

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1374 OF 2016

Dattatraya s/o Bhanudas Adatrao,
age: 44 years, Occ: Nil,
R/o Haladgaon, Tq. Kallamb,
District Osmanabad.

Petitioner

Versus

01 The State of Maharashtra,
through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32.

02 The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad,
through its Deputy Director/Member.

03 The Divisional Controller,
Maharashtra State Road Transport
Corporation, Osmanabad Division,
Tq. & District Osmanabad.

Respondents

Mr.Pratap V. Jadhav, advocate for the petitioner.
Mr.P.S.Patil, A.G.P. for Respondent No.1.
Respondent No.2 stand deleted vide Court's order dated 3.2.2016.
Mr.D.S.Bagul, advocate for Respondent No.3.

**CORAM : R.M.BORDE &
K.L.WADANE, JJ.
DATE : 19th July, 2016**

PER COURT:

1 Heard.

2 Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.

3 Petitioner claims to belong to 'Koli Mahadev' Scheduled Tribe and was possessed of the certificate issued in that regard. Petitioner has been appointed as driver with respondent no. 3 as against the post reserved for Scheduled Tribe category. Petitioner was appointed on 12.07.1999 on temporary basis and his appointment is regularised after 180 days. Since petitioner claimed employment as a member belonging to Scheduled Tribe category, tribe certificate issued in his favour was forwarded by the employer to the Scrutiny Committee. The Scrutiny Committee, however, on recording evidence of the parties, directed invalidation of the caste certificate issued in favour of the petitioner and, as a consequence thereof, the services of petitioner were terminated on 06.02.2006.

4 Petitioner in the instant petition has claimed quashment of the order of termination on the strength of the judgment delivered by the Apex Court in the matter of State of Maharashtra Vs. Milind and others reported in **(2001) 1 SCC 4** and the decision of the Full Bench of this Court in the matter of Arun Vishwanath Sonone Vs. State of Maharashtra reported in **2015(1) Bom.C.R. 568**. The Full Bench of this Court in paragraph nos. 65, 66 and 72 of the judgment observed thus :

“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 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 Caste Certificates against a post reserved for any of the backward class categories, stand protected in terms of the Government Resolution 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 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 so to be granted, up to what stage and extent.”

5 In view of the decision rendered in Milind's case (supra) and the clarification provided in the judgment of Arun's case (supra), according to us, the appointments 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 matter, it is noticed that petitioner was in employment since 1999 and continued to serve up to 2006 until he was issued order of termination. It is not disputed that the petitioner is not in employment since the date of termination for a long duration of more than nine years and as such, the employer need not be saddled with the

burden of payment of backwages to the petitioner. Since the petitioner is not guilty for commission of fraud nor has relied upon any fabricated record for substantiating his claim, he is entitled to be taken back in employment.

7. In this view of the matter, we direct respondent no.3 – Corporation to reinstate the petitioner on the post of driver, as expeditiously as possible, preferably within a period of three months from today. Petitioner shall not be entitled to claim any promotional benefits or any other benefits on the strength of his status as Scheduled Tribe category employee. Petitioner shall file undertaking in that regard to this Court, within a period of four weeks from today. Petitioner also shall not be entitled to claim back wages.

8 Rule is made absolute accordingly. In the facts and circumstances of this case, there shall be no order as to costs.

K.L.WADANE
JUDGE

adb/wp137416

R.M.BORDE
JUDGE