulently secured the benefits meant for 'Halba' Scheduled Tribe.

6. After hearing both the sides and on a perusal of the record and the judgment of the Full Bench, it appears that the services of the petitioner are required to be protected. The petitioner was admittedly appointed before the cut off date i.e. 28.11.2000. So also, there is no observation in the order of the Scrutiny Committee that the petitioner has fraudulently secured the benefits meant for 'Halba' Scheduled Tribe. The caste claim of the petitioner was invalidated as she could not prove the same on the basis of the documents produced by him before the Scrutiny Committee. The petitioner has fulfilled both the conditions that are required to be satisfied, while seeking the

protection of the services, as per the judgment of the Full Bench.

7 In view of the facts and circumstances, the following order is passed:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The respondent nos. 2 and 3 are directed to protect the services of the petitioner on the post of Assistant Teacher, on the condition that the petitioner should furnish an undertaking in this Court and before the respondent nos.2 and 3 that the petitioner would not claim the benefits meant for 'Halba' Scheduled Tribe, in future.
- (iii) Rule is made absolute in the aforesaid terms, with no order as to costs.

JUDGE

JUDGE

*safare*