



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2166 OF 2024

Mohan s/o Shankarrao Sonkusare
Aged : 53 Years, Occu : Service;
R/o Vyankatesh Nagar, Dubewar Layout,
Pusad, Tahsil Pusad, District Yavatmal.

... **PETITIONER**

V E R S U S

1. The State of Maharashtra
General Administration Department,
Mantralaya, Mumbai – 32.
Through its Principal Secretary

[Copy to be served on the Government
Pleader, High Court of Judicature at
Bombay, Bench at Aurangabad]
2. The Education Officer (Secondary)
Zilla Parishad, Yavatmal, Tahsil and District
Yavatmal.
3. The Head Master
Koshatwar Daulatkhan Vidyalaya and
Godhajirao Mukhare Junior College, Pusad,
Tahsil Pusad, District Yavatmal.

Run by – Shikshan Prasarak Mandal, Pusad.

... **RESPONDENTS**

Mr. A. P. Chaware, Advocate for Petitioner.
Mr. S. B. Bissa, AGP for Respondent Nos.1 and 2.
None for the Respondent No.3.

**CORAM : SMT. M. S. JAWALKAR AND PRAVIN S. PATIL, JJ.
DATE : AUGUST 21, 2025.**

ORAL JUDGMENT [PER PRAVIN S. PATIL, J.]

. Heard. **Rule.** Rule made returnable forthwith by consent of the parties.

2. It is seen from the office note of the Registry of this Court that Respondent No.3 was duly served in this Petition long back in the year 2024, but none appeared on behalf of the Respondent No.3 till date in the matter. Today also none appeared for the Respondent No.3 nor power of any Advocate is filed on behalf of the Respondent No.3 in the matter. As such, according to us, Respondent No.3 choose not to appear and contest the Petition. Hence, we proceed to decide the matter.

3. In the present Petition, vide impugned order dated 23/6/2023, the Respondent No.3 has put the service of the Petitioner on supernumerary post with effect from 14/12/2022 for temporary period of eleven months in terms of the Government Resolution dated 21/12/2019. The said order is under challenge in the present Petition.

4. In nutshell, the facts giving rise to the present Petition are as under:

On 16/1/1989 the Petitioner obtained Caste Certificate as belonging to 'Halba - Scheduled Tribe' from the competent authority and on the basis of the same, got appointment in Respondent No.3/School as 'Assistant Teacher (Lower Division)'. After his appointment, approval has been granted by the Respondent No.2/Education Officer (Secondary), Zilla Parishad, Yavatmal on 23/3/1990. Accordingly, he was continued in service. In the year 1992, Petitioner has obtained the training qualification, and accordingly, he was considered for promotion from 25% quota for the Graduate Teachers.

5. On 17/9/2004, Respondent No.3 referred the Scheduled Tribe claim of the Petitioner to the Scheduled Tribe Certificate Scrutiny Committee, Amravati (*for short, 'the Scrutiny Committee'*). The Scrutiny Committee, by order dated 31/10/2008 cancelled and confiscated the Caste Certificate of the Petitioner.

6. Being aggrieved by the order of Scrutiny Committee, Petitioner approached before this Court, challenging the said order vide Writ Petition No. 5306/2010. In the said Petition, in stead of assailing the order passed by the Scrutiny Committee rejecting his Tribe claim, he claimed protection of his services, on the basis of executive orders operating the field. Accordingly, this

Court vide order dated 1/11/2012 granted protection to the services of the Petitioner, and owing to the order passed by this Court, services of the Petitioner are protected and he was continued in service.

7. It is seen from the record that Hon'ble Supreme Court in the case of *Chairman and Managing Director, Food Corporation of India and others V/s Jagdish Balaram Bahira and others, 2017(8) SCC 670* held that protection cannot be continued in favour of the Petitioner, and accordingly, the impugned order dated 23/6/2023 came to be issued in the matter.

8. In the light of above factual position, Petitioner has specifically relied upon the Judgment delivered by the Division Bench of this Court at Aurangabad in *Writ Petition No. 903/2020 (Raja Tukaram Shinde V/s State of Maharashtra & Anr.) Decided on 4/5/2021* along with the bunch of Petitions. The Division Bench of this Court has recorded the observations in paragraph Nos. 23, 24 and 25 as under :

“23. The matter can be viewed from another pedestal. The decision of a Court having jurisdiction even if is erroneous, is binding between the parties, unless set aside by the higher Court or unless the said judgment is reviewed. The correctness or otherwise of the decision of the High Court protecting the services of the petitioners would not be relevant. Even an erroneous judgment is as

much binding between the parties as a correct one, unless set aside by the higher Court or reviewed by the same Court. Once the judgment is concluded inter parties, the parties cannot be allowed to re-agitate the issue decided by the Court of competent jurisdiction on the basis of subsequent judgment of the Apex Court.

24. *The employer at no stage after the order was passed by this Court granting protection to the services of the petitioners questioned the judgments of this Court and in a way accepted the said judgments. The employer after a long slumber cannot be allowed to turn around and by executive instruction set aside the protection granted by this Court by exercising its jurisdiction under Article 226 of the Constitution of India. The petitioners are placed on supernumerary posts based upon the executive instructions of the Government dated 21st December, 2019. The Executive does not possess the authority to sit over the judgments of the High Court delivered in exercise of its powers under Article 226 of the Constitution of India. The judgments of this Court would be binding on the employer. The respondents cannot travel beyond the judgments and order of this Court. If the respondent/employers were not satisfied by the judgments of this Court granting protection in service to the petitioners, they could have approached the Apex Court and/or immediately sought review of the judgments granting protection in service to the petitioners. The respondents did not avail the remedy available to them. On the contrary accepted the judgments without demur. Article 162 of the Constitution of India would not permit the executive to take a policy decision and issue the impugned resolution in defiance of the judgments of this Court. The judgments of this Court cannot be set at naught by the executive resorting to its powers under Article 162 of the Constitution and if it resorts to such an act, it would be an abuse of its powers and functions.*

25. *The aforesaid discussion would lead us to conclude that once the judgment of this Court inter parties has become final and there is no element of fraud at the time of delivering the judgment by this Court, the said judgment would bind the parties and operate as a res judicata. The subsequent judgment of the Apex Court laying down the proposition of law different than the one on the basis of which the judgments are delivered by this Court and have attained finality cannot be reopened. Quietness will have to be given to the litigation. The protection granted by this Court to the employment of the petitioners in the writ petitions filed by them earlier bind the parties and shall continue.”*

9. It is also pointed out by the Petitioner that the Judgment delivered by this Court in the case of ***Raja Tukaram Shinde*** (*supra*) was challenged before the Hon’ble Apex Court vide Civil Appeal No. 6212 of 2015, however, the Hon’ble Apex Court by its order dated 28/4/2025 dismissed the Appeal filed by the State Government. As such, it is clear that the Judgment delivered in the case of ***Raja Tukaram Shinde*** (*supra*) is holding the field till date.

10. The Petitioner has also relied upon the Judgment delivered by this Court in Writ Petition No. 4029/2022 (*Kailas s/o Namdeo Chikhalkar V/s The State of Maharashtra and others*), wherein this Court, by relying upon the Judgment dated 16/3/2022 delivered at Aurangabad Bench of this Court in Writ Petition No. 14820 of 2021, held that if the protection is already granted

in favour of the employee, services of the employee cannot be placed on supernumerary post.

11. Hence, considering the abovesaid legal position, we are of the considered opinion that the impugned order passed by the Respondent No.3 dated 23/6/2023 is not sustainable and liable to be quashed and set aside. In the circumstances, following order is passed.

ORDER

- (1) Writ Petition is allowed.
- (2) The impugned order dated 23/6/2023 passed by the Respondent No.3/Management putting the services of the Petitioner on supernumerary post is hereby quashed and set aside.
- (3) It is made clear that the protection granted by this Court vide order dated 1/11/2012 in Writ Petition No. 5306/2010 shall remain continued to the services of Petitioner till he attains age of superannuation.

12. Rule is made absolute in above terms. No order as to costs.

[PRAVIN S. PATIL, J.]

[SMT. M. S. JAWALKAR, J.]