

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

Writ Petition No. 6302 of 2014

Deepak s/o. Raghunath Shriramwar,
Age : 47 years,
Occupation : Service,
R/o. Shivram Nagar, Parbhani,
District : Parbhani.

.. Petitioner.

versus

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai - 32.
2. The Divisional Commissioner,
(B.C. Cell), Aurangabad.
3. The Divisional Caste Certificate
Scrutiny Committee, Aurangabad
Division, Aurangabad.
4. The Zilla Parishad, Parbhani,
through its Chief Executive Officer.

.. Respondents.

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Mr. S.R. Barlinge, Advocate, for the petitioner.

*Mr. P.P. More, Assistant Government Pleader, for
respondent nos.1 to 3.*

Mr. Vivek Bhavthankar, Advocate, for respondent no.4.

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

**Date of reserving the
judgment : 10th June 2015.**

**Date of pronouncing the
judgment : 8th July 2015**

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

1. Heard Counsel for respective parties.
2. Rule. Rule made returnable forthwith. With consent of the parties, heard finally.
3. According to Shri Barlinge, the learned Counsel for the petitioner, the petitioner belongs to 'Chatri' - Scheduled Tribe and had received a certificate to that effect from the Competent Authority. On the basis of that certificate, the petitioner was appointed as Junior Engineer on the establishment of respondent no.4 - Zilla Parishad, vide order dated 27-11-1990. Since then, the petitioner is in continuous service for more than 23 years. Shri Barlinge, the learned Counsel, pointed out a Circular dated 18-5-1993, issued by the State, whereby option had been given to the employees to give up the claim of Scheduled Tribe and to submit a claim in respect of the caste which according to such employee, is easier for them to prove. Shri Barlinge, the learned Counsel, argued that in pursuant to the said Circular, the petitioner obtained a certificate dated 2-7-2013 from the Competent Authority, as belonging to 'Shimpi' caste which falls under the Other Backward Class category. Our attention is drawn by Shri

Barlinge, the learned Counsel, to the communication dated 29-7-2013 (Exhibit "D") by which the employer of the petitioner had forwarded the said certificate to the Caste Verification Committee for necessary scrutiny.

4. Shri Barlinge, the learned Counsel for the petitioner, further argued that as per Government Resolution dated 15-6-1995, the State has decided to protect services of the employees who entered in service on the basis of tribe certificate, but who falls under the Special Backward Class category. According to Shri Barlinge, the learned Counsel, thereafter vide Government Resolution dated 24-6-2004 (Exhibit "H"), the State has offered protection to those employees who were appointed prior to 15-6-1995, but whose caste is not included in Special Backward Class category. On this backdrop, according to Shri Barlinge, the learned Counsel, the letter dated 20-5-2014, issued by the Assistant Commissioner, to respondent no.4 - Zilla Parishad, directing it to take necessary action, may result in termination of services of the petitioner.

5. We have also heard Mr. More, the learned Assistant Government Pleader appearing for the State and its authorities, as well as Shri Bhavthankar, the learned Counsel appearing for respondent no.4 - Zilla Parishad. They have not disputed the fact, that the State Government by issuing Government Resolution dated 24-6-2004, has decided to protect the services of the employees who secured employment prior to 15-6-1995 on the basis of their tribe claim. According to Shri Bhavthankar, the learned Counsel for respondent no.4, the petitioner claimed to be belonging to Scheduled Tribe ('*Chatri*') and, therefore, he is not entitled for protection in service because the caste claimed by him is not falling in

the list of Special Backward Class category mentioned in the Government Resolution dated 15-6-1995.

6. We have carefully perused the documents made available on record, as well as rival submissions advanced at Bar. It is not in dispute, that on the basis of tribe claim made by him, the petitioner was appointed in service of respondent no.4 - Zilla Parishad as Junior Engineer vide order dated 27-11-1999 and that, he has put in long service of more than 23 years. Undisputedly, vide Government Resolution dated 24-6-2004 (Exhibit "H"), the State Government had taken a policy decision to protect services of the employees who entered in the service of the Government as well as Semi-Government Institutions prior to 15th June 1995, on the basis of tribe claim made by them. In this context, it would be advantageous to make reference to recent judgment of the Hon'ble Apex Court, in the case of *Shalini Vs. New English High School Association & others*, reported in *(2013) 16 Supreme Court Cases 526*. In paras 6 and 7 of the said judgment, the Hon'ble Apex Court has observed thus :

"6. It is evident that there is a plethora of precedents on this aspect of the law, and perhaps for this reason the counsel for the parties were remiss in drawing our attention in the present proceedings to the detailed judgment in *Kavita Solunke v. State of Maharashtra [(2012) 8 SCC 430]*, in which one of us, Thakur, J., had analysed as many as eleven precedents including those discussed above. After reviewing all the judgments it was held, in the facts and circumstances of that case, that since that party had not

intentionally or with dishonest intent fabricated particulars of a Scheduled Tribe with a view to obtain an undeserved benefit in the matter of appointment, she was entitled to protection against ouster from service, but no other benefit.

7. In view of the comprehensive yet concise consideration of case law in *Solunke (supra)*, any further analysis would make the present determination avoidably prolix, and therefore our endeavour will be to cull out the principles which would be relevant for deciding such like conundrums. These are :

7.1. If any person has fraudulently claimed to belong to a Scheduled Caste or Scheduled Tribe and has thereby obtained employment, he would be disentitled from continuing in employment. The rigour of this conclusion has been diluted only in instances where the court is confronted with the case of students who have already completed their studies or are on the verge of doing so, towards whom sympathy is understandably extended.

7.2. Where there is some confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status, such as issuance of relevant certificates to persons claiming to be "Koshtis" or "Halba-Koshtis" under the broadband of "Halbas", protection of employment will be available with the rider that these

persons will thereafter be adjusted in the general category thereby rendering them ineligible to further benefits in the category of Scheduled Caste or Scheduled Tribe as the case may be.

7.3. This benefit accrues from the decision of this Court inter alia in *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar* [(2008) 9 SCC 54] which was rendered under Article 142 of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions / Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it was in *State of Maharashtra v. Milind* [(2001) 1 SCC 4] that the Constitution Bench clarified that “Koshtis” or “Halba-Koshtis” were not entitled to claim benefits as Scheduled Tribes and it was the “Halbas” alone who were so entitled. A perusal of the judgment in *Punjab National Bank v. Vilas* [(2008) 14 SCC 545] by Sirpurkar, J., as well as *Kavita Solunke (supra)* makes it clear that this protection is available by virtue of the decisions of this Court; it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature.

7.4. Where a Resolution or Legislation exists, its *raison d’être* is that protection is justified in *praesenti* (embargo on removal from service or from reversion) but not in *futuro*

(embargo on promotions in the category of Scheduled Caste or Scheduled Tribe). "

7. In the instant case, the petitioner has opted to give up his claim for '*Chatri*' - Scheduled Tribe, as per provision of Government Circular dated 18-5-2013 (Exhibit "B") and rather obtained caste certificate showing that he belongs to '*Shimpi*' caste which falls in Other Backward Class category. That caste certificate is pending scrutiny by the concerned Committee. As such, respondent no.4 - Zilla Parishad cannot venture to terminate services of the petitioner and more particularly, when his claim for '*Shimpi*' caste, which falls under Other Backward Class category, is pending for validity before the Divisional Caste Certificate Scrutiny Committee at Aurangabad, as seen from the letter dated 29-7-2013, issued by respondent no.4 - Zilla Parishad.

8. In the result, we pass following order :

ORDER

(A) The petition is partly allowed.

(B) Respondent no.4 - Zilla Parishad is directed to grant service protection to the petitioner, in the light of the policy of the State as envisaged in Government Resolution dated 24-6-2004.

(C) Respondent no.3 - Committee is further directed to decide the caste claim of the petitioner, expeditiously.

9. Rule is made absolute in the above terms, with no order as to costs.

(A.M. BADAR)
JUDGE

(A.V. NIRGUDE)
JUDGE

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