

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR
BENCH, NAGPUR.**

WRIT PETITION NO.3595 OF 2013

Prabhakar S/o Gopalrao Jambhale

..vs..

**State of Maharashtra, thr its Principle Secretary, Ministry of
Transport, Mantralaya, Mumbai and ors**

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

Court's or Judge's order

Shri A.H. Jamal, counsel for the petitioner.

Shri T.R. Kankale, AGP for R-1.

Shri P.B. Patil, counsel for R-2 & 3.

**CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.
DATE : JANUARY 15, 2015.**

1. **Heard** learned counsel for the respective parties.

2. Perused order passed on 21.1.2014 in the present matter. The said order reads as thus:-

**CORAM : B.P. DHARMADHIKARI
AND Z.A. HAQ, JJ
DATED : JANUARY 21, 2014.**

“Heard Shri A.H. Jamal, learned

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Counsel for the petitioner, Shri T.R. Kankale, learned A.G.P. for respondent no.1 and Shri P.B. Patil, learned Counsel for respondent nos. 2 and 3, for some time.

Petitioner who joined services in 1979 as a reserved category candidate, could not or did not submit documents for verification of his caste, and ultimately on 18.01.2005 his employer treated him as an open category candidate.

Though we have some reservations about such treatment and conversion, as present petitioner has already superannuated, we are not going into the merits of the said conversion. The petitioner was soon after order dated 18.01.2005 given a charge-sheet and after enquiry, he was terminated from service by order dated 28.10.2010. This was just two months prior to his attaining age of superannuation. The punishment was questioned in a departmental appeal and that appeal has been dismissed on 12.01.2012 and thereafter, present Writ Petition has been filed.

Along with Civil Application No. 192/2014, the applicant/petitioner has produced a document dated 08.02.2005 which is a validity certificate issued by the Divisional Caste Certificate Scrutiny Committee, Nagpur in favour of one Pankaj Suresh Jambhale. It shows that he belong to 'Dhangar' caste recognized as V.J.

Shri P.B. Patil, learned counsel appearing on behalf of respondent nos. 2 and 3 states that after 15.06.1995 and before regularization in open category, petitioner was given two promotions as a person belonging to backward class and hence, verification of his

caste claim was necessary. As petitioner did not cooperate, after due departmental enquiry his services has been terminated.

Before proceeding further with consideration of the controversy, we direct the petitioner to join 'Divisional Caste Certificate Scrutiny Committee at Nagpur' as party respondent no.4. Necessary amendment be carried out forthwith. Shri Kankale, learned A.G.P. present in Court waives notice for added respondent. Added respondent – Committee shall produce before this Court the documents submitted for verification by Pankaj Suresh Jambhale. Question is, whether those documents reveal name of present petitioner as one of the relative? After receipt of those documents, the Court may consider the controversy further.

The order of this Court be complied with by 10.02.2014.

Copy of this order be furnished to learned counsel for the parties to act upon."

The petitioner has been given validity, thereafter, on 29.4.2014 as "Nomadic Tribe" belonging to caste "Dhangar".

3. The employer has, vide order dated 18.11.2005, treated the petitioner as a person in

“*Open Category*” and pointed out that, for seniority, date 15.6.1995 shall be looked into.

4. The petitioner has joined the employment, as “*Junior Assistant*”, on 6.3.1981 as a person belonging to “*Dhangad*” (Scheduled Tribe). He was promoted as “*Accountant*”, because of that Certificate, on 1.11.1985 and got further promotion as “*Assistant Accounts Officer*” on 10.8.1993. That Caste Certificate has not been submitted for its verification by the competent Scrutiny Committee.

5. The petitioner has been terminated on 28.10.2010 and otherwise he would have retired on superannuation 31.12.2010. Thus, for not submitting his Caste Validity Certificate as belonging to “*Scheduled Tribe*” candidate, he has been terminated just two months prior to his due date.

.....5/-

6. Considering the background in this situation, Shri A.H. Jamal, learned counsel for the petitioner, submits that in the light of the Full Bench Judgment of this Court in the case of Arun s/o Vishwanath Sonone ..vs.. State of Maharashtra & ors, reported at 2015(1) Mh.L.J. 457, the services of the petitioner need to be protected and he should have been treated as a person belonging to either “*Open Category*” or then “*Nomadic Tribe*” (C).

7. Shri T.R. Kankale, learned Assistant Government Pleader for respondent No.1 and Shri P.B. Patil, learned counsel for respondent Nos.2 and 3 are opposing the said contention. They submit that the petitioner can, at the most, be treated as a person belonging to “*Nomadic Tribe (C)*” from 15.6.1995. Shri Patil, learned counsel, submits that if the petitioner wants the

benefits from prior date i.e. 6.3.1981, he must have been submitted his Caste Certificate for its verification by the Caste Scrutiny Committee.

8. We find that the situation in the present matter is covered by order dated 18.11.2005. The petitioner has accepted that order and as such in the light of the Full Bench Judgment of this Court cited *supra*, we hold that his termination, for not producing the Caste Validity Certificate, on 28.12.2010 is unsustainable. The said termination is, therefore, quashed and set aside. The petitioner is reinstated back in service till his superannuation on 31.12.2010.

9. Needless to mention that he shall be paid his retirement benefits, in accordance with law, within a period of six months from today. The claim of backwages from 28.10.2010 till 31.12.2010 is rejected in present facts.

.....7/-

However, the said period shall be taken into account as continuous service.

JUDGE

JUDGE

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