

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

WRIT PETITION NO. 8750 OF 2015

Mr. Ganpat S. Bankar ...Petitioner
Versus
The District Collector,
RaigadRespondent

Mr. U.P. Warunjikar i/b Mr. R.M. More for the Petitioner.
Mr.N.C. Walimbe, AGP for Respondent /State.

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

DATE : 19th MARCH 2018

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] From the perusal of the averments and grounds in the petition, it is very apparent that the entire petition was premised upon the ruling of the Full Bench of this court in ***Arun s/o. Vishwanath Sonone vs. State of Maharashtra and ors. - 2015(1)Mh.L.J. 457***, in the matter of grant of protection, even after the caste certificate is invalidated by the Caste Scrutiny Committee. This position was not even seriously contested by the learned counsel appearing for the petitioner.

3] On 2nd February 2016, this court, made the following order.

“1. Stand over to 16th February, 2016 for AGP to take instructions in view of Full Bench Judgment in the case “Arun s/o Vishwanath vs. State of Maharashtra and others, 2015 (1) Mh.L.J. 457”
 2. In the meantime no further steps based upon the communication dated 19th January, 2016 till further orders.
 3. Stand over to 16th February, 2016 for disposal.”

4] From the aforesaid as well, it is quite clear that the petitioner was only interested in seeking protection in terms of judgment of the Full Bench of this court in *Arun s/o. Vishwanath Sonone (supra)*.

5] The Hon'ble Supreme Court in ***Chairman and Managing Director, FCI and ors. vs. Jagdish B. Bahira and ors. - AIR 2017 Supreme Court 3271***, upon detailed consideration of the legal position on the subject, has expressly overruled the decision of the Full Bench of this court in *Arun s/o. Vishwanath Sonone (supra)*. On this ground, the present petition is required to be dismissed.

6] The decision of the Hon'ble Supreme Court in the case of *FCI (supra)*, is a complete answer to the present

petition, which, it is apparent, was based upon the ruling of the Full Bench in *Arun s/o. Vishwanath Sonone (supra)*. In fact, paragraph 48 of the Hon'ble Supreme Court's decision in *FCI (supra)* reads thus:

“48. The Full Bench judgment of the Bombay High Court in Arun Sonune (AIR 2015 BOM 123) (supra) has essentially construed the judgments in Kavita Solunke (AIR 2012 SC 3016) (supra) and in Shalini (supra) as having impliedly overruled the earlier Full Bench judgments in Ganesh Rambhau Khalale (AIR 2009 BOM 122) and Ramesh Kamble. 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 (supra) and Shalini (supra), we are unable to subscribe to the view expressed by the Full Bench in Arun Sonone (supra). The judgment of the Full Bench of the Bombay High Court in Arun Sonone (supra) holds that :-

(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from employment or cancellation of appointments that have become final prior to the decision in Milind (AIR 2001 SC 393)(supra) on 28 November 2000;

(ii) the benefit of protection in service upon invalidation of the caste claim is available not only to persons belonging to Koshti and Halba Koshti but is also available to persons belonging to the special backward category on the same terms. The High Court has even gone to the extent of holding that the decision in Milind (supra) was in the nature of prospective overruling of the law which was laid down by the Bombay High Court. The above view of the Bombay High Court is clearly unsustainable. Neither the judgment in Milind (supra) nor any of the judgments of this Court which have construed it have held that Milind (supra) was an exercise in prospective overruling. The High Court was in error in holding so. The decision of the Full Bench in Arun Sonone (AIR

2015 Bom 123) (supra) is unsustainable. The Full Bench had evidently failed to notice that cases where the protection was granted by this Court following the invalidation of a caste claim was in exercise of the power conferred by Article 142 of the Constitution, depending upon the facts and circumstances of each case. The jurisdiction under Article 142 is clearly not available to the High Court in the exercise of its jurisdiction under Article 226. The High Court erred in arrogating that jurisdiction to itself”.

7] Mr. Warunjikar, learned counsel for the petitioner, however, submits that some other matter is due to come up for consideration before the Hon'ble Supreme Court on 21st April 2018, in which, the issue to be considered is whether the decision in *FCI (supra)*, needs to be referred to a Larger Bench. He further submits that the petitioner in the present case is due to attain the age of superannuation shortly. Therefore, applying the principles in ***State of Maharashtra vs. Milind - (2001) 1 SCC 4***, some benefit ought to be granted to the petitioner.

8] On the basis of aforesaid submissions, it would be neither appropriate to defer the hearing of this petition any further or grant the petitioner any benefit in terms of *Milind (supra)*.

9] The submission that the decision in *FCI (supra)*, is likely to be referred to a Larger Bench for reconsideration, is certainly not a ground not to follow the said decision, which is binding on this court. Besides, it is not even known on what basis such submission is made that the decision in *FCI (supra)* is likely to be referred to a Larger Bench. Mr. Walimbe, learned AGP, points out that the petitioner has secured the interim relief in the year 2016 and for one reason or the other, the petitioner is interested to keep this matter pending, so that the interim order is continues. He submits that this submission regards reference to a Larger Bench, is nothing but an attempt to secure further adjournments and continuance of the interim relief.

10] As regards Mr. Warunjikar's contention that the petitioner must be granted protection in terms of *Milind (supra)*, we find that the facts and circumstances in *Milind (supra)* and the facts and circumstances of the present case are not at all comparable. The services of the petitioner in the present case, have not been terminated though, it is found that the caste certificate produced by the petitioner was not valid. The petitioner, has only been

reverted from the post of Circle Officer to the post of Talathi. Secondly, the protection granted by the Hon'ble Supreme Court in *Milind (supra)* was in exercise of powers conferred under Article 142 of the Constitution of India. Such powers, are not vested in the High Court. For these reasons, it is not possible to accept Mr. Warunjikar's submission that protection in terms of *Milind (supra)* must be granted by us to the petitioner.

11] For all the aforesaid reasons, we dismiss this petition. The interim relief is vacated. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)