

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

WRIT PETITION NO. 5050 OF 2016

Ku.Surekha Kundlikrao Ladekar

-vs-

The Divisional Caste Certificate Scrutiny Committee No.3, thr. its Divinl. Commissioner & others

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

Court's or Judge's Orders.

Mr. R.S.Parsodkar, counsel for the petitioner.

Mr. A.S.Fulzeke, Addl.G.P. for the respondent Nos.1 & 4.

Mr. Godbole, counsel h/f Mr. S.G.Jagtap, counsel for the respondent Nos.2 & 3.

CORAM : SMT. VASANTI A NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 13.12.2016.

By this writ petition, the petitioner seeks the protection of her services in view of the judgment of the Full Bench, reported in **2015 (1) Mh.L.J. 457 (Arun Vishwanath Sonone v. State of Maharashtra).**

The petitioner was appointed as an assistant teacher in the respondent No.2-School on 29/09/1986, on a post earmarked for the nomadic tribes. The petitioner claimed to belong to Nhavi Banjara nomadic tribe. The caste claim of the petitioner was invalidated by the Scrutiny Committee on 29/04/2014. The petitioner was permitted by the respondent Nos.2 and 3 to submit the caste certificate of Nhavi caste, that is included in the other backward classes. The petitioner submitted the caste certificate and also secured the caste validity certificate of Nhavi caste, that is included in the other backward classes. Since the petitioner is granted a caste validity certificate of Nhavi caste, that is included in the other backward classes, the petitioner has sought the protection of her services, as she was appointed before the cut-off date in the year 1986 and in a similar case, this court has granted protection to the services of the employees that were appointed on the posts meant for the scheduled tribes, but had

subsequently produced the caste validity certificate of special backward classes.

Shri Parsodkar, the learned counsel for the petitioner, states that the issue involved in this case was also involved in a bunch of writ petitions bearing Writ Petition No.3729 of 2014 and others and this court had, by the judgment dated 12/02/2015, allowed the writ petitions and had directed the concerned respondents to protect the services of the petitioners therein though their claim of belonging to scheduled tribes was invalidated and it was held that they belong to special backward classes. It is stated that in this case also, though the claim of the petitioner of belonging to Nhavi Banjara nomadic tribe is invalidated, the claim of the petitioner of belonging to Nhavi caste, that falls in the other backward classes is validated and the services of the petitioner need to be protected, as she is appointed before the cut-off date in the year 1986.

Shri S.A.Fulzele, the learned Additional Government Pleader appearing for the respondent Nos.1 and 4 and Shri Godbole, the learned counsel appearing for the respondent Nos.2 and 3, do not dispute the position of law, as laid down in the judgment dated 12/02/2015 in the bunch of writ petitions bearing Writ Petition No.3729 of 2014 and others. The learned counsel for the respondent Nos.2 and 3 states that the petitioner had applied for voluntary retirement and the same is accepted on 22/08/2016. It is stated that an appropriate order could be passed in the circumstances of the case.

Since the petitioner is appointed in the year 1986, i.e. before the cut-off date, since there is no observation in respect of fraud played by the petitioner, in the order of the Scrutiny Committee and since the petitioner has produced the validity certificate of Nhavi caste that falls in the other backward classes, the services of the petitioner need to be protected in view of the judgment dated 12/02/2015 in Writ Petition No.3729 of 2014 and others.

Hence, for the reasons aforesaid and for the reasons recorded in the judgment dated 12/02/2014 in Writ Petition No.3729 of 2014 and others, the writ petition is allowed. The respondent Nos.2

and 3 are directed to protect the services of the petitioner on the condition that the petitioner furnishes an undertaking in this court and before the respondent Nos.2 and 3 within four weeks that the petitioner would not claim the benefits meant for the Nhavi Banjara nomadic tribe, in future. Since there is a dispute in regard to the acceptance or otherwise of the application for voluntary retirement of the petitioner, the petitioner is free to take up appropriate proceedings in that regard.

The *ad interim* order passed by this court on 02/09/2016 would continue for a period of four weeks only. Order accordingly. No costs.

JUDGE

JUDGE

KHUNTE