

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5678 OF 2016

Mohand S/o Mukundrao Kusneniwar

Petitioner

Versus

The State of Maharashtra and others

Respondents

Mr. S.M. Vibhute advocate for the petitioner

Mr. V.M. Kagne, AGP for respondent Nos.1 and 2.

CORAM : R.M. BORDE &
K.K. SONAWANE, JJ

(Date : 15th September, 2016.)

PER COURT :-

1 The petitioner claims to belong to Yellammalawandlu caste, which is included in scheduled caste (SC) category. He is in receipt of caste certificate issued by the Competent Authority and on the basis of such certificate, he is inducted in employment as a Geographical Information System Assistant on 17.1.1986 and has completed about 30 years of service. The petitioner is 53 years of age and according to him, he is entitled to claim voluntary retirement. The caste certificate issued to the petitioner by the competent authority was referred for scrutiny to the scrutiny committee and respondent No.2 scrutiny committee, in observance of the procedure prescribed under law scrutinized the

status claim of the petitioner. However, the committee was not satisfied with the claim raised by the petitioner and as such, by order dated 10.5.2016 directed invalidation of the caste certificate issued to the petitioner.

2 The petitioner claims that, he has completed 30 years of service and as such, he is entitled to claim protection of employment in view of the Judgment of the full bench in the matter of *Arun Vishwanath Sonone V/s State of Maharashtra and others* (2015 (1) Mh. L.J. 457).

3 The full bench in the matter of *Arun Sonawane* has observed in para No.66 as below:-

“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 the judgment of the Hon’ble Supreme Court in the case of *Kavita Solunke vs. State of Maharashtra and others*, reported in 2012 (5) Mh. L.J. (S.C. 921 – 2012 (8) SCC 430 and *Shalini vs. New English High School Association and others* reported in 2014 (2) Mh. L.j. (S.C.) 913 = (2013), 16, SCC 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 the Caste Certificates against a post reserved for any of the backward class categories, stand protected in terms of the Government Resolutions 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 the said Act on 18.10.2001 shall also remain protected subject to the condition 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. "

4 The petitioner contends that, because of his family problems, he is not desirous to continue in the employment and has already tendered an application, seeking voluntary retirement. The petitioner has an apprehension that, the application tendered by him, seeking voluntary retirement may not be considered, since the caste certificate issued to him has been invalidated by the scrutiny committee.

5 The petitioner has tendered an undertaking to this Court stating therein that he shall not claim any benefits as a member of SC category for any purpose whatsoever. The undertaking presented by the petitioner is taken on record and marked 'X' for identification.

6 Considering the facts and circumstances of the case and in view of the Judgment delivered by the Full Bench in the matter of

Arun Sonawane, we are of the opinion that the employment of the petitioner need to be protected. The petitioner is entitled to press his request for voluntary retirement and the case of the petitioner shall be considered in accordance with relevant rules. The respondents are directed not to disallow the claim of the petitioner, seeking voluntary retirement, only on the ground that, the scrutiny committee has directed invalidation of the caste certificate issued to the petitioner. The respondent shall take appropriate decision on the application tendered by the petitioner, seeking voluntary retirement as expeditiously as possible and preferably within a period of three months from today and it is accordingly directed.

7 Petition is disposed of.

(K.K. SONAWANE, J)

(R.M.BORDE, J)