

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

94 WRIT PETITION NO.9406 OF 2022

RAJENDRA TULSHIRAM BOYANE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

Advocate for Petitioner : Mr. U. R. Avate h/f Talekar And Associates
AGP for Respondents-State : Mr. A. R. Kale

...

**CORAM : RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE : 21st September, 2022

PER COURT :

1. The petitioner has put forth prayer Clauses 'A' and 'B' as under :-
 - (A) To direct the respondents to grant continuity in service, arrears of salary and other consequential service benefits from initial date of appointment i.e. 10.01.1996 to the petitioner on the post of Peon, by issuing writ of mandamus or any other writ, order or direction as the case may be.
 - (B) To direct the respondents to grant continuity in service, arrears of salary and other consequential service benefits from initial date of appointment i.e. 10.01.1996 to the petitioner on the post of Peon, pending hearing and final disposal of this

petition.

2. We have considered the submissions of the learned Advocate for the petitioner and the learned AGP who appears on behalf of respondent Nos.1, 2 and 3.

3. There is no dispute that the petitioner was appointed as a 'Peon' with the respondent No.4 University on 10/01/1996 and his services were approved on 29/01/1998. Since his Tribe claim was invalidated by the Competent Committee, the University terminated his service on 23/05/2007. He was then appointed on temporary basis by the same University on 03/09/2007. On 16/06/2010, this Court set aside the order of the Scrutiny Committee dated 29/03/2007 and remanded the matter to the Committee for a fresh decision, vide its order passed in Writ Petition No.2796 of 2007. On 07/10/2011, the Committee validated the Tribe claim of the petitioner and concluded that he belongs to the 'Malhar Koli Scheduled Tribe'. Consequentially, the University reinstated the petitioner on the same post of 'Peon' on 04/11/2012. The University has then passed an order dated 01/06/2017 condoning the gap in service. The University had forwarded a proposal dated 16/03/2016

to respondent No.3 for seeking approval.

4. We find that the order of the University dated 01/06/2017 indicates that the gap in service in between 24/05/2007 and 04/11/2012 has been bridged and condoned. He is held entitled for all service benefits including monetary benefits.

5. The learned Advocate for the petitioner submits that respondent No.3 Joint Director of Higher Education, Nanded, is not passing an order considering the decision of the University.

6. In our view, since the petitioner has succeeded before this Court and his claim of belonging to the 'Malhar Koli Tribe' has been validated, which was the sole ground for his disengagement by the University, his reinstatement in 2007, though on a temporary basis and his continuance in service till the order of the High Court validating his claim, would indicate that the petitioner is entitled for condoning the break in service. The reason for his disengagement does not exist in the eye of law.

7. In view of the above, this petition is disposed off with a

direction to respondent No.3 to issue an appropriate order considering the decision of the University dated 01/06/2017, as expeditiously as possible and in any case on or before 15/11/2022.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

gawade/-.