

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

...

WRIT PETITION NO. 3086 /2016

Devanand s/o Tukaram Barapatre
Aged about 50 years, occu; NIL
R/o Balabhau peth, Behind Kamal Talkies
Near Vithoba Akahada
Nagpur 440 0017.

..PETITIONER

v e r s u s

- 1) The State of Maharashtra
Through the Secretary
Industries, Energy and Labour Department
Mantralaya, Mumbai.
- 2) The Manager,
Government Printing Press & Book Depot,
Civil Lines, Nagpur. ..

...RESPONDENTS

.....
Mr. S.A. Chaudhari, Advocate for petitioner
Mrs.Ritu Kalia, Assistant Government Pleader for
Respondent No.1
.....

CORAM: **SMT. VASANTI A. NAIK &**
MRS. SWAPNA JOSHI, JJ.
DATED : 21st July, 2016

ORAL JUDGMENT: (PER SMT.VASANTI A. NAIK, J.)

Rule. Rule made returnable forthwith. The petition is heard finally at the stage of admission, with the consent of the learned counsel for

the parties.

By this Writ Petition, the petitioner seeks protection of his services, in view of the judgment of the Full Bench of this Court, in the case of *Arun Sonone vs. State of Maharashtra and others* reported in 2015 (1) Mh.L.J. 457.

The petitioner was appointed as an Assistant mechanic on 06.03.1997, on a post earmarked for the Scheduled Tribes. The petitioner claimed to belong to 'Halba' Scheduled Tribe, and the caste claim of the petitioner was referred to the Scrutiny Committee for verification. The Scrutiny Committee invalidated the claim of the petitioner by the order dated 20.12.2006. The services of the petitioner were terminated on the invalidation of his caste claim on 18.1.2007. In view of the judgment of the Full Bench, the petitioner has approached this Court, seeking a direction against the respondent no.2 to reinstate the petitioner, on the post of Assistant Mechanic and to protect his services.

Shri Saurabh Chaudhari, the learned counsel for the petitioner submits that the petitioner was appointed before the cut off date, in the year 1997, and there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently secured the benefits meant for the 'Halba'

Scheduled Tribe. It is stated that the caste claim of the petitioner is invalidated only because the petitioner could not prove it on the basis of the documents and the affinity test. It is stated that the caste claim was rejected only because in some of the documents, 'Koshti' was recorded in the column of caste. It is stated that since both the conditions that are required to be satisfied while seeking the protection of services, have been satisfied in the case of the petitioner, the services of the petitioner are required to be protected.

Miss Ritu Kalia, the learned counsel appearing on behalf of the respondent no.1 does not dispute the position of law as laid down by the Full Bench, in the judgment, reported in 2015 (1) Mh.L.J. 457. It is not disputed that the petitioner was appointed before the cut off date and there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently secured the benefits meant for the 'Halba' Scheduled Tribe. It is however stated that the respondent no.2 has abolished the post of Assistant Mechanic after the petitioner was terminated and if at all the petitioner is to be reinstated, he could be reinstated on a post that carries an equivalent pay-scale.

Shri Chaudhari, the learned counsel for the petitioner states that the petitioner is ready for his reinstatement on a post with an equivalent pay-scale. It is stated that the petitioner has given up his caste claim and the

petitioner is ready to furnish an undertaking that he would not claim any benefits meant for the 'Halba' Scheduled Tribe, in future.

On hearing the learned counsel for the parties, we find that both the conditions that are required to be satisfied while seeking the protection of services, stand satisfied in the case of the petitioner, inasmuch as the petitioner was appointed before the cut off date and there is no observation in the order of the Scrutiny Committee that the petitioner had fraudulently secured the benefits meant for the 'Halba' Scheduled Tribe. The respondents are ready to reinstate the petitioner on a post that carries an equivalent pay-scale i.e. equivalent pay-scale of an Assistant Mechanic. Though the petitioner would be entitled for reinstatement in service, the petitioner would not be entitled to the arrears of salary and/or any benefits that may flow from the order of continuity of service, for the period during which he was out of service.

For the reasons aforesaid, the Writ Petition is allowed. The respondent no.2 is directed to reinstate the petitioner on a post with pay-scale, that is equivalent to the pay-scale of an Assistant Mechanic, on the condition that the petitioner furnishes an undertaking in this Court and before the respondent no.2 within a period of four weeks that neither the petitioner nor his progeny would claim the benefits meant for the 'Halba'

Scheduled Tribe, in future. The respondent no.2 is directed to reinstate the petitioner within two weeks from the date of furnishing of the undertaking. It is needless to mention that though the petitioner would be entitled to continuity of service, the petitioner would not be entitled to the arrears of salary or any other monetary benefits that would flow from the order of the continuity in service, for the period during which he was out of service.

Rule is made absolute in the aforesaid terms, with no order as to costs.

JUDGE

JUDGE

sahare

C E R T I F I C A T E

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.”

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