

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.108 OF 2016

Arjun Jugrajsingh Gautam
Age: 40 years, occu: nil
R/o At post Madaj, Tq. Omarga,
Dist. Osmanabad

Petitioner

Versus

- 1 The State of Maharashtra
Through Its Secretary,
Tribal Development
Mantralaya, Mumbai
- 2 The Divisional Controller,
Maharashtra Transport Corporation
Osmanabad Division,
Osmanabad
- 3 The Depot Manager
Omarga, Dist. Osmanabad

Respondents

Mr.A.U. Chandel advocate for the petitioner
Mr.S.S. Dande, AGP for for Respondent No.1
Mr. D.S. Bagul advocate for respondent Nos.2 and 3

CORAM : ***R.M. BORDE &***
K.L.WADANE, JJ
(Date : 13th June, 2016.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

- 1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final decision at admission stage.

3 The petitioner is praying for quashment of the order of termination issued by the Divisional Controller, Osmanabad on 17.1.2004 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.

4 The petitioner was appointed as a conductor, after observing the procedure, prescribed for the appointment, as against a vacancy prescribed for scheduled tribe (ST) category. The petitioner belongs to Thakur, 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 20.3.2003. As a consequence of invalidation of the caste certificate, the services of the petitioner have been terminated by the appointing authority by order dated 17.1.2004. The petitioner is making prayer in view of Judgment of full bench of this Court in case of ***Arun Vishwanath Sonone V/s State of Maharashtra*** (2015 (1) Bom.C.R. 568) and in case of State of

Maharashtra V/s Milind (2001 (1) Bom.C.R. 620 (SC).

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

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

7 In the facts and circumstances of the case, since the employee / petitioner is out of employment from 2004 and has not rendered service since then, it would not be proper to burden the employer with liability to pay back wages 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 back wages 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.

8 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 Thakur ST community. 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 back wages, however, shall be granted continuity in service for claiming retiral benefits.

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

10 Rule is made absolute to the extent specified above.

11 There shall be no order as to costs.

(K.L.WADANE, J)

(R.M.BORDE, J)