IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11765 OF 2018

Smt. Meena Subhash Aher @ Kum. Meena Ramdas Pawar, Aged Years, Residing at Narayan Bapu Villa, Row House No.34, Jail Road, Nashik Road, Dist. Nashik. …PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION NO. 11766 OF 2018

Deepak Bhatu Gaikwad
Aged 47 Years, Residing at Flat No.102, N. S. Hight's, Murari Nagar, D.J.P. Nagar No.2, Ambad, Nashik. …PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

Vijaya Gourishankar Yadav

Digitally signed by Vijaya Gourishankar Yadav
Date: 2018.10.12 18:13:14 +0530

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION NO. 11767 OF 2018

Shri Rajesh Mahadeo Thakur
Aged 45 Years, Residing at Flat No.21, 'B' Wing, Krushna Residency, Dindori Road, Opp. Reliance Petrol Pump, Nashik.

…PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION NO. 11768 OF 2018

Jagannath Rambhau Zankar
Aged 57 Years, Residing at House No.4610, Hanumanwadi, Makhamalabad Road, Panchavati Nashik -3.
…PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION NO. 11769 OF 2018

Shri Vijay JagannathThakur
Aged 45 Years, Residing at Room No.2, Ravideep Row Houses,Vrudavan Park, Behind Aamrapali Lawn, DJP Nagar -2, Ambad, Link Road, Kamtewade, Nashik.
…PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION NO. 11771 OF 2018

Jayshri Digamber Thakur
Aged 35 Years, Residing at Ganesh Bhuvan, Rambaug Lane No.4, Kalyan (W), District Thane.

…PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Vedant Complex, Vartak Nagar Prabhag Samiti Office, 3rd Floor Vartak Nagar, Thane (West)

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION NO. 11772 OF 2018

Mrs. Shilpa Jay Wagh Alias Kum. Pushpa Pandurang Thakur
Aged 42 years, residing at B-5, Vanraj Rejancy, Shahu Chowk, Opp. Uttam Hire Hotel, Near RTO Peth Road, Panchavati, Nashik.
…PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION (ST) NO. 29422 OF 2018

Shri Sandesh Madhukar Thakur
Aged 44 Years, Residing at Flat No.32, Ishwari Bunglow, Near Swami Samarth Kendra, Indira Nagar, Nashik.
…PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

WITH
WRIT PETITION (ST) NO. 29425 OF 2018

Shri Jagdish Shantaram Ahire
Aged 47 Years, Residing at Shivam Nivas, Flat No.12, Vanshri Colony, D.J.P. Nagar No.2, Ambad, Nashik, Dist. Nashik.

…PETITIONER

V E R S U S

1. State of Maharashtra
through its Secretary, Tribal Development Department, Mantralaya, Mumbai.

2. Scheduled Tribe Certificate Scrutiny Committee, Nashik
through its Member Secretary, having its office at Adivasi Vikas Bhavan, 3rd Floor, Gadkari Chowk Old Agra Road, Nashik, Dist. Nashik.

3. Nashik Municipal Corporation
through its Commissioner, having its office at Rajiv Gandhi Road, Sharanpur Road, Nashik, Dist. Nashik.

…RESPONDENTS

Shri R. K. Mendadkar a/w Ms. Priyanka Shaw and T. V. Jadhav for Petitioners in all Writ Petitions.

Mrs. R. M. Shinde, AGP for Respondent Nos.1 and 2 – State in all Writ Petitions.

Mr. S. V. Marne for Respondent No.3 in all Writ Petitions.

CORAM : R. M. SAVANT AND
NITIN W. SAMBRE, JJ.

DATE : 12th OCTOBER 2018.

ORAL JUDGMENT

. Rule, having regard to the nature of the directions to be issued made returnable forthwith and heard.

2. The above group of Petitions have been filed by the employees of the Respondent No.3 i.e. Municipal Corporation, Nashik seeking two fold reliefs namely, the quashing and setting aside of the show cause notice dated 5th October 2018 calling upon the Petitioners to show cause as to why their services should not be terminated as also the orders of the same date i.e. 5th October 2018 reverting the Petitioners back to the original posts held by them. The other relief sought is a direction to the Respondent No.2 – Scrutiny Committee to forthwith decide the validity of the caste claim of the Petitioners in accordance with law.

3. It is not necessary to burden this order with unnecessary details. Since the facts in the above Petitions are identical, for the sake of convenience the facts in Writ Petition No.11765 of 2018 would be referred to. Insofar as the Petitioner in the said Petition namely, Smt. Meena Subhash Aher is concerned, she was appointed as a Clerk in the Respondent No.3 – Municipal Corporation, Nashik on 5th October 1989. She was granted time-bound promotion after completion of 12 years of service as a Clerk. Her Tribe Certificate as belonging to 'Thakur – Scheduled Tribe' has been forwarded to the Respondent No.2 -Committee on 8th July 2013. It seems that the validation proceedings are at the stage of the vigilance enquiry, insofar as the said Petitioner is concerned.

4. Insofar as the other Petitioners are concerned, the posts in which they were appointed and the posts presently held by them as also the dates of appointment and the dates on which the certificates are forwarded to the Respondent No.2 – Committee would vary, however, the basic facts remain the same. The Petitioner Smt. Meena Aher was issued a show cause notice dated 5th October 2018 calling upon her to show cause within three days as to why her services should not be terminated as she had failed to produce the validity certificate. The show cause notice as can be seen from a reading it is founded on Section 10 of the Caste Certificate

Act, 2001. On the same day, she was served with an order reverting her to the lower post. Insofar as the show cause notice is concerned, she has replied to the said show cause notice.

5. It is the case of the Petitioner that no action has been taken pursuant to the show cause notice as well as the order reverting her to the lower post. The learned Counsel for the Respondent No.3 Mr. Marne was not in a position to context the said case of the Petitioners in absence of instructions.

6. The learned Counsel appearing on behalf of the Petitioner Mr. R. K. Mendadkar would contend that Section 10 of the Caste Certificate Act, 2001 does not contemplate an action in respect of which the show cause notice has been given to the Petitioner. It was the submission of the learned Counsel that the action for termination if at all can only be taken after the caste/tribe claim of the present Petitioner is invalidated, the learned Counsel for Petitioner would try to draw our attention to the Division Bench Judgment of this Court in Writ Petition No. 7599 of 2017 dated 8th September 2017 in the matter of ***Kum. Rajeshri Parmeshwar Gampalwad and Others V/s State of Maharashtra and Others***.

7. *Per contra*, the learned Counsel appearing on behalf of the Respondent No.3 – Municipal Corporation Mr. Marne would submit that the Petitioner in Writ Petition No.11765 of 2018 and the Petitioners in the companion Petitions having failed to produce the validity certificate within the time stipulated, have become susceptible to an action which can be taken under Section 10 of the Caste Certificate Act, 2001.

8. We have heard the learned Counsel for the parties.

9. The instant case exemplifies a case where the proceedings relating to the validation of the caste certificate issued to the Petitioner are pending before the Respondent No.2 – Caste Scrutiny Committee for long. Insofar as the Petitioner Smt. Meena Aher is concerned, the said proceedings are pending since 8th July 2013 when they were forwarded to the Respondent No.2 – Committee.

10. We are informed that likewise is the case of the other Petitioners, the question that arises whether action could have been taken against the Petitioners for not producing the validity certificate under Section 10 of the Caste Certificate Act 2001, the said question has been squarely answered by the Division Bench in the case of **Kum. Rajeshri Parmeshwar Gampalwad** *(cited supra)*. The Division Bench has in terms

held that no such power is conferred on the employer to terminate the services of the employee who have failed to produce the caste validity certificate.

11. In our view, therefore, the action proposed to be taken against the Petitioners pursuant to the show cause notice dated 5th October 2018 would be unsustainable. Fortunately, in the instant cases as we have observed herein above, no such action has been taken and the action is still in the realm of a proposal. We are also informed that no action has also been taken pursuant to the order passed by the Respondent No.3 demoting the Petitioner to the next lower post.

12. We, therefore, deem it appropriate to quash and set aside the show cause notice dated 5th October 2018 as also the order of the same date reverting the Petitioner in the instant Petition as also the other Petitions to the lower posts. The aforesaid relief would ennure to the benefit of all the Petitioners except Petitioners in Writ Petition No.11767 of 2018 and Writ Petition No. 11768 of 2018 who have not received such orders of demotion. This relief we are granting solely on the ground the Petitioner's tribe claim is pending before the Respondent No.2 – Committee.

13. We, therefore, dispose of the above Writ Petitions by issuing the following directions.

(A) The impugned show cause notice dated 5th October 2018 and also the impugned orders bearing the same date i.e. 5th October 2018 would stand quashed and set aside.

(B) The Respondent No.2 - Committee is directed to decide the caste or tribe claim of the Petitioners latest by 31st of March 2019 by giving appropriate opportunity to the Petitioners.

(C) The Petitioners would appear before the Respondent No.2-Committee on 26th October 2018. However, the Respondent No.2-Committee to decide their tribe claim within the aforesaid limit of 31st March, 2019.

(4) Pending the consideration of caste or tribe claim of the Petitioners by the Respondent No.2 – Committee, the services of the Petitioners should not be terminated as also they should not be demoted to the lower posts only for the reason that they have not produced the validity certificate.

14. Rule is accordingly made absolute in the aforesaid terms with parties to bear their own costs.

(NITIN W. SAMBRE, J.) **(R. M. SAVANT, J.)**