

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

**WRIT PETITION NO. 7563 OF 2009
WITH
CIVIL APPLICATION NO. 414 OF 2013**

Hanumant Rajaram Koli .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Shri V. M. Humbe, Advocate for the Petitioner

Shri U. S. Mote, A. G. P. for the Respondent No. 1

Shri R. P. Phatke, Advocate for the Respondent No. 2

Shri K. D. Bade Patil, Advocate for the Respondent No. 3

Shri V. V. Ingle, Advocate for the Respondent Nos. 4 and 5

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 30TH APRIL, 2015.

PER COURT :

1. The Tribe claim of the petitioner as belonging to 'Koli Mahadeo' Sheduled Tribe is invalidated. The petitioner is also terminated from service in the year, 2007.

2. Mr. Humbe learned counsel submits that, the petitioner was appointed as a Peon with the Respondent No. 5 on 15.01.1999 and since the said date he is continuously working with the Respondent No. 5 till his termination. The learned counsel submits that, the petitioner is not agitating the judgment of the Committee and accepts the same. However, he is claiming protection of service as held by the Full Bench of this Court in a case of **Arun Vishwanath Sonone V/s State of Maharashtra and Others** reported in **2015 (1) Mh. L. J. 457.**

3. The learned counsel for the Respondent Nos. 4 and 5 submits that, there is no vacancy with the Respondent No. 5 to accommodate the petitioner. We have heard Mr. Bade Patil the learned counsel for the Committee. Learned A. G. P. submits that the Education Officer shall after verifying the case of the petitioner will take steps and if the petitioner is found eligible will place in the list of surplus candidates.

4. We have considered the submissions canvassed by the learned counsel for respective parties. As the petitioner has given up his challenge to the judgment of the Committee, the judgment of the Committee stands upheld and confirmed. The Committee has not arrived at the conclusion that petitioner is

guilty of any fraud or misrepresentation but has invalidated on the ground of lack of evidence.

5. In light of that, the petitioner will be entitled to the benefit of protection in service as held in case of “**Arun Vishwanath Sonone V/s State of Maharashtra and Others**” referred supra. As vacancy is not available with Respondent Nos. 4 and 5, orders cannot be passed directing reinstatement in the Respondent No. 5 school. It is seen that the petitioner’s appointment has been approved by the Education Officer. The petitioner was permanent employee and was appointed prior to the cut off date.

6. The judgment of the Scrutiny Committee invalidating the Tribe claim of the petitioner is upheld and confirmed. The order of termination on account of invalidation of the Tribe claim is quashed and set aside.

7. The Education Officer shall place the petitioner in the list of surplus candidates of Peon and as per its turn direct to appoint the petitioner in a institution having vacancy. The petitioner shall not be entitled for salary from the date of termination till the date the petitioner is accommodated in a Institution having vacancy by the Education Officer. However,

the said period shall be counted for the purpose of continuity and further benefits. The petitioner henceforth shall not be entitled for the benefit of reservation in service or in any walk of life. The entry of this order shall be taken in the Service Book of the petitioner. The Tribe certificate stands cancelled and confiscated. Writ Petition stands disposed of. Civil Application also stands disposed of.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]

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