

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAW] No.2797 of 2019

in

Writ Petition No.3666 of 2019

Gulabdas Sudhudas Burde

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Writ Petition No.3466 of 2019

Shri Vinayak Sheshrao Nandanwar & others

vs.

*The Union of India, through Secretary, Ministry Earth & Science,
Meteorological Department, New Delhi & others*

with

Civil Application [CAW] No.2798 of 2019

in

Writ Petition No.3667 of 2019

Mahadeo Punaji Burde

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2799 of 2019

in

Writ Petition No.3668 of 2019

Dattu Govinda Hedau

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2800 of 2019

in

Writ Petition No.3750 of 2019

Raju Mahadevrao Sushibine

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2801 of 2019

in

Writ Petition No.3751 of 2019

Nilima d/o Wamanrao Umredkar

vs.

The Schedule Tribe Caste Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2798 of 2019

in

Writ Petition No.3667 of 2019

Mahadeo Punaji Burde

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2802 of 2019

in

Writ Petition No.3752 of 2019

Vinayak Ramkrishna Khambalkar

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2803 of 2019

in

Writ Petition No.3753 of 2019

Madhukar Balaji Parate

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2804 of 2019

in

Writ Petition No.3754 of 2019

Digambhar Sukhdev Hedoo

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2805 of 2019

in

Writ Petition No.3755 of 2019

Kishor Manohar Kohat

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

with

Civil Application [CAW] No.2806 of 2019**in****Writ Petition No.3763 of 2019***Ramesh Gulabrao Hedao*

vs.

*The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others***with****Civil Application [CAW] No.2807 of 2019****in****Writ Petition No.3764 of 2019***Suhas Upasrao Nandanwar*

vs.

The Schedule Tribe Certificate Scrutiny Committee, Nagpur & others

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

*Court's or Judge's Orders**Shri Anil S. Mardikar, Senior Advocate with Shri A.M. Sudame, Advocate for the Petitioners.**Shri A.M. Joshi, A.G.P. for the State.**Shri U.M. Aurangabadkar, A.S.G.I. with Mrs. Mugdha Chandurkar, Special Advocate for the Union of India.***CORAM : RAVINDRA V. GHUGE & S.M. MODAK, JJ.****DATE : 11th FEBRUARY, 2020**

01] We have heard the learned Senior Advocate on behalf of the petitioners, the learned Assistant Solicitor General of India on behalf of respondent Nos.2 & 3 and the learned Assistant Government Pleader on behalf of respondent No.1.

02] All these petitioners were in employment when they approached this Court preferring these petitions, by which, they had sought quashing of the orders of invalidation, dates of which are mentioned in prayer clause (ii).

03] By the civil applications filed by these petitioners, they have challenged their subsequent termination from service, dated 16/05/2019 and 28/05/2019, respectively and seek leave to amend their writ petitions. Their claims for seeking validation of their tribes certificates have been rejected by the impugned orders mentioned in prayer clause (ii).

04] The learned Senior Advocate for the petitioners points out that the applicability of the Office Memorandum, dated 08/04/2019, issued by the Government of India applicable to the Central Government Undertakings/instrumentalities, was noticed in Writ Petition No.6524/2019 and Writ Petition No.6566/2019. In similar set of facts, these petitioners apprehended termination from service and the learned Division Bench at the Principal Seat passed an order on 13/06/2019, by which the services of the petitioners were protected. The observations of this Court at the Principal Seat in the matters of *Rajesh B. Likhar* and *Vijay L. Dharmik*, in paragraph Nos.3 to 5, read as under :-

3. We have perused said office memorandum which is based on the Judgments of the Apex Court. Subsequent to FCI Judgment, the Apex Court has considered history of the previous litigation as far as Halba Koshti is concerned and has observed that it is not the case of any one that at the time of entry in service the petitioners have played fraud to obtain employment however the peculiar legal scenario prevailing did not justify the High Court passing an omnibus order. Their Lordship held that it is not the case that the

petitioners had played any fraud in obtaining the certificates of employment and even assuming that they belongs to schedule caste or schedule tribe, either under the most backward or under the backward category and it was also entitled to same resolution at the point of recruitment. The High Court had further passed the Judgment dated 01-11-2012 that all the petitioners will be put into the general category. In this backdrop the appellants were held entitled to the protection granted by the High Court in terms of the Judgment dated 01-11-2012 and appeal is came to be disposed of with the following directions.

“In partial modification of the impugned judgments, it is ordered that all the appellants shall be placed below the last of the general category candidate as on 28-11-2000 and will be continued as such till their superannuation. All the benefits which the appellants earned as reserved category candidates after 28-11-2000 will be surrendered/recovered. After 28-11-2000 the benefits available to the reserved category candidates will be given to the members of the reserved category regarding whom there is no dispute. There shall be no recovery of any benefits from the employees who are already superannuated. Action, if any, taken pursuant to the impugned judgments(s) will stand recalled and modified to the extent indicated herein above.”

Further, the learned counsel has also placed reliance on the decision taken by the Government on 5th June 2018 and also on the Judgment of Division Bench of this Court in Writ Petition No. 3140 of 2018 at Nagpur Bench.

4. Since office memorandum dated 08-04-2019 relies on the aforesaid observations of the Hon'ble Apex Court and direct the respective departments to act accordingly and the State is also desirous of protecting its employees by issuing the Government Resolution, we are inclined to grant ad-interim relief in favour of the petitioner.

5. Taking into consideration the decision of the State Government which grants protection to such employees, we issue notice to respondent Nos. 2, 3 & 4 returnable on 11th July 2019. The Learned AGP waives service for respondent No.1 By way of an ad-interim relief, we grant relief in terms of prayer clause (d) till then.

05] It is also pointed out that this Court in the matters of Ramkrishna B. Chinchghare vs. Scheduled Tribe Caste Certificate Scrutiny Committee and another, Writ Petition No.6784/2019 and Pramod Mukunda Sorte vs. Schedule Tribes Caste Certificate Scrutiny Committee and another, Writ Petition No.8168/2019, has passed orders on 07/10/2019 and 13/12/2019, respectively and has protected the services of the petitioners, who are identical to the petitioners before us. All of them are working in the Government of India, Meteorological Department and are deployed at respondent No.3 Department at Nagpur.

06] Contention, therefore, is that one set of identically placed employees have been protected by this Court pending the hearing of their petitions and these petitioners in the present petitions, have not been granted similar relief. The learned Senior Advocate hastens to clarify that these petitioners have not been refused interim protection for any specific reason or by a specific order passed by this Court. There is no distinction between these petitioners and the petitioners, who have been granted protection by this Court. In all these cases, the Office Memorandum, dated 08/04/2019 would be applicable. Moreover, these petitioners have been working since 1988 and are at verge of their retirement keeping in view that the age of superannuation is 60 years.

07] The learned A.S.G.I. has strenuously opposed the prayer for *ad interim* protection. He has drawn our attention to the additional affidavit-in-reply, dated 14/10/2019, in response to the civil applications and especially the portion under paragraph 6, which reads as under :-

“The contention of petitioner that in compliance of DoPT OM dated 08/04/2019, Central Government has taken a decision to place all employees belonging to Halba/Halba-Koshti or Koshti caste before the last general category candidates as on 28/11/2000 is totally false and baseless. It is pertinent to mention that DoPT OM dated 08/04/2019 as referred in this Amendment Application has been misinterpreted by the petitioner. The said OM also does not have a specific/categorical decision regarding applicability

of these judgments to all Halba Koshti/Koshti/Halba communities employee of Union of India. This is a OM, whereby DoPT has only sought the actions from Department on the judgments as referred therein. The contents as mentioned in this OM cannot be treated direction for compliance. In this regard, a reference of DoPT OM dated 30/08/2018 is invited whereby the service protection granted to such employee vide OM dated 10/08/2010 had been withdrawn. A copy of DoPT OM dated 30/08/2018 is annexed herewith and marked as Annexure R-I.”

08] He, therefore, submits that the contentions put forth on behalf of the Central Government in the above reproduced paragraphs, were not canvassed at the Principal Seat as well as before this Court. Keeping in view the above contentions, the protection granted to such workers by the Office Memorandum, dated 10/08/2018, has been withdrawn by the Office Memorandum, dated 30/08/2018 and the new Office Memorandum, dated 08/04/2019 does not carve out any exception. He, therefore, submits that these petitioners need not be protected, notwithstanding that identically situated other petitioners have been protected by this Court.

09] Considering the above, we have before us two sets of petitioners and these two sets have not been created for any ostensible reason. It is purely on account of fortuitous circumstances that one set of identically placed petitioners have been granted *ad-interim* protection by two learned Division Benches of this Court, as well as by the learned Division Bench at the Principal Seat. Since, we do not find any specific

reason assigned by this Court, when notice was issued in this matter, for non-grant of interim protection, we intend to keep in mind that the writ Court is a Court of equity and equities will have to be balanced amongst identically placed petitioners, lest there is a fear of travesty of justice. These petitioners are nearing age of superannuation and have put in about three decades of service. So also, denial of interim protection to these petitioners for no specific reasons, would amount to depriving them of the relief, which has been granted to identically placed other petitioners.

10] The learned Senior Advocate makes a statement on instructions from the briefing Advocate that these petitioners would not claim back-wages from the dates of their disengagement in the month of May, 2019 and it is only subject to the result of these petitions that they would canvas such a right at the final hearing of these petitions.

11] In view of the above, the civil applications seeking amendments are allowed. These petitioners shall carry out the amendments in each of the petitions within two weeks from today.

12] Considering the above, the impugned orders of disengagement/termination of these petitioners shall be kept in abeyance and they would be permitted to report for duties from 24th February, 2020. This relief shall not create equities in favour of the petitioners and in the event, these petitions are dismissed, no rights would be created in favour of

these petitioners in view of the interim protection granted by this Court. Needless to state, these petitioners would be in employment subject to the result of these petitions or only till the dates on which they would attain the age of superannuation.

13] Keeping in view that all the litigating parties are inclined to have these matters decided expeditiously, that we are listing all these matters for a final hearing on 26th March, 2020. The litigating parties shall enter their synoptical notes of arguments, case law, if any, prior to the date of final hearing, with proper pagination.

(S.M. Modak, J.)

(Ravindra V. Ghuge, J.)

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