

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

7 WRIT PETITION NO. 3937 OF 2017

MADHURI SURESH ARYA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Choudhari M.S.
AGP for Respondents: Mr. S.B. Yawalkar
Advocate for Respondents : Mr. K.C. Sant for R/4.
...

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**
DATE : 31.07.2017

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order of the Scrutiny Committee invalidating her caste claim.

2. The petitioner claims that she belongs to Walmi (Vimukta Jati). Earlier, a writ petition no. 6287/2008 was filed in this Court and on 22.10.2008 this Court directed that the caste certificate and claim be verified in accordance with the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "the Maharashtra Act No. XXIII of 2001"). Pursuant to that judgment and

order, the Scrutiny Committee took up the verification and on 31.01.2009 / 02.02.2009, the claim was invalidated.

3. Though, this order of the Scrutiny Committee is not challenged, what is challenged are the consequences flowing from invalidation of the caste claim.

4. It is urged that the impugned communications issued on 21.07.2016, 03.08.2016 and 06.08.2016 are referable to Section 7(1) of the Act XXIII of 2001, still, it is open for this Court to direct the respondent no.4, to issue a Provisional Degree Certificate and Internship Certificate, so that the petitioner qualifies as a Bachelor of Ayurvedic Medical Sciences and can continue the practice.

5. This Court while entertaining such a petition, on 22.03.2017 passed the following order:

“Heard.

2. Issue notice to the respondents, in both petitions, returnable on 19th April, 2017. The learned A.G.P. waives service of notice for respondent Nos. 1, 2 and 3.

3. Till the next date, no coercive steps be taken against the petitioners pursuant to the impugned communications.”

6. When this petition was placed before us, we invited the

attention of the learned Advocate appearing for the petitioner to the judgment and order of the Hon'ble Supreme Court dated 06.07.2017 in Civil Appeal no. 8928/2015 and connected appeals (**Chairman and Managing Director, Food Corporation of India and others V/s. Jagdish Balaram Bahira and others**).

7. On the earlier occasion, the counsel submitted that he has not perused this judgment.

8. That is why, we did not pass the final orders dismissing the petition but posted the matter today.

9. Today, as well the learned Advocate argued that, though, the impugned communications state that on account of the invalidation of the caste claim, the petitioner cannot continue in employment, it is argued that the petitioner's employment was throughout protected. It cannot come to an end, in the manner done by the employer. It is claimed that the communications, though, referring to earlier judgments of the Hon'ble Supreme Court that would not apply in the light of the authoritative pronouncement in the case of **State of Maharashtra v/s. Milind and Ors.** reported in **(2001)1 SCC 4**.

10. Precisely, such an argument was canvassed in FCI's case

(supra). After considering all such arguments ultimately the Supreme Court concluded as under:

“I Conclusion

57 *For these reasons, we hold and declare that*

(i) *The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in **Milind** were in pursuance of the powers vested in this Court under Article 142 of the Constitution;*

(ii) *Since the decision of this Court in **Madhuri Patil** which was rendered on 2 September 1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for (a) the issuance of caste certificates; (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government; (c) the procedure for the conduct of investigation into the authenticity of the claim; (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine; (e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and (f) Prosecution for a criminal offence;*

(iii) *The decisions of this Court in **R. Vishwanatha Pillai** and in **Dattatray** which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual- such as an appointment to a post or admission to an educational institution – on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.*

(iv) *The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;*

(v) *By Maharashtra Act XXIII of 2001 there is a legislative*

*codification of the broad principles enunciated in **Madhuri Patil**. The legislation provides a statutory framework for regulating the issuance of caste certificate (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates (Section 6(2) and 6(3); cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;*

- (vi) The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18 October 2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;*
- (vii) Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;*
- (viii) The decisions in **Kavita Solunke** and **Shalini** of two learned Judges are overruled **Shalini** in so far as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;*
- (ix) Mens rea is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;*
- (x) The judgment of the Full Bench of the Bombay High Court in **Arun Sonone** is manifestly erroneous and is overruled; and*
- (xi) Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act XXIII of 2001 holds the field.”*

11. We have no doubt in our mind that the attempts made by this Court earlier to protect such employees like the petitioner from the consequences of Section 7(1) of the Maharashtra Act XXIII of 2001 have been pronounced as manifestly erroneous. A Full Bench judgment of this Court from which the appeals arose before the Hon'ble Supreme Court in the case of **Arun Sonone V/s. State of Maharashtra reported in 2015(1) Mh.LJ 457** was expressly overruled. In such circumstances and when it is clarified that the directions issued by the Hon'ble Supreme Court in para 38 in the case of **State of Maharashtra v/s. Milind (supra)** are confined and restricted to such cases as were protected by the Hon'ble Supreme Court, alone by resorting to Article 142 of the Constitution of India. The directions which are traceable to Article 142 of the Constitution of India, therefore, do not lay down any principle of law, which would be followed and applied by the High Courts. It is clarified that the High Courts do not possess such powers as are traceable to Article 142 of the Constitution of India. The Full Bench Judgment in **Arun Sonone's** case, therefore, was overruled by holding that it is manifestly erroneous.

12. The counsel desires that we undertake the same exercise as was undertaken and completed in **Arun Sonone's** case and,

subsequently, once we cannot take recourse to either **Arun Sonone** and those orders of the Hon'ble Supreme Court, which have been referred in **Arun Sonone's** case (supra), then, we have no alternative but to dismiss this petition. We have to follow the binding judgment of the Hon'ble Supreme Court in the case of **Chairman and Managing Director F.C.I. (supra)**

13. In such circumstances there is no merit in the Petition and the same is dismissed.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]

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