

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

WRIT PETITION NO.1214/2021

Vijay Radhikisan Tapre.

vs.

State of Maharashtra through its Secretary, General Administration
Department, Mantralaya, Mumbai and ors.

Office Notes, Office Memoranda of
appearances, Court's Orders or directions and
Registrar's order

Court's or Judge's Order Coram,

Shri S.G.Joshi, Advocate for petitioner.

Shri A.A.Madiwale, Assistant Government Pleader for respondent no. 1.

Shri T.M.Zaheer, Advocate for respondent nos. 2 and 4.

CORAM :- A.S.CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ

DATED :- JANUARY 07, 2022.

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Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

The petitioner was appointed as 'Assistant Teacher' at Zilla Parishad, Buldhana, on 10.07.1995. The petitioner claims that he is belonging to 'Koli Mahdeo' Scheduled Tribe. The Scrutiny Committee however invalidated his tribe claim on 13.08.2001. The services of the petitioner were thereafter terminated. The petitioner has challenged the order of invalidation in Writ Petition No.636/2016. By the judgment dated 21.03.2016 the petitioner was reinstated in service in view of the undertaking given that he would not seek any benefit of belonging to the Scheduled Tribe category after his reinstatement.

It appears that pursuant to the Government Resolution dated 21.12.2019 the Zilla Parishad has on 24.01.2020 sought to place the petitioner on supernumerary post for a period of eleven months and such placement was treated to be temporary in nature. Being aggrieved the petitioner has challenged the aforesaid communication.

We find that this very issue has been considered initially in Writ Petition No.903/2020 (*Raja Tukaram Shinde vs. The State of Maharashtra*

and ors.) at the Aurangabad Bench wherein it was held that Clause-1 of the said Government Resolution would not be applicable to those candidates in whose favour orders of protection of services were passed after giving the benefit of reservation. Thereafter the Division Bench in Writ Petition No.457/2021(*Ramesh Ramkrushna Kadu vs. State of Maharashtra and ors.*) by the judgment dated 06.12.2021 has followed the aforesaid view. In paragraph 13 of the aforesaid judgment, it has been observed as under :

“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 much less 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 No.5824/2013 which has assumed finality.”

In view of aforesaid, we find that the case of the petitioner is governed by the aforesaid decision. Consequentially the order dated 24.01.2020 passed by Zilla Parishad, Buldhana is set aside. It is directed that the petitioner is entitled to continue in service pursuant to the order of protection that was granted in Writ Petition No.636/2016.

Rule is made absolute in aforesaid terms. No costs.

(PUSHPA V. GANEDIWALA J.)

(A.S.CHANDURKAR, J.