

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

WRIT PETITION NO. 5492 OF 2015

Krishna Kaka Marathe	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Ms Prabha Badadare with Mr. Omkar Nagwekar for
Petitioner.

Mr. Rajan Pawar – AAGP for Respondent – State.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 25 JULY 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the
learned counsel for the parties, Rule is made returnable
forthwith.

3] The challenge in this petition is to the judgments and
orders dated 2nd May 2014 and 25th August 2014 made by
the Maharashtra Administrative Tribunal (MAT) dismissing

petitioner's Original Application No. 74 of 2014 and Review Petition No. 16 of 2014. The petitioner, by instituting the Original Application, had challenged order dated 13th January 2014, by which his services came to be terminated after the caste certificate produced by him was found to be false and invalid.

4] Ms Badadare, the learned counsel for the petitioner submits that the petitioner's initial appointment was not at all against any reserved vacancy. She therefore submits that invalidation of her caste certificate, could therefore, not invite the termination order dated 13th January 2014. She submits that the Original Application, as instituted, was to seek the benefit of Section 10 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 (said Act). She concedes that the petitioner, had at the stage of institution of this petition relied upon the decision of the Full Bench of this Court in the case of **Arun Vishwanath Sonone vs. State of Maharashtra & Ors. 2015(1) Mh. L. J. 457.**

However, she submits that irrespective of such issues, since, the original appointment of the petitioner was not at all against any reserved category post, the subsequent invalidation of the petitioner's caste certificate cannot result in termination of the services of the petitioner. Ms Badadare, relies upon the GR dated 16th May 2007 to submit that where candidates have claimed no benefits on account of reservation, then, their services cannot be terminated for inability to produce caste validity certificate. For these reasons, Ms Badadare submits that the impugned judgments and orders warrant interference.

5] Mr. Pawar, the learned AAGP submits that from the record, it is very clear that the petitioner had been appointed against a reserved post. He points out that it was not even the case of the petitioner that the petitioner was not appointed against any reserved post. He points out that the ruling of this Court in *Arun Sonone* (supra) stands overruled by the Hon'ble Supreme Court in the case of ***Chairman and Managing Director, Food Corporation of India & Ors. vs. Jagdish Balaram Bahira & Ors. (2017) 8 SCC 670***. In these circumstances, Mr. Pawar

submits that this petition may be dismissed.

6] Rival contentions now fall for our determination.

7] From the perusal of the Original Application No.74 of 2014, it is quite clear that it was never the case of the petitioner that he had not been appointed as a peon on the vacancy reserved for scheduled tribe candidates. From the perusal of the impugned judgment and order dated 2nd May 2014 as well, it is clear that this was never the case set up by the petitioner. Rather, the record indicates that the petitioner secured appointment on the basis of a caste certificate that he belonged to the Hindu-Thakur caste which is a recognized scheduled tribe. This certificate was however invalidated by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, by order dated 11th July 2012. The petitioner was then given an opportunity to produce any other certificate showing that he belonged to any other backward caste. Since, the petitioner, was unable to do so, his services came to be terminated by order dated 13th January 2014.

8] The petitioner, was in effect, claiming for retention in service relying upon Section 10 of the said Act. The petition as instituted has averments directed to taking the benefit of the decision of the Full Bench in the case of *Arun Sonone* (supra). However, the Hon'ble Supreme Court, in the case of *Jagdish Bahira* (supra), has expressly overruled *Arun Sonone* (supra). In this regard, a reference is necessary to the following observations from the judgment and order in *Jagdish Bahira* (supra) :

“56. Service under the Union and the States, or for that matter under the instrumentalities of the State subserves a public purpose. These services are instruments of governance. Where the State embarks upon public employment, it is under the mandate of Articles 14 and 16 to follow the principle of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality. Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence, the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a choice amongst competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of a person who is not eligible allows someone who is ineligible to gain access to scarce public resources. Secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. These effects upon good governance find a similar echo when a person who does not belong to a reserved

category passes off as a member of that category and obtains admission to an educational institution. Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the Constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. Once the legislature has stepped in, by enacting Maharashtra Act 23 of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] spoke on 28-11-2000. The State law has been enforced from 18-10-2001. Judicial directions must be consistent with law. Several decisions of two-Judge Benches noticed earlier, failed to take note of Maharashtra Act 23 of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the area was unregulated by statute. Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] noted the statute but misconstrued it.”

“59. *The Full Bench judgment of the Bombay High Court in Arun (2015) 1 Mah LJ 457] has essentially construed the judgments in Kavita Solunke [Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 and in Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 as having impliedly overruled the earlier Full Bench judgments in Ganesh Rambhau Khalale v. State of Maharashtra (2009) 2 Mah LJ 788] and Ramesh Suresh Kamble State of Maharashtra (2007) 1 Mah LJ 423]. In view*

of the conclusion which we have arrived at in regard to the earlier decisions rendered by the two-Judge Benches in Kavita Solunke and Shalini , we are unable to subscribe to the view expressed by the Full Bench in Arun."

"69.10. *The judgment of the Full Bench of the Bombay High Court in Arun is manifestly erroneous and is overruled."*

9] The GR dated 16th May 2007 is of no assistance to the petitioner in the facts and circumstances of the present case. At this belated stage, the petitioner, cannot be permitted to take a stand that his initial appointment was not against any reserved post. As noted earlier, this was never the stand taken before the MAT at any stage.

10] For the aforesaid reasons, we see no good ground to interfere with the impugned judgments and orders. This petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Sunita
Kishandas
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Sunita Kishandas
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