

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO. 3817 OF 2014

UMAKANT SHIVRAJ SWAMI.

...PETITIONER.

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS.

...RESPONDENTS.

...
Advocate for Petitioner : Mr.Swami Mahesh C.
AGP for Respondents/State:Mr.N.B. Patil.
...

CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: MARCH 26, 2015.

PER COURT:

This petition has been filed with following prayers:

“B) To grant the benefit of protection of service to the petitioner while considering the Judgments i.e. State of Maharashtra vs Milind, A.P.Ramtekkar v/s Union of India reported in 2013(2) Mh.L.J. 419, Judgment in case Kavita Salunke reported in 2012(8) SCC 430, Judgment in case of Dattu Thakur reported in 2012(1) SCC 549, Jagan Ganpatrao Takilkar vs Union of India and others reported in 2013(1) ALL M R 382 and order passed by this Hon'ble Court in Writ Petition No.7742/2013 and Writ Petition No.3252/2013.

C) To grant stay to operation, execution and implementation of Notice dated 01/04/2014, pending hearing and final disposal of this petition.

D) To direct the respondents, to not to take any adverse action including stoppage of salary, stoppage of pension, reverse in rank and termination of service, against the petitioner, on the basis of non-production of validity certificate, pending hearing and final disposal of this Writ Petition.”

2 The learned Counsel for the petitioner has tendered across the Bar an undertaking of the petitioner, which is taken on record. Para 4 of the said undertaking reads, thus:

“4 And for said purpose of seeking service protection to my services as Police Head Constable in the employment of respondent authority by seeking benefit of above said decision of this Hon'ble Court and of Hon'ble Supreme Court of India, I am waiving all my rights and benefits as Malajangam, Scheduled Caste category except this service as Police Head Constable. I, myself and my children will not claim any benefits, what so ever, of Scheduled Caste Category in future in service or for any other purpose.”

3 The learned Counsel for the petitioner places reliance on the unreported judgment of this Court in

case of **Shri Ram s/o Laxman Zudpe vs The State of Maharashtra and another** delivered on 13th February, 2014 in **Writ Petition No.7742 of 2013** with connected petitions, which has been placed on record in compilation of the writ petition from pages 31 to 41 and submits that in the similar fact situation, upon filing an undertaking, the Division Bench of this Court accepted the undertaking and protected employment of the petitioners therein with continuity of service.

4 The learned Counsel for the respondents, in the light of pronouncement of this Court in case of **Shri Ram s/o Laxman Zudpe** (supra), submits that this Court may pass an appropriate order.

5 We have heard the submissions of the learned Counsel for the petitioner, perused the grounds taken in the petition, annexures thereto and the contents of the undertaking, which is submitted on record by the petitioner. We are of the opinion that the protection

sought by the petitioner by filing an undertaking deserves consideration in the light of the judgment of this Court in case of **Shri Ram s/o Laxman Zudpe** (supra) wherein, this Court in para 5 has considered the judgment of the Division Bench of this Court in case of **A.P. Ramtekkar and others vs. Union of India and others**¹ and relying upon paragraphs 11 to 14 thereof, reached to the conclusion in para 6 that the petitioners therein were appointed in the year, 1995 on the basis of caste certificates certifying that they belong to Scheduled Tribe category and have rendered services for almost twenty years. In view of the judgment in the matter of **A.P. Ramtekkar vs. Union of India** (cited supra), there shall not be insistence upon petitioners to tender proposal for verification of caste certificates, if they are in a position to tender an undertaking to the effect that they are not willing to claim service benefits or any other benefits on the basis of caste certificates issued in their favour. Petitioners have already

¹ 2013(2) Mh.L.J. 419;

tendered undertaking to that effect which have been accepted by the Court. Therefore, this Court observed that there would not be any impediment for granting the request made by petitioners in the said petitions.

In paragraph 7 of the said judgment the respondents therein were directed not to insist upon petitioners to tender proposal for verification of caste certificates in view of Government policy reflected in Government Circular dated 18.05.2013. Services of petitioners shall not be discontinued on the ground of their failure to submit caste validation certificate. Petitioners shall not be entitled to claim service benefits on the basis of their respective castes hereinafter. Petitioners or their progeny shall not be entitled to claim benefit of their belonging to Scheduled Tribe category, either for securing employment or any other benefit.

6 In the present case also, the petitioner has filed

an undertaking. Applying the observations of this Court in paragraphs 6 and 7 of the judgment in case of **Shri Ram s/o Laxman Zudpe** (supra), the petition deserves to be allowed and accordingly, the same is allowed in terms of prayer clause (B). The impugned notice dated 1st April, 2014 issued by the respondent No.4 stands quashed and set aside.

Petition is allowed to above extent and stands disposed of.

(P.R. BORA,, J)

(S.S. SHINDE, J)

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