
**Magaswargbiya Lokhit Shikshan Prasarak Mandal and Others Vs Kumar
Baliramji Sonkusale and Others**

Writ Petition No. 6878 of 2013

Court: Bombay High Court (Nagpur Bench)

Date of Decision: April 13, 2015

Acts Referred:

Constitution of India, 1950 - Article 226#Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - Section 6, 9

Citation: (2015) 6 ALLMR 162 : (2016) 1 BomCR 318 : (2015) 5 MhLj 520

Hon'ble Judges: R.K. Deshpande, J

Bench: Single Bench

Advocate: R.M. Ahirrao, for the Appellant; R.S. Parsodkar, Advocates for the Respondent

Final Decision: Allowed

Judgement

R.K. Deshpande, J.

This petition takes exception to the judgment and order dated 27.09.2013 passed by the School Tribunal, allowing

Appeal No. 66/2012 filed by the respondent No. 1 challenging his termination from service by an order dated 06.06.2012. The respondent No. 1

was terminated on the ground that he was appointed against the post reserved for Scheduled Tribe candidate and in spite of repeated reminders,

he failed to produce the caste validity certificate. The only ground on which the School Tribunal has set aside the termination is that in terms of the

Government Resolution dated 07.12.1994 and the decisions of the Apex Court and of this Court, there is no record to show that the respondent

No. 1 committed fraud or fabricated the caste certificate of Scheduled Tribe category, which will disentitle him from the reliefs claimed. The

School Tribunal has set aside the said termination and directed his reinstatement in service. The School Tribunal has further held that if the

respondent No. 1 is not reinstated in service within a stipulated period of 40 days, then the petitioner Nos. 1 and 2 are liable to pay the back-

wages to him.

2. The facts of the case are as under:

The respondent No. 1 was appointed as an Assistant Teacher by an order dated 10.07.1995. According to the Management, his appointment

was in the post reserved for Scheduled Tribe candidate on the basis of the caste certificate produced by him certifying that he belongs to a Halba -

Scheduled Tribe and it was subject to the production of the caste validity certificate from the competent Scrutiny Committee. In spite of reminders

on 28.05.2002 and 30.05.2012, the respondent No. 1 failed to produce the caste validity certificate and therefore, he was terminated from service

on 06.06.2012. The respondent No. 1 challenged his termination by filing Appeal No. 66/2012 before the School Tribunal at Amravati, under

Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act").

3. The specific case with which the respondent No. 1 approached the School Tribunal was that he was never appointed against the post reserved

for Scheduled Tribunal category. He took a stand that he was appointed from open category. The School Tribunal has in categorical terms

recorded the finding in the judgment impugned in this petition that the respondent No. 1 applied for the post of an Assistant Teacher in response to

the advertisement published on 05.07.1995 in which three posts were reserved for Scheduled Tribe category and two posts were to be filled in

from open category, out of total seven posts. The respondent No. 1 applied against the post reserved for Scheduled Tribe category by submitting

the caste certificate showing that he belongs to Halba - Scheduled Tribe category. The Tribunal considered the plea raised by the respondent No.

1 that in the subsequent roster, he was shown to have been appointed against the open category and it was held that the same will not be of any

help to the respondent No. 1. Thus, the ultimate finding of the School Tribunal is that the respondent No. 1 was appointed against a post reserved

for Scheduled Tribe candidate.

4. On 08.01.2014, this Court granted "Rule" in the matter and stayed the effect and operation of the judgment and order passed by the School

Tribunal, observing that the question involved was sub judice before the larger Bench. As a result, the respondent No. 1 is out of employment

since the date of his termination, i.e. 06.06.2012. The only ground on which the School Tribunal has set aside the termination is that there is no

record to show that the respondent No. 1 committed fraud or fabricated the caste certificate of Scheduled Tribe category, which will disentitle him

from the reliefs claimed. Reliance is placed on the decisions of the Apex Court and of this Court and also on the Government Resolution dated

07.12.1994.

5. It is not the jurisdiction of School Tribunal to hold, either that the respondent No. 1 did or did not commit fraud or that he did or did not

fabricate the caste certificate showing that he belongs to Scheduled Tribe category. The jurisdiction to record such findings is conferred exclusively

upon the Scheduled Tribe Caste Scrutiny Committee, under sub-section (1) of Section 7 of the Maharashtra Scheduled Castes, Scheduled Tribes,

De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and

Verification of) Caste Certificate Act, 2000 ("Act No. 23 of 2001"). The correctness of any such finding can be considered only by this Court

under Article 226 of the Constitution of India, in terms of sub-section (2) of Section 7 of the said Act. There is nothing on record to show that the

claim of the respondent No. 1 was sent to such Scrutiny Committee, it was processed for verification of his caste certificate showing that he

belongs to Halba - Scheduled Tribe category and that there is any adjudication on such issue by such committee. The School Tribunal was not the

forum where the management was expected to produce record to show that the respondent No. 1 committed fraud or fabricated the caste

certificate of Scheduled Tribe category. The finding recorded is without any jurisdiction and will have to be set aside.

6. In the decision of the Full Bench of this Court in case of Arun Vishwanath Sonone vs. State of Maharashtra and others reported in 2015(1)

Mh.L.J. 457 , this Court has considered all the decisions of the Apex Court and of this Court. This Court has held that the relief of protection in

service after invalidation of the caste claim can be granted by the High Court on the basis of the judgments of the Apex Court in the cases of

Kavita Solunke Vs. State of Maharashtra and Others, AIR 2012 SC 3016 : (2012) 7 JT 319 : (2012) 7 SCALE 316 : (2012) 8 SCC 430 :

(2012) 3 SLJ 317 : (2012) AIRSCW 4472 : (2012) 5 Supreme 517 , and Shalini Vs. New English High Sch. Assn. and Others, (2014) 1 JT 296

: (2013) 15 SCALE 273 : (2014) 3 SCJ 144 : (2014) 1 SCT 605 : (2014) 1 SLJ 398 , if the appointment had become final prior to 28.11.2000.

No doubt that the School Tribunal can also grant such protection in service, but the conditions precedent would be that the competent Scrutiny

Committee has merely invalidated the Tribe claim of the respondent No. 1 and there is no finding that it was a false caste certificate, either obtained

fraudulently or was fabricated. In the present case, the claim of the respondent No. 1 has not gone before the Scrutiny Committee to verify

whether it is real, genuine, valid or false, fabricated, fraudulent, ingenuine or bogus. If the Scrutiny Committee had merely invalidated the caste

claim without anything more, the respondent No. 1 would have been entitled to protection in service.

7. The Full Bench of this Court has considered the decision of the Apex Court in case of Kumari Madhuri Patila and another Vs. Addl.

Commissioner, Tribal Development and others, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR

50 Supp , while deciding the question as to whether the protection granted in Milind's case becomes available even without going through the

process of scrutiny of Caste/Tribe claim by the Scrutiny Committee under sub-section (2) of Section 6 of the Act No. 23 of 2001. Para Nos. 63

and 64 of the Full Bench being relevant, are reproduced below:

63. In the decision of the Division Bench of this Court in A.P. Ramtekkar's case, it is held that in view of the law laid down by the Hon^{ble} Apex

Court in State of Maharashtra vs. Milind (supra), the petitioners who are Halba Koshtis can now by no stretch of imagination be held to be

belonging to Scheduled Tribe. We, therefore, fail to understand the approach of the employer in compelling the petitioners to undergo the scrutiny

as to whether they belong to Scheduled Tribes or not, when, as a matter of fact, they have given up their claim as belonging to Scheduled Tribes.

We find that apart from it, being an empty formality, it would unnecessarily increase the workload of the Committees, which are already

overburdened. No doubt, the Special Leave to Appeal (C) No(s) 11831-11832/2013 has been dismissed in limine by the Apex Court on 12-4-

2013, holding that upon perusal of the material, we do not find any legal and valid ground for interference. However, that by itself does not prevent

us from examining the said decision on merits. The dismissal of the SLP in limine would not constitute a ratio of the decision. Hence, we proceed to

consider the said decision on its own merits as law laid down by the High Court.

64. We are unable to concur with the aforesaid view of the Division Bench of this Court in A.P. Ramtekkar's case, the reason being that the cases

of fraudulent claims must be surfaced. The protection can be granted only after verification and scrutiny of the caste claim by the Scrutiny

Committee. In Madhuri Patil's case, the Apex Court has observed that spurious tribes have become a threat to the genuine tribals, who are

defrauding the true Scheduled Tribes to their detriment and deprivation, snatching away their benefits. The spurious and ineligible persons, who

falsely gain entry in public employment and resort to dilatory tactics and create hurdles in completion of the enquiry by the Scrutiny Committee, are

not entitled to any protection. (emphasis supplied) In the words of the Apex Court in Shalin's case, the cases of dishonest and mendacious

persons who have deliberately claimed consanguinity with Scheduled Castes or Scheduled Tribes, are not entitled to protection. One of the

objects of the said Act, as it appears from the objects and reasons, is to provide for deterrent punishment for those, who indulge in fraudulent

activities. Such objects cannot be defeated by dispensing with the enquiry and scrutiny by the Scrutiny Committee. On the contrary, it will be in

furtherance of the objects of providing constitutional reservations to genuine tribals. On question No. (b) in para 55, we answer that the protection

granted in Milind's case becomes available only upon invalidation of the caste claim by the Scrutiny Committee, it would not be merely an empty

formality increasing the workload of the Committees and that the protection is not available without going through the process of Scrutiny

Committee under sub-section (2) of Section 6 of the said Act. (emphasis supplied) It is only to this extent, we overrule partly the decision in A.P.

Ramtekkar"s case.

In Madhuri Patil"s case, the Apex Court has observed that spurious tribes have become a threat to the genuine tribals, who are defrauding the true

Scheduled Tribes to their detriment and deprivation, snatching away their benefits. The spurious and ineligible persons, who falsely gain entry in

public employment and resort to dilatory tactics and create hurdles in completion of the enquiry by the Scrutiny Committee, are not entitled to any

protection. The Full Bench has held that the protection granted in Milind"s case becomes available only upon invalidation of the caste claim by the

Scrutiny Committee, and that the protection is not available without going through the process of Scrutiny Committee under sub-section (2) of

Section 6 of the said Act.

8. It is not disputed that the respondent No. 1 was informed by the communication in writing issued on 28.05.2002 to produce a caste validity

certificate at an earliest, otherwise his name shall not be included in the salary bill. In this letter itself, it was made clear to him that he belongs to

Halba - Scheduled Tribe category. On 30.05.2012, another letter was issued to him, informing to produce a caste validity certificate, otherwise his

services will be automatically terminated.

9. The respondent No. 1 filed Writ Petition No. 2870/2012 before this Court seeking to set aside the notice of termination dated 30.05.2012 on

the ground that he was not appointed against the post reserved for Scheduled Tribe candidate and the petitioners herein were wrong in terminating

his services on the ground of non-production of a caste validity certificate. The said petition was permitted to be withdrawn by the Division Bench

on 06.08.2012, so as to enable the respondent No. 1 to prefer a statutory appeal under Section 9 of the MEPS Act, challenging the termination,

which was already effected.

10. The respondent No. 1 filed another Writ petition No. 6179/2012 before this Court challenging the termination dated 06.06.2012 and claiming

protection in service. The said writ petition was withdrawn on 22.08.2013 with liberty to prosecute an appeal pending before the School Tribunal.

In the appeal before the School Tribunal also, the stand was that he was not appointed against the post reserved for Scheduled Tribe category.

11. In the present case, the respondent No. 1 knew that he was appointed in the vacancy reserved for Scheduled Tribe candidate and had applied

against the said post with the caste certificate showing that he belongs to Halba - Scheduled Tribe category. In spite of this, he started asserting

that his appointment was from open category and avoided to get verified his claim for Halba - Scheduled Tribe category. The contention of the

respondent No. 1 that he was appointed against a post meant for open category has been rejected. The entire attitude and conduct of the

respondent No. 1 throughout, was hostile to the very source of his employment. The respondent No. 1 also resorted to dilatory tactics and

avoided to get his caste claim scrutinized and verified by a competent Scrutiny Committee. The respondent No. 1 having suffered a jolt in such

litigation throughout, cannot now rest upon the source of employment which he earlier disowned and protracted verification of his caste claim. The

respondent No. 1 cannot now claim protection as if a candidate belonging to Halba - Scheduled Tribe category.

12. Shri Parsodkar, the learned counsel appearing for the respondent No. 1 has relied upon the Division Bench judgment of this Court in case of

Dr. Sadique Hussain Sheikh Azim Qureshi Vs. Divisional Caste Certificate Scrutiny Committee, Deputy Secretary, Government of Maharashtra,

Agriculture Animal Husbandary, Dairy Development Department and Fisheries Department and Commissioner, Animal Husbandary, (2011) 1

ALLMR 145 : (2011) 1 BomCR 117 : (2011) 2 MhLj 87 , to urge that it was duty of the employer to forward the caste certificate produced

before him for verification by the Scrutiny Committee and he cannot therefore, turn around and terminate the services on the ground of non-

production of a caste validity certificate, for which the respondent No. 1 is not at fault.

13. The position of law laid down by this Court cannot be disputed. The said principle cannot be applied where a person has by his own conduct

disentitled himself to such relief. From the year 2002 to 2012, the respondent No. 1 has been dragging on the litigation on the ground that he was

not appointed against a post reserved for Scheduled Tribe category. If the intention of the respondent No. 1 was to get the protection in service on

the basis of the decision of the Apex Court in State of Maharashtra vs. Milind and others delivered on 28.11.2000, then he should have first asked

the employer to forward his caste certificate to the Scrutiny Committee for verification. When he approached this Court on two occasions in the

year 2012, he should have made such a complaint and claimed a direction to the management to perform statutory duty to forward his claim for

scrutiny. Instead of this, the respondent No. 1, went on attacking his source of employment. In view of the decision of the Full Bench of this Court,

it is not possible to extend the benefit of protection to the persons who have not at all submitted to the process of the Scrutiny Committee to get

their caste certificate validated.

14. In view of above, the judgment and order passed by the School Tribunal cannot be sustained and the same will have to be quashed and set

aside by dismissing the appeal filed by the respondent No. 1.

15. In the result, the petition is allowed. The judgment and order dated 27.09.2013 passed by the School Tribunal in Appeal No. 66/2012, is

hereby quashed and set aside. The said appeal filed by the respondent No. 1 is dismissed.

16. Rule is made absolute in above terms. No order as to costs.