

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.10089 OF 2013.**

Urmila D/o Vaijnath Kolhe,
Age 38 years, Occ.Service,
R/o C/o Rajkumat Matpati,
Nandanwan Hsg. Society,
Near Medical College, Ambajogai
Road, Tq. Dist.Latur. ... Petitioner.

Versus

1.The State of Maharashtra,
through the Secretary,
Secretary Social Welfare
Department, Mumbai.

2. The Chairman/Secretary,
Shivjagruti Senior College,
Nalegaon, Tq. Chakur,
Dist.Latur.

3.The Principal,
Shivjagruti Senior College,
Nalegaon, Tq. Chakur,
Dist.Latur. ... Respondents.

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Mr.P.V.Mandlik, Senior advocate i/by
Mr.M.C.Swami, advocate for the petitioner.
Mr.S.Y.Mahajan, A.G.P. for the State.
Mr.V.D.Hon, Senior advocate with Mr.S.B.Solanke,
advocate for Respondent Nos.2 and 3.

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**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 01.10.2016.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. Rule. Rule returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

3. The petitioner was appointed as a lecturer on 30.11.1998 on temporary basis and thereafter permanently on 20.12.1999 with Respondent No.3 College. The petitioner was appointed from SC category. The petitioner was in service right since the date of her appointment. The caste certificate of the petitioner was referred to the Scrutiny Committee for validation. The Scrutiny Committee under its order dated 26.7.2012, invalidated the caste claim of the petitioner. The said order was assailed before this Court in W.P.No.6908/2012. This Court rejected the Writ Petition and upheld

the judgment of the Scrutiny Committee invalidating the caste claim of the petitioner vide its judgment and order dated 22.10.2013. After dismissal of the said Writ Petition, the Respondent Nos.2 and 3 terminated the services of the petitioner under order dated 16.11.2013. The same is assailed in the present Writ Petition.

4. Mr.Mandlik, learned Senior advocate for the petitioner submits that the caste claim of the petitioner is invalidated on the ground that the petitioner is not in a position to bring on record sufficient evidence to prove her caste as Beda Jangam-Scheduled Caste. The learned counsel submits that there was no suppression on the part of the petitioner nor there is any finding of fraud or misrepresentation on the part of the petitioner by Committee or by this Court. The petitioner is entitled for protection of her service and reinstatement in view of the judgment of the Full Bench of this Court in a case of **"Arun S/o Vishwanath Sonone Vs. State of Maharashtra and others"** reported in **2015 (1) Mh.L.J.457**. The learned Senior advocate further

submits that the post on which the petitioner was working is still vacant.

5. Mr.Hon, learned Senior advocate for Respondent Nos.2 and 3 submits that upon invalidation of the caste claim of the petitioner, the Respondent Nos.2 and 3 have rightly taken action and terminated the services of the petitioner. The petitioner though did not belong to the Scheduled Caste category has taken benefit of the false SC certificate issued in her favour, thereby depriving one genuine candidate from SC category opportunity of employment. The petitioner can not be allowed to take advantage of her own wrong. The learned Senior advocate further submits that the petitioner had tried to mislead the Committee. Only because Committee has not used the word fraud or misrepresentation, that is not sufficient for the petitioner to take advantage. Even the conduct of the petitioner is required to be considered and the representations made from time to time are also required to be considered while coming to the conclusion as to whether the petitioner is guilty of

misrepresentation or fraud. Even the said aspect is laid down in the judgment of the Full Bench of this Court in a case of **"Arun V/o Vishwanath Sonone Vs. State of Maharashtra and others"** referred to supra. The learned Senior advocate has taken us through the record and submits that the petitioner even gave wrong genealogy before the Committee. Two separate genealogies were given by the petitioner before the Committee. It was with the sole purpose to mislead the Committee. The same tantamounts to playing fraud upon the Committee. The learned Senior advocate further refers to the other judgments delivered by the Apex Court in a case of **"Kavita Solunke Vs. State of Maharashtra and others"** reported in **AIR 2012 Supreme Court 3016**, so also the judgment of the Full Bench of this Court in a case of **"Ganesh Rambhau Khalale Vs. State of Maharashtra"** reported in **AIR 2009 Bom. 122** and the judgment of the Division Bench of this Court in a case of **"Ku Archana Dadarao Pethkar Vs. Joint Commissioner and Vice Chairman"** reported in **2013 CJ (Bom) 218**. The learned Senior advocate also relies on the judgment of the Apex Court in a case of **"Bhaurao**

Dagdu Paralkar Vs. State of Maharashtra” reported in **2005 (7) SCC-605**. The learned Senior advocate also relies on the judgment of the Apex Court in a case of **“State of Maharashtra and others Vs. Sanjay K.Nimje”** reported in Civil Appeal No.231 of 2007 dated 16.1.2007.

6. We have also heard learned A.G.P.

7. We have considered the submissions canvassed by the learned Senior counsel for the respective parties.

8. All the judgments referred to by the learned Senior advocate for Respondents have been considered by the Full Bench of this Court in a case of **“Arun S/o Vishwanath Sonone Vs. State of Maharashtra and others”** referred to supra. The gloss has been put to the said judgment referred to by the learned senior advocate for Respondent by the Full Bench of this Court in a case of **“Arun S/o Vishwanath Sonone Vs. State of Maharashtra and others”**.

9. With the assistance of the learned Senior advocate for both the parties, we have gone through the judgments delivered by the Committee as well as this Court invalidating the caste claim of the petitioner as belonging to Beda Jangam-Scheduled Caste. The Scrutiny Committee nor this Court has arrived at any conclusion nor has given any finding that the petitioner is guilty of fraud or misrepresentation. The reliance is placed by the learned Senior advocate for Respondents on the genealogy given by the petitioner in its affidavit on 25.5.2009, whereby Revanappa is shown as cousin grand father. Reliance has been placed upon both these genealogy submitted.

10. It would appear that nothing would depend upon the said genealogy. It is also not brought on record that Revanappa was not the cousin grand father. Be that as it may, the Committee has not found any objectionable in the said genealogy. The said genealogy was also referred to the Vigilance and the Vigilance has not found anything wrong in the same nor the

Committee is guided by the said genealogy.

11. It appears that the petitioner did not have the sufficient evidence to substantiate her caste. The petitioner did not possess any evidence prior to 1950.

12. Considering the above, the judgment of the Full Bench of this Court in a case of **"Arun S/o Vishwanath Sonone Vs. State of Maharashtra and others"** referred to supra would squarely apply.

13. The petitioner is appointed permanently in the year 1998 i.e. prior to the enforcement of "The Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000" and as such is entitled for protection in service as per judgment of the Full Bench of this Court in a case of **"Arun S/o Vishwanath Sonone Vs. State of Maharashtra and others"** referred to

supra. We had asked the learned Senior advocate for respective parties as to whether the post on which the petitioner was working is still vacant. Upon taking instructions from the Respondent Nos.2 and 3, the learned Senior counsel for Respondent Nos.2 and 3 affirms that the said post is still vacant. It is also stated that the petitioner has not been promoted and still works on the same post on which she was appointed initially.

14. In light of the above, the petitioner would be entitled for the protection in service and reinstatement but will not be entitled for the wages since the date of her termination till her reinstatement. However, the said period will be counted for the purpose of continuity in service.

15. In the result, we pass the following order :

a) The impugned order of termination dated 16.11.2013 is quashed and set aside. The

Respondent Nos.2 and 3 shall reinstate the petitioner on her original post within a period of 15 days from today. The petitioner shall not be entitled for any back wages from the date of her termination till 14th October 2016 i.e. till the date she is reinstated, however, the said period shall be counted for the purpose of continuity in service and all further consequential benefits. The petitioner shall not be entitled to take benefit of her SC category during the continuance of her service or in any walk of life. The entry of this order shall be taken in the service book of the petitioner.

b) Rule accordingly made absolute in above terms. No costs.

c) Learned senior counsel for Respondent Nos.2 and 3 states that the effect of this judgment be stayed for four (4) weeks. Our judgment is based on the decision of the Full

Bench of this Court, as such request made is refused.

Sd/-
(K.L.WADANE, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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