

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4847 OF 2016

Ravikumar s/o Mukundrao Nemmaniwar,
age: 51 years, Occ: service,
R/o House No.19/12, VIP Road,
SVM Colony, Kinwat, Tq. Kinwat,
District Nanded.

Petitioner

Versus

- 01 The State of Maharashtra,
through its Secretary,
Water Resources Department,
Mantralaya, Mumbai.
- 02 The Scheduled Caste, Denotified Tribes,
Nomadic Tribes, Other Backward
Classes and Special Backward
Category Divisional Caste Certificate
Verification Committee No.2, Latur,
through its Member Secretary.
- 03 The Executive Director,
'Godavari Marathwada Irrigation'
Development Corporation,
Akashwani Chauk, Aurangabad,
District Aurangabad.
- 04 The Superintendent Engineer,
Vigilance Unit, Zonal Office,
Water Resources Department,
Behind Old High Court Building,
Adalat Road, Aurangabad,
District Aurangabad.
- 05 The Chief Engineer,
Water Resources Department,
Sinchan Bhavan, Akashwani
Chauk, Aurangabad,
District Aurangabad.

06 The Superintendent Engineer,
Nanded Irrigation Circle,
Sinchan Bhavan Workshop,
Nanded, District Nanded.

07 The Executive Engineer,
Nanded Minor Irrigation Division,
Jangamwadi, Nanded,
District Nanded.

08 The Deputy Executive Engineer,
Nanded Minor Irrigation Division,
Jangamwadi, Nanded,
District Nanded.

Respondents

Mr.Sunil M. Vibhute, advocate for the petitioner.
Mr.P.S.Patil, A.G.P. for Respondents No.1 & 2.
Mr.S.D.Dhongade, advocate for Respondents No.3 to 6
Respondents No. 7 & 8 served.

**CORAM : R.M.BORDE &
K.L.WADANE, JJ.
DATE : 26th July, 2016**

ORAL JUDGMENT (Per R.M.Borde, J.):

01 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

02 The petitioner submits that he belongs to Yellammalawandlu caste, which is included in Scheduled Caste category. On the strength of caste certificate issued to him, petitioner secured employment as a Junior Engineer in Irrigation Department, which comes within the purview of Godavari Marathwada Irrigation Development Corporation on 10.02.1999. The caste certificate issued to the petitioner was referred by the

employer for verification to the Scrutiny Committee. However, the Scrutiny Committee, on consideration of evidence placed on record by the petitioner as well as on perusal of report of the Vigilance Cell, directed invalidation of the caste certificate issued to the petitioner.

03 The petitioner undertakes that he will not claim any benefits available to the Scheduled Caste category in future and that he may be granted protection of employment in view of the judgment delivered by Full Bench of this Court in the matter of **Arun Vishwanath Sonone Vs. State of Maharashtra**, reported in 2015(1) Bom.C.R. 568. An undertaking, in that regard, has been placed on record by the petitioner, which is marked “X” for identification. In view of the undertaking placed on record, petitioner shall not be entitled to claim benefits available to the Scheduled Caste category in future. 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.”

04 In view of the law laid down by the Full Bench of this Court, services of the petitioner need be protected since he was inducted in employment prior to the year 2000 i.e. in the instant case in the year 1999. Petitioner does not appear to have placed reliance on any fraudulent record nor there are allegations in respect of misrepresentation, contained in the order passed by the Scrutiny Committee, whereby the certificate issued to the petitioner has been directed to be confiscated.

05 We have perused the order passed by the Scrutiny Committee. It is noticed that the petitioner has substantiated his claim. Apart from this, verification claim of real brother of the petitioner has been validated by the Scrutiny Committee, which order has attained finality. In this view of the matter, order passed by the Scrutiny Committee need not be interfered.

06 For the reasons recorded above, request made by the petitioner for extending protection in the matter of employment deserves to be accepted. The order passed by the Scrutiny Committee directing invalidation of the caste certificate issued in favour of the petitioner stands confirmed. However, it is directed that services of the petitioner shall not be terminated merely on the ground of his failure to produce validity certificate and the petitioner shall be considered as a candidate belonging to open category and shall not be entitled for any protection available to the reserved category in future.

07 Rule made absolute. There shall be no order as to costs.

K.L.WADANE
JUDGE

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R.M.BORDE
JUDGE