

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

WRIT PETITION NO.4788/2004 & CIVIL APPLICATION NO.657/2015.

Kishor Yashwantrao Nandanwar

-VERSUS-

The Deputy Director ® & Member Secretary and another.

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

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI &
S.B.SHUKRE, JJ.**

DATE : APRIL 01, 2015.

Heard Shri S.D. Khati, learned counsel for the petitioner, Shri R. Deo, learned A.S.G.I. for respondent no.1 and Shri A.M. Deshpande, learned counsel for respondent no.1.

2. Shri Khati, learned counsel upon instructions restricts consideration to prayer for protection in employment. Petitioner born on 27.07.1973, got caste certificate on 26.08.1988, which shows him as person belonging to Halba Scheduled Tribe. On that basis he joined employment in 1996. His claim was forwarded for verification on

2

23.03.1996 and it has been invalidated on 13.09.2004.

This Court has while issuing notice in the matter on 24.10.2004 protected his employment.

3. Learned counsel submits that as per the office memorandum dated 10.08.2010, issued by the respondent no.2 and Full Bench judgment of this Court reported in case of Arun Vishwanath Sonone .vrs. State of Maharashtra and others (2015 (1) Mh.L.J. 457) petitioner is entitled to protection of employment.

4. Learned A.S.G.I. submits that he has received copy of civil application just two days before and is awaiting instructions. He points out that the office memorandum dated 10.08.2010 is not on record and has not been relied upon. He also invites attention to submissions already filed by the said respondent to urge that here appointment order of petitioner specifically cautions him that it is subject to verification of his caste claim and hence, the appointment has not attained finality at any point of time. He also points out that as the caste claim was pending, appointment order was renewed/extended after every three months.

5. Shri Deshpande, learned counsel for

3

respondent no.1 adopts arguments of learned A.S.G.I.

6. The situation is looked into by the Hon'ble Full Bench in its judgment in case of Arun Sonone (supra). The appointment is prior to delivery of judgment of constitution Bench in State of Maharashtra .vrs. Milind [(2001) 1 SCC 4], and therefore also prior to coming in 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, (Act No. 23 of 2001).

7. The impugned order does not show any finding of fraud or falsehood. The school records and other documents of petitioner are not found to be tampered or interpolated. The petitioner also relied upon the primary school leaving certificate of father, where caste of father has been shown as Halba. The Taluq Magistrate has then issued a certificate on 09.06.1969 to his father which mentions caste as Halba. These documents are again not found to be tampered with or interpolated. Vigilance Cell during investigation could trace out some old documents

which reveal caste of forefathers as Koshti. On that basis the later documents has been disbelieved and caste claim has been invalidated. In this situation, we find petitioner entitled to protection in terms of the Full Bench judgment referred above.

8. Subject to petitioner filed an undertaking with this Court and his employer within a period of six weeks, that neither he nor his progeny shall claim status of Scheduled Tribe, his service shall remain protected as per the Full Bench judgment in case of Arun Sonone (supra).

9. Writ Petition is, partly allowed and disposed of. No costs.

Rgd.

JUDGE

JUDGE