

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

BENCH AT AURANGABAD.

WRIT PETITION NO.7278 OF 2005

Ravindra S/o Hanumansingh
Thakur ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
WITH
WRIT PETITION NO.2688 OF 2008.

...
Mr.A.S.Golegaonkar, advocate for the petitioner.
Mrs.R.D.Reddy, advocate for Respondent Nos.2 to
4.
Mr.D.R.Kale, A.G.P. for the State.

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

Date : 22.08.2017.

PER COURT :

1. Writ Petition No.7278/2005 is filed by the petitioner seeking directions against the Respondents to withdraw all the adverse actions and also restrained them from asking the

petitioner to submit his caste certificate for sending it to Scrutiny Committee, so also to promote the petitioner to the higher post.

2. Writ Petition No.2688/2008 is filed seeking directions to give him the benefit of in service Assured Progress Scheme from the date of completion of 12 years service i.e. with effect from 4.12.2002, so also challenging the order promoting Respondent No.5 on 13.9.2006, further seeking directions to promote the petitioner with effect from 13.9.2006 as Executive Engineer with further benefits.

3. The Respondent is the employer of the petitioner. The petitioner was appointed initially as a Junior Officer Grade-II on or about 22.3.1990 from S.T. category. The services of the petitioner were confirmed on 6.4.1992. The contention of the Respondents is that the petitioner failed to submit his caste certificate for referring it to the Committee for validation. According to Mrs.Reddy, learned counsel, the petitioner is working as Divisional Engineer

(Electric) as per his seniority. The wording in the caste certificate as well as the order passed by the Commissioner shows that the same is meant for limited purpose of education and not beyond that. If the said order is perused, the affinity test is not conducted nor the procedure is followed. The Committee can very well consider the certificate. The Respondent No.5 was given temporary promotion until the Departmental Promotion Committee takes place. According to the learned counsel, under Government Resolution dated 21.9.1998, reservation is cancelled for the isolated posts in the Corporation. In fact, the petitioner is benefitted with selection grade along with other employees. If the petitioner belongs to Thakur caste then there is no reason for the Respondents to shy away from referring his certificate to the Scrutiny Committee for validity.

4. According to Mr.Golegaonkar, learned counsel, the tribe certificate has already been validated under order dated 7.1.1982, passed by the Commissioner. At the relevant time there was

no Scrutiny Committee constituted and the Commissioner was the competent authority to confirm validity of the certificate. Once validity is already determined, it is improper for the Respondents to again ask the petitioner to undergo the validation proceedings. The Respondent No.5 was promoted erroneously ahead of the petitioner. Respondents be directed to give the benefit to the petitioner as is admissible.

5. There can not be any debate with the proposition that at the relevant time in the year 1982, the Caste Scrutiny Committee was not constituted and the Divisional Commissioner was the competent authority to decide the validity of the caste certificate. The Divisional Commissioner on 7.1.1982, has passed an order thereby confirming the tribe certificate of the petitioner as belonging to Thakur Scheduled Tribe. In the present matter, we can not consider the legality of the order passed by the Divisional Commissioner as the same is not the subject matter of the present Writ Petition. The said judgment is of the year 1982. Pursuant to

said judgment, the petitioner has completed his education and is also appointed. The said judgment has become final as nobody has assailed the said judgment. Though in the operative part of the judgment, it is stated that the petitioner to continue his studies, it is for the reason that the caste certificate was referred by the College and thereafter the Divisional Commissioner has passed the order. It can not be that the validity is for only one purpose.

6. As the petitioner has already been issued with validity certificate way back in 1982, it would not be appropriate for the Respondents to again ask the petitioner to submit the caste certificate for referring it to the Scrutiny Committee for validation. The cases which have already become final, can not be reopened only on the ground that at the relevant time, the Committee was not constituted.

7. In light of the above, the impugned communication directing the petitioner to submit the tribe certificate for referring it to the

Scrutiny Committee is quashed and set aside. The Respondents shall consider the petitioner as validly appointed from S.T. category and consider the rights of the petitioner for the purpose of ACPS benefit, promotion as belonging to S.T. category and having the validity certificate since the date of his appointment. In case the petitioner is not given the benefit of ACPS and promotion on the date when the petitioner was entitled to as belonging to candidate from S.T. category then the same shall be considered and the benefit accorded to the petitioner expeditiously, preferably within three (3) months.

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

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

