

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

WRIT PETITION NO.4717/2015

Mrs. Sunanda w/o Gajanan Chukambe (Jaware)

...Versus...

State of Maharashtra, through its Principal/Secretary, Public Health Department,
Mantralaya, Mumbai and another

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

Court's or Judge's orders

Shri N.D. Thombre, Advocate for petitioner
Ms Tajwar Khan, AGP for respondent nos.1 and 2

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

DATE : 15.09.2015

By this petition, the petitioner seeks a direction to the respondent no.2 to protect the services of the petitioner as a staff nurse, in view of the judgment of the Full Bench reported in **2015 (1) Mh.L.J. 457**.

The petitioner was appointed on the post of staff nurse by the Zilla Parishad, Chandrapur by an order of appointment dated 6.1.1992 on a post earmarked for the Scheduled Tribes. The petitioner was repatriated to the State Government in the year 2004 and started working with the respondent no.2 since then. Though the petitioner was appointed on the post earmarked for the Scheduled Tribes and the petitioner had claimed to belong to the "Dhanwar" Scheduled Tribes, the Scrutiny Committee held that the petitioner belongs to the "Dhangar" caste, which falls in the Nomadic Tribes. The caste

validity certificate certifying that the petitioner belongs to the “Dhangar” Nomadic Tribe was issued in favour of the petitioner by the Scrutiny Committee. After the Scrutiny Committee invalidated the claim of the petitioner of belonging to the Scheduled Tribes, by the impugned notice dated 29.7.2015, the respondent no.2 directed the petitioner to submit the validity certificate for Scheduled Tribes or else her services would be terminated. The petitioner has challenged the impugned notice and has sought the protection of her services.

Shri Thombre, the learned Counsel for the petitioner states that the petitioner's services are required to be protected in view of the Full Bench decision reported in **2015 (1) Mh.L.J. 457**, which in turn, has relied on several judgments of the Hon'ble Supreme Court, granting protection in similar cases. It is stated that the petitioner was appointed before the cut off date in the year 1992 and there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently claimed the benefits meant for the “Dhanwar” Scheduled Tribe. It is stated that the petitioner possesses a validity certificate of “Dhangar” Nomadic Tribe and the services of the petitioner are required to be protected.

Ms Khan, the learned Assistant Government Pleader does not dispute that the initial appointment of the petitioner in the Zilla Parishad was made in the year 1992. The law laid down by the Full Bench is also not disputed by the learned Assistant Government Pleader. It is stated that this Court may pass appropriate orders on the basis of the judgment of the Full Bench and the other decide cases.

On hearing the learned Counsel for the parties, we find that the services of the petitioner are required to be protected. The petitioner is appointed before the cut off date in the year 1992 and there is no finding recorded by the Scrutiny Committee that the petitioner has fraudulently secured the benefits meant for the “Dhanwar” Scheduled Tribe. In fact, the petitioner possesses a validity certificate of “Dhangar” Nomadic Tribe. In the circumstances of the case, when the petitioner has not played any fraud on the employer, the services of the petitioner need to be protected. It would be worthwhile to refer to the judgment dated 7.8.2015 in Writ Petition No.3056/2015 in this regard.

Hence, for the reasons aforesaid, the writ petition is allowed. The services of the petitioner are protected on the condition that the petitioner submits an undertaking in this Court and to the respondent no.2 within a period of four weeks that neither the petitioner nor her progeny would claim the benefits meant for the “Dhanwar” Scheduled Tribe, in future. The petitioner would not be entitled to the promotional benefits in view of her claim to “Dhanwar” Scheduled Tribe.

Order accordingly. No costs.

JUDGE

JUDGE