

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

CIVIL APPLICATION NO.2306 OF 2015 IN
WRIT PETITION NO.1418 OF 2006

Vilas s/o Trimbak Raut ... APPLICANT

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri A.S. Golegaonkar, Advocate for applicant
Shri S.B. Pulkundwar, A.G.P. for State
Shri D.S. Bagul, Advocate for respondent No.5
.....

WITH

WRIT PETITION NO.7771 OF 2015

Anil s/o Arjun Balwant ... APPLICANT

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri S.A. Wakure, Advocate for petitioner
Shri P.S. Patil, A.G.P. for State
Shri D.S. Bagul, Advocate for respondent No.2
Shri A.B. Tele, Advocate for respondent No.3
.....

WITH

REVIEW APPLICATION STAMP NO.24293 OF 2015 IN
WRIT PETITION NO.1417 OF 2006

Shri Rajaram s/o Uttareshwar Raut ... APPLICANT

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri A.S. Golegaonkar, Advocate for applicant
Shri S.B. Pulkundwar, A.G.P. for State
Shri D.S. Bagul, Advocate for respondent No.5
.....

CORAM: R.M. BORDE AND
 A.I.S. CHEEMA, JJ.

DATED: 26th February, 2016.

ORAL ORDER :

1. All the applicants belong to reserved category and were inducted in employment in Maharashtra State Road Transport Corporation, Osmanabad Division prior to the year 2000. Since the applicants secured employment as against seats earmarked for reserved category, the caste certificates issued to them were referred to the Scrutiny Committee. The Scrutiny Committee, after due enquiry, directed invalidation of the caste certificates issued to them.

2. The challenge raised to the orders passed by the Scrutiny Committee has also been turned down and as such, the

orders passed by the Scrutiny Committee directing invalidation of the caste certificates has attained finality.

3. The petitioners contend that, since they were employed by the employer prior to the year 2000, they are entitled to be taken back in employment in view of the judgment of the Full Bench in the matter of **Arun Vishwanath Sonone Vs. State of Maharashtra** reported in **2015(1) Bom.C.R. 568**. In paragraph Nos.65, 66 and 72 of the judgment, the Full Bench 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 subsection (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.”

4. In view of the judgment declared by the Full Bench of this Court, the petitioners whose services have been terminated on account of their failure to tender validation certificates, need to be inducted in employment. It is not a matter of dispute that, the orders of termination have been issued in the years 2005 and 2006 respectively, about 10 to 11 years back. If at all any post is available with the employer, the employees i.e. the applicants herein can be accommodated. The applicants contend that they will not claim any back wages if they are inducted in the employment.

5. The counsel appearing for the Maharashtra State Road Transport Corporation, on instructions, states that, there is only one post of Helper available in Osmanabad Division and there are three claimants before this Court. Considering this fact, we direct the employer i.e. the Maharashtra State Road

Transport Corporation to induct the applicant who has put in more number of years in employment first and thereafter induct other applicants as and when the posts from the cadre of Helper become available. The applicants shall not be entitled for back wages.

6. In view of above, Writ Petition No.7771/2015 as well as Review Application Stamp No.24293/2015 are disposed of.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)

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