

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7984 OF 2013

Shri Sumant s/o Harishchandra Sarje,
Age-42 years, Occu:Assistant Teacher
with Zilla Parishad Primary School,
Masalga (Kh), Tq-Ausa, Dist-Latur,
R/o-Yeloriwadi, Tq-Ausa, Dist-Latur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Rural Development Department,
Mantralaya, Mumbai-32,
Through its Secretary,
- 2) Zilla Parishad, Latur,
Through its Chief Executive Officer,
- 3) The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad Division, Aurangabad,
Through its Member Secretary.

...RESPONDENTS

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Mr.S.C. Yeramwar Advocate for Petitioner.
Mr.B.V. Virdhe, A.G.P. for Respondent
Nos. 1 and 3.
Mr. V.D. Hon Advocate for Respondent No.2.

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**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE : 2ND FEBRUARY, 2016

ORAL JUDGMENT [PER R.M. BORDE, J.] :

1. Heard. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the Petition is taken up for final disposal at admissions stage.

2. The Petitioner is restricting his claim only in respect of protection in the matter of employment in view of the Judgment of the Full Bench in the matter of **Arun s/o Vishwanath Sonone vs. State of Maharashtra and others, reported in 2015(1) Mh.L.J. 457.**

3. The Petitioner claims to be belonging to Koli-Mahadeo, Scheduled Tribe. He has been appointed as an Assistant Teacher as against vacancy ear-marked for the Scheduled Tribe Category on 8th August 1995. Tribe certificate issued in favour of the Petitioner was forwarded

to the Scrutiny Committee for verification and after observing the procedure prescribed under the law, the Scrutiny Committee found that the Petitioner failed to establish his claim and as such directed invalidation of the caste certificate. The Judgment of the Scrutiny Committee was matter of challenge in Writ Petition No.4517 of 2002 presented by the Petitioner in the High Court. This Court directed remittance of the matter back to the Scrutiny Committee for reconsideration, by order dated 4th April 2005. After remand of the matter to the Scrutiny Committee, the Scrutiny Committee again recorded the finding that the Petitioner failed to establish his claim as belonging to Koli Mahadeo, Scheduled Tribe category.

4. The decision of the Scrutiny Committee has attained finality in view of the rejection of the Writ Petition No.343 of 2006 presented by the Petitioner in this Court.

5. Though the Petitioner failed to establish his claim as belonging to Koli Mahadeo, Scheduled Tribe category, however, since he was inducted in the employment in the year 1995 and still continues to serve the Zilla Parishad as an Assistant Teacher, his services need to be protected.

6. The Full Bench of this Court in the matter of **Arun s/o Vishwanath Sonone**, cited supra, has observed in Para 53 and Para 75 as under:

"53. In view of above, we answer question No.1 in the affirmative, holding that the relief of protection of service after invalidation of caste claim can be granted by the High Court on the basis of the decisions of 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 the subsequent decision in the case of *Shalini vs. new English High School Association and others*, reported in 2014(2)

Mh.L.J. (S.C.) 913 = (2013) 16 SCC 526.

"75. We, therefore, do not enter into the merits of the claim and leave it for the concerned Benches to decide, on the facts and circumstances of each case, whether the protection need to be granted or not. But we conclude in this judgment that-

(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from the employment or cancellation of appointments that have become final prior to the decision in Milind's case on 28-11-2000,

(ii) upon invalidation of the caste claim by the Scrutiny Committee, the benefits obtained or appointments secured from 28-11-2000 upto 18-10-2001 can be withdrawn or cancelled, depending upon the terms of the employment if any, in writing.

(iii) the benefits obtained or appointments secured after coming into force of the said Act on 18-10-2001 can be withdrawn or cancelled immediately upon invalidation of the caste claim by the Scrutiny Committee,

(iv) the benefit of protection in service upon invalidation of the caste claim is available not only to the persons belonging to "Koshti" and "Halba Koshti" but it is also available to the persons belonging to Special backward Class category on the same terms as is available to "Koshti" and "Halba Koshti", and

(v) the claim of the persons belonging to Nomadic Tribes, Vimukta Jatis and Other Backward Class category shall be decided on the lines of the decision of the Apex Court in the case of R. Unnikrishnan and another vs. V.K. Mahanudevan and others, reported in 2014(4) Mh.L.J. (S.C.) 1 = 2014(4) SCC 434."

7. In view of the observations recorded above, we are of the opinion that the instant Petition can be disposed of with a direction to the employer not to discontinue the services of the Petitioner only on the ground of failure of the Petitioner to secure validation certificate from the competent authority. The Petitioner shall be continued in employment and shall be granted

the employment benefits as permissible in accordance with the regulations prescribed by the concerned Department.

8. The Petitioner shall be considered as an employee belonging to appropriate category in view of the policy prescribed by the Government reflected from the Government Resolution dated 21st October 2015.

9. Rule is accordingly made absolute in above terms. There shall be no order as to costs.

[A.I.S. CHEEMA, J.]

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[R.M. BORDE, J.]