

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

912 WRIT PETITION NO.3416 OF 2019

BHAGWAN NAMDEO UGALMUGALE AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. P. D. Jarare h/f Mr. S. S. Thombre, Advocate
for the Petitioners.

Mr. S. B. Pulkundwar, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 02nd APRIL, 2019.

PER COURT:-

1. We have heard Mr. Thombre, learned counsel
for petitioners and Mr. Pulkundwar, learned A.G.P.

2. The substratum of arguments of Mr.
Thombre, learned counsel for petitioners is that
though the freedom fighters certificate of those
who have nominated petitioners for service have
been cancelled, the service benefits of petitioners
cannot be taken away nor petitioners can be
terminated from service. The Government Resolution
dated 21.03.2007 also restricts the cases to the
benefit of freedom fighters pension and does not
extend to the nominees of the freedom fighters who
have been employed. The learned counsel further

submits that the Government Resolution dated 11.02.2014 also does not specifically deal with withdrawing the protection of service granted to petitioners. According to the learned counsel petitioners have got protection under the relevant service Rules. They are permanent employees. The learned counsel further submits that in spite of the order of Tribunal, the respondents are terminating the services of freedom fighters nominees without issuing notice and without hearing.

3. The learned A.G.P. submits that affidavit has been filed before the Maharashtra Administrative Tribunal saying that no action would be taken without issuing notice to the concerned persons and calling for their say.

4. The Tribunal has passed the following order:

"17. In the premises discussed in foregoing paras, we reach at following conclusions:-

- (a) Cancellation of certificate is a fall out of long process of litigation and merger and partial modification of report of justice Palkar Commission in to the order of Hon'ble Supreme Court's decision rendered in S.L.P. Civil Appeal Nos.10627/2013.
- (b) Hence, present Original Applications has no merit in so far as challenge to impugned Govt. decision is concerned.
- (c) In so far as protection at services of applicants are concerned, present O.As. Are premature.

- (d) The Government / appointing authority has to take decision regarding issuing of notices to the applicants, giving them reasonable time to reply, consider each individuals' reply and take decision thereafter.
- (e) The step of issuing notice of show cause and hearing be completed within three months to prevent the Treasury being defrauded through salaries of unauthorized entrants in Government service unless for any other legal grounds the nominees are found eligible for absorption / retention in the employment of the Government.
- (f) Applicant's prayer for protection of their service is concerned is left open being, premature."

5. The Tribunal has specifically observed that Government/Appointing Authority has to take decision regarding issuing of notices to the applicants, giving them reasonable time to reply, consider each individuals' reply and take decision thereafter.

6. The petition at present as such would be premature. In case, the show cause notices are issued to petitioners, petitioners will have every right to agitate all the grounds available to them in the reply, which naturally is required to be considered by the Appointing Authority on its own merits and thereafter the decision has to be taken.

7. Suffice is to observe that, the respondents would not take any decision terminating the services of petitioners without issuing notices

to petitioners, without calling for their explanation and taking decisions considering explanation given as may be permissible under law. The petitioners will have every right to agitate each and every ground available to them.

8. With these observations, writ petition is disposed of. No costs.

(A. M. DHAVAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/April-19