

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

WRIT PETITION NO. 457 OF 2021

Ramesh s/o Ramkrushna Kadu,
Aged about 48 years,
Occupation – Service, Assistant Teacher,
R/o Aarogya Colony, Goulkhed Road,
Shegaon, Tq. - Shegaon, District -
Buldhana.

.... **PETITIONER**

VERSUS

- 1) State of Maharashtra,
through its Secretary,
General Administration Department,
Mantralaya, Mumbai – 32.
- 2) The Chief Executive Officer,
Zilla Parishad, Buldhana.
- 3) Block Education Officer,
Panchayat Samiti Shegaon,
Zilla Parishad, Buldhana.
- 4) The Education Officer (Primary),
Zilla Parishad, Buldhana.

.... **RESPONDENTS**

Mr. Sumeet G. Joshi, Counsel for the petitioner,
Mrs. Kalyani Deshpande, Assistant Government Pleader for respondent
1,
None for respondents 2 to 4.

**CORAM : DIPANKAR DATTA, C.J. &
ROHIT B. DEO, J.
DATED : 6th DECEMBER, 2021**

JUDGMENT : (PER : ROHIT B. DEO, J.)

Petitioner-Mr. Ramesh Ramkrushna Kadu is assailing the order of termination dated 24-1-2020 issued by the Chief Executive Officer, Zilla Parishad, Buldhana-second respondent herein-purportedly pursuant to the Government Resolution dated 21-12-2019.

2. We may note the relevant facts, which are few and incontrovertible :

2.1 Petitioner, on the premise that he belongs to Scheduled Tribes “Koli Mahadeo” secured from the Executive Magistrate, Akola Certificate dated 14-9-1985.

2.2 Petitioner was appointed as an Assistant Teacher in vacancy reserved for the Scheduled Tribes, vide order dated 30-6-1995 issued by the second respondent.

2.3 The claim of the petitioner of belonging to the Scheduled Tribes “Koli Mahadeo” was rejected by the Caste Scrutiny Committee vide order dated 31-7-2013. Dissatisfied with the invalidation of the caste claim, the petitioner approached this Court in Writ Petition 5824/2013.

2.4 The Full Bench judgment of this Court in *Arun Vishwanath*

Sonone vs. State of Maharashtra, 2015(1) Mh.L.J. 457 was rendered on 22-12-2014. The Full Bench *inter alia* held that Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act XXIII of 2001) which mandates the withdrawal of benefits secured on the basis of a false caste certificate operates with effect from 18-10-2001. The Full Bench further articulated, referring to the Apex Court decisions in ***Kavita Vasant Solunke vs. State of Maharashtra and others, 2012(5) Mh.L.J. (SC) 921*** and ***Shalini Gajananrao Dalal vs. New English High School Association and another, 2014(2) Mh.L.J. (SC) 913***, that relief of protection of service can be granted by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India notwithstanding the invalidation of the caste claim.

2.5 Relying on the Full Bench decision in *Arun Vishwanath Sonone vs. State of Maharashtra*, the Division Bench of this Court protected the services of the petitioner vide judgment dated 15-6-2015 rendered in Writ Petition 5824/2013. The second respondent was directed to reinstate the petitioner in service from 01-7-2015, with continuity in service, without back wages.

2.6 It is common ground that the judgment in Writ Petition 5824/2013 is not challenged and has assumed finality.

2.7 The decision of the Full Bench in *Arun Vishwanath Sonone vs. State of Maharashtra* was overruled by the Hon'ble Supreme Court in *Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others, 2017(4) Mh.L.J. 898* vide judgment dated 06-7-2017. The Apex Court *inter alia* held that invalidation of the caste or tribe claim would render the appointment or the admission, as the case may be, void or *non est* and that the protection which the Apex Court granted in the decisions which were pressed in service by the employees, was in exercise of plenary power under Article 142 of the Constitution of India.

2.8 The Government of Maharashtra issued Government Resolution dated 21-12-2019 which directs that the employees covered by categories A to E specified in Clause 1 be treated as holding supernumerary posts and that the process to fill in the vacant posts be initiated and concluded in a time bound manner.

2.9 It is pursuant to the Government Resolution dated 21-12-2019 that the second respondent has issued the order dated 24-1-2020 purporting to place the petitioner on supernumerary post as

an *ad hoc* measure, for the period of eleven months or till attainment of the age of superannuation, whichever eventuality occurs earlier in point of time. It is this order dated 24-1-2020 which is impugned before us.

3. We have heard the learned Counsel for the petitioner Mr. Sumeet Joshi and the learned Assistant Government Pleader for respondent 1 Mrs. Kalyani Deshpande. None appeared on behalf of the other respondents who are duly served.

4. Mr. Sumeet Joshi has twin submissions to canvass. Mr. Sumeet Joshi would submit that the Government Resolution dated 21-12-2019 does not take within its sweep employees whose services are protected by judicial orders, which have attained finality. The other submission is, that the Government Resolution dated 21-12-2019, which is issued in exercise of executive power under Article 162 of the Constitution of India, cannot, in any event, unsettle or nullify the rights of the parties which are concluded by decisions inter parties which have attained finality. The extension of the latter submission is, that even if it is assumed that the order of protection dated 15-6-2015 rendered in Writ Petition 5824/2013 was on the basis of the decision in *Arun Vishwanath Sonone vs. State of Maharashtra*, which is held manifestly erroneous by the Apex Court, the decision protecting the petitioner not having been

assailed further, and having assumed finality, would continue to operate with equal vigour inter parties. Mr. Sumeet Joshi would submit that the twin submissions have found favour with a coordinate Bench at Aurangabad which decided a bunch of writ petitions vide judgment dated 04-5-2021.

5. The learned Assistant Government Pleader Mrs. Kalyani Deshpande, relying on the enunciation in *Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others*, would submit that the appointment of the petitioner is *non est* in law and the invalidation of the tribe certificate must necessarily result in the termination of the services. Mrs. Kalyani Deshpande would submit that the decision of placing the petitioner on a supernumerary post, is pursuant to Government Resolution dated 21-12-2019, which is issued in deference to the law laid down by the Apex Court in *Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others* and the subsequent orders rendered by this Court in Writ Petitions 6247/2015 and 3140/2018.

6. The twin objectives underlying the Government Resolution dated 21-12-2019 are (1) to ensure that the administration is not severely

hampered due to immediate and *en masse* termination of employees who are appointed against the reserved vacancies and whose caste or tribe claims are invalidated, and (2) the perception that the employees would get some breathing time and enable them to meet the post termination situation more robustly.

7. In the context of the submission canvassed by Mr. Sumeet Joshi, we have bestowed due consideration to the decision of the Coordinate Bench at Aurangabad in ***Writ Petition 903/2010, Raja Tukaram Shinde vs. The State of Maharashtra and other connected matters***, and we are of the view that Mr. Sumeet Joshi is justified in submitting that the twin submissions which he is canvassing and which we have noted supra, have found favour with the coordinate Bench.

8. Clause 1 of Government Resolution dated 21-12-2019, reads thus:

“१. अनुसूचित जमातीसाठी राखीव असलेली पदे रिक्त करणे - सर्व प्रशासकीय विभागांनी खुद्द व त्यांच्या अधिपत्याखालील शासकीय/निमशासकीय कार्यालयातील अनुसूचित जमातीच्या खालील अधिकारी व कर्मचा-यांची संवर्गनिहाय संख्या निश्चीत करून त्यांच्या सेवा दि. ३१.१२.२०१९ पर्यंत अधिसंख्य पदांवर वर्ग कराव्यात :-

(अ) अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरलेले अधिकारी/कर्मचारी.

(ब) अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरल्यानंतर विशेष मागासप्रवर्गाचे अथवा अन्य कोणत्याही मागासवर्गाचे जात वैधता प्रमाणपत्र सादर केलेले अधिकारी/कर्मचारी.

(क) अनुसूचित जमातीचा दावा सोडून दिलेले अधिकारी/कर्मचारी.

(ड) नियुक्तीनंतर जातप्रमाणपत्राच्या पडताळणीसाठी विहित मुदतीत जात पडताळणी समितीकडे प्रस्ताव सादर न केलेले अनुसूचित जमातीचे अधिकारी व कर्मचारी.

(इ) ज्या अधिकारी व कर्मचा-यांनी त्यांचे अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरविण्याच्या जात पडताळणी समितीच्या निर्णयाच्या विरोधात माननीय न्यायालयात याचिका दाखल केल्या असतील मात्र त्यांच्या प्रकरणी माननीय उच्च न्यायालयाने किंवा माननीय सर्वोच्च न्यायालयाने जात प्रमाणपत्र अवैध ठरविण्याच्या समितीच्या निर्णयास कोणतीही स्थगिती दिली नसेल असे अधिकारी व कर्मचारी.”

9. In *Raja Tukaram Shinde vs. The State of Maharashtra*, the Division Bench observes thus :

“17. In the present cases, the tribe claims of the petitioners are invalidated and the said judgments are upheld by this Court, however, protection is granted to their services. Reading clause 1(A to E) of the impugned Government Resolution, it appears that, the petitioners are not directly covered under the said G.R. Present matters are limited only in respect of those candidates to whom the High Court under its orders has granted protection to the petitioners in their employment. Such a category does not appear to be covered in the Government Resolution dated 21-12-2019.”

10. *Raja Tukaram Shinde vs. The State of Maharashtra* further articulates, *inter alia* relying on the decision of the Apex Court in ***Kalinga Mining Corporation vs. Union of India and others, (2013)5 SCC 252***, that the judgments granting protection in service, notwithstanding the invalidation of the tribe claims, and which have attained finality, would operate as *res judicata*, inter parties, irrespective of the fact that the decision on the basis of which the protection is granted, is subsequently overruled by the Apex Court. *Raja Tukaram Shinde vs. The State of Maharashtra* *inter alia* relies on the decisions of the Apex Court in ***Pradeep Kumar Maskara and others vs. State of West Bengal and others, (2015) 2 SCC 653*** and ***Kalinga Mining Corporation vs.***

Union of India and others, (2013)5 SCC 252 to hold that a decision granting protection in service, on the basis of the decision in *Arun Vishwanath Sonone vs. State of Maharashtra*, would continue to bind the parties, if the judgment has assumed finality and that the overruling of the Full Bench decision in *Arun Vishwanath Sonone vs. State of Maharashtra* would not unsettle the rights of the employees.

11. It is not disputed that the decision dated 15-6-2015 in Writ Petition 5824/2013 whereby the services of the petitioner were protected is not challenged by the employer and has assumed finality. The adjudication of facts in the said decision, would, therefore, bring into play the doctrine of *res judicata* or principles analogous thereto, and the said decision shall continue to operate with full vigour inter parties. It is trite law, that even if the decision is rendered in view of a binding judgment which is subsequently overruled by the superior Court, if the decision is not assailed and assumes finality, the decision continues to bind the parties.

12. Statutory recognition of the said principle is discernible from the Explanation to Order XLVII of the Civil Procedure Code, which reads thus :

“Explanation : The fact that the decision on a question of law

on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

13. We are inclined to respectfully agree with the observation in *Raja Tukaram Shinde vs. The State of Maharashtra* that the categorization of employees in Clause 1 of the Government Resolution dated 21-12-2019 does not encompass employees who are protected by judicial orders which have attained finality. *Arguendo*, even if we were to assume, that Government Resolution dated 21-12-2019 comes into play, in our considered view, the rights recognized and settled by judicial orders cannot be altered muchless diluted or obliterated by issuing executive instructions in exercise of power under Section 162 of the Constitution of India. We are of the view that the order impugned which assigns supernumerary post to the petitioner manifestly falls foul of the order of protection rendered in Writ Petition 5824/2013 which has assumed finality.

14. In view of our broad agreement with the conclusions reached by the coordinate Bench in *Raja Tukaram Shide vs. The State of Maharashtra*, burdening this judgment with a reference to the plethora of decisions which have dealt with the issue of binding nature of decision which has assumed finality arising in the petition, is wholly

unnecessary.

15. In the light of the discussion *supra*, we are inclined to allow the petition and quash the order of *termination dated 24-1-2020 (Annexure-P-10)*, which we accordingly order.

(ROHIT B. DEO, J.)

(DIPANKAR DATTA, C.J.)