

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

WRIT PETITION NO. 8406 OF 2014

Kerba S/o Dashrath Koli,
Age : 43 Years, Occu. : Nil,
R/o Terkheda, Tq. Washi,
District Osmanabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through : The Secretary,
General Administration Department,
Mantralaya, Mumbai - 32.
2. Maharashtra State Road Transport
Corporation, Through its
Divisional Controller, Osmanabad .. Respondents

Shri Manish P. Tripathi, Advocate for the Petitioner.

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

Shri D. S. Bagul, Advocate for the Respondent No. 2.

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

DATE : 22ND JULY, 2015.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Tripathi, the learned counsel for the petitioner submits

that, the tribe claim of the petitioner is invalidated. In the year 1994 the petitioner was selected and appointed as senior clerk from the Scheduled Tribe category. The tribe claim of the petitioner was forwarded to the Committee. The Committee invalidated the tribe claim of the petitioner in the year 2009. This Court upheld the judgment of the Committee by dismissing the writ petition in the year 2011. Pursuant thereto the petitioner was terminated vide order dated 26.11.2011. The learned counsel submits that, there is no finding of any fraud, misrepresentation or forgery in the judgment delivered by the Committee. The writ petition has been filed immediately thereafter.

2. We had asked Mr. Bagul, the learned counsel for the respondent No. 2, as to whether the vacancy still exists with the respondent No. 2/corporation of the post of senior clerk on which the petitioner was working. The learned counsel on instructions states that, the said post is still vacant.

3. Considering the judgment of the Full Bench of this Court in a case of **Arun Vishwanath Sonone Vs. State of Maharashtra and others** reported in **2015(1) Mh.L.J. 457** and the fact that, the post is still vacant, we deem it appropriate to set aside the order of termination and direct the respondent No. 2 to reinstate the petitioner with continuity,

however, without backwages.

4. In the light of the above, we pass the following order.

5. The order of termination issued by the respondent No. 2 terminating the service of the petitioner on the ground that tribe claim is invalidated is quashed and set aside. The respondent No. 2 shall reinstate the petitioner on his original post with effect from 01.08.2015. The petitioner will not be entitled for backwages from the date of termination till the date of joining, however, said period shall be counted for continuity in service and all further benefits.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[V. K. JADHAV, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/July 15