

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6536 OF 2014

Ashok s/o Guman Nikumbh,
Age-53 years, Occu:Nil,
R/o-Sudhakar Nagar, Police Colony,
Near Sayli Kirana, Aurangabad,
Tq. & Dist-Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through it's Secretary,
Tribal Development Department,
Mantralaya, Mumbai-400032,
- 2) Director General of Police,
MS, Mumbai,
- 3) Special Inspector General of Police,
Range Aurangabad,
- 4) Superintendent of Police,
Osmanabad,
- 5) Home Deputy Superintendent of Police,
Osmanabad,
- 6) Adjutant S.R.P.F. Group, 14,
Aurangabad (M.R. Pawar),
- 7) The Divisional Caste Certificate
Scrutiny Committee, Nashik Division,
Dhule
(Through its Member Secretary),

- 8) Ram Raje Pawar,
Age-45 years, Occu:Service,
R/o-C/o-Office of Superintendent
of Police, Beed, Dist-Beed.

...RESPONDENTS

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Mr.S.B. Talekar Advocate for Petitioner.
Mrs. Y.M. Kshirsagar, A.G.P. for Respondent
Nos. 1 to 7.
None present for Respondent No.8, though
served.

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**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE : 15TH APRIL, 2015

ORAL ORDER :

1. Leave to add.
2. Heard Mr. Talekar, learned counsel for the Petitioner and learned A.G.P. for Respondent Nos. 1 to 7. Respondent No.8 though served, absent.
3. Mr. Talekar, learned counsel submits that the Petitioner has submitted the caste certificate as belonging to "Koli" S.B.C. category on 5th

February 2010. The Petitioner was appointed from S.T. Category in the year 1985 as a junior clerk and was given promotion from time to time. The Petitioner was working as senior clerk. Departmental enquiry was initiated for non submission of validity certificate. Order was passed compulsorily retiring the Petitioner only on the ground that validity certificate has not been submitted. Petitioner filed appeal. However, without considering the said appeal, the Respondent removed the Petitioner from service vide order dated 15th February 2014. Learned counsel submits that the Petitioner was entitled to submit S.B.C. Certificate in view of the Government Resolutions dated 15th June 1995, 30th June 2004 and 21st May 2013 and the Petitioner has submitted S.B.C. Certificate. Even the Respondent submitted proposal to the Scrutiny Committee seeking validation of the said S.B.C. Certificate and same is also received by the Committee on 25th September 2013. Learned counsel submits that the

order compulsorily retiring the Petitioner so also subsequent order terminating services of the Petitioner on 15th February 2014, are illegal. The Petitioner is entitled for protection in service in view of the Judgment of the Full Bench of this Court in the case of **Arun Vishwanath Sonone vs. The State of Maharashtra and others, reported in 2015(1) Mh.L.J. 457.** Learned counsel also relies on the Judgment in the case of **Shalini vs. New English High School Association and others, reported in (2013) 16 S.C.C. 526.**

4. The learned A.G.P. submits that the Petitioner has secured appointment on a post reserved for Scheduled Tribe Category. Petitioner did not submit tribe certificate. Petitioner was time and again called to submit said certificate, however, it is only on 5th February 2010 the Petitioner submitted the S.B.C. Certificate as belonging to "Koli" caste. Departmental enquiry was initiated. It is found that the Petitioner, on

the basis of false claim, secured appointment. The action is rightly taken.

5. We have considered the submissions canvassed by the learned counsel for the respective parties. Initially the Petitioner was made to compulsorily retire by way of punishment. The Petitioner filed appeal. The punishment was enhanced and Petitioner was removed from service. It is admitted by the Respondent in affidavit-in-reply itself that the Petitioner has submitted S.B.C. Certificate as belonging to "Koli" caste on 5th February 2010. Departmental enquiry is subsequent. Punishment of compulsory retirement is issued on 22nd April 2013. Appeal was filed and then the order of removal from service is much subsequent i.e. on 15th February 2014. Prior to that proposal has already been submitted with the Scrutiny Committee seeking validation in respect of caste claim of the Petitioner as belonging to "Koli" caste, S.B.C. Category.

6. The Respondents ought to have refrained from initiating any action till the Committee took decision on the validation proceedings. The Petitioner is entitled for protection in service even if his caste claim is invalidated on any ground except that of fraud, forgery or misrepresentation.

7. Considering the aforesaid aspects of the matter, the impugned orders would not be sustainable.

8. In light of above, the impugned order of compulsorily retiring the Petitioner from service dated 22nd April 2013 and the subsequent order dated 15th February 2014 removing the Petitioner from service, are quashed and set aside. The Respondents shall reinstate the Petitioner in service. However, the Petitioner shall not be entitled for any back-wages from the date of order

of compulsory retirement till the date of this order. However, the said period would be counted for the purpose of continuity in service.

9. The Respondents are entitled to take further steps in tune with the Judgment of the Committee in validation proceedings pending with the Committee in respect of Petitioner's claim as belonging to "Koli" caste, S.B.C. Category.

10. The Writ Petition accordingly, partly allowed in aforesaid terms. No costs.

[A.I.S.CHEEMA, J.]

asb/APR15

[S.V. GANGAPURWALA, J.]