

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

Writ Petition No. 2752 of 2002

Smt. Vidya d/o. Bhaskar Patil,
Aged : 31 years,
Occupation : Service,
R/o. C/o. Education Department,
Zilla Parishad, Jalna.

.. Petitioner.

versus

1. The State of Maharashtra.
2. The Committee for Scrutiny
& Verification of Tribe Claims,
M.S., Aurangabad
(Through Its Member Secretary).
3. The Zilla Parishad
(Through its Chief Executive Officer),
Jalna.
4. The Tahsildar and Taluka Executive
Magistrate,
Sillod, District : Aurangabad.

.. Respondents.

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Mr. S.B. Talekar, Advocate, for the petitioner.

*Mr. D.V. Tele, Assistant Government Pleader, for
respondent nos.1 and 4.*

Mr. P.S. Patil, Advocate, for respondent no.2.

Mr. A.B. Tele, Advocate, for respondent no.3.

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

**Date of reserving the
judgment : 11th June 2015.**

**Date of pronouncing the
judgment : 23rd June 2015**

JUDGMENT (Per A.M. Badar, J.) :

1. Heard Mr. S.B. Talekar, the learned Counsel appearing for the petitioner; Mr. D.V. Tele, the learned Assistant Government Pleader for respondent nos.1 and 4; Mr. P.S. Patil, the learned Counsel for respondent no.2 / Scrutiny Committee, as well as Mr. A.B. Tele, the learned Counsel for respondent no.4 / Zilla Parishad.

2. Mr. Talekar, the learned Counsel appearing for the petitioner argues that the petitioner belongs to 'Koli Malhar' - Scheduled Tribe, and her tribe claim was referred to respondent no.2 - Committee for verification, by respondent no.3 - Zilla Parishad. According to Mr. Talekar, the learned Counsel for the petitioner, by the impugned order dated 29-12-2001, tribe claim of the petitioner came to be invalidated by respondent no.2 - Scrutiny Committee. Mr. Talekar, the learned Counsel for the petitioner, argues that the petitioner was appointed as Steno-Typist with respondent no.4 - Zilla Parishad, way back in the year 1993, on the post reserved for Scheduled Tribe. In the meanwhile, the Government of Maharashtra had included 'Koli' in the list of Backward Classes and has further decided not to terminate services of the candidates who are already

appointed on posts reserved for Scheduled Tribes, on the ground that their tribe claims are ultimately invalidated by the Scrutiny Committee. He has placed reliance on Government Resolution dated 15th June 1995, as well as corrigendum dated 24th July 1998, for canvassing that the petitioner is entitled for protection in service despite invalidation of her tribe claim.

3. Mr. Talekar has further relied upon judgment of Full Bench of this Court, in the case of ***Arun s/o. Vishwanath Sonone Vs. State of Maharashtra & others***, reported in ***2015(1) Mh.L.J. 457***, and contended that as the caste certificate produced by the petitioner, for securing appointment with respondent no.4 - Zilla Parishad is not found to be false or fraudulent, the petitioner is entitled for protection in service in terms of this judgment. Mr. Talekar, the learned Counsel for the petitioner, fairly accepted the judgment of the Scrutiny Committee, invalidating the caste claim of the petitioner, and submitted that neither the petitioner nor her progeny will claim to be belonging to 'Koli Malhar' - Scheduled Tribe.

4. We have also heard the learned Counsel appearing for the respondents. They have not disputed the fact, that the caste certificate produced for seeking employment by the petitioner was not found to be false or fraudulent. Similarly, they have not disputed the fact, that the petitioner was appointed as Steno-Typist with respondent no.4 - Zilla Parishad in the year 1993 and particularly, vide appointment order dated 16-11-1993. It is not dispute, that the petitioner is still continued in service of the Zilla Parishad by virtue of interim order of this Court.

5. Having heard the learned Counsel appearing for the parties,

we are of the opinion that the petitioner deserves the limited relief of continuance in service of respondent no.4 - Zilla Parishad, in view of settled position of law which is crystallized in the judgment of this Court in the case of **Arun s/o. Vishwanath Sonone (supra)**. We have perused the impugned order of respondent no.2 - Scrutiny Committee. The tribe claim of the petitioner for 'Koli Malhar' tribe came to be invalidated as school record of the petitioner was reflecting her caste as 'Koli' and reliance was placed on the same by respondent no.2 - Committee. Perusal of the impugned order of the Scrutiny Committee does not show that the petitioner had fraudulently obtained caste certificate as belonging to 'Koli Malhar' for securing employment with respondent no.4 - Zilla Parishad. The order of respondent no.2 - Scrutiny Committee shows that caste of the petitioner is recorded as 'Koli' in primary school admission extract. Caste 'Koli' is undisputed included in the list of Special Backward Classes as per Government Resolution dated 15th June 1995.

6. At this juncture, it is apposite to quote para 66 of the judgment of this Court, in the case of **Arun s/o. Vishwanath Sonone (supra)**, which reads thus :

" 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 cases of *Kavita Solunke vs. State of Maharashtra and others*, reported in 2012(5) Mh.L.J. (S.C.) 921 = 2012(8) SCC 430, and *Shalini vs. New English High School Association and others*, reported in 2014(2) Mh.L.J. (S.C.) 913 = (2013) 16 SCC 526. 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 15-6-1995 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 15-6-1995 and 30-6-2004 and shall not be disturbed, and the appointments that have become final between 15-6-1995 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 15-6-1995 and 30-6-2004 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 become 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 cancelled immediately upon rejection of the caste claim by the Scrutiny Committee. "

7. As the appointment of the petitioner was made prior to 15-6-1995, on the basis of caste certificate which is not found to be obtained falsely or fraudulently, the service of the petitioner needs to be protected in terms of Government Resolution dated 15-6-1995 and 30-6-2004. However, the petitioner shall not take any advantage in terms of promotion or otherwise after 28-11-2000 solely on the basis of her claim as a candidate belonging to '*Koli Malhar*' - Scheduled Tribe, in respect of which her claim is invalidated by respondent no.2 - Scrutiny Committee. The petitioner shall furnish an undertaking to the effect that, neither she nor her progeny would claim any benefit of reservation as belonging to '*Koli Malhar*' - Scheduled Tribe, in respect of which her claim is invalidated by the Scrutiny Committee, within a period of two weeks from the date of this judgment, before this Court, as well as to her employer respondent no.4 - Zilla Parishad.

8. The petition is partly allowed in the above terms and accordingly Rule is made absolute. In the circumstances of the case, there shall be no order as to costs.

(A.M. BADAR)
JUDGE

(A.V. NIRGUDE)
JUDGE

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