



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

WRIT PETITION NO. 97 OF 2024

(Narayan s/o Laxmanrao Wankhede Vs. State of Maharashtra and another)

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

Court's or Judge's orders

Mr. Shankar Borkute, Advocate for petitioner.
Mr. A.V. Palshikar, AGP for respondent No.1/State.
Mr. J.B. Kasat, Advocate for respondent No. 2.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATED : 21-02-2025

Heard Mr. Borkute, the learned Counsel for the petitioner, Mr. Palshikar, the learned AGP for respondent No. 1/State and Mr. Kasat, the learned Counsel for respondent No. 2.

2. On 7.2.2005, the following position was recorded.

2. The Petition questions the denial of second Assured Career Progression (for short "ACP") to the Petitioner on the ground that he has been put on a supernumerary post consequent to the invalidation of his tribe claim of belonging to Dhoba Scheduled Tribe by the Caste Scrutiny Committee. The Petitioner entered service as Fireman with Nagpur Municipal Corporation on 05.06.1984 in the post reserved for "Dhoba" Scheduled Tribe. The claim of the Petitioner, of belonging to Scheduled Tribe was invalidated by the Caste Scrutiny Committee by its order dated 11.05.2004. In view of the Government Resolution dated 15.06.1995, the Petitioner was continued in service as belonging to OBC category "Dhobi".

3. The claim of the Petitioner was validated by the Scrutiny Committee by its order dated 20.03.2012 (page 45). During the course of the service, the Petitioner was placed on supernumerary post in view of the Government Resolution dated 21.12.2019 and thereafter superannuated on 27.11.2020.

4. This Court by its judgment dated 21.11.2022 in Writ Petition No.3380/2022 Narayan s/o Laxmanrao Wankhede Vs. The State of Maharashtra & another, categorically found as under:

“5. We have heard the learned Counsel for the parties and we have perused the documents on record. It is undisputed that after invalidation of the petitioner’s tribe claim, his services were protected by relying upon the Government Resolution dated 15/6/1995. The petitioner’s services were protected as belonging to the Other Backward Class category. His name was also included in the seniority list as belonging to that category. In this backdrop, when the Corporation itself protected the services of the petitioner and placed him in the Other Backward Class category, there does not appear to be any justification to await the recommendations of the Study Group and thereafter the policy decision of the State Government. It is undisputed that after being placed in the Other Backward Class category, the petitioner has obtained validity certificate dated 20/3/2012 of belonging to ‘Dhobi’ Other Backward Class category. He was permitted to superannuate on 27/11/2020. We find that the Division Bench in Raja Tukaram Shinde (supra) has considered the effect of the orders of protection granted by this Court and the effect of non-release of pensionary benefits thereafter. In the present case, the employer itself has granted such protection and hence in these facts, it would not be necessary to await the recommendations of the Study Group and thereafter the policy decision of the State Government. 6. For the aforesaid reasons, there does not appear to be any justification in issuing the impugned communication dated 12/5/2021 to the petitioner in that regard. Respondent No.2 – Municipal Corporation is directed to release the pensionary benefits of the petitioner pursuant to his superannuation on 27/11/2020. Needful be done within a period of six weeks from receipt of copy of this judgment.”

5. Thereafter the Respondent No.2, by the office note dated 08.03.2020 has denied the benefit of second ACP to the Petitioner on the ground that he has been placed on the supernumerary post.

6. It is the contention of Mr. Borkute, learned Counsel for the Petitioner, that once the Respondent No.2, accepted the validity of the Petitioner, as belonging to Dhobi OBC and permitted to continue in service and superannuate on 27.11.2020, the Respondent No.2 cannot deny the benefit of second ACP to the Petitioner, as the grant of such benefit is dependent upon the length of service put in by the employee, in respect of which there is no dispute.

7. He further contends, that since the claim of the Petitioner of belonging to OBC Dhobi was accepted and the Petitioner was continued, in spite of the fact that the Government Resolution dated 15.06.1995 (page 42), did not permit the Respondent No.2 to grant any protection, the situation having been accepted by the Respondent No.2, the denial of the second ACP by the impugned office note, is not justified.

8. Mr. Kasat, learned Counsel for the Respondent No.2, basically relies upon the Government Resolution dated 15.06.1995 to contend, that since the protection was granted to the Petitioner under this Government Resolution, the claim of the Petitioner, that his employment was continued on account of the validity as indicated above, cannot be accepted.

9. A perusal of the Government Resolution dated 15.06.1995, points out that it is only in relation to lifting of a stay, in respect of the appointment to categories mentioned therein. It does not speak anything about granting of any protection to an employee whose tribe claim has been rejected. The Government Resolution dated 15.06.1995, therefore is of no assistance to Mr. Kasat, learned Counsel for the Respondent No.2.

10. Mr. Kasat, learned Counsel for the Respondent No.2, thereafter relies upon the Government Resolution dated 14.12.2022 (page 90) clause (B), to contend, that it was in terms of the aforesaid Government Resolution, that the Petitioner has been placed on supernumerary post, on account of which the benefit was not permissible.

11. This is in teeth of the fact, that after the claim of the Petitioner of belonging to Scheduled Tribe Dhoba, being invalidated by the Tribe Scrutiny Committee, the Petitioner, who thereafter had obtained a validity of belonging to Dhobi OBC, was continued in employment and was permitted to superannuate. The continuation of the Petitioner cannot be related to the Government Resolution dated 15.06.1995, and therefore, will have to be presumed to be an act by which the invalidity, of the claim of the Petitioner of belonging to Scheduled Tribe Dhoba, stood condoned by the Respondent No.2 otherwise there is no reason whatsoever for the Respondent No.2, to have continued the Petitioner in employment.

12. This is also indicated by the seniority list dated 31.12.2005 (page 35) in which the name of the Petitioner figured at 37 and the category to which the Petitioner belonged is shown as OBC Dhobi. This seniority list is after invalidation of the tribe claim of the Petitioner of belonging to Dhoba Scheduled Tribe category. This would therefore indicate, that the continuation of the Petitioner's employment has been accepted by the Respondent No.2, which in turn, would logically entitle the Petitioner for the second ACP, having completed the period of

24 years for its entitlement”.

3. Today, Mr. Kasat, learned Counsel for respondent No.2, placing reliance upon the Government Resolution dated 4.10.2024 (p 138), clause 3 of which indicate that persons whose caste/ tribe claim has been invalidated and who have been put on a supernumerary post, submits that the petitioner not entitled to the benefit of the ACP scheme.

4. The narration of events as recorded above would indicate, that though the claim of the petitioner of belonging to Dhoba Scheduled Tribe was invalidated on 11.5.2004, however, thereafter, the petitioner has been continued in service, on account of the fact, that he belonged to Dhobi community which was included in Other Backward Categories which claim has been validated by the Scrutiny Committee, by its order 20.3.2012. There is no order appointing the petitioner on any supernumerary post, consequent to his tribe claim of belonging to Dhoba Scheduled Tribe being invalidated by the Scrutiny Committee by order dtd 11.5.2004 as indicated above. The Government Resolution dated 15.6.1995 does not indicate a situation, which permits such a person to be put on supernumerary post. This itself would indicate, that though the claim of the petitioner, of belonging to Dhoba Scheduled Tribe, was invalidated, the respondent No. 2 has continued the employment of the petitioner, by accepting his claim, of having belonged to the OBC category - Dhobi which would indicate a protection being granted to the employment of the petitioner in 2004 itself. That being the position, the subsequent Government Resolutions dated 21.12.2019, and

4.10.2024, would clearly not be attracted to the case of the petitioner, as consequent to the rejection of the tribe claim of the petitioner of belonging to Dhoba community, the services of the petitioner, have been protected, by accepting his claim of belonging to Dhobi OBC community. Had this not been so, nothing prevented the respondent No. 2, from terminating the services of the petitioner, as the initial claim of the petitioner, was found to be incorrect. Having not so done, but continued with the employment of the petitioner, by accepting his claim of belonging to Dhobi OBC and granting protection to his services, the respondent No. 2, cannot now be permitted, to take the benefit and advantage of the Government Resolutions dated 21.12.2019 and 3.10.2024. We therefore, hold, that in the peculiar circumstances, as indicated above, where the services of the petitioner have been protected by accepting his claim, of belonging to the Dhobi OBC category, and permitted to superannuate the petitioner is entitled to be considered for the benefit of the 2nd ACP. The petition is accordingly allowed in the above terms. The impugned note dated 8.3.2020 (p 74) which has been accepted by the Addl. Commissioner on 3.3.2020, as well as order dated 9.1.2020 are hereby quashed and set aside and the petitioner is held to be entitled to be considered for the benefit of the 2nd ACP. The respondent No. 2, is accordingly directed to calculate the amounts payable to the petitioner on account of the above and make payment within a period of four weeks from today.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)