

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

WRIT PETITION NO. 2762 OF 2007

1. Ganpati S/o Govinda Tipparase,
Age : 47 Years, Occu. : Service,
2. Balaji S/o Doraji Pallewar,
Age : 49 Years, Occu. : Service,
3. Rama S/o Babarao Pallewar,
Age : 51 Years, Occu. : Service,
4. Manohar S/o Manik Tipparase,
Age : 48 Years, Occu. : Service,
5. Khandu S/o Digambar Pallewar,
Age : 49 Years, Occu. : Service,
6. Nemaji S/o Nagoba Perke,
Age : 49 Years, Occu. : Service,
7. Manik S/o Dhondiba Nalme,
Age : 56 Years, Occu. : Service,
8. Vyenkati S/o Khandoji Kolghane,
Age : 48 Years, Occu. : Service,
9. Dulbaji S/o Sambhaji Adabe,
Age : 47 Years, Occu. : Service,
10. Devidas S/o Manik Tippase,
Age : 44 Years, Occu. : Service,

All R/o Tuppa, Taluka &
District Nanded.

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture,
Mantralaya, Mumbai - 32.
2. The Maharashtra Agricultural Industry
Development Corporation Ltd.,
Rajan House, 03rd Floor, Prabhadevi,
Mumbai 25, Through its
Deputy General Manager.
3. The Manager,
Fertilizer Facto,
Plot No. B-2 (1-2), MIDC, Industrial
Estate, Post box No. 46, Degloor Road,
Nanded. .. Respondents

Shri S. R. Shirsath, Advocate h/f Shri S. S. Jadhavar, Advocate
for the Petitioner.

Mrs. A. V. Gondhalekar, Addl.G.P. for the Respondent No. 1.

Shri R. B. Bhosale, Advocate h/f Shri J. G. Toshniwal, Advocate
for Respondent Nos. 2 and 3.

WITH
WRIT PETITION NO. 2778 OF 2007

Bhiva S/o Babarao Pallewad,
Age : 50 yrs, Occu.-Service,
R/o Tuppa, Taluka & District Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,

Department of Agriculture,
Mantralaya, Mumbai - 32.

2. The Maharashtra Agricultural Industry
Development Corporation Ltd.,
Rajan House, 03rd Floor, Prabhadevi,
Mumbai 25, Through its
Deputy General Manager.

3. The Manager,
Fertilizer Facto,
Plot No. B-2 (1-2), MIDC, Industrial
Estate, Post box No. 46, Degloor Road,
Nanded.

.. Respondents

Shri S. R. Shirsath, Advocate h/f Shri S. S. Jadhavar, Advocate
for the Petitioner.

Mrs. A. V. Gondhalekar, Addl.G.P. for the Respondent No. 1.

Shri R. B. Bhosale, Advocate h/f Shri J. G. Toshniwal, Advocate
for Respondent Nos. 2 and 3.

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

DATE : 24TH AUGUST, 2017.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The petitioners are seeking directions against the respondents to exempt the petitioners from submitting caste certificate or to get their caste certificate scrutinized from the Caste Scrutiny Committee. So also not to take further action.

2. It is submitted by the petitioners in these writ petitions that, petitioners, except petitioner Nos. 1, 9 and 10 have retired

on attaining age of superannuation.

3. It is submitted by learned counsel that, all these petitioners were appointed from open category and at no material point of time were given benefit of reservation. Even the promotion was given to them considering their seniority and their suitability. They were all initially appointed as helpers and subsequently promoted as operators. According to the learned counsel, neither the appointment orders, nor the promotion orders even remotely refer that they are appointed or promoted considering the caste. They are all appointed from open category. As such, insistence on the part of respondents to submit the caste certificate/tribe certificate is erroneous.

4. The employer/respondent No. 3 has filed an affidavit denying the contentions of the petitioners and stating that in their applications, the petitioners had mentioned about their caste and as such preference was given to them. They were promoted considering that they belong to scheduled tribe.

5. We have considered the pleadings. The appointment orders are placed on record. The orders nowhere state that the petitioners are appointed from reserved category. The promotion orders placed on record also state that, they are promoted considering their seniority and suitability to the post.

Advertisement is not produced on record by the respondents to suggest that, the posts were reserved for S. T. category and petitioners are appointed on the reserved posts. There is not a single document produced by respondents suggesting that the petitioners are appointed from reserved category, except in the application form their caste was mentioned. In absence of any record suggesting that the appointments of the petitioners were as against reserved post, the contention of the petitioners that, they were appointed from open category will have to be accepted, more particularly in view of the appointment order.

6. In the light of the above, the respondents shall not insist upon the petitioners to submit any tribe certificate for referring it to the Scrutiny Committee for verification. The impugned notices are also quashed and set aside.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[MANGESH S. PATIL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Aug. 17