



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1893 OF 2023

Ishwar s/o Kisan Murdakar,
aged about 48 years,
occupation : Service,
r/o Raipur, Tahsil and District
Buldhana.

... Petitioner

- Versus -

- 1) State of Maharashtra, through
Education Officer (Secondary),
Zilla Parishad, Buldhana, Tahsil and
District Buldhana.
- 2) Shri Shivaji Shikshan Sanstha,
Raipur, through President,
Tahsil and District Buldhana.
- 3) Shri Shivaji Shikshan Sanstha,
Raipur, through Secretary,
Tahsil and District Buldhana.
- 4) Shri Shivaji Shikshan Sanstha,
Raipur, through Headmaster,
Raipur, Tahsil and District Buldhana.

... Respondents

Shri M.V. Bute, Advocate for petitioner.

Ms. N.P. Mehta, Assistant Government Pleader for respondent no.1.

Shri K.P. Mahalle, Advocate for respondent nos.2 to 4.

CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATED : SEPTEMBER 11, 2023

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

Rule. Rule is made returnable forthwith. Heard finally with consent of the learned Counsel for the parties.

2) The petitioner was appointed on the post of Peon, which was reserved for members of Scheduled Tribe. The petitioner claimed to belong to “Mahadeo Koli” (Scheduled Tribe). The tribe claim of the petitioner, however, came to be invalidated by the Scrutiny Committee on 18/9/2015. The said order was challenged by the petitioner in Writ Petition No.5488/2015 (Ishwar s/o Kisan Murdakar vs. State of Maharashtra and others). By the judgment dated 27/10/2015 though the order passed by the Scrutiny Committee was upheld, the employer (respondent nos.2 to 4 herein) was directed to protect the services of the petitioner subject to petitioner submitting an undertaking that he would not claim benefit of his tribe during the course of employment. Notwithstanding aforesaid, the petitioner has been issued order dated 7/12/2022 seeking to treat his appointment on a supernumerary post.

3) The learned Counsel for the parties do not dispute that the legal issue in this regard has been considered and decided in a bunch of writ petitions being Writ Petition No.903/2020 (Raja Tukaram Shinde vs. The State of Maharashtra and another) with connected writ petitions on

4/5/2021 at Aurangabad Bench. Since the services of the petitioner have been protected and Government Resolution dated 21/12/2019, on the basis of which the order dated 7/12/2022 came to be passed, does not entitle the employer to place the services of the petitioner on a supernumerary post, the following order is passed :

The impugned order dated 7/12/2022 issued by the respondent no.3 is quashed and set aside. The petitioner is entitled to continue in employment in the light of protection granted in Writ Petition No.5488/2015.

4) Rule is made absolute in the aforesaid terms. No order as to costs.

JUDGE

JUDGE

khj