

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

WRIT PETITION NO.413 OF 2020

1. Sharad S/o Wasudeo Gonnade,
Aged about 47 yrs, Occ. Service,
R/o Near Marathi Uchcha Primary
School, Sitabuldi, Armori,
Tah. Armori, Distt. Gadchiroli

.... **PETITIONER**

// **VERSUS** //

1. The State of Maharashtra
Through its Chief Secretary,
General Administration Deptt.,
Mantralaya, Mumbai-32.
2. The Deputy Conservator of
Forest,
Wadsa Forest Division, Wadsa,
Distt. Gadchiroli

.... **RESPONDENTS**

Shri S.R. Narnaware, Advocate for petitioner.
Smt. Sangita Jachak, AGP for respondent Nos.1 and 2/State.

CORAM : A.S. CHANDURKAR, AND
G.A. SANAP, JJ.

DATE : 15.12.2021

ORAL JUDGMENT: (Per: A.S. CHANDURKAR J.)

1. Rule. Rule made returnable forthwith. Heard finally
with consent of learned counsel for the parties.

2. The petitioner was appointed as Forest Guard, on a post that was reserved for Scheduled Tribe candidate on 17.07.1995. The Tribe Certificate of the petitioner was invalidated on 25.01.2016. The petitioner therefore approached this Court challenging the said order in Writ Petition No.2566/2016. By the judgment dated 22.06.2016 this Court upheld the order of invalidation but protected the services of the petitioner on the post of Forest Guard. In the said judgment, it was made clear that neither the petitioner nor his progeny would be entitled for any claim the benefits meant for “Halba” as belonging to the Scheduled Tribe, in future. Thereafter on 21.12.2019 Government Resolution was issued by the respondent No.1 seeking to implement the judgment of the Hon’ble Supreme Court in the case of ***Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others. (2017) 8 SCC 670***. In paragraph 4.3 thereof it has been held that in respect of employees whose claims have been invalidated, they shall be placed on a supernumerary posts for a period of eleven months. Acting on the said Government Resolution the respondent No.2 issued an order dated 31.12.2019 and placed the petitioner on a supernumerary post.

Being aggrieved the petitioner has challenged the same.

3. Shri S.R. Narnaware, learned Advocate for the petitioner submits that the issue arising in this Writ Petition has been decided by the Aurangabad Bench of this Court in Writ Petition No.903/2020 with connected Writ Petitions (*Raja Tukaram Shinde Vs. The State of Maharashtra, Tribal Development Department, Mantralaya, Mumbai and another with connected matters*) on 04.05.2021. He submits that Government Resolution dated 21.12.2019 has been directed to be applied in a manner so as not to include employees whose tribe-claims are invalidated but are granted protection in employment by the orders of the Court. It is therefore, submitted that similar course be followed and the order dated 31.12.2019 be set aside.

4. Smt. Sangeeta Jachak, Learned Assistant Government Pleader for the respondent No.1 and 2/State opposes the aforesaid contention. It is submitted that the judgment referred to herein above is sought to be challenged by the State Government before the Hon'ble Supreme Court and hence the relief as prayed for may not be granted.

5. On perusing the judgment in *Raja Tukaram Shinde* (supra) we find that this Court has held that in cases where employment is protected by the orders of the Court and those judgments have attained finality Government Resolution dated 21.12.2019 could not be made applicable.

6. We are inclined to follow the aforesaid judgment of Division Bench and hence for the reasons assigned in the said judgment the following order is passed:-

O R D E R

(i) The order dated 31.12.2019 issued by the respondent No.2 appointing the petitioner on supernumerary post is set aside.

(ii) The petitioner is entitled to continue in employment in terms of the earlier order of protection that was passed in Writ Petition No.2566/2016.

Rule is made absolute in the aforesaid terms. No costs.

JUDGE

JUDGE

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