

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1003 OF 2021

Ulka Ramesh Thakur Petitioner
Vs.
State of Maharashtra and Ors. Respondents

Mr. Prathamesh B. Bhargude for the Petitioner.
Mrs. S. S. Bhende, AGP for Respondent Nos.1 and 2-State.
Mr. Pankaj P. Deokar for Respondent No.3.

**CORAM: S. B. SHUKRE &
G. A. SANAP, JJ.**

DATED : 14 MARCH 2022.

P. C.

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. The Petitioner was appointed as a primary teacher by following due procedure. She was appointed on the reserved post for Schedule Tribe. As the Petitioner failed to submit tribe validity certificate, the Petitioner was terminated from service by order passed on 2/6/2010. Subsequently, the Petitioner after a prolonged legal battle won her case before this Court and on the intervention of this Court, this scrutiny committee granted tribe validity certificate to the Petitioner. However, termination order was not withdrawn and the Petitioner was not taken back in service although, the Petitioner was appointed on contract basis for 11

months and such contract of service is being renewed from time to time. The Petitioner claims that the very reason of the termination order has been taken away and so there is no justification for Respondent No.3 to not reinstate the Petitioner in regular service.

3. Learned counsel for the Petitioner has invited our attention to the legal opinion given by learned Advocate for Respondent No.3. Opinion is tendered in the open court and taken on record and it is marked "A" for identification.

4. Opinion given by learned Advocate for Respondent No.3 shows that upon providing the validity certificate by the Petitioner to the employer, the basis of termination of her service no more survives and therefore learned Advocate has further opined that the Petitioner was entitled to be reinstated in service. It appears that this opinion has not been fully accepted. If the Petitioner could be taken back in service on contract basis it only means that Respondent No.3 now does not have any objection on the issue of tribe validity certificate to the Petitioner. Then the only reason for termination of services of non production of tribe validity certificate by the Petitioner would no more exist. Afterall, as the tribe validity certificate has been duly issued and it is also submitted to Respondent No.3, we, therefore, find that the action of Respondent No.3 in appointing the Petitioner in service only on contract basis is unjust, arbitrary and illegal. This would mean that same must be quashed and set aside.

5. The Petition is partly allowed in terms of prayer clause (a) except the claim regarding back wages. The back wages shall not be paid to the Petitioner although, the Petitioner shall be given notional seniority and also notional benefits till the date she was taken back in service on contract basis. The Petitioner shall be entitled to difference of salary between regular salary and salary received by her as contractual employee of Respondent No.3. The Petitioner shall also be entitled to continuity in service and other benefits to be made available notionally for the period she was not in regular service of Respondent No.3.

6. Rule is made absolute in the above terms. No costs.

(G. A. SANAP, J.)

(S. B. SHUKRE, J.)