

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

WRIT PETITION NO. 10045 OF 2015

Ramesh Indrasing Patil
age 51 years, occ. Service
r/o yashwant Colony, Shriram Nagar
Near Yashwant Vidyalaya
Ulhasnagar 4, Dist. Thane.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Social Welfare Department,
Mantralaya, Mumbai 32.
2. The Divisional Caste Scrutiny
Committee NO.2 ,
Parola Road, Near Rachana Hall
Dhule
Tq. & Dist. Dhule
Through its Director.
3. The Education Inspector
Bruhan Munbai (North Division)
Chembur, Mumbai.
4. Vishwamitra Gayatri Seva Mandal, Mumbai
Through its President / Secretary
Shri Datta Mandri, tulshipada Pipe
Line, Gaondevi Road, Bhandup (E)
Mumbai 78.
5. Gayatri Vidya Mandir, Bhandup
Through its Head Master,
Shri Datta Mandir, Tulshipada Pipe Line
Gaondevi Road, Bhandup (E)
Mumbai 78.

.. RESPONDENTS

Mr. D.B. Thoke, advocate for petitioner.
Mr. S.B. Pulkundwar, AGP for the State.

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**CORAM : R.M. BORDE &
A.I.S. CHEEMA, JJ.
DATE : 7th JANUARY, 2016.**

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

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Petitioner claims to be belonging to Rajput Bhamta caste which is included in VJNT category. Since petitioner secured employment as Assistant Teacher in the year 1995 on the strength of reservation policy, caste certificate issued in his favour has been referred to Scrutiny Committee for verification. The Scrutiny Committee, after conducting detailed enquiry, found that petitioner has failed to substantiate his claim as belonging to Rajput Bhamta caste.
4. Learned counsel appearing for petitioner states on instructions that petitioner is not challenging the order passed by the Scrutiny Committee and he accepts the same. On perusal of the order passed by the Scrutiny Committee it is noticed that petitioner has not relied upon any fabricated document or has indulged in committing any fraud for substantiating his claim. Petitioner states that he has been appointed as Assistant Teacher in the year 1995 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, on perusal of the judgment delivered by the Scrutiny Committee, we do not find any allegation in respect of fraud or interpolation at the hands of petitioner for securing any benefits.

8. In this view of the matter, petitioner shall be granted protection claimed by him based upon the judgment of the Full Bench cited supra.

9. Writ petition deserves to be dismissed. However, petitioner shall be permitted to continue in employment and he shall not be treated as an employee belonging to Rajput Bhamta VJNT category.

10. Writ petition stands dismissed. Rule discharged. There shall be no order as to costs.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE