

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.450/2015

Jitendra Devram Borse

..PETITIONER

Versus

The Chief Regional Manager
and Appointing Authority,
The Oriental Insurance Co.Ltd.
Regional Office, S.K.Towers
4th Floor Nelson Square
Chindwara Road,Nagpur

..RESPONDENT

...
Mr.Anandsing Bayas,Adv. for petitioner
...

**CORAM : S.V.GANGAPURWALA &
V.L.ACHLIYA,JJ.
DATE : 15th January, 2015.**

P.C. :

Mr.Bayas, learned counsel for petitioner submits that the
Tribe claim of the petitioner was invalidated pursuant to which the
petitioner is terminated from the service. In view of the judgment
of the Apex Court in the case of **Shalini V/s New English High
School Association and others reported in 2014 (2) SCC 165**
and the judgment of the Apex Court in the case of **Kavita Solunke
V/s State of Maharashtra and others reported in 2012 (5)
Mh.L.J. 921** so also judgment of Full Bench of this Court in the

case of **Arun Sonune** dated 22/12/2014, the petitioner is entitled for the protection in service as the petitioner is appointed in the year 1997. The learned counsel submits that the finding of fraud given by the Committee also does not survive inasmuch petitioner has been discharged in the Criminal case by the competent Court. According to the learned counsel, the petitioner has put in 13 years of service. It is only after the judgment is delivered by the Apex Court in the case of **Shalini**, the petitioner can claim protection and has moved to this Court. The Court may consider that the petitioner is a handicap person. The petitioner henceforth will not claim any benefit of reservation.

2] We have considered submission canvassed by the learned counsel for the petitioner. The Full Bench of this Court in the case of **Arun Sonune** referred supra has held that if a person is appointed prior to 2001 and even if his Tribe claim is invalidated, the petitioner can claim protection, however the said certificate should not have been obtained by fraud. In the present case, the Committee while dismissing the validation proceedings has specifically observed that the certificate on the basis of which petitioner had got appointment from the Scheduled Tribe category is a fake certificate. The relevant observation of the committee is as follows :

“From the statements of above mentioned three persons it has been revealed that no caste certificate has been issued from the office of Executive Magistrate Jalgaon on 15/2/1989. From all the facts corroborated above, the conclusion is irresistible that the caste certificate is not issued from the office of the Executive Magistrate, Jalgaon.

Further, the applicant has obtained the new Caste Certificate of Tokare Koli Scheduled Tribe from Sub-Divisional Officer, Jalgaon to show that he belongs to Tokare Koli Scheduled Tribe. While perusing all the documents it is found that the applicant had obtained the Caste Certificate of Koli, Special Backward Category from Executive Magistrate, Bhusawal bearing No.MAC SBC/SR/2/1998 dated 12/1/1998. The applicant in total has obtained three Caste Certificates first one dated 15/2/1989 of Tokare Koli Scheduled Tribe which is proved as a fake certificate on which basis he has obtained stenographer's post in the Oriental insurance company ltd. Second Caste Certificate is of Koli, Special Backward Category dated 12/1/1998. Through which he can obtain the reservation facilities meant for Special Backward Category. And the third one is of Tokare Koli Scheduled Tribe dated 17/2/2010 which he has submitted at the time of hearing dated 10/3/2010 that means at the time of closing his case through which he wanted to show that he belongs to Tokare Koli Scheduled Tribe. By way of procuring three Caste Certificates the applicant caused deceit by making dishonest and fraudulent misrepresentation, he is liable for legal action."

3] The said judgment of the committee is upheld by this Court by dismissing the Writ Petition bearing No.9129/2010 vide judgment and order dated 28/9/2012.

4] The discharge in a Criminal case is on altogether different premises. The same could not be relevant in the present matter. It is only on the ground that the circumstances under which the document came to be forged was not brought before Court and the

investigation could not reveal as to by whom it was forged, the petitioner has been discharged.

5] Be that as it may. The judgment of the committee has been confirmed by this Court in Writ Petition.

6] In light of the above, benefits of the judgment of Full Bench of this Court cannot be given to the petitioner. Writ Petition is dismissed. No costs.

V.L.ACHLIYA,J.

S.V.GANGAPURWALA,J.

umg/