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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3180 OF 2022**

Kashinath Dhondiba Misal

..Petitioner

VS.

Maharashtra State Road Transport
Corporation and ors.

..Respondents

Dr. Suresh T. Mane for the petitioner.

Mr. Nitesh Bhutekar a/w. Ms. Gargi Warunjikar, Mr. Aniket
Nangre for respondent nos. 1 & 2.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : MARCH 25, 2022.

P.C. :

1. The petitioner is an employee of the Maharashtra State Road Transport Corporation (hereafter 'the Corporation' for short). He impugns an order dated 16 March/April, 2021 issued by the competent authority, Divisional Controller, State Transport Pune of the Corporation. By the said order, it was conveyed to the petitioner that he had obtained employment on a post reserved for the Scheduled Tribes as one belonging to Mahadev Koli tribe and since his tribe certificate stands invalidated, he is not entitled to be continued in service based on the decision of the Supreme Court in Civil Appeal No. 8928 of 2015 (**Chairman and Managing Director, FCI and others versus Jagdish Balaram Bahira and**

others); accordingly, it had been decided to allow the petitioner to work on a supernumerary post for eleven (11) months on a temporary basis or till his superannuation, whichever is earlier.

2. Our attention has been drawn by Dr. Mane, learned advocate for the petitioner, to the order dated February 18, 2003 of a co-ordinate Bench of this Court in Writ Petition No. 739 of 2003 (**Shri Kashinath Dhondiba Misal and another versus State of Maharashtra and others**) wherein orders dated December 5, 2002 and December 20, 2002 were challenged. By such orders, the services of the two petitioners (the petitioner herein being the first petitioner in the said writ petition) were terminated by the Divisional Controller, State Transport Pune of the Corporation on the ground of invalidation of their tribe claims. It was recorded by the co-ordinate Bench that the petitioners had joined services of the Corporation prior to Government Resolution dated June 15, 1995 and hence, they ought not to have been terminated from the services because their cases were covered by the said Government Resolution. Further, upon consideration of the statement at the bar from the side of the petitioners that they would give up their claim as belonging to Mahadev Koli, upon their acceptance of the finding of the Committee for Scrutiny and Verification of the Tribe Claim that they belonged to Koli caste, the co-ordinate Bench allowed the writ petition and while setting aside the impugned orders dated December 5,

2002 and December 20, 2002, directed reinstatement of the petitioners in service on or before March 17, 2003 with continuity of service and all other benefits, except back wages. It is in pursuance of such order dated February 18, 2003 that the petitioner has continued in service without any break till such time, the order impugned in this writ petition came to be issued.

3. Dr. Mane has also brought to our notice the decision of another co-ordinate Bench of this Court reported in 2021 (4) AIR Bom R 50 (**Raja Tukaram Shinde versus State of Maharashtra and others**). Referring to paragraphs 3, 4, 14, 20, and 24 to 26 of such decision, it is the contention of Dr. Mane that since the earlier decision of the co-ordinate Bench in Writ Petition No. 739 of 2003 has attained finality, it was no longer open for the Divisional Controller to have a relook in the matter and pass the impugned order dated 16th March/April, 2021. He has, accordingly, prayed that the impugned order be quashed and the petitioner be allowed to continue in the service of the Corporation till he attains the age of superannuation.

4. Mr. Nitesh Bhutekar, learned advocate for the Corporation has contended that the office order dated 16th March/April, 2021 was issued based on the concerned officer's understanding of the decision in **Jagdish Balaram Bahira** (*supra*) and since the petitioner's tribe claim had been invalidated, he felt that the petitioner ought not to be continued in the service of the Corporation.

5. Having heard learned advocates for the parties and considering that the earlier order dated February 18, 2003 of this Court between the parties has attained finality, we are of the clear view that the Divisional Controller was not justified in issuing the impugned order and allowing the petitioner to work on a supernumerary post for eleven (11) months or till his superannuation, whichever is earlier. The co-ordinate Bench of this Court while disposing of Writ Petition No. 739 of 2003 having held that the petitioners in such writ petition, which included the present petitioner, were entitled to the benefit of Government Resolution dated June 15, 1995, it was not open to the Divisional Controller to take a different view of the matter on the administrative side and pass the impugned order as if he were sitting in appeal over a judicial decision.

6. The impugned order being indefensible, is set aside. The writ petition stands allowed with the direction that the petitioner shall be allowed to continue in the services of the Corporation till he attains the age of superannuation.

7. No costs.

8. In the event, the petitioner has been paid less salary than what he was entitled because of he being made to work on a supernumerary post, the difference in salary shall be paid by the Corporation without any delay.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)