



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

Writ Petition No.4029 of 2022

Kailas S/o Namdeo Chikhalkar Versus The State of Maharashtra and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.C. Yeramwar, Counsel for Petitioner.

Shri N.S. Rao, Assistant Government Pleader for Respondent Nos.1 and 2.

Shri A.P. Sadavarte, Counsel for Respondent No.3.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : 18th MARCH, 2024

P.C. :

1. Heard.
2. The petitioner entered in the service as a Health Worker on 6-5-1999 on the post reserved for Scheduled Tribe category.
3. On 26-8-2008, a show cause notice was issued to the petitioner to produce the validity certificate, however the petitioner has responded to the same by producing on record the certificate of 'Koli' Special Backward Class. The petitioner thereafter produce the validity certificate of Special Backward Class, that is 'Koli', however he came to be terminated vide order dated 17-9-2013.
4. Feeling aggrieved, the petitioner preferred an appeal before the respondent No.2, which was dismissed on 22-6-2015. However, in Review Petition No.49 of 2016, the order of termination was set aside, resulting into granting reinstatement.
5. After the reinstatement of the petitioner, since he was placed on supernumerary post by the impugned orders dated 31-1-2020 and 22-1-2021, the petitioner is claiming that the earlier protection extended by virtue of the

order dated 27-10-2016 cannot be taken away, thereby placing the services of the petitioner on supernumerary post.

6. So as to substantiate his contentions, the learned counsel for the petitioner has drawn support from the judgment delivered in Writ Petition No.14820 of 2021 on 16-3-2022 at Aurangabad Bench, particularly Paragraphs 9 and 10, which read thus :

“9. Learned Counsel placed reliance on the judgment delivered by the Division Bench of this Court on 4.5.2021 in Writ Petition No.903 of 2020 filed by Raja Tukaram Shinde Vs. State of Maharashtra & ors., in support of his submission that the protection already granted by earlier Government Resolution which was in force till the impugned Government Resolution came to be issued, cannot be taken away.”

“10. This Court, in the judgment in the case of Raja (supra), after referring to several judgments of the Honourable Supreme Court held that once the protection has already been granted to the employment of the petitioner earlier, the said protection cannot be taken away by subsequent Government Resolution with retrospective effect. In our view, the said judgment of this Court in the case of Raja (supra) would apply to the facts of this case. We are respectfully bound by the said judgment and do not propose to take a different view in the matter.”

7. Though the prayer for protection of services of the petitioner on regular establishment and not on the supernumerary post is resisted by the learned counsel for the respondent-employer, we are of the view that the issue is squarely covered by the judgment in Writ Petition No.14820 of 2021, referred to above.

8. It is no doubt true that the petitioner's tribe claim as belonging to Scheduled Tribe was waived, however in view of the policy as was existing at the relevant time, though the services were terminated, the reinstatement was

granted by virtue of the order dated 27-10-2016 passed by the Additional Commissioner in review jurisdiction.

9. As a sequel of such order, the services of the petitioner remained protected on the regular establishment, he having submitted the caste validity certificate as that of belonging to 'Koli' Special Backward Category.

10. Thus, the impugned orders dated 31-1-2020 and 22-1-2021, by which the services of the petitioner are placed on supernumerary post, passed by the respondent No.3-Additional Commissioner, Amravati Division, Amravati cannot be sustained. As such the said orders are hereby quashed and set aside with a further direction to continue the services of the petitioner on regular establishment in view of the protection granted by the respondent No.3.

11. The petition stands allowed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)