

RAIWAD MANOJKUMAR NIVRUTTIRAO v. STATE OF 987
MAHARASHTRA & ANR.

belong to 'Koli Mahadeo', Scheduled Tribe. Aggrieved, A
the appellant filed a writ petition. The High Court
dismissed the writ petition. Therefore, the appellant filed
the instant appeal.

Partly allowing the appeal, the Court B

HELD: In the facts of the instant case, the appellant
belongs to 'Koli' tribe and it was in **Kumari Madhuri Patil
& Anr. v. Additional Commissioner, Tribal Development
& Ors.* that it was held that 'Mahadeo Koli' and 'Koli' were C
not one or the same tribe and that 'Koli' tribe is not a
Scheduled Tribe. Before the decision of this Court in
**Kumari Madhuri Patil & Anr. v. Additional Commissioner,
Tribal Development & Ors.* the appellant had been D
appointed in the service of NABARD on 28.02.1992 and
since 1992 for long nineteen years, he has been in
service. Invoking the jurisdiction under Article 142 of the
Constitution, the initial appointment of the appellant in
the service of NABARD will not be disturbed, but the
appellant will not be granted any benefit as a member of
the Scheduled Tribe including any promotional benefit E
and promotional benefit, if any, granted to the appellant
as a member of the Scheduled Tribe shall be cancelled.
[Para 7] [990-E-H; 991-A]

**Kumari Madhuri Patil and Anr. v. Additional
Commissioner, Tribal Development and Ors.* AIR 1995 SC F
94: 1994 (3) Suppl. SCR 50 – relied on.

*Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar
and Ors.* (2008) 9 SCC 54: 2008 (12) SCR 992 – referred G
to.

Case Law Reference:

2008 (12) SCR 992	Referred to	Para 5	
1994 (3) Suppl. SCR 50	Relied on	Para 7	H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7857 of 2004.

B From the Judgment and Order dated 05.08.2003 of the High Court of Judicature at Bombay Bench at Aurangabad in Writ Petition No. 2146 of 2003.

M.S. Nargolkar, D.M. Nargolkar and Amey Nargolkar for the appellant.

Asha Gopalan Nair for the Respondents.

C The following Judgment of the Court was delivered by

A. K. PATNAIK, J. 1. This is an appeal against the order dated 05.08.2003 of the Bombay High Court in Writ Petition No.2146 of 2003.

D 2. The facts very briefly are that on 07.06.1990 the Tehsildar and Executive Magistrate issued a caste certificate to the appellant certifying that he belongs to 'Koli Mahadeo', which was recognized as a Scheduled Tribe in the State of Maharashtra. On 28.02.1992, the appellant was selected and appointed to a vacancy of Clerk Grade-II in the National Bank of Agricultural and Rural Development (NABARD) in a vacancy reserved for Scheduled Tribe. The General Manager of NABARD referred the claim of the appellant as Scheduled Tribe for verification and scrutiny. The Vigilance Cell submitted its report on 19.09.2000. The Scrutiny Committee then called the appellant for interview and when the appellant did not appear on several dates fixed for the interview, it finally submitted its order on 27.01.2003 that the appellant did not belong to 'Koli Mahadeo', Scheduled Tribe.

G 3. Aggrieved by the findings of the Caste Scrutiny Committee, the appellant filed Writ Petition No.2146 of 2003 in the High Court challenging the order of the Caste Scrutiny Committee. By the impugned order dated 05.08.2003, the High Court dismissed the Writ Petition. In the impugned order, the

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RAIWAD MANOJKUMAR NIVRUTTIRAO v. STATE OF 989
MAHARASHTRA & ANR. [A.K. PATNAIK, J.]

High Court held that the Caste Scrutiny Committee had found from the documents on record that the father of the appellant belonged to caste 'Koli' and 'Koli' and 'Koli Mahadeo' are different tribes as has been decided by this Court in *Kumari Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors.* [AIR 1995 SC 94]. The High Court also found that despite several notices issued to the appellant, he did not appear before the Caste Scrutiny Committee to attend the hearing and that the appellant had failed to discharge the burden to prove by producing cogent and reliable evidence that he belonged to the 'Koli Mahadeo' tribe and not to 'Koli' tribe.

4. Learned counsel for the appellant made efforts to persuade us to set aside the findings of the High Court and the Caste Scrutiny Committee, but on perusal of the order of the Caste Scrutiny Committee and the High Court, we are not inclined to do so as we find that there is no infirmity in the order of either the Caste Scrutiny Committee or the High Court.

5. Learned counsel for the appellant next submitted that the appellant had been in service since 1992, almost for nineteen years and if the appellant is removed from service on the basis of the order of the Caste Scrutiny Committee, he will suffer immense hardship. He cited the decision in *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar & Ors.* [(2008) 9 SCC 54] in which this Court invoking its jurisdiction under Article 142 of the Constitution, directed that the appointment of the respondent no.1 in that case, who had put in a long years of service, should not be disturbed even though he was found not to be belong to the Scheduled Tribe. He submitted that a similar relief may be granted to the appellant under Article 142 of the Constitution.

6. We find on reading of the judgment of this Court in *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar & Ors.* (supra) that the respondent no.1 in that case claimed to be a member of the Scheduled Tribe, namely, the 'Halba' tribe. The caste of his father in school record was shown as 'Koshti',

A whereas the caste of his Uncle and his Cousins were shown as 'Halba'. After his MBBS course, he was appointed as a Field Officer in the Maharashtra Pollution Control Board against a vacancy meant for Scheduled Tribe subject to validity certificate. He filed a writ petition in the Bombay High Court and the Bombay High Court allowed the writ petition in 1988. The Division Bench of the Bombay High Court in its judgment dated 11.08.1988 held that the respondent no.1 should be declared as belonging to 'Halba' tribe as his other relatives have been declared as such. Thereafter, a co-employee of respondent no.1 questioned the caste certificate granted in favour of the respondent no.1 and this Court held that the respondent no.1 did not belong to 'Halba' tribe and was not a Scheduled Tribe. In Para 49 of the judgment, however, this Court held invoking the jurisdiction under Article 142 of the Constitution that it would not be proper to disturb the very appointment of the respondent no.1 in that case, but observed that he shall not be eligible for grant of any benefit as a member of Scheduled Tribe.

7. In the facts of the present case, we find that the appellant belongs to 'Koli' tribe and it was in *Kumari Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors.* (supra) that it was held that 'Mahadeo Koli' and 'Koli' were not one or the same tribe and that 'Koli' tribe is not a Scheduled Tribe and the decision of this Court in *Kumari Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors.* (supra) has been relied upon by the High Court in the impugned judgment in this case to hold that the appellant did not belong to 'Mahadeo Koli' tribe. Before the decision of this Court in *Kumari Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors.* (supra), the appellant had been appointed in the service of NABARD on 28.02.1992 and since 1992 for long nineteen years, he has been in service. Invoking our jurisdiction under Article 142 of the Constitution, we order that the initial appointment of the appellant in the service of NABARD will not be disturbed, but the appellant will not be granted any benefit as a member of the Scheduled Tribe

RAIWAD MANOJKUMAR NIVRUTTIRAO v. STATE OF 991
MAHARASHTRA & ANR. [A.K. PATNAIK, J.]

including any promotional benefit and promotional benefit, if any, A
granted to the appellant as a member of the Scheduled Tribe
shall be cancelled. We make it clear that the relief extended is
not intended to be precedent and shall not be relied upon to
grant similar relief.

8. The appeal is partly allowed with no order as to costs. B

The application for impleadment is dismissed.

N.J.

Appeal Partly allowed.