

(2016) 08 KAR CK 0054

KARNATAKA HIGH COURT

Case No: Writ Petition No. 6383 of 2014 (GM-CC)

Smt. Hemavathy Ningaraju K.

APPELLANT

Vs

Director and Appellate Authority,
Scheduled Tribes Welfare,
Bangalore

RESPONDENT

Date of Decision: Aug. 18, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226, Article 311

Citation: (2016) 4 AirKarR 859 : (2016) ILRKarnataka 3880 : (2016) 4 KCCR 3375

Hon'ble Judges: A.S. Bopanna, J.

Bench: Single Bench

Advocate: C. Jagadish, Spl. G. A, for the Respondent Nos. 1 and 2; Sri Abhilash Rjau V., Advocate for M/s. Sundarswamy and Ramdas, Advocates, for the Respondent No. 3; M. Nagaprasanna, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A. S. Bopanna, J. - The petitioner is before this Court assailing the orders dated 11.11.2009 and 27.01.2014 impugned at Annexures-A and B respectively.

2. The petitioner who acquired her degree in Engineering (Industrial Production) had applied and was selected as Engineer-II in the third respondent company. While seeking employment she had relied on the caste certificate dated 14.01.1991. The said certificate indicated her to belong to the "Jenu Kuruba" caste which is a Schedule Tribe. As required, on being employed the third respondent employer referred the caste certificate for verification of its validity. The second respondent in that view issued notice to the petitioner. During the pendency of the proceedings, the family of the petitioner on gaining knowledge of the Government order dated 11.03.2002 surrendered the caste certificate to take benefit thereunder. The

petitioner also surrendered the caste certificate along with her family members. Notwithstanding the same, the proceedings was continued and by the order dated 11.11.2009 relying on certain other entries contained in the document which indicate d that the cousin of the petitioner belonged to a different caste, arrived at the conclusion that the caste certificate obtained by the petitioner was false. Hence, it was held that the petitioner did not belong to "Jenu Kuruba" caste. The petitioner claiming to be aggrieved filed an appeal in No.DSTW/appeal/CR-1/2013. The Appellate Authority has dismissed the said appeal. It is in that view the petitioner is before this Court assailing the said order.

3. The respondent No.3 has filed objection statement to the petition. Insofar as the said respondent is concerned, the employment of the petitioner is based on the caste certificate and in that view when ultimately the conclusion by the competent authority was that the petitioner did not belong to the caste based on which the certificate was relied, they have taken action to terminate her services. With regard to the benefit as claimed by the petitioner under the order dated 11.03.2002 the respondent No.3 has contended that such benefit would not be available to the petitioner. In respect of the reference made to another employee who was granted the benefit, the circumstances had been explained to indicate that the petitioner is not similarly placed. The respondents therefore seek that the petition be dismissed.

4. Heard Sri. M. Nagaprasanna, learned counsel for the petitioner, Sri. C. Jagadish, learned Special Government Advocate for respondent Nos. 1 and 2, Sri. Abhilash Raju, learned counsel for respondent No.3 and perused the petition papers.

5. In the backdrop of the subject-matter involved, if the decisions in the case of <i><ß>State of Maharashtra v. Milind and others (AIR 2001 SC 393)</ß</i>; in the case of <i><ß>Geeta v. State of M.P. and others (2007 AIR SCW 3892)</ß</i> ; in the case of <i><ß>Ritesh Tewari and another v. State of Uttar Pradesh and others [(2010) 10 SCC 677]: (AIR 2010 SC 3823)</ß</i> relied on by the learned counsel for the respondents Nos. 1 and 2 are taken into consideration, there can be absolutely no quarrel with the proposition of law laid down relating to disentitling a person from the benefit of a caste certificate which is falsely obtained. The position enunciated in the above referred decisions is that the Schedule Tribes Order can be amended only by the Parliament and allowing the candidates not belonging to Schedule Tribe to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and scheme of the Constitution. In that view, if an order is bad at its inception, it does not get sanctified at a later stage and the illegality strikes at the root. Hence, if benefit is obtained illegally, that should be nullified.

6. However, the issue for consideration herein is as to whether the instant case is to be placed in such straight jacket and a decision is to be taken or as to whether it merits any other manner of consideration, if the contentions urged are kept in view. In that regard, the fact that the petitioner was issued with a caste certificate dated

14.01.1991 as belonging to "Jenu Kuruba" and such certificate was relied on for the purpose of securing employment with respondent No.3 company is the undisputed position. Though there is some pleading in the memorandum of appeal filed before the first respondent and in this writ petition relating to assertion made by the petitioner about the validity of the caste certificate as pointed out by learned counsel for respondent Nos. 1 and 2, the whole hog contention on behalf of the petitioner however is with reference to the Government order dated 11.03.2002 and in that light to claim benefit, since the caste certificate issued in favour of the petitioner and all her family members have been surrendered by her father as far back as on 23.05.2008.

7. The order dated 11.03.2002 is available at Annexure -D to the petition. A perusal of the same indicates that the Government of Karnataka in its proceedings has taken into consideration the benefit that was extended to the persons who belonged to the categories mentioned therein pending decision of the Government of India to treat them as synonyms for being considered as Schedule Tribe. The reference therein is also with regard to the persons belonging to "Kuruba" community having obtained caste certificates as "Jenu Kuruba (ST)" or "Kadu Kuruba". In that circumstance, on taking note of the position of law, the Government of Karnataka on realising that the benefit extended to the synonyms of the different castes was not appropriate, permitted such of the persons who had obtained the caste certificates as Schedule Tribe to surrender it to the issuing authority so as to cancel the same. The order further provides that in respect of appointments already made based on such certificates, such of those persons will not be eligible for promotion or any other benefits as Schedule Tribe candidates in future. Thus the appointments were saved to be continued without the benefit or the advantages attached to the reserved post and it is such protection, the petitioner is seeking at present.

8. The learned counsel for respondent No.3 has however placed reliance on the decision in the case of *Additional General Manager-Human Resource, Bharath Heavy Electricals Ltd. v. Suresh Ramkrishna Burde* [(2007) 5 SCC 336] : (AIR 2007 SC 2048) wherein the benefit of the order of Government of Maharashtra, dated 15.06.1995 was held as not being available to an employee of a public sector undertaking controlled by the Central Government. In that view, it is contended that the petitioner cannot claim the protection under the Government of Karnataka order dated 11.03.2002 as she was the employee of respondent No.3 which is also a public sector undertaking under the control of Central Government. The learned counsel for respondent Nos. 1 and 2 in that regard has further relied on the order dated 31.07.2012 passed by a Hon'ble Division Bench of this Court in W A. No.530/2007(GM-CC) wherein the very Government Order dated 11.03.2002 was not accepted to be applicable to an employee of a Central Government undertaking and the said order is shown to have been upheld by the Hon'ble Supreme Court in SLP No. 138/2013.

9. The learned counsel for the petitioner on the other hand has relied on the decision in the case of <i><ß>Punjab National Bank and another v. Vilas [(2008) 14 SCC 545]</ß</i> wherein a similar contention with regard to the resolutions of the State Government not being applicable to the Central Government undertaking etc., was urged, but such contention was not accepted by the Hon"ble Supreme Court. It was further held therein that even otherwise the decision in <i><ß>Milind's case (AIR 2001 SC 393)</ß</i> (supra) has provided such protection to save the appointment without the benefit of reserved post being extended for the future and a similar protection was given in that case. The learned counsel for the petitioner has also relied on the decision of the Hon"ble Supreme Court in the case of <i><ß>Shalini v. New English High School Association and others (2013) 16 SCC 526]</ß</i> wherein, after referring to all the precedents on the issue relating to caste certificate which include the decisions relied on by the learned counsel for respondent Nos. 1 to 3 noticed supra, it was concluded as follows;

"5. Almost one year later this very question, which has led to a deluge of litigation already, received the attention of a three-Judge Bench in Dattatray. The Respondent, claiming to belong to the Scheduled Tribe "Halba", was appointed as Assistant Professor of Psychiatry in G.B. Pant Hospital, New Delhi against a post reserved for Scheduled Tribes. A verification of the Certificate of Scheduled Tribe disclosed that he did not belong to the Halba tribe. The second challenge to this Uncling, before the High Court, also proved to be futile. However, on what has been held to be a misinformed reading of the Constitution Bench decision in Milind, the High Court thought it fit to protect his service. The three-Judge Bench referred to two other decisions of this Court namely <i><ß>Bank of India v. Avinash D. Mandivikar (2005) 7 SCC 690 : (AIR 2005 SC 3395)</ß</i> and <i><ß>Bhel v. Suresh Ramkrishna Burde (2007) 5 SCC 336: (AIR 2007 SC 2048)</ß</i> and noting that the employee had falsely claimed that he belonged to the Scheduled Tribe/Halba, set aside the judgment of the High Court. Whilst it permitted settlement of employee-Doctor's terminal benefits it placed an embargo on his receiving any pensionary benefits. This conclusion was arrived at by the three-Judge Bench without noting <i><ß>State of Maharashtra v. Sanjay K. Nimje (2007) 14 SCC 481 : (AIR 2007 SC (Supp) 501)</ß</i> where the impugned order passed by the Division Bench of the High Court of Judicature at Bombay directing the reinstatement of a person belonging to the "Koshti" tribe, (not even "Koshti-Halbas") was set aside.

6. It is evident that there is a plethora of precedents on this aspect of the law, and perhaps for this reason Counsel for the parties were remiss in drawing our attention in the present proceedings to the detailed judgment in <i><ß>Kavita Solunke v. State of Maharashtra (2012) 8 SCC 430 : (AIR 2012 SC 3016)</ß</i>, in which one of us, Thakur J., had analysed as many as eleven precedents including those discussed above. After reviewing all the judgments it was held, in the facts and circumstances

of that case, that since that party had not intentionally or with dishonest intent fabricated particulars of a scheduled tribe with a view to obtain an undeserved benefit in the matter of appointment, she was entitled to protection against ouster from service, but no other benefit.

7. to 7.2 x x x x x

7.3 This benefit accrues from the decision of this Court inter alia in <i><ß>Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar (2008) 9 SCC 54 : (AIR 2008 SC (Supp) 514)</ß</i> which was rendered under Article 142 of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions/ Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it was in Milind that the Constitution Bench clarified that "Koshtis" or "Halba-Koshtis" were not entitled to claim benefits as Scheduled Tribes and it was the "Halbas" alone who were so entitled. A perusal of the judgment in Vilas by Sirpurkar J., as well as Solunke makes it clear that this protection is available by virtue of the decisions of this Court, it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature.

7.4 Where a Resolution or Legislation exists. its *raison d'être* is that protection is justified in praesenti (embargo on removal from service or from reversion) but not in future (embargo on promotions in the category of Scheduled Caste or Scheduled Tribe).

8. XXX XX

9. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with Scheduled Castes or Scheduled Tribes etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant Authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including

termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be dis entitled to claim and further or continuing benefit on the predication of belonging to the said Scheduled Caste/Scheduled Tribe.

(Emphasis supplied)

10. On being enlightened about the nature of consideration made by the Hon^{ble} Supreme Court in the different circumstances as narrated therein, it is time to examine and determine the bracket to which the case of the petitioner herein would fit. Notwithstanding the earlier assertion of the petitioner that she belonged to "Jenu Kuruba" caste, it is also recorded in the impugned orders of respondent Nos. 1 and 2 herein that in view of the publication made in "Vijaya Karnataka" newspaper on 06.04.2008 the family of the petitioner have surrendered the caste certificate. The reason however indicated in the impugned order to hold against the petitioner is that Ms. M.S. Savitha, the cousin of the petitioner was issued the validity certificate on 02.11.2008 as Category-2 A- "Kuruba" and that the husband of the petitioner Sri. Ningaraju had stated that he belongs to "Hori Kuruba". As such the petitioner cannot belong to "Jenu Kuruba" caste is the conclusion.

11. The very nature of the consideration made by respondent Nos.1 and 2 would indicate that the family of the petitioner belonged to the "Kuruba" caste, though not to the "Jenu Kuruba" caste which alone is classified as a Schedule Tribe. If that be the position, the very fact that the petitioner belonged to a synonym regarding which there was a confusion at a point when it was under consideration and the authorities themselves were issuing the certificate in the circumstance as depicted in the preamble portion of the Government Order dated 11.03.2002 will be evident.

12. In that background, it is to be noticed that the father of the petitioner was issued with the "Jenu Kuruba" caste certificate as far back as on 12.11.1972 and the siblings of the petitioner were also issued such caste certificates in the years 1980, 1991 and 1993 respectively. The petitioner was issued with the caste certificate on 14.01.1991, while the certificate of the cousin referred to in the impugned order as category 2A is at a point subsequent to the Government Order dated 11.03.2002, when a clear view had been taken at that juncture to the effect that the synonym castes will not be entitled to issue of caste certificate as Schedule Tribe but will be entitled to claim benefits under the respective category of Backward Class. If that be the position, the case of the petitioner cannot be considered as one where the petitioner despite being aware that she does not belong to Schedule Tribe had made a false declaration and obtained the caste certificate only for the purpose of securing an employment with a mala fide intention to wrongfully usurp the benefit available to another person belonging to that category. On (he other hand, her entire family had been given the benefit in the prevailing circumstance stated above and they had

surrendered the certificates on the position being clarified.

13. It is no doubt true that as contended by the learned counsel for respondent Nos. 1 and 2, the surrender was made only on 23.05.2008 though the Government order is dated 11.03.2002. However, it cannot be lost sight that a notification for the information of the general public is made on 04.04.2008 in the newspaper (Annexure -G) and thereafter it has been surrendered. In all cases the concession provided is to save the admission or employment secured based on such caste certificate, but not the subsequent benefits attached to such post as a reserved post. No doubt the petitioner has committed the technical error of not informing the employer of this development and continued to justify the certificate produced, which probably is because the employer had by then despatched the certificate on 12.07.2005 for considering its validity and a defence was put forth therein as a panic reaction.

14. Be that as it may, when the caste certificate was issued to the petitioner by the Tahsildar who is an officer under the State Government and in that circumstance, as noticed above, it had been relied on by the Central Government undertaking, even if the Government Order dated 11.03.2002 is accepted as not binding in its strict sense as a direction issued to an authority who is not subordinate or is not under the control of the State Government, the nature of the consideration made in the Order explaining the circumstance under which the caste certificates were issued earlier and the extent to which the benefit of reservation is nullified subsequently, while saving only the appointment is a relevant material or the decision to be taken with regard to the continuation of the employment by denuding the status of Schedule Tribe when it is not a case of misrepresentation or playing fraud to obtain the caste certificate. Such protection saving the appointment in any event has been given by the Hon"ble Supreme Court in the earliest case relating to Milind (AIR 2001 SC 393) (supra), which has been reiterated in the case of Punjab National Bank (supra) In that light, if the subsequent decision in the case of Shalini (supra) is kept in perspective, the case of the petitioner will qualify as that of a person marooned on the other bank of the Rubicon, as expressed by the Hon"ble Supreme Court and the protection of saving the appointment will have to be extended to her. In fact, it is seen that the father of the petitioner was given employment based on the caste certificate issued in similar circumstance and in view o the Government Order dated 11.03.2002, such consideration was made by the employer-Bharath Earth Movers Ltd.,(Annexure-W) which is also a public sector undertaking under the control of the Central Government.

15. If in the light of the above discussion, the orders dated 11.11.2009 and 27.01.2014 are perused minutely, the ultimate conclusion by both the authorities is that the petitioner does not belong to "Jenu Kuruba" but her caste is "Kuruba", which is backward class Category- 2A. That in any event is the accepted position at this point in time, but in the circumstance explained above, despite such position

the appointment of the petitioner would stand protected and saved, but without any benefits attached to the post reserved for Schedule Tribe. Hence, even in the teeth of the orders dated 11.11.2009 and 27.01.2014, the respondent No.3 employer was required to keep these aspects in view and was required to modulate the same as has been done by the employer of the petitioner's father.

16. Therefore, in that situation the order dated 11.11.2009 and 27.01.2014 though not required to be set aside shall be read down to that effect by the respondent No.3 -employer and the employment be regulated in the terms as has been stated above in view of such protection being extended by the Hon'ble Supreme Court in cases of present nature. Since it is stated that the respondent No.3 instead of doing so has passed a dismissal order dated 14.01.2014 which is assailed in another petition in W.P.No.29850/2014, the directions relating to reinstatement and to regulate the employment is left open to be urged therein.

17. In the result, for all the reasons afore stated the following,

ORDER

(i) The orders dated 11.11.2009 and 27.01. 2014 (Annexures-A and B) though need not be set aside for the reasons stated above they shall be read down as the orders declaring the caste status of the petitioner to regulate the benefits as not attached to Schedule Tribe, but without adversely affecting the appointment of the petitioner, with the respondent No.3 company.

(ii) Further directions in that regard are however left open to be urged in W.P. No. 29850/2014 which is said to be pending.

(iii) This writ petition is allowed in the above terms with no order as to costs.