

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR
BENCH, NAGPUR.

CIVIL APPLICATION (CAW) NO.173 OF 2015

IN

WRIT PETITION NO.2772 OF 2003

Nilkanth Sitaram Nikhare

..vs..

The State of Mah. and ors

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
.....

Court's or Judge's order

Shri S.S. Shirsat, counsel for the applicant/petitioner.
Shri M.M. Agnihotri, counsel for N.A. No.4/Resp.
Mrs. M.M. Hiwase, AGP for N.A. Nos.1 & 3/Resps.

CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.
DATE : JANUARY 28, 2015.

1) **Heard.**

2) By the present application, the applicant/petitioner seeks disposal of the writ petition by relying upon the decision of the Full Bench of this Court in the case of Arun s/o Vishwanath Sonone ..vs.. State of Maharashtra & ors, reported at 2015(1) Mh.L.J. 457.

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3) The applicant/petitioner who was born on 6.10.1968, claims to be belonging to “Halba” (Scheduled Tribes). He was issued caste certificate on 20.12.1989 and the same was the subject matter of verification before the Scrutiny Committee. The applicant/petitioner is in employment of respondent No.4 since the year 1992. By impugned order dated 13.1.2003 the said caste certificate has been invalidated.

4) Perusal of the impugned order indicates that the caste certificates issued in favour of the petitioner’s brother and sister recorded caste as “Halba”. Similarly, the caste of the petitioner’s father was recorded as caste “Koshti”. However, there is no observation in the impugned order that during the vigilance enquiry, there was any tampering or insertion in the old records or that a false claim had been made.

5) The Full Bench in Arun Sonone (*supra*) while considering the question as regards extending protection to persons who are in employment prior to coming into force of The Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, 2000 (Act No.XXIII of 2001), has held that if after due verification by the Scrutiny Committee, the caste certificate produced to secure employment is not found to be false or fraudulent, then such persons are entitled for such protection.

6) In the present case, the petitioner is in employment since the year 1992. The entire exercise of verification of the caste claim has taken place after coming into force of Act

No.XXIII of 2001. In such circumstances, we are inclined to extend the protection in terms of the Full Bench judgment of this Court cited *supra*. It is to be noted that by virtue of the *ad-interim* orders, that are operating since 31.7.2003, the applicant/petitioner has been continued in employment.

7) In view of the aforesaid, the following order is passed :-

ORDER

i) It is declared that the applicant/petitioner is entitled for protection of his services in terms of the decision of the Full Bench in Arun Sonone (*supra*).

ii) The applicant/petitioner shall file an undertaking in this Court as well as with his employer – respondent No.4, within a period of four weeks from today, stating therein

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that he or his progeny shall not claim any benefits or status of belonging to “*Halba*” (Scheduled Tribes).

Needles to mention that this protection would be subject to filing of aforesaid undertaking.

8) In view of the aforesaid, the civil application and the writ petition stand disposed of accordingly. No order as to costs.

JUDGE

JUDGE

!! BRW !!