

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

966 Writ Petition No.6250 Of 2020

Ram Yashwanta Koli

Age : 52 years, Occu : Service,
R/o. Hadga, Tq. Nilanga, Dist. Latur

.. Petitioner

Versus

1. The State of Maharashtra
General Administration Department
Mantralaya, Mumbai
Through its Principal Secretary
 2. The Superintending Engineer @
Appointing Authority, Maharashtra State
Electricity Transmission Company Ltd
EHV O & M Circle, Old Power House,
Parali – Vaijnath, Tq. Parli, Dist. Beed.
 3. The General Manager
(Human Resource – Establishment)
Maharashtra State Electricity Transmission
Company Ltd., Prakashganga, Plot No.C-19,
E-Block, 7th Floor, Bandra – Kurla Complex,
Bandra (East), Mumbai
- ... Respondents

...

Mr Vivek U. Jadhav, Advocate for the Petitioner
Mr S.G. Karlekar, AGP for the Respondent - State
Mr S.V. Adwant, Advocate for Respondent Nos.2 and 3

...

**CORAM : S. V. GANGAPURWALA AND
R.N. LADDHA, JJ.**

DATE : 22-09-2021

ORAL JUDGMENT (Per S. V. GANGAPURWALA, J.) :

1. Rule. Rule made returnable forthwith. With the consent of the parties, the matter is taken up for final hearing.
2. Heard the learned Counsel appearing for the respective parties.
3. The petitioner assails the clause 1(c) of Govt. Resolution dated 21-12-2019 and the order of the employer - respondent no.2 dated 18-02-2020 placing him on supernumerary post.
4. It is submitted by the learned Advocate for the petitioner that the petitioner secured employment with respondent no.2 from Scheduled Tribe category. His caste claim was invalidated. He assailed the same before this Court by filing Writ Petition bearing No.4444 of 2004. This Court under judgment and order dated 27-03-2006 disposed of the writ petition. The petitioner, during the course of argument, did not agitate about invalidation of his caste claim, but sought protection in service in terms of Govt. Resolution dated 15-06-1995. According to the learned Counsel, once the protection is granted in service and the said Judgment has become final, now, the respondents cannot take a different stand. The learned Counsel relies upon the judgment of this Court dated

04-05-2021 in Writ Petition No.903 of 2020 with connected writ petitions.

5. Mr Adwant, learned Advocate for Respondent Nos.2 and 3 submits that the petitioner's entry in service was from Scheduled Tribe category. The petitioner failed to prove his caste claim. In view of that, the petitioner is not entitled to claim the benefit of reservation *vis-a-vis* Scheduled Tribe category. The learned Advocate refers to the judgment of the Hon'ble Apex Court in the case of **Chairman And Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira & Others**, reported in (2017) 8 SCC 670 and submits that the constitutional scheme of reservation has been discussed by the Hon'ble Apex Court and those, who have obtained employment from Scheduled Tribe category and failed to prove their tribe claim, are not entitled to be protected and the benefits given to them are required to be taken away. According to the learned Advocate, the facts in Writ Petition No.903 of 2020 and other connected writ petitions decided by this Court under Judgment and order dated 04-05-2021 can be differentiated in as much as the tribe claims of the petitioners therein were invalidated and confirmed by the High Court and while upholding the judgment of the Committee, the protection was granted to the services of the petitioners therein.

In the present case, the petitioner gave up the claim of the Scheduled Tribe category and as such, the petitioner cannot be said to be similarly situated.

6. Mr Adwant, learned Advocate relies upon the judgment of the Hon'ble Apex Court in the case of **Inbasagaran v. S. Natarajan** reported in **(2015) 11 SCC 12** to submit that each case depends upon its own facts and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. According to the learned Advocate, order of this Court dated 27-03-2006 in Writ Petition No.4444 of 2004 is an order and cannot be termed as a judgment.

7. Learned Advocate for Respondent Nos.2 and 3 also relies upon the judgment of the Hon'ble Apex Court in the case of **R. Vishwanatha Pillai Vs. State of Kerala & Others** reported in **(2004) 2 SCC 105** to submit that a person procuring appointment in a post meant for a reserved category candidate on the basis of a false caste certificate is not a person holding a civil post and such appointment is no appointment in the eyes of the law. The benefit cannot be given to such a person.

8. The learned Advocate for Respondent Nos.2 and 3 further relies upon judgment of the Hon'ble Apex Court in the case of **Bank of India and Another Vs. Avinash D. Mandivikar and Others** reported in **(2005) 7 SCC 690** to contend that if the certificate is fraudulently obtained, such a person is not entitled for protection. It is further observed by the Hon'ble Apex Court that when the clear finding of the Scrutiny Committee is that he did not belong to a Scheduled Tribe, the very foundation of his appointment collapses.

9. The factual matrix that the petitioner herein was appointed from Scheduled Tribe category on or about 18-09-1989 does not appear to be disputed. The petitioner's caste claim was referred to the Scrutiny Committee. The Scrutiny Committee under judgment and order dated 25-08-1997 invalidated the tribe claim of the petitioner holding that the petitioner could not prove that he belongs to Scheduled Tribe. The petitioner challenged the said judgment by filing Writ Petition bearing No. 4444 of 2004 before this Court. In the said matter, apart from the Scrutiny Committee, employer i.e. present respondent nos.2 and 3 were also parties. The petitioner herein sought protection in service. During the course of argument, the petitioner did not seriously assailed the order of the Scrutiny

Committee, however, sought protection in service in terms of the Government Resolution.

10. The employer - respondents herein though were parties to the said writ petition, did not resist the protection granted to the petitioner herein in the judgment dated 27-03-2006 in Writ Petition No.4444 of 2004. Para - 4 of the said judgment reads thus:

“4. In the instant case, the petitioner has been appointed as Junior Operator in the Maharashtra State Electricity Board on 18th September, 1989. The petitioner is therefore, entitled to the protection of his services in view of the Government Resolution dated 15.06.1995. It has already been held by this Court in the judgment reported in **2006 (1) Mh.L.J. 308** that the persons belonging to Special Backward Category are entitled the benefits of the Government of the employees is made prior to the date prescribed in the Government Resolution i.e. 15.06.1995. In view of the reported judgment referred to hereinabove, the petitioner is also entitled to the similar protection and benefits as are provided by the Government Resolution dated 15.06.1995.”

11. The judgment of this Court, as referred to above, inter parties has become final. The present respondents, who were parties to the said judgment, did not assail the said judgment, accepted the said judgment and allowed the petitioner to continue therein for all these years.

12. Once the judgment inter parties has become final, unless the said judgment is assailed the judgment inter parties would operate as

a *res judicata*. The respondents herein had opportunity to resist the claim of the petitioner seeking protection in service in Writ Petition No.4444 of 2004. The respondents, however, did not resist the same and accepted the judgment. The said judgment is acted upon. Pursuant to the said judgment, the petitioner submitted the validity of SBC certificate to the respondents. The respondents continued the petitioner in service and, now, in view of the Government Resolution dated 21-12-2019 has placed the petitioner on supernumerary post.

13. This Court in Writ Petition filed by the petitioners whose invalidation of the caste claim was confirmed by the Court but had granted protection in service had held that once the judgment inter parties has become final, the same would operate as a *res judicata* and the employer would not be entitled to contend otherwise. This Court relied upon the judgment of the Hon'ble Apex Court in the case of **Kalinga Mining Corporation Vs. Union of India and Others**, reported in (2013) 5 SCC 252 and another Judgment of the Hon'ble Apex Court in the case of **Pradeep Kumar Maskara and Others Vs. State of West Bengal and Others** reported in (2015) 2 SCC 653.

14. In the present matter also, before the judgment was delivered by the Hon'ble Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and Others** (supra) the protection in service is granted by this Court to the petitioner herein and the same would be final.

15. In light of the above, Government Resolution dated 21-12-2019 would be read in a manner not to include the employees whose tribe claims are invalidated, but granted protection in employment under the judgment of this Court and the said judgment would attain finality.

16. In light of the above, the impugned communication is quashed and set aside. Rule is made absolute accordingly. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

...