

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2573/2015

Vijaysingh Hukumsingh Banafar

...Versus...

Deputy Director, Health Services, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.R. Narnaware, Advocate for petitioner
Ms Tajwar Khan, AGP for respondent

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

DATE : 29.09.2015

Heard.

By this petition, the petitioner seeks a direction to the respondent to reinstate the petitioner in service and protect his services in view of the judgment of the Full Bench reported in **2015 (1) Mh.L.J. 457.**

The petitioner was appointed as a driver by the respondent on 15.5.1996, on a post earmarked for the Scheduled Tribes. The petitioner had claimed to belong to 'Thakur Scheduled Tribe' and the caste claim of the petitioner was referred to the Scrutiny Committee for verification. The caste claim of the petitioner was invalidated on 30.10.1998. The respondent issued a notice of proposed termination to the petitioner in view of the invalidation of his caste claim, on 30.11.2006. The services of the petitioner were terminated on

30.1.2008 in view of the order of the Scrutiny Committee. The petitioner has filed the instant petition, seeking protection of his services, in view of the judgment of the Full Bench.

The learned Counsel for the petitioner submits that the petitioner was appointed before the cut off date in the year 1996 and since there is no observation in the order of the Scrutiny Committee that the petitioner has fraudulently secured the benefits meant for the 'Thakur Scheduled Tribe', the petitioner is entitled to protection of his services as both the conditions that are required to be fulfilled, in view of the judgment of the Full Bench, are fulfilled in the case of the petitioner.

The learned Assistant Government Pleader appearing on behalf of the respondent does not dispute the proposition of law as laid down in the judgment of the Full Bench reported in **2015 (1) Mh.L.J. 457**. The learned Assistant Government Pleader states on the basis of the affidavit-in-reply filed on record that some posts of drivers are vacant in Nagpur Division and the petitioner could be reinstated in one of the vacant posts. It is, however, stated that the petitioner should not be entitled to any monetary benefits including the salary for the period from the date of his termination till the date of his reinstatement.

On hearing the learned Counsel for the parties and on a perusal of the judgment of the Full Bench and the order of the Scrutiny Committee, it appears that the services of the petitioner are required to be protected. The petitioner was appointed before the cut off date in the year 1996 and there is no observation in

the order of the Scrutiny Committee that the petitioner has fraudulently secured the benefits meant for the 'Thakur Scheduled Tribe'. The petitioner was not able to prove his claim on the basis of the documents and affinity test.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondent is directed to reinstate the petitioner in service on the condition that the petitioner furnishes an undertaking in this Court and to the respondent that neither the petitioner nor his progeny would claim the benefits meant for the 'Thakur Scheduled Tribe', in future. Though the petitioner would be entitled to continuity in service, the petitioner would not be entitled to claim the salary or any monetary benefits for the period during which the petitioner was out of service. The respondent is directed to reinstate the petitioner within a period of two weeks from the date of receipt of the undertaking.

Order accordingly. No costs.

JUDGE

JUDGE

Wadkar