

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

WRIT PETITION NO.5003/2015
WITH
WRIT PETITION NO.5004/2015
WITH
WRIT PETITION NO.5005/2015
WITH
WRIT PETITION NO.5006/2015

WRIT PETITION NO.5003/2015

Dilip s/o Totaram Ingle
...Versus...
The Divisional Controller, Maharashtra State Road Transport Corporation,
Buldhana Division, Buldhana and another

WITH

WRIT PETITION NO.5004/2015

Subhash s/o Trambak Ingle
...Versus...
The Divisional Controller, Maharashtra State Road Transport Corporation,
Buldhana Division, Buldhana and another

WITH

WRIT PETITION NO.5005/2015

Sandu s/o Krishna Deokar
...Versus...
The Divisional Controller, Maharashtra State Road Transport Corporation,
Buldhana Division, Buldhana and another

WITH

WRIT PETITION NO.5006/2015

Ramesh s/o Shamrao Folane

...Versus...

**The Divisional Controller, Maharashtra State Road Transport Corporation,
Buldhana Division, Buldhana 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 S.G. Joshi, Advocate for petitioner in all petitions
Shri V.G. Wankhede, Advocate for respondent no.1 in all petitions
Shri N.R. Rode, AGP for respondent no.2 in W.P. No.5003/2015
Shri S.J. Kadu, AGP for respondent no.2 in W.P. No.5004/2015
Shri A.M. Balpande, AGP for respondent no.2 in W.P.No.5005/2015
Ms T.H. Udeshi, AGP for respondent no.2 in W.P. No.5006/2015

**CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.**

DATE : 20.11.2015

Since the issue involved in these writ petitions is identical and similar relief is sought by the petitioners herein, they are heard together and are decided by this common order.

By these petitions, the petitioners seek a declaration that they are entitled to protection of service on the basis of the judgment in the case of Kavita Solunke...Versus...State of Maharashtra and others, reported in 2012 (5) Mh.L.J. 921 and the judgment of the Full Bench of this Court in the case of Arun s/o Vishwanath Sonone...Versus...State of Maharashtra and others, reported in 2015 (1) Mh.L.J. 457.

According to the petitioners, they were appointed as drivers by the respondent – Corporation on 31.7.1999. Since the petitioners were appointed on the posts reserved for the

Scheduled Tribes and since the petitioners claimed to belong to 'Koli Mahadeo' Scheduled Tribe, their caste claim was referred to the Scrutiny Committee for verification. After the Scrutiny Committee invalidated the caste claim of the petitioners, the services of the petitioners were terminated by the respondent – Corporation by the orders dated 14.11.2002. The petitioners have sought the protection of their services by relying on the judgment of the Full Bench, reported in **2015 (1) Mh.L.J. 457**.

Shri Joshi, the learned Counsel for the petitioners submitted that the petitioners' services need to be protected after reinstating them as the petitioners were appointed before the cut off date (28.11.2000) and there is no observation in the order of the Scrutiny Committee that the petitioners had fraudulently secured the benefits meant for the 'Koli Mahadeo' Scheduled Tribe. It is stated that the caste claim of the petitioners was rejected as the petitioners were not able to prove the same on the basis of the documents and affinity test.

Shri Wankhede, the learned Counsel for the respondent – Corporation opposes the prayers made in the writ petitions and submitted that the petitioners are not entitled to the protection of their services as the petitioners were not appointed before the cut off date. It is submitted that the petitioners were appointed on 31.7.1999 on temporary basis, as and when the work was required by the Corporation. It is submitted that the appointment order dated 31.7.1999 clearly shows that the petitioners were appointed purely temporarily and as and when work was required. It is submitted that the petitioners were brought on temporary time scale on 5.3.2001 and they were

granted the facilities of uniform, washing allowance and medical etc. It is stated that the petitioners were not taken on regular time scale. It is stated that since the petitioners were not taken on regular time scale, their pay scale was not fixed as they were not treated as regular/permanent employees of the respondent – Corporation.

On hearing the learned Counsel for the parties and on a perusal of the documents annexed to the writ petition and the pursis filed by the petitioners, it appears that the relief sought by the petitioners cannot be granted. Protection cannot be granted to the persons like the petitioners on the basis of the Full Bench judgment. We have perused the appointment orders of the petitioners. The petitioners were appointed on 31.7.1999 on purely temporary basis and were to be provided work, as and when the same was available. It is clear from the appointment orders that the petitioners were not appointed on regular posts by following the due procedure and the petitioners were temporarily appointed to work as drivers, as and when work was available. On a perusal of the documents annexed to the pursis, it appears that by the orders dated 5.3.2001, the petitioners were brought on temporary time scale from 1.11.2000. It is, thus, clear that the petitioners were not in regular employment of the Corporation before the cut off date i.e. 28.11.2000. Also, by the order dated 5.3.2001 the petitioners were only brought on temporary time scale. The petitioners were not brought on permanent time scale, much less before the cut off date i.e. 28.11.2000. The petitioners have hardly worked with the respondent – Corporation and the said work was also not on regular basis. The statement made in

the affidavit-in-reply of the respondent – Corporation that the petitioners were never brought on permanent time scale needs to be accepted as the petitioners have not produced any document to show that the petitioners were brought on permanent time scale. Protection has to be granted to the services of an employee, if the employee is appointed before the cut off date i.e. 28.11.2000 and has attained permanency. In the instant case, neither were the petitioners appointed on regular basis before the cut off date nor were the petitioners granted permanency by the respondent – Corporation. If the persons like the petitioners are protected and directed to be reinstated, it would affect the deserving persons from the reserved categories as well as the open categories. Also, granting protection to persons like the petitioners would burden the exchequer inasmuch as the petitioners have worked only for a few months with the respondent – Corporation on temporary basis and if they are directed to be reinstated with continuity, great loss would be caused. Also, protection of the services of the persons like the petitioners would not be in consonance with the principle of law laid down in the case of *Kavita Solunke* and the Full Bench reported in **2015 (1) Mh.L.J. 457**. A lame attempt was made on behalf of the petitioners to seek the relief by placing reliance on a judgment of this Court dated 17.2.2015, in a bunch of writ petitions bearing Writ Petition No.99/2003 and others. It was canvassed that the cases of the present petitioners and the petitioners in the decided cases are identical. We had called those decided writ petitions. On a perusal of the same, we find that in those writ petitions the petitioners/employees were appointed by following the due procedure of selection in the years 1997 and

1998. The petitioners in the decided writ petitions were appointed before the cut off date after their selection by a duly constituted selection Board. Their appointments were made in regular posts and were subject to the production of the caste validity certificates. In those cases, the petitioners had worked on regular basis as traffic controllers, assistant workers (Sahayyak Kamgar) etc. for a period of nearly 4 years before the cut off date. Such is not the case here. The petitioners herein cannot be equated to the petitioners in the decided cases.

Since no case has been made out by the petitioners for protection of their services, the writ petitions are dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar