

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

...

WRIT PETITION NO.2850/2016

Chhabil s/o Jaideo Devikar
Aged about 40 years, occu: service
Tadulwar Sq., Opp: Panchayat Samiti
Armori, Tq.Armori, Dist.Gadchiroli.

..PETITIONER

v e r s u s

1) Vice-Chairman and
Joint Commissioner,
Scheduled Tribe Certificate
Scrutiny Committee, Gadchiroli.

2) The Manager,
Gadchiroli District Central Cooperative
Bank Ltd., Main Office, Gadchiroli. ..

...RESPONDENTS

.....
Mr. Sachin Zoting, Advocate for petitioner
Mr. V.G.Gangane, Assistant Government Pleader for Respondent No.1
None for Respondent no.2.
.....

CORAM: **SMT. VASANTI A. NAIK &**
MRS. SWAPNA JOSHI, JJ.

DATED : 1st July, 2016

ORAL 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 the protection of his services, in view of the law laid down by the Full Bench of this Court, in the case of **Arun Sonone vs. State of Maharashtra**, reported in **2015 (1)Mh.L.J. 457**.

3. The petitioner was appointed as a Peon, on 26.01.2000, on daily-wage basis, by the respondent no.2. He was appointed on probation on a post reserved for the 'Halba' Scheduled Tribes, on 29.07.2000. After completion of probationary period, the petitioner was made permanent, on 27.08.2001. The petitioner was appointed against the vacancy reserved for Scheduled Tribes category, on the basis of the caste certificate, as belonging to 'Halba' Scheduled Tribe, issued by the Competent Authority i.e. the Executive Magistrate, Armori, dated 9th April, 1999. The petitioner submitted the voluminous documentary evidence with the respondent no.1, for verification of his caste claim, as belonging to 'Halba' Scheduled Tribe, on 14.10.2014, through his employer. The respondent no. 2 asked the petitioner to submit validity certificate within a stipulated period. The petitioner preferred Writ Petition No.4580/2014 challenging the said communication before this Court and also sought a direction to the Scrutiny Committee to decide his caste claim within a stipulated period. This Court directed the respondent no.1 to decide the caste claim of the petitioner within a period of nine months from 15.09.2014 and also protected his services, till the decision of the respondent no.1. The respondent no.1 invalidated the caste claim of the

petitioner on 10th March 2016, on the basis of the documents of father and uncle of the petitioner, as 'Koshti'. The respondent no.2 issued a show-cause notice to the petitioner on 20.4.2014 asking as to why his services should not be terminated. In these circumstances, the petitioner has filed the present petition.

4. Mr. Sachin Zoting, the learned counsel for the petitioner contended that the petitioner was appointed in the year 2000, before the cut off date i.e. 28.11.2000 and, as such, his services are required to be protected. He further contended that there is no observation in the order of the Scrutiny Committee dated 10.03.2016 that the petitioner has fraudulently secured the benefits meant for 'Halba' Scheduled Tribe. The learned counsel for the petitioner submitted that since both the conditions that are required to be satisfied while seeking the protection of services are satisfied in the case of the petitioner, his services are required to be protected.

5. Mr.V.G.Gangane, the learned Assistant Government Pleader appearing on behalf of the respondent no.1, does not dispute the legal position. He fairly admits that there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently secured the benefits meant for 'Halba' scheduled Tribe, except that the petitioner does not belong to 'Halba' Scheduled Tribe.

6. After hearing both the sides and on a perusal of the documents on record, it is noticed that since the petitioner was appointed before the cut

off date and since there is no observation in the order of the Scrutiny Committee that the petitioner has fraudulently secured the benefits meant for the 'Halba' Scheduled Tribe, the services of the petitioner are required to be protected, in view of the law laid down by the Full Bench, cited *supra*.

7. For the above-said reasons, the Writ Petition is partly allowed. The impugned notice of termination is quashed and set aside. The Respondent nos.1 and 2 are directed to protect the services of the petitioner on the post of Peon, on the condition that the petitioner furnishes an undertaking before the respondent no.2 and also in this Court within a period of four weeks, that neither the petitioner nor his progeny would claim the benefits meant for 'Halba' Scheduled Tribe, in future.

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

JUDGE

JUDGE

sahare