

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

Misc. Civil Application (Review) No.819/2011
in
Writ Petition No.4379/2010 (D)
(Ambadas Govindrao Bhange .vs. Chief Executive Officer, Zilla Parishad,
Yavatmal and another)

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

Court's or Judge's orders.

Mr. S.P. Bhandarkar, Advocate h/f Mr. S.R. Narnaware, Advocate for
Petitioner.

Mr. J.Y. Ghurde, Advocate for Respondent No.1.

Ms. P.D. Rane, AGP for Respondent No.2.

CORAM : B.R. Gavai & Indira K. Jain, JJ.
DATED : August 11, 2015.

1. This is an application for review of the order dated 17th June, 2011.

2. By the said order, the Court has rejected the claim of the petitioner for protection of his services on the basis of the judgment of the larger Bench of this Court in the case of **Ganesh Rambhau Khalale .vs. State of Maharashtra and others** reported in **AIR 2009 Bombay 122**.

3. The larger Bench of this Court in the case of **Arun .vs. State of Maharashtra** reported in **2015 (1) Mh.L.J. 457** has held that in view of the judgments of the Apex Court in the case of **Kavita Solunke .vs. State** reported in **2012 (5) Mh.L.J.921** and in the case of **Shalini .vs. New English High School Association and ors** reported in **2014(2) Mh.L.J. 913**, the view taken by the larger Bench in the case of **Ganesh** (supra)

stands impliedly overruled. It has been further held that the employees who are in service for a considerable period and in whose case there is no finding of fraud by the Scrutiny Committee, are entitled for protection of services. As such the review application is allowed. The order dated 17th June,2011 is recalled. The petition is restored to file.

Writ Petition No.4379/2010

1. Not on board. By consent taken on board.
2. Rule. Rule made returnable forthwith. Heard by consent.
3. The petitioner was appointed as Junior Engineer vide order dated 4.10.1997 against a vacancy reserved for the Scheduled Tribe candidate. Respondent no.1 asked the petitioner to submit the validity certificate by letter dated 15.12.2005 which was the subject matter of challenge in Writ Petition No. 6639/2005. The said writ petition was disposed of by directing the Scrutiny Committee to decide the caste claim of the petitioner within four weeks.
4. The Caste Scrutiny Committee invalidated the caste claim of the petitioner which was the subject matter of challenge in Writ Petition No.2419/2007. This court vide order dated 20.06.2008 rejected the said writ petition. On 22.05.2009, the respondent no.1 issued termination order to the petitioner terminating his services as Junior Engineer.
5. The petitioner challenged the termination order dated 22.05.2009 in Writ Petition No.3117/2009

and this Court disposed of the said petition by directing the respondents to consider the representation of the petitioner for protection of service according to law.

6. The respondents had rejected the representation made by the petitioner vide order dated 18.08.2010.

7. In the meantime the petitioner filed a Contempt Petition No.125/2010 and in the said contempt petition, this Court has granted liberty to the petitioner for raising objection and grievances against the rejection letter before the appropriate Court. The petitioner has, therefore, moved the present petition for reinstatement in the service and protection of his services.

8. The Full Bench of this Court in the case of **Arun Sonone .vs. State of Maharashtra** reported in **2015 (1) Mh.L.J. 457** has held that the employees who are in service for considerable period and in whose case there is no finding of fraud by the Scrutiny Committee, are entitled for protection of services. In the present case, there is no finding of fraud against the petitioner by the Scrutiny Committee.

9. Taking into consideration this aspect, we are inclined to allow the petition.

The respondents are directed to reinstate the petitioner and protect his services. However, it is made clear that the petitioner would not be entitled to any of the benefits on the basis of his claim of belonging to Scheduled Tribe Category. It is further made clear that though the petitioner would not be entitled for any salary for the period during which he was out of employment, however, the said period shall be

construed to be the period as if the petitioner was in employment for all other purposes including the seniority and consequential benefits.

10. Rule made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

halwai