

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 7600 OF 2013

Nanda Chandrakant Basapure
age 39 years, occ. Service
r/o at post Alkuti, Tq. Parner
Dist. Ahmednagar

.. PETITIONER

VERSUS

- 1 The State of Maharashtra
 Through its Secretary
 Department of Transport
 Mantralaya, Mumbai
- 2 The Divisional Controller
 Maharashtra State Road Transport Corporation,
 Nanded Division Nanded
- 3 The Managing Director
 Central Office,
 Maharashtra State Road Transport Corporation,
 Mumbai 08.

.. RESPONDENTS

Mr. A.S. Bayas, advocate for petitioner.
Mr. S.S. Dande, AGP for the State.
Mr. B.S. Deshmukh, advocate for respondent n o. 2.

=====

**CORAM : R.M. BORDE &
 K. L. WADANE, JJ.
DATE : 2nd AUGUST, 2016.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the respective parties.

2. The petitioner is praying for quashment of the order of issued by the Divisional Controller, Nanded on 12.05.2007 and seeks direction for his reinstatement in service with consequential benefits and continuity of service, in view of the Government Resolution dated 21.10.2015.

3. The petitioner was appointed as clerk in MSRTC, Parner Depot, after observing the procedure prescribed for the appointment, as against the vacancy prescribed for Scheduled Tribe community. After his appointment, the caste certificate issued to him was forwarded for verification to the Scrutiny Committee and the Scrutiny Committee found that the petitioner has failed to substantiate his tribe claim and directed invalidation of the caste certificate by order dated 06.05.2006. As a consequence of invalidation of the caste certificate, the services of the petitioner have been terminated by the appointing authority by order dated 12.05.2007. The petitioner is making prayer in view of judgment of Full Bench of this Court in case of Arun Vishwanath Sonone vs. State of Maharashtra reported in 2015(1) Bom.C.R. 568 and, in case of State of Maharashtra vs. Milind reported in 2001(1) Bom.C.R. 620 (SC).

4. Learned counsel appearing for the respondent corporation, on instructions states that, there is vacancy available for accommodating the petitioner in employment.

5. In identical circumstances, Division Bench of this court while dealing with Writ Petition no. 7434/2011 on 26.6.2015 and Review Petition St. No. 18601/2007 in Writ Petition No. 3445/2006 on 3.7.2015, directed reinstatement of the employee without backwages, however, entitling him to claim benefit of continuity in employment for the purpose of claiming retiral benefits.

6. In the facts and circumstances of the case, since the employee / petitioner is out of employment from 2007 and has not rendered service since then, it would not be proper to burden the employer with liability to pay backwages to the petitioner from the date of termination till the date of reinstatement. In view of the decisions recorded in the matters referred to above, we hold that the petitioner shall be entitled to reinstatement in employment. However, he shall not be entitled to claim backwages or any other monetary benefits from the date of termination till the date of his reinstatement. It is observed that since the petitioner is not guilty of commission of fraud, nor has relied upon any fabricated record for substantiating his tribe claim, he is entitled to be taken back in employment.

7. Respondent shall reinstate the petitioner on the post of Conductor as expeditiously as possible and preferably within a period of eight weeks from today. The petitioner shall not be entitled to claim promotional benefits or any other benefits on the strength of his belonging to Mannerwalu Scheduled Tribe category. The petitioner shall undertake to file undertaking in that regard within a period of eight weeks from today. The petitioner shall not be entitled to claim backwages, however, shall be granted continuity in service for claiming retiral benefits.

8. The order issued by the respondent, terminating petitioner from service is quashed and set aside.

9. Rule is made absolute to the extent specified above.
10. There shall be no order as to costs.

(K. L. WADANE)
JUDGE

(R. M. BORDE)
JUDGE

dyb