

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

WRIT PETITION NO. 4132 OF 2002

Mallikarjun s/o Ramrao Rodge
age 43 years, occ. Service
r/o Dverjan Tq. Udgir, Dist. Latur.

.. PETITIONER

VERSUS

1. The State of Maharashtra
2. The Scheduled Caste Certificate
Scrutiny Committee,
Jalna Road, Aurangabad Division,
Aurangabad.
3. The Taluka Executive Magistrate,
Udgir, Tq. Udgir, Dist. Latur.
4. The Head Master
Saraswati Vidya Mandir,
Amtem, Tq. Pen
Dist. Raigad
5. Jagruti Shikshan Prasarak Mandal
Pedli, Tq. Sudhagad, Dist. Raigad
Through its Secretary
6. The Education Officer (Secondary)
Raigad Zilla Parishad,
Alibag.

.. RESPONDENTS

Mr. P.G. Rodge, advocate for petitioner.
Mr. S.K. Kadam, AGP for the State.

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**CORAM : R.M. BORDE &
A.I.S. CHEEMA, JJ.
DATE : 5th FEBRUARY, 2016.**

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

1. Heard.
2. Notices were issued to respondents in pursuance to the order issued

by this Court on 20.10.2015. Similarly, notices have been issued on respondents in Civil Application No. 12177/2015, however, respondents 4 to 6 have not caused appearance.

3. Petitioner is objecting to the order passed by the Scrutiny Committee dated 19.07.2002 directing invalidation of the caste certificate issued in his favour. Petitioner claims to be belonging to Lingdhar caste which is included in Scheduled Caste category. Since petitioner secured employment on 15.06.1987 as against the vacancy prescribed for Scheduled Caste category, caste certificate issued in his favour was referred for verification to the Scrutiny Committee. Scrutiny Committee, however, after extending an opportunity of hearing to the petitioner, came to the conclusion that petitioner does not establish his claim as belonging to Scheduled Caste category and as such, directed invalidation of his caste certificate.

4. Although petitioner is challenging the order passed by the Scrutiny committee in the instant petition, however, statement is made by learned counsel for petitioner, on instructions that he does not intend to press challenge to the order passed by the Scrutiny Committee directing invalidation of his caste certificate and would be satisfied if this Court issues direction in respect of protection of his employment. Petitioner has tendered an undertaking on 06.10.2015 stating that he himself or his family members shall not claim any benefit as prescribed for reserved category i.e. Lingdhar, Scheduled Caste, in future for any purpose whatsoever. Petitioner prays to protect his employment since he has been appointed as Assistant

Teacher on 15.06.1987 and is in employment since last more than 28 years. Petitioner is due to retire on attaining age of super annuation in the month of March 2016. Petitioner states that he has been appointed in the year 1987 and shall be granted protection in employment on the strength of judgment of Full Bench in the matter of Arun s/o Vishwanath Sonone Vs. State of Maharashtra & others, reported in **2015(1) Mh.L.J. 457**.

5. In the matter of Kavita Solunke Vs. State of Maharashtra & others, reported in **2012(5) Mh.L.J. 921**, the Surpeme Court has granted protection to the petitioner who was in employment and rendered service for not less than 10 years, even after order of invalidation of tribe certificate by the Scrutiny committee. The protection was claimed on the basis of judgment in the matter of State of Maharashtra Vs. Milind reported in **2001(1) Mh.L.J. (SC) 1 = (2001) 1 SCC 4**. Petitioner – Kavita, before the Supreme Court, claimed benefits as a person belonging to Halba, Scheduled Tribe. While dealing with the issue as regards grant of protection, the Supreme Court has observed in paragraph 14 of the judgment as below :

“14. Reference may also be made to Punjab National Bank Vs. Vilas 2007 (3) Mh.L.J. (S.C.) 805 = (2008) 14 SCC 545. That too was a case of appointment based on a certificate which was later cancelled on the ground that 'Halba Koshti' was not the same as 'Halba' Scheduled Tribe. The High Court had set aside the termination of the service of the affected candidates relying upon a Government resolution dated 15th June, 1995 as applicable to Punjab National Bank. While upholding the said order, H.K. Sema, J. held the candidate to be protected against ouster on the basis of the resolution. V.S. Sirpurkar, J. however, took a slightly different view and held that the appointment made by the Bank having become final the same was protected against ouster in terms of the decision of the

Constitution Bench in Milind's case (supra). The question, whether the Government resolution protected the candidates against ouster from service was for that reason left open by His Lordship. Reliance in support of that view was placed upon the decision of this Court in Civil Appeal No. 7375 of 2000 (wrongly) mentioned in the report as Civil Appeal No. 3375 of 2000) mentioned above. The Court observed :

“The situation is no different in case of the present respondent. He also came to be appointed and/or promoted way back in the year 1989 on the basis of his caste certificate which declared him to be Scheduled Tribe. Ultimately, it was found that since a “Koshti” does not get the status of a Scheduled Tribe, the Caste Scrutiny Committee invalidated the said certificate holding that the respondent was a Koshti and not a Halba. I must hasten to add that there is no finding in the order of the Caste Scrutiny Committee that the petitioner lacked in bona fides in getting the certificate. I say this to overcome the observations in para 21 of Sanjay K. Nimje case. But it is not a case where the respondent pleaded and proved bona fides. Under such circumstances, the High Court was fully justified in relying on the observations made in Milind case. The High Court has not referred to the judgment and order in Civil Appeal No. 3375 of 2000 decided on 12.12.2000 to which a reference has been made above. However, it is clear that the High Court was right in holding that the observations in Milind case apply to the case of the present respondent and he stands protected thereby.”

Ultimately, noticing that the petitioner has not indulged in fabricating or falsifying particulars of being a Scheduled Tribe category candidate, with a view to obtain undeserved benefits in the matter of appointment as a teacher, she was held entitled for extension of protection

against ouster.

6. The Division Bench of this court, in the matter of A.P. Ramtekkar Vs. Union of India, has considered case of petitioner for granting protection from ouster noticing that the petitioner, who claimed benefits as a candidate belonging to Scheduled Tribe and having rendered service for number of years, is entitled to protect his employment on the basis of judgments delivered in the matter of Kavita Solunke Vs. State of Maharashtra (supra) and in the matter of State of Maharashtra Vs. Milind (supra). A reference is made to the judgment in the matter of Dattu Namdeo Thakur Vs. State of Maharashtra, reported in **2012 (3) Mh.L.J. (S.C.) 179 = (2012) 1 SCC 549**, wherein the Hon'ble Supreme court has held that disturbing educational career or employment of a candidate, which has become final with the passage of time, will not be in the interest of anyone. The view taken by the Division Bench in A.P. Ramtekkar's matter, has been confirmed by the Three-Judge Bench of the Supreme Court.

7. In the instant matter, petitioner is admittedly appointed prior to the year 2000 and as such, is entitled to claim protection in respect of his employment in view of judgment of the Supreme Court in the matter of Arun Sonone (supra) as well as policy prescribed by the State Government in pursuance to the aforesaid judgment.

8. In view of above, writ petition succeeds. Respondents are directed not to terminate employment of petitioner merely on the ground of

invalidation of caste certificate issued in his favour and that, he shall be permitted to continue in employment until the date of super annuation. Petitioner shall be paid all the pensionary benefits without raising any objection referable to the order of invalidation of caste certificate. Rule made absolute to the extent specified above. No cost.

9. In view of disposal of petition, pending civil application, if any, does not survive and stands disposed of.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE

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