

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7434 OF 2011

Prakash s/o Motiram Piratwad
Age: 55 yrs, Occ : Nil,
R/o. N-11, B-17/2, T.V.Centre,
HUDCO, Aurangabad.

... Petitioner

VERSUS

1. The State of Maharashtra
Through its Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai -32.
(Copy to be served to GP, High Court,
Bench at Aurangabad)

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.

3. The Collector,
Aurangabad.

4. Shaikh Naim Shaikh Lal,
Age: 35 years, Occu.: Business,
Tq. and Dist. Hingoli.

... Respondents

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Advocate for Petitioner : Mr. Suryawanshi Prashant D. and A R Tapse
AGP for Respondents 1 to 3: Mr. D.B. Bhang
Advocate for Respondent No.4 : Mr. P.S. Agarwal

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

DATED : 26th JUNE, 2015

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :-

1. Mr. Suryawanshi, the learned counsel for the petitioner states
that the petitioner is terminated from service only on the ground that

his tribe claim has been invalidated. The petitioner was appointed as junior clerk on 26.5.1977 from Scheduled Tribe category. The claim of the petitioner was belatedly referred to the committee. The committee invalidated the said tribe claim. The judgment invalidating the tribe claim of the petitioner is confirmed up to the Apex Court. Thereafter, the petitioner is terminated from service. The last promotion given to the petitioner was as Deputy Collector on 29.3.2000. The learned counsel submits that in the judgment of the committee or this Court, there is no finding of any fraud, misrepresentation or forgery. According to the learned counsel, the petitioner is entitled to protection in service in view of the judgment of the Full Bench of this Court in the case of ***Arun Vishwanath Sonone vs. State of Maharashtra and others, reported in 2015(1) Mh.L.J. 457.***

2. Mr. Bhangé, the learned A.G.P. submits that the action has been rightly taken. Merely because no case of any fraud being played in obtaining the caste certificate is made out that by itself would not be sufficient to contend that the consequences specified under Section 10 of the Maharashtra SC, ST, DNT, VJNT and SBC (Regularization of issuance and verification of caste certificates) Act, 2000 would not follow. Action has been rightly initiated and taken. The petitioner cannot claim any protection of service.

3. Mr. Agarwal, the learned counsel for respondent No.4 submits that it is upon the complaint of the present respondent No.4, who is a social worker, that the tribe claim of the petitioner was referred to the committee and was subsequently invalidated. The petitioner got appointment from reserved category, which he could not have got. Knowingly, the petitioner has represented his false tribe. According to the learned counsel, the petitioner is already terminated from service and has also attained the age of superannuation. The petitioner would not be entitled for any relief. According to the learned counsel, once the petitioner is already terminated from service and invalidation of his caste claim is confirmed upto the Apex Court, the petitioner cannot seek any further relief. The authorities have rightly terminated the services of the petitioner.

4. We have considered the submissions canvassed by the learned counsel for the respective parties. We have also gone through the judgment delivered by the committee.

5. The committee has invalidated the tribe claim of the petitioner only on the ground that the petitioner did not possess sufficient evidence to prove his tribe claim as belonging to Mannerwarlu Scheduled Tribe. The said judgment is confirmed upto the Apex Court. In the judgment delivered by the committee and confirmed by

this Court, there is no finding of fraud, misrepresentation or forgery on the part of the petitioner. The tribe claim is invalidated because of paucity of evidence to prove the same. In such a case, the judgment of the Full Bench of this Court in the case of Arun Sonone (supra) would squarely apply and the petitioner would be entitled for the protection in service.

6. Of course, the petitioner is not entitled for protection of promotional post if he is promoted after the cutoff date i.e. after introduction of Act of 2000. The said Act has been introduced w.e.f. 18.10.2001. The last promotion of the petitioner as Deputy Collector is on 29.3.2000. Therefore, the petitioner would be entitled for protection in service as Deputy Collector.

7. Now the petitioner has attained the age of superannuation. Naturally, the petitioner has been terminated from service on 21.1.2010. The petitioner will not be entitled for back wages or salary for the period from 22.1.2010 till he has attained the age of superannuation. However, the said period would be counted for the purpose of continuity of service and for further retiral benefits.

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

O R D E R

- I. The impugned order of termination dated 21.1.2010 passed by the employer so also the impugned judgment of the Maharashtra Administrative Tribunal dated 13.07.2011, are quashed and set aside. However, the petitioner would not be entitled for back wages from 22.1.2010 till his date of superannuation. The said period, nonetheless, be counted for continuity in service and for all future retiral and monetary benefits.
- II. The petitioner naturally, would not be entitled for the benefit of his Scheduled Tribe category and entry of the same would be taken in the service book of the petitioner.
- III. Writ petition is accordingly partly allowed and disposed of. No costs.
- IV. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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