

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

WRIT PETITION NO. 9138 OF 2016

Shri Narayan S/o Irba Gone,
Age : 43 Years, Occu. : Nil,
R/o Shiv Kalyan Nagar,
Opp. Bus Stand, Loha,
Tq. Loha, Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Development,
Mantralaya, Mumbai – 32.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division,
Aurangabad, through its
Member Secretary.
3. The Tahsildar and Taluka Executive
Magistrate, Loha, Tq. Loha,
Dist. Nanded.
4. The Education Officer (Secondary),
Zilla Parishad, Nanded.
5. Shri Vitthaleshwar Shikshan Prasarak
Mandal, Vitthalwadi, Loha, Tq. Loha,
Dist. Nanded, through its President,
Shri Kerbaji Bidwai,
Age : 70 Years, Occu. : Business,
R/o Laxmanrao Bidwai Nagar,
Loha, Tq. Loha, Dist. Nanded.

6. The Head Master,
Late Vishwanathrao Nalge Secondary
and Higher Secondary School,
Vitthalwadi, Loha, Tq. Loha,
Dist. Nanded. .. Respondents

Shri U. R. Awate, Advocate h/f Talekar and Associates, Advocate
for the Petitioner.

Ms. Vaishali N. Patil, A.G.P. For Respondent Nos. 1 to 4.

Shri Vikas Kodale, Advocate h/f Shri S. G. Rudrawar, Advocate
for Respondent Nos. 5 and 6.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 02ND FEBRUARY, 2017.

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

. Rule. Rule made returnable forthwith. With the consent of
parties, taken up for final hearing.

2. The petitioner is appointed as an Assistant Teacher in the
year 1999. The petitioner was appointed on reserved post meant
for the Scheduled Tribe, as the petitioner contended that he
belongs to Rajgond (Scheduled Tribe). Tribe claim of the
petitioner was referred to Scrutiny Committee. The petitioner
filed application before the Committee that, the validation
proceedings need not be decided further and the petitioner has
given up his claim towards Rajgond (S.T.). The Committee
accepted the same and invalidated the tribe claim. Thereafter
the petitioner has been terminated from service by the employer

under order dated 10th August, 2016. The petitioner has assailed both these orders in the present writ petition.

3. Mr. Awate, the learned counsel for the petitioner submits that, in fact, under misconception the petitioner had filed the application. The petitioner thought that as he is appointed prior to 2001 his services would be protected. The Committee ought not have accepted the said application and should have decided the caste proceedings on merits. The termination order be also set aside.

4. We have heard the learned counsel for respondent Nos. 5 and 6. The learned counsel submits that, the post on which the petitioner was working is still vacant.

5. We have also heard the learned Assistant Government Pleader for respondent Nos. 1 to 4. The learned A. G. P. states that, as the petitioner had given up his claim, the Committee accepted the same.

6. We have considered the submissions. The petitioner, it seems is appointed in the year 1999. Even if his claim is invalidated by the Committee, the petitioner is entitled for protection in service, if it is found that the tribe certificate was not obtained by the petitioner by fraud or misrepresentation.

Reliance can be placed on the judgment of the Full Bench of this Court in a case of **Arun Sonone Vs. State of Maharashtra and others** reported in **2015(1) Mh.L.J. 457**.

7. It appears that, under misconception, the petitioner had filed that application. We are inclined to give opportunity to the petitioner. It is also submitted by the learned counsel for the employer that on the post on which the petitioner was working is still vacant and the petitioner can be accommodated.

8. Considering the above, we pass following order.

9. The impugned order dated 07.07.2016 passed by the respondent/Committee is quashed and set aside. The Committee shall decide the validation proceedings in respect of tribe claim of the petitioner on its own merits and in accordance with law. The petitioner shall appear before the Committee on 21.02.2017. The impugned order dated 10.08.2016 passed by respondent Nos. 5 and 6 is also quashed and set aside. The petitioner shall be reinstated in service on his original post, which he was holding on the date of his termination. The petitioner shall not be entitled for the backwages from the date of termination i. e. 10.08.2016 till the date of this order. However, said period shall be counted for the purpose of continuity in service and other consequential benefits. The employer can take further course of

action depending upon the judgment that may be delivered by the Committee in validation proceedings.

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

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Feb. 17