

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

MISC. CIVIL APPLN. NO.881 OF 2015

IN

WRIT PETITION NO. 5430 OF 2011 (D)

Kailash S/o Namdeorao Gaonar

-vs-

Govt.of Maharashtra, through its Secretary, Social Welfare, Cultural, Sports & Tourism
Department 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. P. S. Kshirsagar, counsel for the applicant.
Mr. N.R. Rode, A.G.Pfor the respondent Nos.1 and 4.
Mr. P. S. Chawhan, counsel for the respondent Nos.2 and 3.

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

DATE : 01.09.2015.

By this review application, the applicant seeks a review of the order, dated 14/08/2012 in Writ Petition No.5430 of 2011.

The applicant was appointed as an Assistant Teacher on a post reserved for the Scheduled Tribes on 27/06/1987. The applicant claimed to belong to Dhanwar Scheduled Tribe and the caste claim of the applicant was referred to the Scrutiny Committee for verification. The Scrutiny Committee invalidated the caste claim of the applicant by the order dated 31/10/2008. The applicant gave up his claim to Dhanwar tribe and claimed that the applicant belongs to Dhangar caste. The applicant challenged the order of the Scrutiny Committee in a writ petition, bearing Writ Petition No.2542 of 2009. The said writ petition was dismissed on the ground that the applicant did not wish to contest the claim and another petition filed by the applicant bearing Writ Petition No.1016 of 2009 also suffered the same fate. The applicant filed a review application, but the same was dismissed. The applicant challenged his termination order in Writ Petition No.5430 of 2011. This Court, by the order sought to be reviewed, dated 14/08/2012,

permitted the applicant to withdraw the petition with liberty to approach the Secretary in the Department of Social Welfare only for a limited relief whether the applicant could be granted pensionary benefits despite the invalidation of his caste claim. With the aforesaid liberty, the petition was disposed of as withdrawn.

It is the case of the applicant that the law in regard to grant of protection to the candidates appointed on the reserved post despite invalidation of their caste claim was set at rest by the Full Bench of this Court by the judgment, reported in 2015 (1) Mh.L.J. 457 (Arun v. State of Maharashtra). It is stated that the Full Bench of this Court had held after considering the law laid down by the Hon'ble Supreme Court during the past couple of years that the services of an employee, who was appointed before the cut-off date i.e. 28/11/2000 and against whom there were no observations of the Scrutiny Committee in respect of fraud, the protection was required to be granted. It is stated that it is observed by the Full Bench in paragraph No.76 of the judgment, reported in 2015 (1) Mh.L.J. 457 that merely because a petition claiming the relief of protection was filed and that was either withdrawn or dismissed by the Court, that by itself would not follow that the subsequent petition claiming the same relief would be barred by the principles of *res judicata*. It is stated that the appointments of all similarly situated employees have been protected by this Court, time and again. It is stated that in the peculiar facts of the case, the applicant had given up his caste claim and had sought the protection of his services, but since the Court was not inclined, the learned counsel for the applicant had sought permission to withdraw the writ petition. It is stated that the withdrawal of the previous petition would not come in the way of the petitioner in seeking the relief of protection, in view of the law laid down by this Court in paragraph No.76 of the judgment, reported in 2015 (1) Mh.L.J. 457.

Shri Chawhan, the learned counsel for the respondent Nos.2 and 3-Management, submitted that the applicant would not be entitled to the relief of protection. It is stated that the previous petitions filed by the applicant have been dismissed by this Court and the last petition was also withdrawn by the applicant. It is

stated that the petition would be barred by principles akin to the principles of *res judicata*.

In the peculiar circumstances of the case, we are inclined to review our order, dated 14/08/2012, as admittedly the applicant was appointed in the year 1987 and there is no observation in the order of the Scrutiny Committee that the applicant has illegally and fraudulently secured the benefits meant for Dhanwar Scheduled Tribe. The observations made by the Full Bench in paragraph No.76 of the judgment reported in 2015 (1) Mh.L.J. 457 will come to the rescue of the applicant in seeking a review of the order, dated 14/08/2012. In the peculiar facts and circumstances of the case, we intend to grant the relief to the applicant by directing the respondent Nos.2 and 3-Management to reinstate the applicant in service and protect his services. Since the applicant is appointed before the cut-off date and since there is no observation in the order of the Scrutiny Committee that the applicant has fraudulently secured the benefits meant for Dhanwar Scheduled Tribe, on parity, we intend to direct the respondents-Management to reinstate the applicant and protect his services.

Hence, the review application is disposed of with a direction to the respondents-Management to reinstate the applicant in service on the condition that the applicant tenders an undertaking in this Court and also to the respondents-Management within a period of four weeks that neither the applicant, nor his progeny would claim the benefits meant for the Dhanwar Scheduled Tribe, in future. Though the applicant would be entitled to reinstatement with continuity of service, the applicant would not be entitled to the salary and the other monetary benefits for the period during which the applicant was out of service. We direct the respondents-Management to reinstate the applicant in service within a period of two weeks from the date of receipt of the undertaking.

Order accordingly. No costs.

JUDGE

JUDGE