

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO. 2003 OF 2016

Shrikrishna s/o Ramdas Gullapelli  
age 48 years, occ. Nil  
r/o Behind Manma Devi Temple  
Mastgad, Old Jalna, Tq. Jalna  
Dist. Nanded.

Petitioner

Versus

1. The State of Maharashtra  
through its Secretary  
Revenue Department,  
Mantralaya,  
Mumbai 32.
2. The District Collector, Jalna  
Dist. Jalna.
3. The Sub Divisional Officer  
Partur, Dist. Jalna.

Respondents

Mr. S.M. Vibhute advocate for the petitioner.  
Mr. A.R. Kale, A.G.P. for the State.

**CORAM : R.M.BORDE &  
K.L.WADANE, JJ.  
DATE : 20<sup>th</sup> July, 2016**

**ORAL JUDGMENT : ( PER R. M. BORDE, J. )**

1. Rule. Rule made returnable forthwith.

2. Heard finally with the consent of learned counsel for the respective parties.

3. Petitioner applied the Tahsildar, Jalna, for issuance of tribe certificate in the year 1993. In pursuance to his request, the Executive Magistrate, Jalna, issued him certificate on 01.11.1993 certifying that he belongs to Mannervarlu Scheduled Tribe. Petitioner, on the strength of the tribe certificate, claimed appointment as Talathi from amongst Scheduled Tribe category and was issued order of appointment by respondent no. 3 on 08.01.1996. The proposal for verification of tribe certificate was forwarded to the Scrutiny Committee. The Committee however, directed invalidation of the tribe certificate vide order dated 08.04.2002. The order passed by the Scrutiny Committee was a matter of challenge in Writ Petition No. 2592/2002 presented by petitioner, which came to be dismissed on 01.04.2009. As a consequence of rejection of challenge to the order of invalidation declared by the Scrutiny Committee, the services of petitioner were terminated by order dated 30.04.2010. Petitioner challenged the order of termination by presenting Original Application No. 494/2010 before Maharashtra Administrative Tribunal however, the original application came to be rejected. Challenge raised to

the order passed by the tribunal has been turned down by this Court while dealing with Writ Petition No. 2592/2002 as well as by the Hon'ble Supreme Court in SLP (C) CC No. 13399/2011.

4. Petitioner in the instant petition claims protection of employment in view of judgment delivered by Full Bench in the matter of Arun s/o Vishwanath Sonone Vs. State of Maharashtra reported in **2015(1) Mh.L.J. 457**. The Full Bench of this Court has observed in aforesaid judgment as below :

“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 directions issued by the Full Bench, petitioner needs to be extended protection in employment. Petitioner shall

tender undertaking to this Court that he shall not claim backwages from the date of issuance of order of termination i.e. 30.04.2010 till the date of his re-instatement in employment, within a period of four weeks from today. Petitioner shall be granted continuity in service only for the purpose of claiming pensionary benefits. It is not disputed that there are vacancies available in the cadre of Talathi in the office of respondent no. 3. Petitioner shall be accommodated in employment and shall be re-instated as expeditiously as possible, preferably within period of eight weeks from today. In the event of failure of petitioner to present undertaking, direction issued by this Court shall not be enforceable. Rule is accordingly made absolute. In the facts of the case, there shall be no order as to costs.

**K.L.WADANE**  
**JUDGE**

**R.M.BORDE**  
**JUDGE**

dyb/