

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

913 WRIT PETITION NO.3550 OF 2019

PRABHAKAR RAMRAO WANVE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. S. S. Thombre, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents-State.

...

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

DATED : 02nd APRIL, 2019.

PER COURT:-

1. We have heard Mr. Thombre, learned counsel for petitioner and Mr. Gujrathi, learned A.G.P.

2. The substratum of arguments of Mr. Thombre, learned counsel for petitioner is that though the freedom fighters certificate of the person who has nominated petitioner for service is cancelled, the service benefits of petitioner cannot be taken away nor petitioner can be terminated from service. The Government Resolution dated 21.03.2007 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 petitioner. According to the learned counsel petitioner has got protection under the relevant service Rules. He is permanent employee. 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 petitioner, petitioner will have every right to agitate all the grounds available to him 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 petitioner without issuing notices

to petitioner, without calling for his explanation and considering explanation given. The petitioner will have every right to agitate each and every ground available to him.

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

(A. M. DHAVAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/April-19