

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5184 OF 2015
WITH
C. A. NO. 5192 OF 2015 IN W. P. NO. 5184 OF 2015
C. A. NO. 6089 OF 2015 IN W. P. NO. 5184 OF 2015
C. A. NO. 7004 OF 2015 IN W. P. NO. 5184 OF 2015

Amol Jagannath Kamble and others ...Petitioners

Versus

The State of Maharashtra and others ...Respondents

.....
Shri R. N. Dhorde, Senior Advocate i/by Shri A. S. Bayas, Advocate
for Petitioners.

Shri Pravin S. Patil, Special Advocate for Respondent Nos. 1 to 6.

.....

WITH
WRIT PETITION NO. 5703 OF 2015

Shivkumar Sayanna Muddamwar ...Petitioner

versus

The State of Maharashtra and others ...Respondents

.....

Mr. Mahesh Deshmukh, advocate for petitioner
Shri Pravin S. Patil, Special Advocate for Respondent Nos. 1 to 5.

WITH
WRIT PETITION NO. 5958 OF 2015

Organization for Right of Tribal
Through its District Secretary
Laxman Upasrao mangam ...Petitioner

versus

The State of Maharashtra and others ...Respondents

.....

Shri V.J. Dixit, senior counsel i/b Mr. A.N. Nagargoje, advocate for petitioner

Mr. K.G. Patil, AGP for respondent Nos. 1 to 4

Shri Pravin S. Patil, Special Advocate for Respondent Nos. 5 and 6.

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 2nd JULY, 2015

P.C. :-

1. The Writ Petition No. 5184 of 2015 and Writ Petition No. 5703 of 2015 are filed by the persons who have been selected by M.P.S.C. for their respective posts, such as Deputy Collector, Tahsildar, Assistant Commissioner, Section Officer, etc. as per the details laid down in petitions. They were issued with appointment orders on or about 08.04.2015. The petitioners of both these writ petitions were appointed from reserved category. Vide order dated 28.04.2015 the appointment orders were stayed until further orders by the General Administration Department. The petitioners in both these writ petitions have assailed the said order. In the order dated 28.04.2015 it is stated that, 46 candidates who are selected from Scheduled Tribe category, their validity certificates/caste certificates are proposed to be scrutinized.

2. The petitioner in Writ Petition No. 5958 of 2015 is an

organization for rights of tribal, who seek directions regarding re-verification of the tribe claims of the respondents therein, with further relief that, the respondent Nos. 1 to 4 shall not issue appointment orders in favour of said 25 candidates including respondent Nos. 7 to 23 till the tribe claims are re-verified.

3. Mr. Dhorde, the learned senior counsel for the petitioner in Writ Petition No. 5184 of 2015 submits that, the petitioners are issued with validity certificates after following due procedure of law. The petitioners are selected after undergoing selection process. Some of the petitioners were earlier confirmed employees of the State and they are selected by the M. P. S. C. The petitioners are also issued with appointment orders and they were to be sent for training. However, the said order is abruptly stayed on 28.04.2015. According to the learned senior counsel, there is no basis for the same. There was no impediment to allow the petitioners to join the training. Some of the petitioners were approved and permanent government employees have been relieved from their earlier post. However, because of the order dated 28.04.2015 they are not being appointed, nor sent for training, that would also affect their seniority and would hamper their further progress. The learned senior counsel submits that, the Division Bench of this Court in Writ Petition No. 2136 of 2011 with other connected writ petitions vide judgment and order

dated 25th August, 2011 has held that, condition No. 7 in the Government Resolution dated 05.11.2009 which prevents appointment or promotion to a candidate belonging to backward class only if he possesses validity certificate is erroneous. The learned senior counsel submits that, in the present matter, the petitioners are on better footing, as they possess validity certificate. The order impugned is erroneous and the respondents be directed to appoint the petitioners and allow them to join the training as per the appointment order.

4. Mr. Deshmukh, the learned counsel for the petitioner in Writ Petition No. 5703 of 2015 adopts the arguments of Mr. Dhorde, the learned senior counsel.

5. Mr. Patil, the learned counsel for the respondent/State submits that, as far as question of seniority is concerned, the apprehension of the petitioners is misplaced. The seniority would be considered after the training period is over. The seniority of the petitioners as well as the candidates who have jointed the training would not be declared by the Department immediately and the said seniority would be declared after training period is completed by all these candidates for which two years period is required. As such, the petitioners' apprehension is unsustainable. The learned counsel submits that,

the validities of the petitioners are under cloud. The learned counsel also appears for the respondent No. 4 and on instructions states that, prima facie enquiry has been conducted and in some matters notices are issued and in some matters notices are yet to be issued. The learned counsel for the respondent No. 4 submits that, unless validity is decided by the Committee, the petitioners cannot be sent for training by the deponent's office.

6. Mr. Dixit, the learned senior counsel for the petitioner in Writ Petition No. 5918 of 2015 submits that, validity certificates issued in favour of 25 candidates referred to in the letter dated 28.04.2015 be set aside and respondent Nos. 5 and 6 be directed to re-verify the tribe claims of the said 25 candidates. According to the learned senior counsel instances are given in the petition itself about the basic documents against them and fraud being played by them while obtaining validity certificates. Directions need to be issued to the respondent Nos. 5 and 6 to re-verify the tribe claims of said 25 candidates. According to the learned senior counsel, as there is fraud, suspicion and prima facie evidence against the respondents, they should not be issued with appointment orders.

7. Affidavit in replies are filed by the respondent Nos. 5 and 6 in writ petition No. 5958 of 2015 stating that show cause notices have

been issued to the respondents and date of hearing is fixed by the Committee at Nashik and Aurangabad.

8. In writ petition Nos. 5184 of 2015 and 5703 of 2015, prayer is made to set aside the communication dated 28.4.2015 staying the joining of the petitioners. It is a matter of record that the petitioners in these two writ petitions have been issued with the appointment orders but the employer has sought information from the committee with regard to genuineness of the validity certificate or otherwise. It is matter of fact that the validity certificate are issued in favour of the petitioners in both these writ petitions. As of today, these petitioners are issued with the validity certificates. The respondent employer has asked the committee some information concerning the validity certificates issued. There is no impediment to allow these petitioners to join the said post and/or training at least provisionally.

9. As far as the writ petition No. 5958 of 2015 is concerned, the prayer is made to quash and set aside the validity certificate granted in favour of respondent Nos. 7 to 23 in the said writ petition. Affidavit in replies are filed by respondent Nos. 5 and 6 in the said writ petition about inquiry being conducted or otherwise. The said prayer as such now needs no consideration. In so far as other prayers in the said writ petition about restraining the respondent Nos. 7 to 23 from not

issuing appointment order is concerned the appointment orders are already issued and only joining is stayed.

10. As observed earlier by us that these persons can be allowed to join provisionally subject to further contingencies and eventualities as it would not serve anybody's purpose from not allowing them to join the duties after having been issued the appointment orders and more particularly when today they are possessing the validity certificates.

11. It is made clear that in these writ petitions we are not considering the rights of any of the parties with regard to the averments and allegations made by the respective parties about social status or the rights of the committees to inquire into the matter or right of the petitioners in each of the writ petitions with regard to inquiry. The parties may proceed with regard to their rights in accordance with law.

12. In the light of above, we pass the following order:-

- I. The respondent employer shall allow the petitioners in writ petition No. 5184 of 2015 and 5703 of 2015 to join provisionally depending upon further contingencies and eventualities. To that extent the order restraining them

from joining is set aside.

II. Writ petitions accordingly stand disposed of with the aforesaid observations and directions.

III. Pending civil applications are also disposed of.

13. Parties to act on authenticated copy of this order.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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