

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

WRIT PETITION NO. 7925 OF 2019

Mohan S/o Vasant Rao Kumbhare,
Aged about 48 years, Occ. Service,
R/o Near Priyadarshani Mahila Mahavidyalaya,
Rajnagar, Ward No.3, Nalwadi, Wardha, Dist. Wardha.

PETITIONER

.....VERSUS.....

Zilla Parishad, Wardha,
Through its Chief Executive Officer.

RESPONDENT

Shri S.R. Narnaware, Advocate for the petitioner.
Shri D.R. Bhoyar, Advocate for the respondent.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : SEPTEMBER 16, 2022

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. The petitioner was appointed on the post of 'Senior Assistant' at the Zilla Parishad, Wardha on a vacancy that was reserved for the candidates belonging to the Scheduled Tribe category. His order of appointment is dated 23/2/1999. The tribe claim of the petitioner was referred to the Scrutiny Committee for verification. By the order dated 13/3/2007, that claim was invalidated. The petitioner challenged the said adjudication in Writ Petition No. 4799/2010. This Court on 24/4/2015

upheld the order passed by the Scrutiny Committee but at the same time protected the petitioner's services by clarifying that the petitioner would not be entitled to any further benefit on the basis of his tribe claim. The Zilla Parishad subsequently on 20/11/2019 issued a notice to the petitioner calling upon him to explain as to why his services should not be terminated in the light of the judgment of the Hon'ble Supreme Court in *Chairman And Managing Director, Food Corporation Of India And Others Vs. Jagdish Balaram Bahira And Others [(2017) 8 SCC 670]*. Being aggrieved by the issuance of the show cause notice, the petitioner has filed the present Writ Petition.

3. The learned Counsel for the petitioner submits that the petitioner's services having been protected by this Court in Writ Petition No. 4799/2010, it was not permissible for the Chief Executive Officer to have issued the aforesaid notice. According to him, the decision of the Hon'ble Supreme Court in *Food Corporation Of India (supra)* was rendered subsequent to the order granting protection to the petitioner's services. He has placed reliance on the decision of the Aurangabad Bench in *Raja Tukaram Shinde Vs. The State of Maharashtra and another [Writ Petition No. 903/2020 decided on 4/5/2021]* with other connected matters. He has also invited attention to the decision in *Chief Regional Officer the Oriental Insurance Co Ltd. Vs. Pradip and another [AIR 2020*

SC 4858] to urge that orders that have attained finality *inter parties* could not be re-opened on the basis of the decision in *Food Corporation Of India (supra)*. According to the learned Counsel, the observations in the show cause notice seek to take away the benefit of protection granted to the petitioner in Writ Petition No. 4799/2010.

4. The learned Counsel for the respondent relied upon the affidavit-in-reply filed on behalf of the respondent as well as the decision in *Food Corporation Of India (supra)*. He has also referred to the Government Resolution dated 21/12/2019 in that regard.

5. It is not in dispute that the services of the petitioner have been protected by the order dated 24/4/2015 passed in the earlier Writ Petition. That adjudication has attained finality. Admittedly, the order of protection is passed prior to 6/7/2017 when the decision in *Food Corporation Of India (supra)* was rendered. This position has been considered in paragraph 16 of the decision in *Chief Regional Officer the Oriental Insurance Co Ltd. (supra)*. The Aurangabad Bench in *Raja Tukaram Shinde (supra)* has held that protection granted earlier and that has attained finality cannot be re-opened. We find that the petitioner would be entitled to the benefit of protection of his services in these facts.

6. Though it is urged by the learned Counsel for the respondent

that the judgment of the Aurangabad Bench is the subject matter of challenge before the Hon'ble Supreme Court and the same is pending, we find that there are no interim orders passed in those proceedings. In that view of the matter, it would be for the Zilla Parishad to consider the effect of final adjudication of those proceedings.

7. For the aforesaid reasons, the show cause notice dated 20/11/2019 is set aside. The petitioner is entitled to continue in service in terms of the earlier order of protection.

8. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit