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

WRIT PETITION NO. 213 OF 2016

**ANITA MUNNASWAMI MUDRLU
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHERS**

Advocate for Petitioner : Sunil M. Vibhute
AGP for Respondents/State: Mrs.V.N. Patil (Jadhav)
Advocate for Respondent No.2 : N.S. Kadam**

CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 30/06/2017

PER COURT :-

1] The petitioner by this Writ Petition under Article 226 of the Constitution of India seeks the following relief :

“B] The removal order dated 07/04/2006 issued by the respondent No.2, removing the services of the petitioner as junior assistant on the basis of invalidation of Tribe Claim of the petitioner, may kindly be quashed and set aside and the respondent No.2 may kindly be directed to reinstate the petitioner on said post with continuity of services and with all consequential benefits by conferring the benefits of protection of services as per judgment of full bench of this Hon'ble Court in Arun Vishwanath Sonwane vs. State of Maharashtra reported in 2015 (1) Mh.L.J. 467 and Government Resolution dated 21/10/2015 (Exhibit-H), wherein services of employees appointed prior to 28/11/2000 and 17/10/2001 respectively protected, inspite

invalidation of Tribe Claim of such employees, as the petitioner has been appointed on 09/07/1999.”

2] The petitioner does not dispute the basic facts.

3] She claims that she belongs to Andh (Schedule Tribe). She applied to Tahsildar, Bhokar, Dist. Nanded for issuance of a Tribe Certificate. That was issued on 28/10/1991. On the strength of this certificate, the petitioner sought employment with the second respondent Zilla Parishad, Nanded. She was appointed on 09/07/1999 against the reserved seat. The appointment was conditional upon production of certificate of validity issued by the competent Scrutiny Committee. Accordingly the second respondent referred Tribe claim of the petitioner to the Schedule Tribe Certificate Verification Committee, Aurangabad (for short the Scrutiny Committee) on 11/11/1999. Initially the Scrutiny Committee invalidated the tribe claim of the petitioner on 31/12/2005. That order was challenged by filing Writ Petition No. 4618 of 2006. On 13/11/2006 that Writ Petition was allowed. The order of the scrutiny committee was set aside and the matter was remitted back to the scrutiny committee.

4] However, relying upon the order of the scrutiny committee petitioner's services were already terminated on 07/04/2006. The petitioner once again challenged the order of the scrutiny committee which was passed on 14/05/2007. The committee reaffirmed its earlier conclusion that the tribe claim is not substantiated and proved. Against this order of the committee dated 14/05/2007 Writ Petition No. 3389 of 2007 was filed in this Court on 07/06/2007. On 01/04/2008 this Writ Petition was also dismissed. The petitioner filed Review Petition on 21/08/2008 seeking review of the Division Bench

judgment. However, that Review Petition was also dismissed on 12/09/2014.

5] The two contentions raised by Shri Vibhute are that this Court speaking through a Full Bench granted protection to such of those Schedule Tribes whose certificates were invalidated by the scrutiny committee. The Full Bench judgment in **Arun Vishwanath Sonwane vs. State of Maharashtra reported in 2015 (1) Mh.L.J. 467** was rendered at Nagpur on 22/12/2014. Hence, Mr. Vibhute would submit that the petitioner is entitled to the protection in terms of the directions issued in this Full Bench judgment.

6] Then Mr. Vibhute would submit that there are still vacant posts in the establishment of the second respondent Zilla Parishad. Unfortunately for the petitioner her husband died on 27/06/2017. She is in need of a job. Therefore, we should interfere in our writ jurisdiction. We should also interfere because even if the Full Bench judgment is challenged by the Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others in Civil Appeal no. 8928/2015, that Civil Appeal has been heard. The judgment is reserved. The Hon'ble Supreme Court may resolve the issue finally, at least till then the petitioner be given an opportunity to serve the second respondent.

7] Given the admitted facts and reproduced above, it is not possible to agree with Shri Vibhute. The petitioner's services came to be terminated on 07/04/2006. That is relying on the earlier order of the Scrutiny Committee dated 31/12/2005. Though this order was challenged in a Writ Petition, filed in this Court, the petitioner advisedly did not seek the relief of reinstatement in the service of the second respondent. That claim could have been and ought to have

been raised. The settled position is it is deemed to have been raised. The Division Bench set aside this order of the scrutiny committee on 13/11/2006 and much prior to that order of termination dated 07/04/2006. Thus, the petitioner's services were terminated. It may be that she succeeded before this Court and the matter was sent back to the Scrutiny Committee but at no stage we find any direction either of this Court or from any other authority permitting her to resume services. Thus, there was never a resumption of service. The Scrutiny Committee again invalidated her certificate on 14/05/2007. In that order, the Scrutiny Committee has observed that the claim of the petitioner can safely be termed as fraudulent. Relying upon the appointment order and service book of the petitioner's father, pages of which were kept back, from the committee, the above factual finding was rendered. The order of the Scrutiny Committee came to be confirmed by this Court by dismissing the fresh Writ Petition viz. Writ Petition No. 3389/2007. That dismissal of 01/04/2008 by this Court reiterates the position that the petitioner was out of service and never allowed to resume or rejoin the same. The Review Petition was dismissed on 12/09/2014.

8] Everything therefore, occurs before the Full Bench judgment was delivered. At best the Full Bench judgment can be construed as giving liberty to parties like the petitioner or persons not in service to raise a fresh claim by filing a Writ Petition. However the Full Bench as also the State Government while issuing the Government Resolution relied upon by Shri Vibhute had essentially those employees in mind who were continuing to render their services and in fact were in service. Such of the terminated employees like the petitioner and long time back can never be intended to be protected. In such circumstances we do not think that the petitioner has any right to the post or to the relief that is sought. The writ of mandamus,

as is well settled, is issued to enforce a pre existing or established and proven right. That writ is not issued to create a right which never existed. Such being the case before us, we do not think we can accept the submissions of Shri Vibhute.

9] It is unfortunate that the petitioner is placed in a pre-carious condition having lost her husband as well. If there is no earning member and the petitioner is in search of a livelihood, nothing prevents her for from applying to a vacant post in the event that is advertised and to be filled up and stake her claim by not relying on the Tribe Certificate. She can compete with other open category or non reserved candidates. Granting her such liberty and observing in the event she applies, she is otherwise eligible, her case be considered for appointment, we do not make any further observations, much less issuing a writ. The Writ Petition is therefore dismissed. No costs.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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