

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

WRIT PETITION NO.2814 OF 2014

The Divisional Controller,
Maharashtra Road Transport
Corporation, Jalgaon Division,
Jalgaon

.. Petitioner

Versus

Prabhakar s/o Sahadu Koli,
Age Major,
R/o Tukaram Wadi, Balwadi
Chauk, Jilla Peth,
Jalgaon

.. Respondent

Mr M.K.Goyanka, Advocate for petitioner
Mr S.R.Patil, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 24th February 2015

ORAL JUDGMENT

1. The petitioner - Corporation, by way of instant petition questions the legality and validity of the judgment and order passed by the learned Judge, Labour Court, Jalgaon in Complaint (ULP) No.39/2012 allowed on 28th March 2013 and confirmed by the judgment and order passed by the learned Member, Industrial Court, Jalgaon in Revision Application (ULP) No.46/2013 by an order dated 22nd November 2013. The facts leading to the filing of present petition are as under.

2. The respondent - employee was appointed as a Security Guard after undergoing the selection process vide selection letter dated 14th January 1998 against a post reserved for Scheduled Tribe category.

3. The caste certificate of the said employee dated 6th February 1989 was sent for verification to the Committee at Nasik, the same came to be invalidated by order dated 28th November 2001. The said order was subject-matter of challenge before this Court in Writ Petition No.5301 of 2001. The said petition came to be partly allowed wherein declaration that the employee does not belong to Scheduled Tribe category and invalidating their social claim was quashed and set aside. The respondent - employee was given opportunity to obtain caste certificate from the competent authority and with observation that same can be sent for verification.

4. Subsequent to the above referred order, the Scheduled Tribe Caste Scrutiny Committee, Nandurbar Division, Nandurbar by issuing validity certificate on 29th March 2008, declared that respondent - employee belongs to "Tokre Koli", Scheduled Tribe. In the meantime, the petitioner has terminated services of the respondent - employee by issuing order of termination dated 9th September 2002.

5. The respondent herein approached the learned Labour Court vide application referred supra alleging unfair labour practice under Item 1 (a) (b) (c) (d) (e) (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971.

6. The Labour Court, having regard to the pleadings of the parties framed issues and granted relief in favour of the present respondent

declaring the termination order dated 18th September 2002 as illegal and quashed the same. It was also directed to reinstate the complainant – respondent with continuity of service but, without back-wages.

7. The revision preferred by the present petitioner has suffered fate of dismissal, as such present writ petition.

8. Learned Counsel for the petitioner has raised two fold contentions (i) that once there is finding recorded in earlier round of litigation that the certificate of caste was obtained by the present respondent by playing fraud, he was not entitled for the relief in question and in support thereof, he has placed reliance upon the judgment of this Court in Writ Petition No.5301 of 2001. (ii) In addition to above, he submits that in the background of above, this Court, in its Full Bench in the matter of **Arun s/o Vishwanath vs. State of Maharashtra and others,, 2015 (1) Mh.L.J. 457** has observed that the protection of services cannot be ordered in favour of the persons like respondent.

9. While countering the above referred submissions, learned Counsel for the respondent – employee has invited my attention to the very observations made by this Court in the order passed in Writ Petition No.5301 of 2001. According to him, this Court once having granted liberty to the respondent herein to apply for issuance of fresh scheduled tribe certificate, it is not open for the petitioner to re-open the said issue before this Court. He submits that already the

respondent holds a validity certificate, as apparent from the certificate of validity dated 29th March 2008 and according to him, he cannot be faulted for issuing earlier certificate and delay in issuance of validity certificate. He further urged that the respondent was in service prior to year 2000 and as such, he is entitled for protection. He submits that in the wake of above referred background, both the Courts below have rightly held in favour of the respondent granting reinstatement.

10. Having considered rival contentions of the parties, it is required to be noted that this Court, in earlier round of litigation, i.e. Writ Petition No.5301 of 2001, initiated at the behest of respondent has set aside the order as regards the finding that the respondent does not belong to Scheduled Tribe and has granted liberty to respondent to apply for issuance of fresh certificate of Scheduled Tribe. In compliance thereof, the respondent had applied to the competent authority and was issued certificate of Scheduled Tribe certifying that the respondent belongs to "Tokre Koli" - Scheduled Tribe. The said certificate dated 8th July 2005 was subject to scrutiny before the competent authority, i.e. Scheduled Tribe Certificate Scrutiny Committee, who has issued certificate of validity in favour of respondent on 29th March 2008. In view of above, both the Courts below have rightly held that the claim of the respondent as belonging to Scheduled Tribe was genuine. Once it is held that the respondent belongs to Scheduled Tribe category, the order of termination on the ground that the respondent does not belong to Scheduled Tribe, is unsustainable.

11. Perusal of the judgment delivered by Labour Court and also by the Industrial Court reflects the consideration of entire case *qua* facts and the issues raised. Learned Labour Court has noticed that the respondent was working as Security Guard since 26th August 1997 and said appoint was after following due selection process. It was also noticed by the learned Court below that the services of the respondent were confirmed on 28th December 1998 in appropriate pay-scale from 5th October, 1998. The Labour Court has already considered that the respondent holds a certificate of validity. Based on the above referred factual matrix, in my opinion, the Labour Court, so also the Industrial Court have rightly proceeded to pass order of quashing of termination of the respondent and ordering reinstatement.

12. In the light of the above referred observations, no case for interference is made out. The writ petition being devoid of merits, is dismissed. Rule discharged.

(N.W. SAMBRE, J.)

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