

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

WRIT PETITION NO.3479 OF 2015

1. Dada S/o Babu Koli **... Petitioner**
Age: 41 Years, Occu. Nil,
R/o: Ramwadi, Tq. Osmanabad
Dist. Osmanabad

VERSUS

1. The State of Maharashtra
Tribe Development Department
Through its secretary
Mantralaya, Mumbai-32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Through its Deputy
Director/Member.

3. The Divisional Controller **... Respondents**
Maharashtra State Road
Transport Corporation,
Osmanabad Division,
Tq. and Dist. Osmanabad.

WITH

WRIT PETITION NO.1375 OF 2016

1. Bhima s/o Pandurang Khot **... Petitioner**
Age: 43 Years, Occu. Nil,
R/o: Kolewadi, Tq. Osmanabad
Dist. Osmanabad

VERSUS

1. The State of Maharashtra
Tribe Development Department
Through its secretary
Mantralaya, Mumbai-32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad
Through its Deputy
Director/Member. (Deleted as
per order dated 03.02.2016.)

3. The Divisional Controller ... Respondents
Maharashtra State Road
Transport Corporation,
Osmanabad Division,
Tq. and Dist. Osmanabad.

Mr. Pratap v. Jadhavar, Advocate for the petitioners,
Mr. M.B. Bharaswadkar, AGP for the respondent-State
Mr. D. S.Bagul, Advocate for respondent No.3

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

DATE : 29th July, 2016

JUDGMENT :

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. Petitioners claim to be belong to 'Koli Mahadev' Scheduled Tribe and were possessed of the certificates issued in that regard. Petitioners have been appointed as Helpers with respondent No. 3 as against the post reserved for Scheduled Tribe category. Petitioner in Writ Petition No.3479/2015 was appointed on 01.08.1995 and confirmed in employment on 01.10.1996 whereas the petitioner in Writ Petition No. 1375/2016 was appointed on 02.08.1995 and his services were confirmed. Since petitioners claimed employment as members belonging to Scheduled Tribe category, tribe certificates issued in

their favour were forwarded by the employer to the Scrutiny Committee. The Scrutiny Committee, however, on recording evidence of the parties, directed invalidation of the caste certificates issued in favour of the petitioners and, as a consequence thereof, the services of petitioners were terminated on 06.02.2006 and 06.01.2006 respectively.

4. Petitioners in the instant petitions have claimed quashment of the orders 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 petitioners were in employment since 1996 and continued to serve up to 2006 until they were issued orders of termination. It is not disputed that the petitioners are not in employment since the dates of termination for a long duration of more than ten years and as such, the employer need not be saddled with the burden of payment of back wages to the petitioners. Since the petitioners are not guilty for commission of fraud nor have relied upon any fabricated record for substantiating their claim, they are entitled to be taken back in employment.

7. In this view of the matter, we direct respondent – Corporation to reinstate the petitioners on the post of Helper, as expeditiously as possible, preferably within a period of three months from today. Petitioners shall not be entitled to claim any promotional benefits or any other benefits on the strength of their status as Scheduled Tribe category employee. Petitioners shall file undertakings in that regard to this Court, within a period of four weeks from today. Petitioners also shall not be entitled to claim back-wages.

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

9. Notice issued by this Court to Respondent No.3 in Writ Petition No. 3479/2015 on 7th July, 2016 stands discharged.

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

(R. M. BORDE, J.)

JPC