

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

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

Court's or Judge's orders

WRIT PETITION NO. 9416 OF 2015

DNYANESHWAR ROHIDAS KOLI

VERSUS

THE VC & MD, MAHARASHTRA STATE ROAD TRANSPORT
CORPN., MUMBAI AND ANOTHER.

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Advocate for petitioner : Mr. M.D. Shinde
A.G.P. for respondent/State : Mr. A.G. Magre
Advocate for Respondent No.2 : Mr. Manoj Shinde
holding for Mr. M. K. Goyanka

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CORAM: S.S.SHINDE & SANGITRAO S. PATIL, JJ.

Dated: JULY 19, 2016

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Heard the learned counsel appearing
for the petitioner, the learned A.G.P.
appearing for the Respondent/State and
the learned counsel appearing for
Respondent No.2.

2. The learned counsel appearing for the
petitioner submits that though the
petitioner secured the employment as a
Conductor from the reserved category i.e.
Scheduled Tribe category being "Tokre

Koli" on 21st May, 1994. Subsequently, on inquiry, it was found that the petitioner was not from the said category, but was from Special Backward Category. Therefore, he was terminated with effect from 19th February, 2002. He submits that the State Government issued the Resolution dated 30th June, 2004 in its General Administration Department and the Corporation has also issued circular on 5th August, 2014 giving directions to the authorities to implement the said Government Resolution. The learned counsel appearing for the petitioner submits that in view of the said Government Resolution, which is adopted by the Respondent – Corporation by issuing circular, the petitioner was reinstated in the service vide order dated 5th November, 2013. It is submitted that once the petitioner's status was brought under the Special Backward Class, there was no question of examining as to whether the petitioner obtained service on the basis that he belonged to Scheduled Tribe Category. The petitioner is entitled for the benefits of the said Government Resolution, the circular issued by the corporation, the judgment delivered by the Full bench of High Court

and the judgment of the Division Bench in the case of **Shaikh Noor S/o Shaikh Kasim V/s The Vice Chairman and Managing Director, Maharashtra State Road Transport corporation and another**), decided on 23rd February, 2016. The sum and substance of the arguments of the learned counsel appearing for the petitioner is that the petitioner's services deserve to be protected from Special Backward Class category having been reinstated in the service in the year 2003 from the said category.

3. On the other hand, the learned counsel appearing for the Corporation, relying upon the averments in the affidavit in reply and also the judgment of the Division Bench in the case of **Rajnikant S/o Lotu Salunke and others V/s The Maharashtra State Road Transport Corporation and another in Writ Petition No.1801 of 2004** along with one connected matter), decided on 6th May, 2005, and particularly on the observations made in paras 2, 11 and 13, submits that the Division Bench after considering the documents placed on record and after hearing the parties, observed that the present petitioner, who was petitioner

no.3 therein, had got appointed by practising fraud and therefore, the petitioner would not be entitled to claim any right to the post as he had captured the said post meant for the reserved category candidate i.e. scheduled tribe candidate. He supports the impugned order dated 6th July, 2005 terminating services of the petitioner and the order dated 22nd/23rd December, 2014 rejecting the representation of the petitioner for his reinstated in the service.

4. We have carefully considered the submissions advanced by the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings in the Petition, annexures thereto and the aforementioned Government Resolution, the Circular issued by the Respondent – Corporation, the reply filed by the Respondent corporation and the judgment delivered by the Division bench of this Court in the case of **Rajnikant S/o Lotu Salunke V/s The Maharashtra State Road Transport Corporation and another** in Writ Petition No. 1801 of 2004 and particularly para 13 thereof, which reads as under :-

"13. It is also necessary to make it clear that present petitioners secured appointments on the posts reserved for Scheduled Tribe candidates on the basis of forged, fake and false caste certificates. The said caste certificates and the Scrutiny Committee found that the said caste certificates are not issued by the competent authorities and when it was found that the petitioners do not belong to Scheduled Tribe, then the very basis of their appointment is nothing but a fraud. In such circumstances, it can be said that their appointments are not valid in the eye of law. They are not entitled to claim a right to the post as they have captured those posts meant for reserved category candidates i.e. the posts meant for scheduled tribe candidates by playing a fraud and producing false and fake caste certificates. It is also clear from the factual aspects in the above petitions that the petitioners have obtained appointments on the basis of the false certificates depriving the claim of the genuine candidates. In view of this position, the order of the Scrutiny Committee to cancel and confiscate the said caste certificates submitted by the petitioners has been maintained by the learned Single Judge of this Court. In such circumstances, we do not find any merit in the present petitions and further find that the order of termination of services of the petitioners are definitely justified. Even it is made clear by Shri.Joshi, advocate for the respondents that prosecution pending against the petitioners on account of producing false and fake caste

certificates."

5. It would have been different matter in case the petitioner had not been a party to the above-referred Writ Petition and there had been no finding of fraud on his part in obtaining the appointment to the post of Conductor. In the judgment in that case, this Court could have applied the said Government Resolution/Circular, however, in the peculiar facts of this case, when the Division bench in the case of **Rajnikant S/o Lotu Salunke and others V/s The State of Maharashtra and another** in Writ Petition No. 1801 of 2004 has categorically held that the petitioner has obtained the said employment by playing fraud, deserves no protection, as long as those findings of facts are intact. The above judgment came to be delivered on 6th May, 2005, i.e. after reinstatement of the petitioner in the service vide order dated 5th November, 2003, with the benefit of continuity in service by treating the intervening period as leave without pay. If the respondent Corporation does not wish to continue the present petitioner in the service in view of the observations made by the Division Bench of this Court

against him about having played fraud while obtaining employment as a Conductor, the respondent - corporation cannot be compelled to continue the services of the petitioner, having such character.

6. Apart from it, even if the case of the petitioner is considered for equitable relief, in view of those findings recorded by the Division bench, which have attained the finality, we are unable to persuade ourself to grant any relief in favour of the petitioner. No discretion can be exercised in favour of the petitioner.

7. For the reasons aforesaid, Writ Petition stands rejected.

(SANGITRAO S.PATIL,J)

(S.S. SHINDE,J)