

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 8009 OF 2014

Pandurang s/o Nivarutti Mone,
Age: 63 years, Occu. Pensioner,
R/o. Ambali Nivas, Samtanagar,
Aurangabad.

... PETITIONER

VERSUS

- 1] State of Maharashtra,
Through, the Secretary of Forest and
Revenue Department, Mantralaya,
Mumbai.
- 2] Desk Officer, General Administration,
State of Maharashtra.
- 3] District Collector, Aurangabad.
- 4] District Collector, Jalna.

... RESPONDENTS

...
Mr. Angad L. Kanade, Advocate for Petitioner.

Mr. M. M. Nerlikar, APP for Respondent / State.

Mr. D. R. Irale Patil, Advocate for Respondent.
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CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 25th February, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The petition is filed for relief of direction against the Respondents, State Government to see that the persons to whom appointments are given in Government departments as nominees of freedom fighters on the basis of false record are cancelled and they are removed from services and also for quashing and setting aside the order of Government communicated by the Desk Officer, General Administration Department of State Government on 3rd September, 2014 to the District Collectors Jalna and Aurangabad to protect these employees.

3 In the past, Public Interest Litigation No.43 of 2011 was filed by the present Petitioner. He was serving in Revenue Department as Talathi in Aurangabad District. He had information that around 570 persons had obtained nominations from freedom fighters by creating false record and by falsely contending that they were sons, nephews etc. of the freedom fighters and they had got

appointments on Class-III and Class-IV posts in the two districts. He had first approached the Government, but as the Government has not taken action, PIL was filed. In the PIL, order of inquiry was made on 26th July, 2012. The inquiry was to be made as per Government Resolution dated 24th June, 1997 and order was to take further action. This Government Resolution provided for procedure for inspection and verification of record of the employees, who had obtained concessionary benefits as nominees of the freedom fighters. After making inquiry, report was prepared to the effect that many of the employees, who were named as amongst the aforesaid 570 employees had prepared bogus record and on that basis they had obtained nominations and employment. No action was taken even after making inquiry and coming to that conclusion and so Contempt Petition No.383 of 2013 was filed in respect of the order made in PIL No.43 of 2011. No stay was granted by this Court to the order made in PIL. Then review application was also filed with condonation of delay to stall everything and to prevent the action, but the application was rejected.

4 In the inquiry report, Respondent Nos.6 to 83 of PIL

No.43 of 2011 were found to be guilty of creation of false record and getting nomination and appointment on the basis of that false record. The nominations were cancelled on the basis of inquiry made. Then various petitions were filed by these persons like Writ Petition No.5225 of 2014 and others and in all these writ petitions, interim relief was given by this Court to the effect that adverse orders were not to be passed in respect of those Petitioners. Apparently, on the basis of that interim order, communication under challenge was issued by the Desk Officer. These petitions were dismissed and so there was no question of continuation of interim order, giving protection to these employees, but till the date of present proceeding they were not removed from service and so the petition was filed.

5 This Court has carefully gone through the communication dated 3rd September, 2014. The communication shows that only on the basis of interim order of this Court, communication was issued and specific direction was given to see that the persons already in service are not terminated. The reply affidavit filed for the State shows that after further scrutiny of the report, it was noticed that 48 nominations were wrongly issued and the nominees were not relatives

/ dependents of freedom fighters as prescribed in the Government Resolutions dated 10th January, 1985 and 6th August, 2004. The inquiry committee passed order dated 18th June, 2014 and cancelled the nomination letters issued in favour of those 48 persons. The affidavit shows that in view of the aforesaid impugned communication that these employees were not to be terminated, those employees were not terminated. There is no need to make specific order in respect of the impugned communication as it needs to be presumed that after disposal of the petitions, the interim relief got vacated and the communication became ineffective.

6 The aforesaid circumstances show that after dismissal of the petitions and after vacating of the interim relief by this Court in Writ Petition No.5225 of 2014 and other petitions, further action ought to have been taken, but that action was avoided. It cannot be said that it is a routine lapse of the Government machinery. It can be said that scrutiny was made even of the report many times and after that conclusion was reached that these 48 persons could not have been nominated by the freedom fighters and the record in that regard was false. In such circumstances, the State Government is expected to

act sternly. Their specific writ petitions were also dismissed and there was nothing in their favour to protect the services. In such case, even criminal action needs to be taken against the concerned. The State Government could not have regularized these employees under any circumstances and even by using the power given to the State Government under Article 162 of the Constitution of India. The State needs to see that its action is not as per morality and ethics. If that is not done, the society will not remain united. Such orders of protection are also against Articles 14, 16 and 309 of the Constitution of India. Thus, immediate action needs to be taken by the State to see that these persons are removed from the services and further action is also expected. In the result, the following order is passed:

ORDER

- I. The writ petition is allowed.
- II. The decision given initially of taking action as against 48 nominees mentioned in the affidavit of the Government filed in February, 2015 is to be executed.
- III. The communication under challenge, if it relates to

those 48 cases, stands quashed and set aside.

IV. The action is to be taken within 30 days and compliance report is to be filed in this Court.

V. Rule made absolute accordingly.

VI. Pending civil application stand disposed of.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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