

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.4255 OF 2002

Balaji s/o Marutrao Mukkamwar
Age 27 years, Occu. Service,
R/o Dhobigalli, Degloor,
Tq. Degloor, District Nanded

... PETITIONER

VERSUS

1. The State of Maharashtra
(Notice to be served on Govt.
Pleader in his office at High Court
of Judicature of Bombay,
Bench at Aurangabad)
2. The Scheduled Tribes Certificate
Scrutiny Committee, Aurangabad,
through its Member Secretary.
3. The Deputy Director,
Technical Education and Training,
Regional Office, Aurangabad.
4. The Principal,
Industrial Training Institute,
Degloor, Tq. Degloor
District Nanded

... RESPONDENTS

.....
Shri A.S. Golegaonkar, Advocate for petitioner
Mrs. Y.M. Kshirsagar, A.G.P. for State
Shri K.D. Bade Patil, Advocate for respondent No.2
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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 23rd April, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. Mr. Golegaonkar, learned counsel for the petitioner submits that, the Committee, while invalidating the tribe claim of the petitioner, has not considered all the documents produced on record. It has not considered the record of the year 1978 wherein the entry in the brother's school record is also recorded as Mannerwarlu. So also the record of the petitioner shows the caste being recorded as Mannerwarlu. Learned counsel submits that, there is not a single contra evidence on record. Only because there is no old record prior to 1950, the tribe claim has been invalidated. The learned counsel submits that, the parents of the petitioner are illiterate, as such, no question arises of the school record of the petitioner's parents. According to the learned counsel, only a stray sentence recorded while conducting affinity is made basis of the judgment. Learned counsel submits that, even the son of real uncle of the petitioner namely Hanumant Govindrao Mukkamwar has been issued the validity certificate as belonging to Mannerwarlu - Scheduled Tribe. The learned counsel submits that, the petitioner is terminated only on

the ground that he has not submitted the validity certificate. The petitioner has put in 8 years service prior to termination of service. The petitioner is entitled for the benefit of the judgment of Full Bench of this Court in case of Arun Vishwanath Sonone Vs. State of Maharashtra, reported in 2015(1) Mh.L.J. 457.

2. Mr. Bade Patil, learned counsel for the respondent Committee submits that the petitioner could not even pass the affinity test. The petitioner could not even tell the occupation of the persons belonging to Mannerwarlu - Scheduled Tribe. The learned counsel submits that there is not a single old document. The petitioner has not produced any validity certificate issued or granted in favour of near relative of the petitioner though has made such a statement. According to the learned counsel, the Committee has rightly come to the conclusion.

3. Learned A.G.P. submits that, the petitioner was appointed for a temporary period. He was never permanent and as his tenure came to an end, the petitioner was relieved from duty.

4. We have considered the submissions canvassed by the respective parties.

5. The petitioner has filed an undertaking before this Court for seeking protection in service.

6. We have perused the appointment orders issued. The last appointment order is issued in the year 2000, which says that the petitioner is appointed on temporary basis for a period of 180 days.

7. We have also perused the termination order issued to the petitioner. The order of termination states that, as the period of the term for which the petitioner was appointed has come to an end, the petitioner has been relieved from service. The services of the petitioner are not terminated on the ground that the petitioner has not submitted validity certificate but the petitioner is relieved from service as the tenure of his appointment has come to an end. Even the petitioner has given a statement wherein he has clearly admitted that he was appointed on a temporary basis only.

8. As the petitioner is not terminated on account of non submission of validity certificate, he is relieved from service as his period of service has come to an end, the petitioner cannot claim reinstatement on the basis of the judgment of the Full Bench in the case of Arun Sonone (referred supra), the prayer of

the petitioner in that regard is negated.

9. We have perused the record as submitted by the learned counsel for the Committee and the judgment. It is crystal clear that there is not a single contra evidence on record. The petitioner could not produce any old record. The record produced by the petitioner is for a period 1978 onwards. During the course of hearing, the petitioner has produced photo copy of the validity certificate stated to have been issued in favour of the son of real uncle of the petitioner namely Hanumant Govindrao Mukkamwar. The same is stated to have been issued in March 2008. The affidavit of the said person is also filed on record with the pedigree. The said document was not before the Committee while passing the judgment. It is for the committee to consider the said validity certificate and the evidence on the basis of which the same is issued. In light of the above, and further considering the fact that no contra evidence is placed on record, we are inclined to remit the matter back to the Committee.

10. In the result, the impugned order passed by the Committee, invalidating the tribe claim of the petitioner as belonging to Mannerwarlu - Scheduled Tribe is quashed and set aside. The matter is remitted to the Committee for deciding the said proceedings afresh. The petitioner is at liberty to file

additional documents on record before the Committee. The committee shall, after following due procedure of law, decide the said proceedings afresh. The petitioner shall appear before the Committee on 18th May 2015. Writ Petition accordingly stands disposed of. Rule accordingly disposed of. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)