

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2024 OF 2000

Bapu s/o Manak Sawale, Age 33 years,
Occupation Service, Maharashtra State
Electricity Board, Dhule

Petitioner

V E R S U S

1 The State of Maharashtra

Respondents

2 The Committee For Scrutiny and
Verification of Tribe's Claim, Nasik

3 The Superintending Engineer, Maharashtra
State Electricity Board, Dhule

Mr. S.R. Barlinge, Advocate for the petitioner
Mr. D.V. Tele, A.G.P. for respondent no.1/State
Mr. P.S. Patil, Advocate for respondent no.2

**CORAM : A. V. NIRGUDE, &
A. M. BADAR, JJ.**

DATE : 17TH JUNE, 2015

ORAL JUDGMENT : [Per A.M. Badar, J.]

1. Heard Shri S.R. Barlinge, learned counsel appearing for the petitioner and Shri P.S. Patil, learned counsel appearing for respondent no.2 – Scrutiny Committee. We also heard learned A.G.P. appearing for respondent no.1.

2. In this petition, the petitioner has prayed for quashing and setting aside judgment and order dated 31st March, 2000, passed by respondent no.2 – Scheduled Tribe Caste Certificate Scrutiny Committee invalidating the tribe claim of the petitioner for 'Tokre Koli' scheduled tribe.

3. During the course of hearing of this petition, learned counsel Shri Barlinge appearing for the petitioner on instructions, fairly stated that his client is not pressing the claim for 'Tokre Koli' scheduled tribe. Shri Barlinge, learned counsel for the petitioner argued that the petitioner is now interested only in protection of his service in view of the judgment delivered by Full Bench of this Court reported in **2015 [1] Mh.L.J. 457 [Arun s/o Vishwanath Sonone v. State of Maharashtra and others]**.

4. Record shows that the petitioner was appointed as Junior Machine Operator with respondent no.3 by order dated 18th April, 1998. He is being continued on the said post even after invalidation of tribe claim by virtue of the interim order passed by this Court. The petitioner is now giving-up the claim for 'Tokre Koli' Schedule Tribe and is only interested in service protection. We have carefully perused the impugned judgment of respondent no.2 – Scrutiny Committee. There are no observations made by the

Scrutiny Committee in order dated 31st March, 2000, in regard to fraud played by the petitioner while obtaining tribe certificate and/or fraudulently securing the benefit of the scheduled tribe while seeking appointment. We do not find that the petitioner had played fraud while securing the appointment or that he procured caste certificate by playing fraud. The claim of the petitioner has been rejected by the Scrutiny Committee not only on the basis of documents as also on the ground that the petitioner failed to pass affinity test.

5. At this juncture it is apposite to quote position of law crystallized in the judgment of the full Bench in the matter of Arun [*supra*]. Paragraph nos.65 and 66 of the said judgment need re-production as under :-

“65.The factual position to which the law laid down is to be applied, is stated as under:

(a) Before coming into force of the said Act on 18.10.2001, the appointments and promotions were made against the post reserved for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Classes category (consolidatedly called as “the backward class category”) merely on the basis of the production of the Caste Certificates issued by the Competent Authorities with or without the condition of producing a caste validity certificate.

(b) The decision in Madhuri Patil's case was delivered by the Apex Court on 02.09.1994, and by issuing the Government Resolutions dated 15.06.1995 and 30.06.2004, all the appointments and promotions made up to 15.06.1995 against a post reserved for backward class category are protected and such appointments and promotions cannot be canceled.

(c) After coming to force of the said Act on 18.10.2001, no appointments and/or promotions could be made without production of a caste validity certificate under sub-section (2) of section 6 of the said Act, but it is a fact that some such appointments have been made.

(d) In terms of the decision in Milind's case, all the appointments that have become final up to 28.11.2000 stand protected subject to the conditions as under:-

(i) that upon verification by the Scrutiny Committee, the Caste Certificate produced to secure an appointment, is not found to be false or fraudulent.

(ii) that the appointee shall not take any advantage in terms of promotion or otherwise after 28.11.2000 solely on the basis of his claim as a candidate belonging to any of the backward class categories in respect of which his claim is invalidated by the Scrutiny Committee, and

(iii) that it shall be permissible for the Competent Authority to withdraw the benefits or promotions obtained after 28.11.2000 as a candidate belonging to backward class category for which the claim has been rejected.

66. In view of the law, which we have laid down, the relief of protection of service after invalidation of caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in the case of *Kavita Solunke Vs State of Maharashtra and others*, reported in 2012(5)Mh.L.J. (SC)921=2012(8)SCC430, and *Shalini Vs New English High School Association and others*, reported in 2014(2) Mh.L.J.(SC)913=(2013)16SCC526. The manner and the extent to which such protection is to be made available, is laid down as under:-

(a) The appointments or promotions made up to 15.06.1995 in public employment on the basis of the Caste certificates against a post reserved for any of the backward class categories, stand protected in terms of the Government Resolutions dated 15.06.1995 and 30.06.2004 and shall not be disturbed, and the appointments that have become final between 15.06.1995 and 28.11.2000 shall remain unaffected in view of the decision of the Apex Court in *Milind's Case*.

(b) The grant of protection in terms of the Government Resolutions dated 15.06.1995 and 30.06.2004 and the decision in *Milind's case*, shall be subject to the following conditions:

(i) that upon verification by the Scrutiny Committee, the Caste certificate produced to secure an appointment, is not found to be false or fraudulent.

(ii) that the appointee shall not take any advantage in terms of the promotion or otherwise after 28.11.2000 solely on the

basis of his claim as a candidate belonging to any of the backward class categories, in respect of which his claim is invalidated by the Scrutiny Committee, and

(iii) that it shall be permissible for the Competent Authority to withdraw the benefits or promotions obtained after 28.11.2000 as a candidate belonging to backward class category for which the claim has been rejected.

(c) Any appointments that have become final against a post reserved for any of the categories of backward class on the basis of the production of Caste Certificate without incorporating a specific condition in the order of appointment that it is subject to production of caste validity certificate after 28.11.2000 and before coming into force of the said Act on 18.10.2001 shall also remain protected subject to the conditions mentioned in clause (b) of para 64.

(d) After coming into force of the said Act on 18.10.2001, no benefit or appointment can be obtained or secured in any public employment against a post reserved for any of the backward class categories merely on the basis of the production of a caste certificate and without producing a caste validity certificate from the Scrutiny Committee. Such appointments are not protected and shall be liable to be canceled immediately upon rejection of the caste claim by the Scrutiny Committee."

6. Shri S.R. Barlinge, learned counsel for the petitioner has made a statement across the bar that the petitioner will furnish an undertaking that he will not claim any benefit of 'Tokre Koli' Scheduled Tribe before his employer as well as this Court, within 15 days of passing this judgment. We accept that undertaking. If petitioner furnishes such undertaking, respondent no.3 is directed not to take any adverse action against the petitioner only on the basis that his tribe claim for 'Tokre Koli' Scheduled Tribe is invalidated by respondent no.2 – Scrutiny Committee. We further clarify that the petitioner shall not take advantage in the term of promotion or otherwise after 20th November, 2000 solely on the basis that he belonged to Tokre Koli Scheduled Tribe.

7. Rule made absolute in above terms. The petition stands disposed of accordingly with no order as to costs.

(A.M. BADAR, J.)

(A.V. NIRGUDE, J.)