

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

WRIT PETITION NO. 3228 OF 2017

Urmila Vijay Bhalavi

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Rohit R. Chaughule, Advocate for the Petitioner.

Shri M. B. Bharaswadkar, A.G.P. for Respondent Nos. 1, 2 and 4.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

DATE : 23RD MARCH, 2017.

PER COURT :

. The petitioner is appointed as a staff nurse on 10.02.2000 and posted in ESIS Hospital Aurangabad. In the year 2002 caste claim of the petitioner was invalidated. Thereafter on 11.10.2002, services of the petitioner were terminated. The petitioner filed Original Application before the Maharashtra Administrative Tribunal, Aurangabad. Under judgment and order dated 29.11.2010 the original application filed by the petitioner was dismissed and the service protection is not given. The petitioner assailed the said order before this Court at Nagpur. The said writ petition is sent to this Court on the ground that petition would not be tenable at Nagpur. Hence present petition.

2. The learned counsel for the petitioner states that, the petitioner bonafide believed that, she would get the caste of her husband. As such caste certificate was given to the petitioner. The petitioner relied on the orders issued by the Labour and Social Welfare Department that upon marriage the petitioner and progeny will get status of scheduled tribe that of her husband. The learned counsel submits that, there was no fraud on the part of the petitioner, nor there is any finding of fraud or misrepresentation. The petitioner is entitled for protection in service.

3. The learned Assistant Government Pleader submits that, the school record of the petitioner shows that the petitioner belongs to Maratha caste. Even caste certificate is issued to the petitioner certifying her as Maratha. This itself shows that, the petitioner is aware that she does not belong to Scheduled Tribe. In view of that, no protection can be given to the petitioner.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The petitioner would get the caste from her parent and would not axiomatically acquire caste of her husband. It is stated that, the husband of the petitioner belongs to Gond caste (S.T.) The Committee also observed that, it was believed by the

petitioner that, the couple as well as their progeny is eligible to be S. T. as per order passed by the Labour and Social Welfare Department dated 12th August, 1958 and 19th October, 1959. The same would not be legal position. The petitioner would not get the cast of the scheduled tribe.

6. It appears that, bonafidely the petitioner believed on the basis of said orders issued by the Labour and Social Welfare Department dated 12th August, 1958 and 19th October, 1959 about status being that of S.T. It appears to be bonafide act and even the Committee has not concluded about any fraud or misrepresentation being played on the part of the petitioner.

7. In the light of the above, the petitioner would be entitled for the benefit of judgment of the Full Bench of this Court in a case of **Arun Vishwanath Sonone Vs. State of Maharashtra and others** reported in ***2015(1) Mh. L. J. 457.***

8. However, the petitioner would not be entitled for the backwages from the date of her termination till reinstatement. The said period shall be counted for the purpose of continuity in service.

9. In the result, we pass following order.

10. The impugned order passed by the Tribunal is quashed and

set aside. The respondents shall reinstate the petitioner at her original post. The petitioner shall not be entitled for the benefit of reservation. The entry of this order shall be taken in the service book of the petitioner. The petitioner shall not be entitled for backwages from the date of termination till the date of reinstatement. The petitioner shall be reinstated on or before 01.04.2017, however, shall not be entitled for continuity in service. The writ petition accordingly is allowed in above terms. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 17