

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

WRIT PETITION NO.7063/2016

Rajeshwar s/o Sudhakar Dhakate

...Versus...

Scheduled Tribe Caste Certificate Scrutiny Committee, through its
Member/Secretary, Gadchiroli and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.D. Khati, Advocate for petitioner
Ms Tajwar Khan, AGP for respondents

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

DATE : 20.12.2016

The only prayer made by the petitioner in the instant petition is for a direction against the respondent no.2 to reinstate the petitioner in service and protect his services, in view of the law laid down by the Full Bench in the judgment, reported in **2015 (1) Mh.L.J. 457.**

The petitioner was appointed as a Statistical Assistant by the respondent no.2 on 20.12.1997, on the post earmarked for the Scheduled Tribes. The petitioner had claimed to belong to Halba Scheduled Tribe and the caste claim of the petitioner was referred to the Scrutiny Committee for verification. After the Scrutiny Committee invalidated the caste claim of the petitioner on 22.3.2010, the services of the petitioner were terminated by the respondent no.2. The petitioner has given up his caste claim

and has sought the protection of his services, in view of the Full Bench judgment.

Shri Khati, the learned Counsel for the petitioner submits that since the petitioner was appointed before the cut off date on 20.12.1997 and since there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently secured the benefits meant for the Halba Scheduled Tribe, the services of the petitioner need to be protected, more so, when the petitioner had worked as a Statistical Assistant with the respondent no.2 for more than 15 years till his services were terminated. It is submitted that since in similar matters this Court has directed the reinstatement of the employees and has also protected their services, a similar order needs to be passed in this case, on parity.

Ms Khan, the learned Assistant Government Pleader appearing for the respondents does not dispute the position of law, as laid down by the Full Bench. It is stated that it appears from the appointment order that the petitioner was appointed before the cut off date and there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently secured the benefits meant for the Halba Scheduled Tribe. It is stated that an appropriate order may be passed, in the circumstances of the case.

It appears on a reading of the judgment of the Full Bench and the order of the Scrutiny Committee that the services of the petitioner need to be protected. The petitioner worked as a Statistical Assistant with the respondent no.2 for more than 15 years when his services were terminated after the invalidation of

his caste claim. We have read the order of the Scrutiny Committee in detail. The Scrutiny Committee has not observed that the petitioner had fraudulently secured the benefits meant for the Scheduled Tribes by fabricating the documents or interpolating the same. We find that the Scrutiny Committee has invalidated the claim of the petitioner only because the petitioner could not have proved the same on the basis of the documents and the affinity test. Since both the conditions that are required to be satisfied while seeking the protection of the services, in view of the judgment of the Full Bench, stand satisfied in the case of the petitioner, the prayer made by the petitioner needs to be granted.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondent no.2 is directed to reinstate the petitioner on the post of Statistical Assistant only on the condition that the petitioner furnishes an undertaking in this Court and before the respondent no.2 within four weeks that neither the petitioner nor his progeny would claim the benefits meant for the Halba Scheduled Tribe, in future. Though the petitioner would be entitled to the continuity of service, the petitioner would not be entitled to the arrears of salary for the period during which he was out of service. The petitioner would also not be entitled to any other monetary benefits flowing from the order of continuity of service for the period during which he was out of service.

Order accordingly. No costs.

JUDGE

JUDGE

Wadkar