

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 118 OF 2015

Kishore Manohar Sonkusare

-vs-

State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.V.Shiralkar, counsel for the petitioner.
Mr. N.R. Rode, A.G.P for the respondent Nos.1 to 4.

CORAM : SMT. VASANTI A. NAIK &
A. I. S. CHEEMA, JJ.

DATE : 24.08.2015.

By this petition, the petitioner impugns the order of the Maharashtra Administrative Tribunal, Nagpur, dated 11/09/2014, dismissing the original application filed by the petitioner and holding that the petitioner was not entitled to protection of his promotion on the basis of his caste claim.

The petitioner was appointed as a Wireless Operator in the year 1990 on a post earmarked for the scheduled tribes. The petitioner claimed to belong to Halba Scheduled Tribe and the caste claim of the petitioner was sent to the Scrutiny Committee for verification. On 17/05/1996, the petitioner was promoted on the post of Head Wireless Operator from the Scheduled Tribes Category. The petitioner was further promoted on the post of Sub-Inspector of Police Wireless (Traffic) in the year 2007-08. The petitioner was served with a notice in the year 2011 asking him why he should not be reverted to the post of Wireless Operator. After the issuance of the show cause notice, vide an order dated 20/05/2013, the petitioner was reverted on the post of Wireless

Operator/Head Constable. The order of the respondents was challenged by the petitioner before the Maharashtra Administrative Tribunal. By the impugned order, dated 11/09/2014, the original application filed by the petitioner, was dismissed.

Shri Shiralkar, the learned counsel for the petitioner, submitted that since the petitioner was promoted on the second occasion, from open category, the promotion of the petitioner on the post of Sub-Inspector of Police Wireless (Traffic) of the year 2007-08 should be protected. It is submitted that in view of the judgment of the Full Bench, reported in 2015 (1) Mh.L.J. 457 (Arun v. State of Mah.), the promotion of the petitioner on the post of Head Wireless Operator also needs to be protected.

Shri Rode, the learned Assistant Government Pleader appearing on behalf of the respondents, supported the order of the Tribunal and submitted that the petitioner was promoted on 17/05/1996 on the post of Head Wireless Operator reserved for the Scheduled Tribes. It is submitted that since the petitioner was promoted after 15/06/1995, the petitioner cannot seek the protection of his promotion on the post of Head Wireless Operator by relying on the judgment of the Full Bench. It is submitted that this Court has by the judgment, dated 03/07/2015, dismissed Writ Petition No.2162 of 2015 and has held that only the initial appointment of a person claiming to belong to a reserved category could be protected in view of the judgment of the Full Bench after the invalidation of the caste claim. It is stated that this Court has observed in the said judgment that protection of the initial appointment and the protection of the promotion stand on different pedestal. It is stated that this Court had declined to protect the promotion by the said judgment in Writ Petition No.2162 of 2015.

On hearing the learned counsel for the parties and on a perusal of the judgment of the Full Bench (cited supra), the unreported judgment dated 03/07/2015 in Writ Petition No.2162

of 2015 and the order of the Tribunal, it appears that the Tribunal was justified in dismissing the original application filed by the petitioner. The petitioner was admittedly promoted in the year 1996 on a promotional post earmarked for the Scheduled Tribes. Since the caste claim of the petitioner was invalidated by the order of the Scrutiny Committee, the petitioner could not have sought the protection of his promotion of the year 1996. Even assuming that the petitioner was again promoted to the next higher post in the year 2007-08, since the first promotion of the petitioner cannot be protected, the second promotion of the petitioner should also fall. The Tribunal was justified in dismissing the original application filed by the petitioner and holding, by placing reliance on several judgments of the Hon'ble Supreme Court and this Court that the promotion of the petitioner could not have been protected. There is no illegality in the order of the Tribunal so as to interfere with the same, in exercise of the writ jurisdiction.

Since the impugned order is just and proper, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

KHUNTE