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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
W.P. NO. 10991 OF 2012**

Sau. Pratibha W/o Rajendra Thakur
@ Kum. Pratibha D/o Bapurao Thakur .. Petitioner

Vs.

Scheduled Tribe Certificate
Scrutiny Committee, Nashik and Ors. .. Respondents

....
Mr. Sameer S. Kadam I/b Mr. V.A. Sugder & Mr. Mahesh
Deshmukh Advocate for Petitioner

Mr. S.B. Kalel AGP for Respondent Nos. 1 and 2

Mr. S.S. Kanetkar Advocate for Respondent No.3

....

**CORAM : B.R.GAVAI AND
M.S.KARNIK, JJ.
DATED : OCTOBER 17, 2018**

ORAL JUDGMENT [PER B.R.GAVAI, J.]:

1 Rule. Rule made returnable forthwith. By
consent, matter is finally heard.

2 The Petitioner has approached this Court being
aggrieved by order passed by the Respondent No.1 -
Scrutiny Committee, dated 24.9.2012 thereby invalidating
the caste claim of the Petitioner and consequent order

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passed by the Respondent No.3, dated 28.7.2011 thereby terminating the services of the Petitioner. Petition deserves to be allowed on the very short ground.

3 The Petitioner's father viz. Bapurao Lotu Thakur has been held to be validly belonging to the "Thakur" Scheduled Tribe by order dated 22.6.2001 and was given a Validity Certificate on the basis of the orders passed by this Court in Writ Petition Nos. 2746 of 1998, 5454 of 1998 and 856 of 1998. Not only this, the Petitioner's real sister viz. Pushpa Bapurao Thakur has also been given validity certificate by the Scrutiny Committee.

4 The Division Bench of this Court in the case of ***Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 Nagpur & Ors. [2010 (6) Mh.L.J. 401]***, has held that "if a blood relative of a candidate has been granted caste validity certificate, then the candidate cannot be denied the validity certificate".

5 In view of the fact that the validity certificates

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are granted in favour of Petitioner's father and real sister, the impugned order needs to be quashed and set aside and it needs to be held that the Petitioner belongs to "Thakur" Scheduled Tribe.

6 The only question is with regard to the consequential relief. The Petitioner has been communicated on 28.7.2011 that on account of non submission of caste validity certificate, since the Petitioner was appointed against the post reserved for Scheduled Tribe, the services of the Petitioner were terminated. We had requested the learned counsel Mr. Kanetkar appearing on behalf of the Respondent No.3 to seek instructions as to whether any vacancy exists today in the Respondent No.3 School. Mr. Kanetkar informed that since the Petitioner's services were terminated in the year 2011, the vacancy available for the Scheduled Tribe category has already been filled-in in 2012. He submitted that only vacancy that is available is for B.A. D.Ed. whereas the Petitioner has qualification of H.S.C. D.Ed.

7 Taking into consideration the peculiar facts and

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circumstances, we are of the considered view that the Respondent No.3 be directed to appoint the Petitioner against an available post. It also needs to be taken into consideration that Respondent No.3 has classes from Vth to Xth Standard and as such, the Petitioner is duly qualified to take classes from Vth to VIIth Standard. The Respondent No.3 can make some internal arrangement so as to ensure that the students' interest is not compromised.

8 At the same time, we find that since the Petitioner has not actually worked for the period between her termination of service and her reinstatement, the Petitioner would not be entitled to back-wages. However, the Petitioner would be entitled to continuity of service with all consequential benefits including increments, promotion, etc.

9 In the result, the petition is allowed in the following terms.

- (a) The impugned order passed by Respondent No.1 dated 24.9.2012 is quashed and set aside;
- (b) The order dated 28.7.2011 passed by

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Respondent No.3 thereby terminating the services of the Petitioner, is quashed and set aside;

(c) The Respondent No.3 is directed to reinstate the Petitioner in service from 1st November, 2018;

(d) It is held that though the Petitioner would not be entitled to back-wages for the period during which she was out of employment, but she shall be entitled to continuity of service for all purposes including increments, promotion, salary fixation, etc.

(e) Respondent no.2 - Education Officer is directed to grant approval and continuity of service of the Petitioner in according with the aforesaid directions.

(f) Rule is made absolute in above terms with no order as to costs.

M.S.KARNIK, J.

B.R.GAVAI, J.

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