

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

989 WRIT PETITION NO.9097 OF 2020

Vandana Kacheshwar Pawar
Age: 43 years, Occu: Service,
R/o: A-24/9, Shivaji Nagar,
Aurangabad
Tq. & Dist – Aurangabad.

... Petitioner

Versus

1. State of Maharashtra
Through Secretary for
General Administration Department
Mantralaya Mumbai – 32

2. Aurangabad Municipal Corporation, Aurangabad
Through its Administrator and Commissioner

3. Education Officer
Aurangabad Municipal Corporation,
Aurangabad.

... Respondents

...

Mr. Barde Parag Vijay, Advocate for Petitioner
Mr. S. R. Yadav – Lonikar, AGP for Respondents/State
Mrs. Anjali Bajpai Dube, Advocate for Respondent Nos. 2 & 3

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE : 12.02.2021

P.C. :

. The petitioner, pursuant to the impugned order, is placed
on Supernumerary Post. The reason for placing the petitioner on

Supernumerary Post is the judgment of the Apex Court in case of **Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others** reported in **2017 AIR SC 3271**.

2. Mr. Barde the learned counsel for the petitioner submits that the petitioner was appointed in the year 1999 as a Primary Teacher and on 4th January, 2001 was made permanent. On 29th June, 2007, the Scrutiny Committee invalidated the caste claim of the petitioner. The petitioner assailed the said judgment by filing Writ Petition No.6631 of 2007. Under the judgment and order dated 20th February 2015, this Court upheld the judgment of the Scrutiny Committee invalidated the caste claim but protected the service of the petitioner.

3. The learned counsel submits that the protection was granted to the petitioner. The said order of the High Court become final. Now, the respondents could not have taken action against the petitioner on ground of invalidation of caste claim. The same would be against the judgment of the High Court. The learned counsel relies on the following judgments of the Apex Court which are as under:

(i) S. G. Barapatre and Ors. Vs. Ananta Gajanan Gaiki and Ors. reported in AIR (2018) SC (715)

(ii) Gajanan Marotrao Nimje and Ors. Vs. Reserve Bank of India and Ors. reported in AIR (2018) SC 703

(iii) Chief Regional Officer the Oriental Insurance Co. Ltd. Vs. Pradip and Another reported in SCC (2020) 95

4. Smt. Dube the learned advocate for respondent Nos. 2 and 3 submits that the action has been taken by respondent Nos. 2 and 3 in view of the judgment of the Apex Court in the case of **Chairman and Managing Director FCI & Ors. Vs. Jagdish Balaram Bahira & Ors.** reported in **2017 AIR SC 3271**. The learned advocate also relies on the judgment of the Apex Court in the case of **Vijay Kishanrao Kurundkar & Anr. Vs. State of Maharashtra & Ors.** dated **28th February, 2021 in Civil Appeal No.1865 of 2020** to submit that even if protection was granted earlier, the same would not be an impediment for the respondents to pass the impugned order.

5. We have considered the submissions canvassed by the learned advocate for the parties.

6. The factual matrix as narrated above is not disputed. After the caste claim of the petitioner was invalidated, the petitioner

filed Writ Petition bearing No.6631 of 2007. This Court upheld the invalidation of the caste claim. This Court further observed that the petitioner has not played fraud nor is guilty of misrepresentation or forgery, only because of lack of evidence, he could not prove his case and relying on the judgment of Full Bench of this Court operating then that is in the case of **Arun Vishwanath Sonone Vs. The State of Maharashtra and Others** reported in **2015 (1) MLJ 457** granted protection to the service of the petitioner.

7. The facts of the present case are akin to the facts in case of S.G. Barapatre and Ors. Vs. Ananta Gajanan Gaiki and Ors (*Supra*). In the said case, before the judgment was delivered by the Apex Court in a case of Chairman and Managing Director FCI & Ors. Vs. Jagdish Balaram Bahira & Ors (*Supra*), the service of the petitioner was protected under the order of this Court dated 20th February, 2015 in Writ Petition No.6631 of 2007. In case of Chief Regional Officer the Oriental Insurance Co. Ltd. Vs. Pradip and Another (*Supra*), the Apex Court had considered the judgment in case of S. G. Barapatre & Ors. Vs. Ananta Gajanan Gaiki & Ors (*Supra*) and Gajanan Marotrao Nimje & Ors. Vs. Reserve Bank of India & Ors. (*Supra*) and observed as under:

“15. The above observations make it abundantly clear that the challenge by the Food Corporation of India to the order of the Bombay High Court had been rejected on 12 April 2013 and as a result of the decision *inter partes*, the order of the High Court had attained finality. Consequently, this Court clarified in paragraph 9 of the above order that only the employees covered by the earlier judgment shall be entitled to the benefits which have been granted specifically by the High Court in paragraph 18 of its judgment, which has been extracted above.”

8. The petitioner was already granted protection under the order of this Court before the judgment of the Apex Court in FCI was delivered. The same had attained finality prior to the judgment of the Apex Court in the case of FCI (*Supra*).

9. In light of the above, The writ petition is disposed of. The impugned order is quashed and set aside.

(SHRIKANT D. KULKARNI, J.)

(S. V. GANGAPURWALA, J.)