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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 WRIT PETITION NO.12148 OF 2022

**ANIKET BAJIRAO WAGH
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

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Mr P. V. Jadhavar, Advocate for petitioner;
Mr S. G. Sangle, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 7th January, 2023

PER COURT:

1. The petitioner has put forth prayer clauses (B), (C) and (D),
which read as under :-

“B) By issuing appropriate writ, order or direction in like nature. may kindly be quashed and set aside the impugned termination order dated 30/09/2022 (Exhibit E) by the respondents/employer regarding to non-submission of validity certificate.

C) By way of an appropriate writ, order or direction in the like nature may kindly issue direction to the respondent No. 2 scrutiny committee may kindly be to decide the tribe claim of the petitioner as early as possible or issue the validity certificate in favour of petitioner as belongs to Koli Malhar Scheduled Tribe.

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D) Pending hearing and final disposal of this writ petition, may kindly grant stay to the impugned termination order dated 30/09/2022 (Exhibit E) issued by the respondents/employer regarding to non-submission of validity certificate and not fill up the post against the petitioner by respondent authority.”

2. This matter was heard on 03/01/2023 and yesterday. Considering the earlier order dated 09/09/2021, passed by this Court in Writ Petition No.10046/2021, filed by the petitioner, by which the concerned authorities were directed to issue a provisional appointment order to the petitioner though his claim for validity was pending, the petitioner was, therefore, offered provisional appointment by an order dated 01/10/2021. Since he did not submit his validity certificate within six months, his provisional employment was brought to an end by a communication dated 30/09/2022, after 1 year.

3. We have considered the strenuous submissions of the learned Advocate for the petitioner and the learned A.G.P. This Court had directed the Committee to decide the claim of the petitioner within one year and which was not decided. The Joint Commissioner, Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, who is present in the Court, has entered an affidavit

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dated 06/01/2023, by way of an explanation. It is pointed out that, there were approximately 1700 tribe claims pending Vigilance Cell Enquiry with the said Committee. The Vigilance Cell of the Committee comprises of one Deputy Superintendent of Police, three Police Inspectors and four Constables. In view of 1700 tribe claims pending for Vigilance Enquiry and in several cases, the Courts had directed a time frame, the Committee could not conclude the proceedings within the time frame. The Committee has expressed an apology in this regard.

4. Having considered the affidavit filed by the concerned authority, we find that the explanation offered needs to be accepted, considering the heavy burden on the Committee. We do not find and there is no allegation that the Committee had deliberately kept the petitioners' proceedings aside.

5. It is submitted that, the real paternal uncle and the paternal cousin brother of the petitioner, have received validity certificates of belonging to the 'Koli Malhar – Scheduled Tribe'.

6. We have noticed in hundreds of cases that the candidates provisionally appointed, pending validation of their caste/tribe claims, continue in employment without validity certificates for

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quite sometime. If their claims are invalidated, they are protected by the orders of the Court and until their proceedings are decided by the High Court, they continue to remain in employment despite their claims having been invalidated.

7. The learned A.G.P. points out the Judgment delivered by 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**, wherein the Hon'ble Supreme Court has concluded that, the claimants, whose claims have been invalidated, have actually played a fraud on the system and their continuance in employment or in education, deprives an eligible candidate from such opportunity. Having noted this in series of cases, we find that the time has come for us to look at such cases, differently. The petitioner's provisional appointment has been cancelled four months ago. The learned A.G.P. representing the Committee assures that, if the petitioner co-operates, a decision in his claim for validity would be delivered, on or before 31/03/2023. In this situation, we find that an advisable and appropriate option would be to keep the post occupied by the petitioner vacant, and if his claim is validated, he would be entitled for automatic reinstatement in service, with

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continuity and full backwages. His lien on the said post will, therefore, continue and the moment his claim is validated, he would be reinstated in the service by the employer with continuity.

8. In view of the above, this petition is disposed off with the following directions :-

(a) A statement of the petitioner that, his father is willing to give a statement to the Committee in the Vigilance Cell Enquiry proceedings, is recorded.

(b) The petitioner shall fully co-operate in the said proceedings and would not delay the proceeding on technical grounds or by seeking adjournments on unreasonable and trivial grounds.

(c) The Committee, by following the due procedure laid down in law, would pass a final order in the proceedings, on or before 31/03/2023.

(d) The post of 'Multi-purpose Health Worker', provisionally occupied by the petitioner at the Sub-Centre, Kelgaon, Tq. Sillod, District Aurangabad, shall be kept vacant by the authorities.

(e) The moment the petitioner's claim is validated by the committee and the validity certificate is tendered to the employer, respondent No.3 herein, the employer, would immediately reinstate the petitioner in service alongwith continuity and backwages to be paid within three months.

(f) In the event the petitioner's claim is invalidated and he continues to litigate in the Court and eventually succeeds, he would be entitled for reinstatement with continuity in service. Due to a long absence from service, the issue of full back wages is kept open and the parties would be at liberty to canvass all grounds.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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