

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

REVIEW APPLICATION NO.05 OF 2016
IN
ORIGINAL APPLICATION NO.422 OF 2013

DISTRICT : RAIGAD

Manoj Pandurang Wadkar.)
Aged 41 Yrs, Occu. Nil (Ex-Talathi),)
With his last posting at Village Tadwagale,))
Alibaug, District : Raigad,)...**Review Applicant**
(Ori. Applicant)

Versus

1. The State of Maharashtra.)
Through its Secretary,)
General Admn. Department,)
Mantralaya, Mumbai - 400 032.)
2. The District Collector, Raigad.)
Having Office at Alibaug,)
District : Raigad.)
3. The Sub-Divisional Officer.)
Sub-Division, Alibaug, Dist : Raigad.)...**Respondents**

Shri R.K. Mendadkar, Advocate for Applicant.

Ms. Savita Suryawanshi, Presenting Officer for Respondents.



CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 15.10.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This application is made by the original Applicant of the disposed of Original Application (OA) seeking review of our order dated 21.4.2015 whereby the order terminating the services of the Applicant was effectively upheld on the ground that the Scheduled Tribe Certificate submitted by the Applicant was invalidated by the Caste Scrutiny Committee (the said Committee). This course of action is apparently adopted in view of the order of a Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.11475/2015 (Manoj P. Wadkar Vs. State of Maharashtra and others, dated 29th January, 2016)** which reads as follows :

“ORDER:-

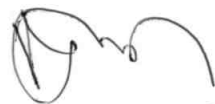
1. The petitioner has challenged order dated 21st April, 2015 passed by the learned Members of the Maharashtra Administrative Tribunal thereby the order of termination of



service for want of caste certificate, is upheld, as the certificate was invalidated.

2. Learned Counsel for the Petitioner has referred to the Full Bench judgment of this Court in the case "Arun S/o. Vishwanath Sonone Vs. State of Maharashtra & Ors" reported in "2015 (1) Mh. L.J. 457" dated 22nd December, 2014. That was prior to impugned order dated 21st April, 2015. Therefore, in the interest of justice, the complaint and/or grounds of the petitioner, if any, based upon this judgment, we are permitting to agitate before the Maharashtra Administrative Tribunal, as admittedly, the Full Bench Judgment was not pointed out an/or referred by the learned Tribunal while rejecting the Original Application filed by the Petitioner.

3. Therefore, in the interest of justice to give one more chance, liberty is granted to the petitioner to file appropriate proceedings before the Maharashtra Administrative Tribunal against the impugned order. Learned Tribunal to consider the same in accordance with law. The present petition is disposed of in view of the observations so made as aforesaid. All



contentions of the parties are expressly kept open. No costs.”

2. The Applicant joined the Government service as Talathi on 3rd March, 1999. He apparently got appointed from Scheduled Tribe category. However, the said Committee by its order of 29.01.2013 invalidated his Caste Certificate. The Respondents made order of dismissal from service on 28.5.2013 which was challenged before this very Bench by way of the Original Application No.422/2013 wherein this RA now has been moved. This Bench speaking through one of us (Shri Rajiv Agarwal-Vice Chairman) considered various Judgments of the Hon'ble Supreme Court including **Shalini Vs. The New English High School Association and others in Civil Appeal No.10997/2013, dated 12th December, 2013.** The perusal of the said order would show that it was held that the Applicant fell foul with the provisions 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 (the said Act hereinafter). It was held by us that in the context of the facts, it was not necessary to hold a detailed enquiry once his claim represented by

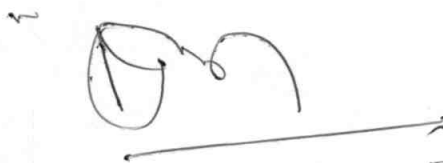


the said Certificate came to be invalidated. The above referred final order came to be challenged by way of the Writ Petition detailed at the outset wherein the Hon'ble High Court was pleased to make the order which has been fully quoted hereinabove and it is thus, and therefore, that this application for review of our order has come up for consideration and final decision.

3. We have heard Mr. R.K. Mendadkar, the learned Advocate for the Applicant and Ms. Savita Suryawanshi, the learned Presenting Officer (PO) for the Respondents.

4. The perusal of our order in the OA would show that the Judgment of the Full Bench of the Hon'ble High Court at its Nagpur Bench in **Arun V. Sonone Vs. State of Maharashtra, 2015 (1) MLJ 457** (Arun Sonone hereinafter) was not cited before us. It is, therefore, clear that even as **Arun Sonone** held the field by the time we rendered our order in the OA, we preceded in ignorance of **Arun Sonone's** case (supra).

5. In **Arun Sonone's** case, all the Judgments in the field, most of them rendered by the Hon'ble Supreme Court including **State of Maharashtra Vs. Milind and others, 2001 (1) MLJ (SC) Page 1 = (2001) 1 SCC Page 4, Shalini**

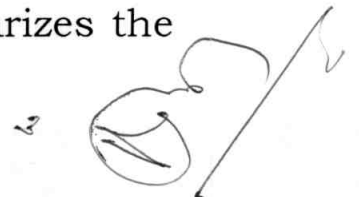


Vs. New English High School, 2014 (2) MLJ (SC) 913 (supra) and Kavita Solunke Vs. The State of Maharashtra and others, 2012 (5) MLJ (SC) 921 were considered by the Full Bench of the Hon'ble Chief Justice in **Arun Sonone** (supra). The opening Paragraph itself culls out the issues that fell for consideration of the Hon'ble Full Bench and they were as follows :

“1. Whether the relief of protection of service after invalidation of the caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in Kavita Solunke Vs. State of Maharashtra and others, 2012 (5) MLJ (SC) 921 = 2012 (8) SCC 430 ?

2. If the answer to question No.1 is in the affirmative, can such relief of protection of service be granted by the High Court in a case where the same relief has been earlier refused by the High Court ?”

6. The issues fell for consideration in the factual context of the failure of the Caste Validity Certificate and its effect. Shri Mendadkar, the learned Advocate for the Applicant invited our pointed attention to Para 75 of the Judgment in **Arun Sonone** (supra) which summarizes the



principles laid down by Their Lordships of the Full Bench. We may as well reproduce the said Paragraph for facility.

“75. We, therefore, do not enter into the merits of the claim and leave it for the concerned Benches to decide, on the facts and circumstances of each case, whether the protection need to be granted or not. But we conclude in this judgment that –

(i) mere invalidation of the caste claim by the Scrutiny Committee would entail the consequences of withdrawal of benefits or discharge from the or cancellation of appointments that have become final prior to on in Milind’s case on 28-11-2000,

(ii) upon invalidation of the caste claim by the Scrutiny Committee, the benefits obtained or appointments secured from 28-11-2000 upto 18-10-2001 can be withdrawn or cancelled, depending upon the terms of the employment, if any, in writing.

(iii) the benefits obtained or appointments secured after coming into force of the said Act on 18-10-2001 can be withdrawn or cancelled immediately upon invalidation of the caste claim by the Scrutiny Committee,



(iv) the benefits of protection in service upon invalidation of the caste claim is available not only to the persons belonging to "Koshti" and "Halba Koshti", but it is also available to the persons belonging to Special Backward Class category on the same terms as is available to "Koshti" and "Halba Koshti", and

(v) the claim of the persons belonging to Nomadic Tribes, Vimukta Jatis and Other Backward Class category shall be decided on the lines of the decision of the Apex Court in the case of R. Unnikrishnan and another vs. V.K. Mahanudevan and others, reported in 2014(4) Mh.L.J. (S.C.) 1 = 2014(4) SCC 434."

7. Ms. Savita Suryawanshi, the learned PO sought to contend that the observations of Their Lordships in Para 66 of **Arun Sonone's** case will support the stand of the Respondents, and therefore, according to her, the principle enunciated by the Full Bench will be inapplicable to the present facts. We can do better than reproduce Para 66 to furnish a complete refutation to the submissions of the learned PO so assiduously made by her. Once we did that, it would not be necessary for us to add anything more of our own.



“66. In view of the law, which we have laid down, the relief of protection of service after invalidation of caste claim can be granted by the High Court on the basis of judgment of Hon’ble Supreme Court in the cases of Kavita Salunke vs. State of Maharashtra and others, reported in 2012(5) Mh.L.J. (S.C.) 921 = 2012(8) SCC 430, and Shalini vs. New English High School Association and others reported in 2014(2) Mh.L.J. (S.C.) 913 = (2013) 16 SCC 526. The manner and the extent to which such protection is to be made available, is laid down as under :

(a) The appointments or promotions made up to 15-6-1995 in public employment on the basis of the Caste Certificates against a post reserved for any of the backward class categories, stand protected in terms of the Government Resolutions dated 15-6-1995 and 30-6-2004 and shall not be disturbed, and the appointments that have become final between 15-6-1995 and 28-11-2000 shall remain unaffected in view of the decision of the Apex Court in Milind’s case.

(b) The grant of protection in terms of the Government Resolutions dated 15-6-1995 and



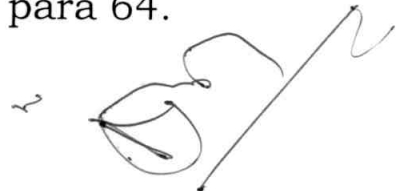
30-6-2004 and the decision in Milind's case, shall be subject to the following conditions :

(i) that upon verification by the Scrutiny Committee, the Caste Certificate produced to secure an appointment, is not found to be false or fraudulent,

(ii) that the appointee shall not take any advantage in terms of the promotion or otherwise after 28-11-2000 solely on the basis of his claim as a candidate belonging to any of the backward class categories, in respect of which his claim is invalidated by the Scrutiny Committee, and

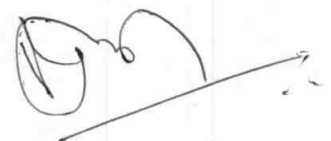
(iii) that it shall be permissible for the Competent Authority to withdraw the benefits or promotions obtained after 28-11-2000 as a candidate belonging to backward class category for which the claim has been rejected.

(c) Any appointments that have become final against a post reserved for any of the categories of backward class on the basis of the production of Caste Certificate without incorporating a specific condition in the order of appointment that it is subject to production of caste validity certificate after 28-11-2000 and before coming into force of the said Act on 18-10-2001 shall also remain protected subject to the conditions mentioned in clause (b) of para 64.



(d) After coming into force of the said Act on 18-10-2001, no benefit or appointment can be obtained or secured in any public employment against a post reserved for any of the backward class categories merely on the basis of the production of a caste certificate and without producing a caste validity certificate from the Scrutiny Committee. Such appointments are not protection and shall be liable to be cancelled immediately upon rejection of the caste claim by the Scrutiny Committee.”

8. It is, therefore, very clear that following as we must the mandate of **Arun Sonone** (supra), the Applicant who joined the Government service in 1999 will not have to suffer for the invalidation of his Caste Certificate. To take advantage of the fact that it was by an order of November, 2007 (Exh. 'R-4, Page 97 of the Paper Book (PB)) whereby the Applicant was given deemed permanency, the learned PO told us that he may not be entitled for the relief. We disagree for the simple reason that the grant of deemed permanency by itself cannot derogate against the fact that the Applicant joined Government service in 1999 and till his termination by the order impugned in the OA dated 28.5.2013, he was in the continuous Government service.



9. Mr. Mendadkar relied upon a G.R. of 21st October, 2015 (Exh. 'E', Page 77 of the P.B). The essence of the matter in so far as this RA is concerned is that the said G.R. seeks to take care of the situation such as it was during 15.6.1995 and 17.10.2001, the second date being the date on which the said Act was enforced. Now, by an **order dated 25th April, 2016 in Writ Petition No.2647/2015 Organization for Rights of Tribal Nagpur Vs. State of Maharashtra and others**, a Division Bench of the Hon'ble Bombay High Court in its Nagpur Bench has granted stay to the said G.R, but we shall reproduce from a plain copy submitted at the Bar of the said order.

"Heard.

Rule.

Hearing expedited.

Learned Government Pleader waives notice for respondent nos.1 and 2. Advocate Shri Parsodkar waive notice for respondent no.4.

Full Bench of this Court in **2015(1)Mh.L.J.457** (*Arun Vishwanath Sonone ..vs.. State of Mah.*) has squarely spelt out the circumstances in which the protection can be extended to employees.

Hence, subject to it, we stay G.R. dated 21st of October, 2015."

10. It is, therefore, very clear that the Applicant will not be hit by the order of stay made by the Division Bench

of the Hon'ble Bombay High Court because the stay has been granted subject to the decision of the Full Bench and the facts and circumstances governed by the Full Bench Judgment would not be affected by the stay granted by the Division Bench.

11. The above discussion must, therefore, make it very clear that although the power of review is constricted as mentioned in Section 23 of the Administrative Tribunals Act read with Section 114 read with order 47 of the Code of Civil Procedure, but it is not as if there is no power of review at all and that being the state of affairs, in our opinion, there is no other go but to follow **Arun Sonone's** mandate herein and even if it amounts to practically nullifying our order in the OA, so be it. The position such as it obtains post **Arun Sonone** is what it is, we are of the view that regardless of whichever way the prayer clause 10 may have been phrased, the order which is warranted as per the mandate of **Arun Sonone** (supra) can straightway be made here itself, so as to avoid fruitless multiplication of the proceedings. We can always even in the Review Application mould the relief in such a manner as it would be attuned to the facts of the case and warranted thereby.



12. The Application for Review is allowed. The order dated 21.4.2015 in **OA 422/2013 (Shri Manoj P. Wadkar Vs. District Collector, Raigad and 2 others)** is set aside and is substituted by an order that the order dated 28.5.2013 impugned in that OA being Exh. 'A' (Page 11 of that OA) stands hereby quashed and set aside and the Respondents are directed to reinstate the Applicant to the same post that he had been terminated from within four weeks from today. The Applicant post reinstatement shall be free to move the authorities for other reliefs, if so advised which shall be considered by the Respondents expeditiously preferably within three months of the representation. No order as to costs.

Sd/-

(R.B. Malik)
Member-J
15.10.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
15.10.2016

Mumbai

Date : 15.10.2016

Dictation taken by :

S.K. Wamanse.

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