

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3474 OF 2012

Suryakant Pandit Sapkale
age: 40 years, occu: service,
Tax Assistant
Central Excise & Customs Department
Jalgaon Division, Jalgaon
Plot No.1, Hira Shiva Colony,
Nimkhedi Road, Jalgaon

Petitioner

Versus

- 1 The Union of India
 Through: Department of Central
 Excise & Customs
- 2 The Commissioner,
 Central Excise & Customs,
 Kendriya Rajaswa Bhuwan,
 Gadkari Chowk, Nashik
- 3 The Superintendent (Vigilance)
 Central Excise & Customs,
 Nashik
- 4 The Scheduled Tribe Certificate
 Scrutiny Committee,
 Nandurbar Division, Nandurbar
- 5 The State of Maharashtra,
 through: The Additional Secretary,
 Department of General Administration
 And Tribal Mantralaya, Mumbai 32

Respondents

Mr.V.B. Patil advocate for the petitioner
Mr.P.S.Patil, AGP for Respondent State
Mr. Alok Sharma, ASG for Respondent Nos.1 to 3
Mr. K.D. Bade Patil Advocate for respondent No.4

CORAM : R.M. BORDE &
P.R. BORA, JJ

Dated : 20th OCTOBER, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 The petitioner is objecting to the order passed by the Scrutiny committee, directing invalidation of caste certificate issued in favour of the petitioner certifying that he belongs to Koli Mahadev, Scheduled Tribe (ST).

2 The petitioner was appointed in the Excise Department as a Lower Division Clerk (LDC), as against a seat, reserved for ST category. The caste certificate issued in favour of the petitioner was referred to the Scrutiny Committee for verification. However, the scrutiny Committee, on observance of the procedure, prescribed under law and after extending opportunity of hearing to the petitioner, directed invalidation of the caste certificate issued in his favour,.

3 We have perused the order passed by the scrutiny committee on 10.10.2011. The scrutiny committee has given hearing to the petitioner and on consideration of the documents and the material placed on record, directed invalidation of the tribe certificate issued to him and the said order is legal and

proper and does not call for interference.

4 The claim of validation of Tribe certificate raised by the petitioner has been turned down only on the ground of lack of evidence and there are no observations in respect of misrepresentation or fraud alleged to have been committed by the petitioner in securing benefits prescribed for reserve category.

5 In the circumstances, the request made by the petitioner for protection of his employment deserves to be considered favourably. The petitioner has been inducted in service since 31.3.1997 and is in employment as on today. In view of the Judgment delivered by full bench of this Court in case of **Arun S/o Vishwanath Sonone V/s State of Maharashtra** (2015 (1) Mh.L.J.457), the petitioner is also entitled to claim service protection.

6 In paragraph No.72 and 73 of the Judgment the full bench has observed :-

“72. There cannot be any straitjacket formula laid down either to refuse or grant protection in the employment either at the initial stage or at the promotional stage. The approach has to be practical and pragmatic rather than technical and pedantic keeping in view the object and purpose of the Constitution in providing the benefits and concessions to a particular category of backward class. The Court has to strike the balance between the

conflicting claims of genuine candidates, who are denied the benefits meant for them and all other persons, who honestly and genuinely believe and claim themselves to be belonging to a particular category for whom the concessions and benefits were meant. The Court will have to consider the facts and circumstances of each case to decide whether the protection is to be granted or refused, and if it is to be granted, up to what stage and extent.

73. Apart from bona fides of the candidate claiming protection in service, the two tests laid down by the Apex Court in Shalini's case – one was the fraudulent claim and the other was concerning eligibility to the benefits on the basis of the Caste Certificate. There are several ways and means of securing the benefits by practicing fraud, misrepresentation, etc., which cannot be catalogued. Similarly, there are several angles to test the bona fides and consider the equity, which also cannot be catalogued. In cases of candidates belonging to castes other than Special Backward Category, the Court will have to look into the history of the controversy to find out whether the benefits were secured as a result of confusion or uncertainty prevailing in the area of eligibility to claim such benefits, as has been held by the Apex Court in the case of R. Unnikrishnan.

7 The conclusions are drawn in paragraph No.75 by full bench and those are quoted as below:-

“ 75. We, therefore, do not enter into the merits of the claim and leave it for the concerned Benches to decide, on the facts and circumstances of each case, whether the protection need to be granted or not. But we conclude in

this Judgment that-

- (i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from the employment or cancellation of appointments that have become final prior to the decision in Milind's case on 28.11.2000,*
- (ii) upon invalidation of the caste claim by the Scrutiny Committee, the benefits obtained or appointments secured from 28.11.2000 up to 18.10.2001, can be withdrawn or cancelled, depending upon the terms of the employment, if any, in writing,*
- (iii) the benefits obtained or appointments secured after coming into force of the said Act on 18.10.2001 can be withdrawn or cancelled immediately upon invalidation of the caste claim by the Scrutiny committee,*
- (iv) the benefit of protection in service upon invalidation of the caste claim is available not only to the persons belonging to 'Koshti' and "Halba Koshti" but it is also available to the persons belonging to Special Backward Class category on the same terms as is available to 'Koshti' and "Halba Koshti" and*
- (v) the claim of the persons belonging to Nomadic Tribes, Vimukta Jatis and Other Backward Class category shall be decided on the lines of the decision of the Apex Court in case of R. Unnikrishnan and another v/s. V.K. Mahanudevan and others, reported in 2014 (4) Mh. L.J. (S.C.) 1 = 2014(4) SCC 434. "*

8 In view of law laid down by the full bench of this Court in the matter, as referred to above, according to us, the petitioner can be granted service protection since, as a result of mere invalidation of his caste claim, would not entail the consequence of withdrawal of

benefits or discharge from the employment or cancellation of appointment that has become final prior to the decision in Milind's case on 28.11.2000.

9 The petitioner has tendered an undertaking to the effect that in future, he will not claim any benefit on the basis of tribe certificate as belonging to Koli Mahadeo. The petitioner shall be entitled to claim service protection and he shall not be entitled to claim promotion in employment as a candidate belonging to reserved category, however, service benefits received till 26.11.2000 shall stand protected. The employer, as such, is directed not to terminate the services of the petitioner, merely on the ground of invalidation of his tribe claim and he shall be permitted to continue in employment as a candidate belonging to open category.

10 Rule is accordingly made absolute.

11 There shall be no costs.

12 The pending Civil Application does not survive and stands disposed of.

(P.R. BORA, J)

(R.M.BORDE, J)