

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

WRIT PETITION NO.7990 OF 2015

1. Shri Nagnath s/o Manikrao Karde,
Age 45 years, Occ. Service as Senior Lecturer
with Dr.Babasaheb Ambedkar College of
Arts & Commerce, Aurangabad run by People's
Education Society, Mumbai,
R/o. New Pahadsingpura, Hanuman Tekdi,
Aurangabad, Dist. Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra
Department of Tribal Development,
Mantralaya, Mumbai 32
Through its Secretary.
2. The Scheduled Tribe Certificate Scrutiny
Committee,
Aurangabad Division, Aurangabad,
Through its Member Secretary.
3. The Principal,
Dr.Babasaheb Ambedkar College of Arts &
Commerce,
Nagsenvana, Aurangabad 431 002
Run by - People's Education Society, Mumbai.

...RESPONDENTS

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Mr. Yeramwar Sushant C., Advocate for the
petitioner.

Mr. U.S.Mote, A.G.P., for respondent State.

Mr. A.B.Tele, Advocate for respondent no.2.

Mr. A.V.Deshmukh, Advocate, for respondent no.3.

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**CORAM: R.M.BORDE
AND
P.R.BORA, JJ.**

DATE : October 27th, 2015.

ORAL JUDGMENT: (Per R.M.Borde, J.)

1. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

2. The petitioner has been appointed as a Senior Lecturer with Dr.Babasaheb Ambedkar College of Arts and Commerce, Aurangabad, in the year 1996, as against a seat earmarked for Scheduled Tribes category. The caste validation proposal forwarded to the Scrutiny Committee has been turned down by the Committee by order dated 31st May, 2008. It is not a matter of dispute that the petitioner is continued in employment since 1996, till this date.

The petitioner has tendered an undertaking to the effect that he has accepted the order of the Scrutiny Committee and that he would not claim benefits available to the Scheduled tribe category for himself, or for his progeny in the matter of employment or education. The petitioner has also stated in the undertaking that he will not claim the benefit available to the

Scheduled Tribe category in the matter of promotion. The affidavit tendered by the petitioner is taken on record and is marked "X" for identification. The claim of validation of tribe certificate preferred by the petitioner has been turned down 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 for securing benefits available for the reserved category.

3. 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 25.10.1996 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.

4 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.

5 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. "

6 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.

7. In view of the undertaking tendered by the petitioner, accepting the decision of the Scrutiny Committee and further relinquishing his entitlement to claim benefits available for the Scheduled Tribe category, the claim raised by the petitioner in the instant petition for grant of protection in employment needs to be accepted.

The respondent - employer, as such, is directed not to terminate the services of the petitioner merely on the ground of invalidation of his caste certificate and he shall be permitted to continue in employment as a candidate belonging to Open category.

Rule is accordingly made absolute. There shall be no order as to costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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