

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

WRIT PETITION NO.11903 OF 2015

Shaikh Noor s/o Shaikh Kasim
Age major, Occu. Nil (due to
unlawful termination by the
respondent No.2),
R/o At Post Masum Colony,
Dargah Road, Parbhani,
Taluka and 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/ MSRTC,
Division-Parbhani, Taluka and
District Parbhani.

... RESPONDENTS

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

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

DATED: 23rd February, 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 objecting to the order in respect of termination of his services, issued on 22.4.2003 on account of rejection of validation claim in respect of the caste certificate issued to the petitioner. The petitioner claims to belong to "Raj" community, which is included in Nomadic Tribe. The petitioner came to be appointed as against a reserved seat, prescribed for Nomadic Tribe Category as Helper in the year 1994. Since the petitioner claimed employment as against reserved vacancy, the caste certificate issued to the petitioner was referred for verification to the Scrutiny Committee. The Scrutiny Committee, after observing the procedure prescribed under law and after extending opportunity of hearing to the petitioner, came to the conclusion that the petitioner has failed to substantiate his claim and as such, directed invalidation of the caste certificate issued to him.

3. As a consequence of rejection of claim for validation of the caste certificate by the Scrutiny Committee, the employer of the petitioner took action of termination of services of the petitioner and issued an order in that regard on 22.4.2003. The petitioner, in this petition, claims benefit in view of the judgment delivered by Full Bench of this Court 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."

4. In view of the decision rendered in the case of **State of Maharashtra Vs. Milind and others**, reported in **(2001) 1 SCC 4**, and the clarification provided in the matter of Arun Sonone (supra), according to us, the appointments made prior to

20.11.2000 shall stand protected. As has been observed by the Full Bench, there cannot be a straight jacket formula either to refuse or to grant protection in employment either at initial stage or at promotional stage. The approach has to be practical and pragmatic rather than technical and pedantic keeping in view the object and purpose of Constitution in providing the benefits and concessions to a particular category of backward class.

5. In the instant matter, it is noticed that, the petitioner was in employment since 1994 and continued to serve the employer till 22.4.2003 until he was issued the order of termination. It is not in dispute that the petitioner was not in employment since the date of termination for a long period of more than 12 years and as such, the employer shall not be saddled with the burden of payment of back wages to the petitioner. Since there is no allegation in respect of commission of fraud made against petitioner nor it is alleged that he relied upon any fabricated record for substantiating his claim, he is entitled to be taken back in employment.

6. The petitioner has tendered an undertaking to this Court that he shall not claim back wages nor he will claim any benefit as a member belonging to Nomadic Tribe backward category. In view of the undertaking given by the petitioner, the employer shall have to be directed to accommodate the

petitioner in employment. Learned counsel appearing for respondent employer makes a statement that there is a vacancy available so as to accommodate the petitioner in employment. In this view of the matter, the Writ Petition deserves to be allowed and same is accordingly allowed. The order of termination issued by the employer on 22.4.2003 is quashed and set aside. The respondent employer is directed to continue the petitioner in employment. The petitioner shall not be entitled to claim back wages.

7. Rule is made absolute in above terms. In the facts and circumstances of the case, there shall be no order as to costs.

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

(R.M. BORDE, J.)