

Smt. Hemavathy Ningaraju K. Vs Director and Appellate Authority, Scheduled Tribes Welfare, Bangalore

Court: KARNATAKA HIGH COURT

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 indicated 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 *State of Maharashtra v. Milind and others* (AIR 2001 SC

393) *Geeta v. State of M.P. and others* (2007 AIR SCW 3892) *Ritesh Tewari and*

another v. State of Uttar Pradesh and others [(2010) 10 SCC 677]: (AIR 2010 SC 3823)

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 petiti. 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 <Ä~><ÄŸ>Additional General Manager-

Human Resource, Bharath Heavy Electricals Ltd. v. Suresh Ramkrishna Burde [(2007) 5 SCC 336] : (AIR 2007 SC 2048)

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 <Ä~><ÄŸ>Punjab National Bank and another v.

Vilas [(2008) 14 SCC 545]

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 <Ä~><ÄŸ>Milind"s case (AIR 2001 SC 393)

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 <Ä~><ÄŸ>Shalini v. New English High School Association and

others (2013) 16 SCC 526]

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 <Ä~><ÄŸ>Bank of India v. Avinash D. Mandivikar (2005) 7 SCC 690 : (AIR 2005 SC 3395)

<ÄŸ>Bhel v. Suresh Ramkrishna Burde (2007) 5 SCC 336: (AIR 2007 SC 2048)

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 <Ä~><ÄŸ>State of Maharashtra v. Sanjay K. Nimje (2007) 14 SCC 481 : (AIR 2007 SC (Supp) 501)

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 <Ä~><ÄŸ>Kavita Solunke v. State of Maharashtra (2012) 8 SCC 430 :

(AIR 2012 SC 3016)

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 <Ä><Ä>Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar (2008) 9 SCC

54 : (AIR 2008 SC (Supp) 514)

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'etre 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 of 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,

<Äÿ>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

effecting 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.