

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5675 OF 2016

Bebinanda D/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. She is in receipt of caste certificate issued by the Competent Authority. The petitioner has been inducted in employment as an Assistant Teacher in respondent No.4 school as against a seat reserve for SC category on 2.1.1999.

2 The petitioner is stated to be employment till this date. Since the petitioner secured employment as against a reserve seat , the caste certificate issued to her was referred to the scrutiny committee, for verification by the employer. The scrutiny committee, however, after observing the procedure prescribed

under law, has directed invalidation of the caste certificate issued to the petitioner. The petitioner apprehends adverse action at the instance of employer on the ground of invalidation of the caste certificate issued to her. She claims that her services need to be protected 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 has tendered an undertaking to this Court stating therein that she 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.

5 In view of law laid down by the full bench, as referred to above the service of the petitioner as Assistant Teacher with respondent Nos.3 and 4 needs to be protected. The respondents are directed not to take any adverse action against the petitioner on the ground of invalidation of the caste certificate issued to her. The petitioner shall not be entitled to claim any benefits as a member of the SC category.

6 In view of above, the writ petition stands disposed of.

(K.K. SONAWANE, J)

(R.M.BORDE, J)