

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

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WRIT PETITION NO. 216/2016

Mithun s/o Chhayaram Gonnade
Aged about 35 years, occu: service
R/o Armori, Tahsil Armori
Dist.Gadchiroli.

..PETITIONER

v e r s u s

- 1) The State of Maharashtra
Through its Secretary
Department of Rural Development and Water
Conservation, Mantralaya, Mumbai -400 032.
- 2) Zilla Parishad, Gadchiroli
Through its Chief Executive officer,
Gadchiroli.

..RESPONDENTS

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Mr. N.A.Jachak, Advocate for the petitioner
Mrs.Kalyani Deshpande, Asst. Govt.Pleader for Respondent No.1
Mr. H.A. Deshpande, Advocate for the Respondent No. 2
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CORAM: **SMT. VASANTI A. NAIK &**
MRS. SWAPNA JOSHI, JJ.
DATED : 16th June, 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.

2. By this Writ Petition, the petitioner seeks a direction against the Respondent no.2-Zilla Parishad to reinstate the petitioner in service as a *Gramsevak*, in view of the judgment of the Full Bench, reported in 2015 (1) Mh.L.J. 457: Arun. Sonone vs. State of Maharashtra and others, and protect his services.

3. The petitioner was appointed as a *Gramsevak* on 18.6.2001 by the respondent No.2-Zilla Parishad, in pursuance of an advertisement issued by the respondent no.2 some time in August, 2000. The petitioner was on probation for a period of one year and by an order dated 23.7.2004 the services of the petitioner were confirmed. Since the petitioner was appointed on a post earmarked for the Scheduled Tribes, the caste claim of the petitioner was referred to the Scrutiny Committee for verification. The Scrutiny Committee invalidated the caste claim of the petitioner by the order dated 20.09.2005. The services of the petitioner were terminated on 23.1.2006, due to invalidation of his caste claim. The petitioner had filed Writ Petition No. 5073/2005 challenging the order of the Scrutiny Committee, but the said Writ Petition was dismissed. In view of the judgment of the Full Bench (*supra*), the petitioner has approached this Court for a direction to the respondent No.2-Zilla Parishad that his services be protected after reinstatement.

4. Shri N.A. Jachak, the learned counsel for the petitioner submits that the petitioner is entitled to protection of his services, in view of the law laid down by the Full Bench, in the judgment reported in 2005 (1) Mh.L.J. 457. It is stated that both the conditions that are required to be satisfied while seeking protection stand satisfied in the case of the petitioner inasmuch, as the petitioner was appointed

before the cut off date on 18.6.2001 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 was not validated as he was not able to prove the same on the basis of the documents and the affinity test. The learned counsel seeks reinstatement of the petitioner in service and a further direction to the Zilla Parishad to protect his services.

5. Shri H.A.Deshpande, the learned counsel for the respondent no.2-Zilla Parishad has strongly opposed the prayer made on behalf of the petitioner. It is stated that after the petitioner was terminated, the petitioner secured gainful employment as an Agricultural Assistant and is presently working as such. It is submitted that in the earlier Petition filed by the petitioner, the petitioner had claimed for protection of his services and hence the second petition cannot be filed for protection. It is then submitted that nine posts of *Gram Sevaks* are vacant in Zilla Parishad, Gadchiroli, but there is a backlog for Scheduled Tribes. It is stated that all the posts that are vacant, are located in scheduled areas and it would not be possible for the petitioner to work there. It is stated that the petition suffers from laches and is liable to be dismissed, as such. It is stated, in the circumstances of the case, the relief sought by the petitioner may not be granted.

6. On hearing the learned counsel for the parties, it appears that the services of the petitioner are required to be protected like all other employees whose services are protected, in view of the judgment of the Full Bench. Both the conditions that are required to be satisfied, in view of the judgment of the Full

Bench for seeking protection, stand fulfilled 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 has fraudulently secured the benefits meant for the 'Halba' Scheduled Tribe. Merely because the petitioner is employed elsewhere the protection of his services cannot be denied, since this case stands covered by the judgment of the Full Bench. Admittedly, nine posts of *Gramsevak*s are vacant in Zilla Parishad, Gadchiroli and the petitioner is ready to join in one of the vacant posts, even in the scheduled areas. Merely because there is some backlog for the reserved categories, it cannot be said that the petitioner cannot be reinstated on the post of *Gramsevak* and his services cannot be protected. It would be necessary for this Court to follow the judgment of the Full Bench and protect the services of the petitioner, in the facts of the case. We find that the caste claim of the petitioner was rejected by the Scrutiny Committee as the petitioner was not able to prove the same on the basis of the documents and affinity test. There are no adverse observations against the petitioner, whatsoever in the order of the Scrutiny Committee. Hence, the protection to the services of the petitioner cannot be denied when all other similarly situated employees are reinstated in service by granting the benefit of the Full Bench decision. It cannot be said that the petitioner has approached this Court belatedly. After the Full Bench judgment was rendered, employees who had worked for a considerable long period and whose services were terminated, approached this Court seeking protection of their services and consistently, during the recent past, this Court has protected the services of the employees. It also cannot be said that the petitioner had sought the protection of his services in Writ Petition No.5073/2005 and hence this petition is not

maintainable. We have read the prayer clause in Writ Petition No.5073/2005. The only prayer made by the petitioner in the said petition was for setting aside the order of the Scrutiny Committee and reinstating the petitioner in service. A mere reference to the word 'protection' in paragraph 18 of the Writ Petition No. 5073/2005 is unduly relied on by the learned counsel for the Zilla Parishad to claim that the petitioner had sought for the protection of his services in the earlier Writ Petition and the said Writ Petition is dismissed. We do not find any prayer for protection in the earlier Writ Petition. None of the submissions made on behalf of the respondents are capable of denying the relief sought by the petitioner.

7. In the result, the Writ Petition is allowed. The respondent-Zilla Parishad is directed to reinstate the petitioner in service, on the condition that the petitioner furnishes an undertaking that neither the petitioner nor his progeny would claim the benefits meant for the 'Halba' Scheduled Tribe, in future. The respondent-Zilla Parishad is directed to reinstate the petitioner within a period of two weeks from the date on which the undertaking is submitted. It is needless to mention that though the petitioner would be entitled to continuity of service, the petitioner would not be entitled to claim any monetary benefits for the period during which he was out of service. This would mean that the petitioner would not be entitled to back wages and/or any other monetary benefits including increments etc.

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

JUDGE

JUDGE

sahare