
(2016) 01 BOM CK 0239
In the Bombay High Court
Case No : Writ Petition No. 2760 of 2002

Manisha

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Citation : (2016) 01 BOM CK 0239

Hon'ble Judges : R.M. Borde and A.I.S. Cheema, JJ.

Bench : Division Bench

Advocate : S.R. Barlinge, Advocate, for the Appellant; S.B. Pulkundwar, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Borde, J.—1. The petitioner claims to belong to Tokre Koli, a Scheduled Tribe. The caste/tribe certificate, issued in her favour, was referred for verification to the Scrutiny Committee. However, the Scrutiny Committee, by its order dated 30.10.2011, directed invalidation of caste/tribe certificate issued in favour of the petitioner.

2. Learned Counsel appearing for the petitioner, on instructions, makes a statement that the petitioner would not claim any benefit on the basis of her status as belonging to Tokre Koli, Scheduled Tribe and is willing to give up her claim as a member belonging to Scheduled Tribe. Learned Counsel appearing for the petitioner further submits that the petitioner has accepted judgment delivered by the Scrutiny Committee and does not want to pursue challenge to the said judgment. Petitioner also undertakes not to take any benefit as a member belonging to Tokre Koli, Scheduled Tribe, in the matter of employment or for securing any other benefits under any Government scheme or for educational purposes.

3. In view of the oral undertaking given by the petitioner, objection to invalidation of caste claim of the petitioner by the Scrutiny Committee need not

be gone into. The decision of the Scrutiny Committee stands confirmed.

4. Petitioner is in the employment of Respondent No. 3 - Central Bank of India as a Clerk since 1993. The petitioner is seeking protection in the employment in view of the judgment of the Full Bench of this Court in the matter of Arun s/o Vishwanath Sonone Vs. State of Maharashtra & others, reported in 2015 (1) Mh.L.J. 457.

5. In the matter of Kavita Solunke Vs. State of Maharashtra & others, reported in , 2012 (5) Mh.L.J. 921, the Supreme Court has granted protection to the petitioner who was in employment and rendered service for not less than 10 years, even after order of invalidation of tribe certificate by the Scrutiny Committee. The protection was claimed on the basis of judgment in the matter of State of Maharashtra Vs. Milind, reported in , 2001 (1) Mh.L.J. (SC) 1 : (2001) 1 SCC 4. Petitioner - Kavita, before the Supreme Court, claimed benefits as a person belonging to Halba, Scheduled Tribe. While dealing with the issue as regards grant of protection, the Supreme Court has observed in paragraph 14 of the judgment, as below:

"14 Reference may also be made to Punjab National Bank Vs. Vilas, , 2007 (3) Mh.L.J. (S.C.) 805 : (2008) 14 SCC 545. That too was a case of appointment based on a certificate which was later cancelled on the ground that "Halba Koshti" was not the same as "Halba" Scheduled Tribe. The High Court had set aside the termination of the service of the affected candidates relying upon a Government resolution dated 15th June, 1995 as applicable to Punjab National Bank. While upholding the said order, H.K. Sema, J. held the candidate to be protected against ouster on the basis of the resolution. V.S. Sirpurkar, J., however, took a slightly different view and held that the appointment made by the Bank having become final the same was protected against ouster in terms of the decision of the Constitution Bench in Milind's case (supra). The question, whether the Government resolution protected the candidates against ouster from service was for that reason left open by His Lordship. Reliance in support of that view was placed upon the decision of this Court in Civil Appeal No. 7375 of 2000 (wrongly) mentioned in the report as Civil Appeal No. 3375 of 2000, mentioned above. The Court observed:

"The situation is no different in case of the present respondent. He also came to be appointed and/or promoted way back in the year 1989 on the basis of his caste certificate which declared him to be Scheduled Tribe. Ultimately, it was found that since a "Koshti" does not get the status of a Scheduled Tribe, the Caste Scrutiny Committee invalidated the said certificate holding that the respondent was a Koshti and not a Halba. I must hasten to add that there is no finding in the order of the Caste Scrutiny Committee that the petitioner lacked in bona fides in getting the certificate. I say this to overcome the observations in para 21 of Sanjay K. Nimje case. But it is not a case where the respondent pleaded and proved bona fides. Under such circumstances, the High Court was fully justified in relying on the observations made in Milind case. The High Court

has not referred to the judgment and order in Civil Appeal No. 3375 of 2000 decided on 12.12.2000 to which a reference has been made above. However, it is clear that the High Court was right in holding that the observations in Milind case apply to the case of the present respondent and he stands protected thereby."

Ultimately, noticing that the petitioner has not indulged in fabricating or falsifying particulars of being a Scheduled Tribe category candidate, with a view to obtain undeserved benefits in the matter of appointment as a teacher, she was held entitled for extension of protection against ouster.

6. The Division Bench of this Court, in the matter of A.P. Ramtekkar Vs. Union of India, has considered case of the petitioner for granting protection from ouster noticing that the petitioner, who claimed benefits as a candidate belonging to Scheduled Tribe and having rendered service for number of years, is entitled to protect his employment on the basis of judgments delivered in the matter of Kavita Solunke Vs. State of Maharashtra (supra) and in the matter of State of Maharashtra Vs. Milind (supra). A reference is made to the judgment in the matter of Dattu Namdeo Thakur Vs. State of Maharashtra, reported in , 2012 (3) Mh.L.J. (S.C.) 179 : (2012) 1 SCC 549, wherein the Hon"ble Supreme Court has held that disturbing educational career or employment of a candidate, which has become final with the passage of time, will not be in the interest of anyone. The view taken by the Division Bench in A.P. Ramtekkar's matter, has been confirmed by the Three-Judge Bench of the Supreme Court.

7. In the instant matter, on perusal of the judgment delivered by the Scrutiny Committee, we do not find any allegation in respect of fraud or interpolation at the hands of petitioner for securing any benefits.

8. In this view of the matter, petitioner shall be granted protection claimed by her based upon the judgment of the Full Bench cited supra.

9. Writ Petition deserves to be dismissed. However, petitioner shall be permitted to continue in employment and she shall be treated as an employee belonging to Special Backward Class (SBC) category.

10. Writ Petition stands dismissed. Rule discharged. There shall be no order as to costs.