

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

REVIEW PETITION NO. ST.18601 OF 2007  
IN WRIT PETITION NO.3445 OF 2006

Indrajit Pandurang Ghante

Applicant

Versus

The State of Maharashtra and others

Respondents

WITH  
REVIEW APPLICATION ST.NO.18598 OF 2007  
IN WRIT PETITION NO.3451 OF 2006

Dattu Bhimrao Koli

Applicant

Versus

The State of Maharashtra and others

Respondents

Mr.V.M.Humbre advocate for the applicants  
Mr.S.G. Nandedkar, AGP for Respondent State

---

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

Dated : 3<sup>rd</sup> JULY, 2015.

PER COURT :-

1 The applicants have approached this Court, seeking review of the order passed by this Court directing invalidation of the caste certificates issued by the Competent Authority and thereby confirming the decision rendered by the Scrutiny Committee.

2 Both the applicants claim to be belonging to Mahadev Koli, scheduled tribe (ST). A Tribe certificate in the prescribed proforma was submitted by them for the purpose of gaining employment. Both the review applicants were appointed as Security Guard with the respondent No.3, Maharashtra State Road Transport Corporation (MSRTC for short) as against seats reserved for ST category. During continuation of employment, the caste certificates produced by them were referred to the scrutiny committee for verification. The Tribe certificates tendered by both the review applicants were found to be invalid and as such, the scrutiny committee refused to issue validation certificates. The order of the scrutiny committee has been confirmed by this Court while dismissing Writ Petitions presented by them.

3 The review applicants do not question validity of the decision rendered by the Scrutiny Committee, which has been confirmed by this Court, however claim their entitlement to continue in employment, on the basis of decision in the matter of ***State of Maharashtra V/s Milind (2001(1) Bom.C.R.620 (SC)*** and in view of observations of full bench of this Court in the matter of ***Arun Vishwanath Sonone V/s State of Maharashtra (reported in 2015 (1) Bom.C.R.568)***.

4 There is no dispute on the issue that, both the review applicants have not committed any fraud, nor have placed reliance on fraudulent record in support of their claim, either before the scrutiny committee or before this Hon'ble Court. According to the applicants, in view of decision in Milind's case, their appointments have become final and as such stand protected. The issue has been dealt with in reference to the policy decision of the State Government as reflected in the Resolution dated 15.6.1995 and 30.6.2004 as well as the decision in Milind's case by full bench. The Full bench, in para Nos.65, 66 and 72 observed, as below:-

*“ 65. The factual position to which the law laid down is to be applied, is stated as under :*

*(a) Before coming into force of the said Act on 18-10-2001, the appointments and promotions were made against the post reserved for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Classes category (consolidatedly called as “the backward class category”) merely on the basis of the production of the Caste Certificates issued by the Competent Authorities with or without the condition of producing a caste validity certificate.*

*(b) The decision in Madhuri Patil's case was delivered by the Apex Court on 2-9-1994, and by issuing the Government Resolutions dated 15-6-1995 and 30-6-2004, all the appointments and promotions made up to 15-6-1995 against a post reserved for*

*backward class category are protected and such appointments and promotions cannot be cancelled.*

*(c) After coming to force of the said Act on 18-10-2001, no appointments and/or promotions could be made without production of a caste validity certificate under sub-section (2) of section 6 of the said Act, but it is a fact that some such appointments have been made.*

*(d) In terms of the decision in Milind's case, all the appointments that have become final up to 28-11-2000 stand protected subject to the conditions as under :*

*(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 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.*

*66. 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(6) Bom.C.R. 234(S.C.) : 2012(8) S.C.C. 430, and Shalini Vs. New English High School Association and others, reported in 2014(3) Bom.C.R.*

*113(S.C.) : (2013)16 S.C.C. 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 it is subject to production of caste validity certificate after 28-11-2000 and before 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."*

*" 72. There cannot be any strait jacket 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. "*

5 In view of the decision rendered in Milind's case and the clarification provided in the Judgment of Arun's case, according to us, the appointment of the applicants made prior to 20.11.2000 shall stand protected. As has been observed by the full bench, there cannot be a straight jacket formula either to refuse or to grant protection in employment either at initial stage or at

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 back ward class.

6 In the instant matters, it is noticed that both the applicants were employed in the year 1997 and 1998 respectively and were continued in employment up to 2006. After the decision of the scrutiny committee, directing invalidation of their caste certificates, they were served with termination orders. It is an admitted position that, the applicants are not working since the date of order of termination and as such since they have not rendered any service during the aforesaid period and as such, it would not be appropriate to burden the employer of liability to pay back wages to the applicants from the date of issuance of order of termination till the date of reinstatement. We, therefore, hold that, the applicants shall not be entitled to claim back wages or any monetary benefits from the date of termination till the date of their reinstatement. Since it is observed that the applicants are not guilty of commission of fraud, nor have relied upon any fabricated record for substantiating their claim, they are entitled to be taken back in employment. Respondent Corporation shall reinstate the applicants on the post of Security guards as

expeditiously as possible and preferably within a period of 8 weeks from today. The applicants shall not be entitled to claim promotional benefits or any other benefits, on the strength of their caste/Tribe status as belonging to Mahadev Koli. The applicants undertake to file undertaking in that regard within a period of four weeks from today.

- 7 The review applications are allowed accordingly.
- 8 There shall be no order as to costs.
- 9 Pending Civil applications, if any stand disposed of.

(P.R. BORA, J)

(R.M.BORDE, J)

vbd