

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4870 OF 2004

SAMBHAJI GANPATI GHANTEWAD
VERSUS
STATE OF MAHARASHTRA & ORS

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Advocate for Petitioner : Mr. A S Golegaonkar
AGP for Respondent No.1: Mr. S.D. Ghayal
Advocate for Respondents 2 and 3 : Mr. K.J. Ghute Patil
Advocate for respondent Nos. 7 and 8: Mr. B.N. Patil

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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 16th OCTOBER, 2015

PER COURT:-

1. This petition mainly challenges the correctness of the judgment and order dated 24.2.2003, passed by the Additional Commissioner, Aurangabad Division, Aurangabad on the appeal filed by the petitioner. The petitioner had filed an appeal challenging the promotion given to his juniors. The petitioner was working as untrained teacher with Zilla Parishad, Osmanabad since 1992. In the year 1996, his Tribe claim was held to be invalid and therefore, the Zilla Parishad removed the petitioner from service on 22.1.1997.

2. The petitioner came before this Court in writ petition No. 5394 of 1997. This court remanded the case to the Scheduled Tribe Certificate Scrutiny Committee, Nashik. The committee vide its order dated 27.1.1998

validated the tribe claim of the petitioner. In view of this, the Zilla Parishad reinstated the petitioner in service vide order dated 18.2.1998.

3. There was break of more than one year in the service of the petitioner. The learned Commissioner while dismissing the appeal held that the break in service of the petitioner was not condoned by the competent authority. This was wrong impression of the Commissioner. The record shows that the competent authority vide his order dated 29.8.2000 had already condoned the break in service of the petitioner. The appeal thus was dismissed on wrong assumption that the break in service was not condoned so far. We are therefore, convinced that the impugned order dated 24.2.2003 deserves to be set aside and the case should be remanded back to the Additional Commissioner, Aurangabad. The Commissioner shall decide the appeal afresh in the light of what is stated above in this order. The Commissioner shall decide the matter within four weeks from today.

4. If the appeal is allowed, the Commissioner may pass consequential orders like deemed date of promotion etc.

5. Rule is made absolute in the above terms. Writ petition is disposed of. No costs.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)