

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5 OF 2015

Sangita Dattatray Patil

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. R.K. Mendadkar, for the Petitioner.

Mr. V.N. Sagare, AGP, for the Respondents No. 1 and 2.

Mr. C.G. Govnekar, for Respondents No. 3 and 4.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**

DATE : 20 June 2017

ORDER :

1. Rule is made returnable forthwith.

2. Heard by consent.

Sharayu.

3. By way of present Petition, the Petitioner has though initially challenged the order dated 23 September 2014 passed by Respondent No. 2 Committee invalidating the claim of the Petitioner of belonging to Koli Mahadeo Scheduled Tribe, the Petitioner has restricted the claim in the Petition only for protection of her services.

4. The Petitioner claiming to be belonging to Koli Mahadeo Scheduled Tribe had applied for the post of Assistant Teacher against the seat reserved for Scheduled Tribe on the establishment of Respondent No. 3. The Petitioner was selected and appointed as such on 7 February 2000. However, since admission of the Petitioner was against the post reserved for Scheduled Tribe, her claim was sent for considering its validating to Respondent No. 2. Respondent No. 2 by the impugned order has invalidated the same.

5. Shri. Govnekar, learned Counsel for Respondents No. 3 and 4 vehemently opposes the Petition. The learned

Counsel for Respondents No. 3 and 4 submits that the Petitioner having obtained false certificate of belonging to Mahadev Koli, when certificate of her father shows her father to be Koli is not entitled for the protection in services. Shri. Govnekar submits that the Petition deserves to be dismissed.

6. The Hon'ble Apex Court in case of ***State of Maharashtra Vs. Milind & Ors.***¹ held that such of the employees who had put in long number of service would be entitled to protection of their services. However, there were divergent opinions expressed by this Court as to whether the powers exercised by the Hon'ble Apex Court in the said case were either under Article 141 or under Article 142 of the Constitution of India. The larger bench of this Court in ***Arun s/o Vishwanath Sonavane Vs. The State of Maharashtra***² has now held that the law laid down by the Apex Court in the case of ***State of Maharashtra Vs. Milind Katware*** (supra) has held that exercise of power is referable to Article 141 of Constitution

¹ 2001(1) Mh.L.J. 1

² 2015(1) Mh.L.J. 457

of India and as such this Court also while exercising powers under Article 226 of the Constitution of India can exercise the powers for grant of protection. Larger bench has held that if the candidate has put in long number of years and if there are no findings of fraud against him, then he would be entitled for protection of service.

7. The perusal of record would reveal that there are no findings of fraud against the Petitioner.

8. In that view of the matter, we find that the Petitioner is entitled for protection of services. However, the Petitioner would be considered to be a candidate either from the open category or from Koli Special Backward Classes, if she possesses a validity certificate of that category. The Petition shall file an undertaking in this Court within a period of one week from today stating therein that neither she nor her relative would claim any of the benefits of belonging to Scheduled Tribe.

9. Rule is made absolute in the aforesaid terms.
10. No order as to costs.

[RIYAZ I. CHAGLA, J.]

[B.R. GAVAI, J.]