

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

WRIT PETITION NO.11958 OF 2015

Quisoraddin s/o Moinoddin
Age 55 years, Occu. Nil
(due to unlawful termination by
respondent No.2)
R/o At Post Jethapur Mohalla,
Pathri, Taluka Pathri,
District Parbhani

... PETITIONER

VERSUS

1. The Vice Chairman & Managing
Director, Maharashtra State Road
Transport Corporation, Central Office,
Vahatuk-Bhavan, Dr. Anand Nair
Marg, Mumbai Central, Mumbai.

2. The Divisional Controller,
Maharashtra State Road Transport
Corporation (M.S.R.T.C.)
Division Parbhani, Talukla and
District Parbhani

... RESPONDENTS

.....
Shri A.R. Salve, Advocate for petitioner
Shri R.N. Jain, Advocate holding for
Shri D.S. Bagul, Advocate for respondent No.2
.....

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

DATED: 1st March, 2016.

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

1. Rule. Rule made returnable forthwith. With the
consent of learned counsel appearing for the parties, the petition

is taken up for final disposal at admission stage.

2. The petitioner is praying for issuance of directions to the respondents to continue him in employment by setting aside the order of termination issued by the Corporation on 22.4.2003. The petitioner, on the basis of his claim, as belonging to Raj - Scheduled Tribe, was appointed as a Conductor in Maharashtra State Road Transport Corporation, Division Parbhani, Taluka and District Parbhani by an order dated 8.5.1990. Since the petitioner was appointed as against Scheduled Tribe category, the tribe certificate issued to him came to be referred to the Scrutiny Committee for verification. The Scrutiny Committee, after recording evidence of the parties and on consideration of Vigilance Cell report, came to the conclusion that the petitioner has failed to substantiate his claim as belonging to Raj - Scheduled Tribe and as such, by order dated 4.4.2003, directed invalidation of the caste certificate issued to the petitioner. As a consequence of rejection of the caste verification claim by the Scrutiny Committee, the employer terminated the services of the petitioner w.e.f. 22.4.2003.

3. The petitioner claims that, since he was inducted in employment prior to 2000, by virtue of judgment in the case of **Arun Vishwanath Sonone Vs. State of Maharashtra** reported in **2015(1) Bom.C.R. 568**, the petitioner is entitled to be

reinstated in employment. The petitioner states that, he will not claim the back wages during the period while he was out of employment.

4. In the matter of **Arun Vishwanath Sonone Vs. State of Maharashtra** reported in **2015(1) Bom.C.R. 568**. In paragraph Nos.65, 66 and 72 of the judgment, the Full Bench 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 subsection (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 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."

5. Since the petitioner's services have been put to an end as a result of invalidation of the caste claim by the Scrutiny Committee, the request made in the instant petition for his accommodation on the post of Conductor needs to be considered.

6. Learned counsel appearing for respondent No.2, on instructions, states that, one post of Conductor is available with the respondent No.2 and the petitioner can be accommodated against the said post. In this view of the matter, the respondent No.2 is directed to induct the petitioner in employment within a period of four weeks from today. The petitioner shall be entitled to continue in employment until the date of superannuation. The petitioner shall not be entitled to claim back wages from the date of his termination till the date of his induction in employment by the respondent No.2.

7. Rule is accordingly made absolute. There shall be no order as to costs.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)