
(2008) 2 ALLMR 572 : (2008) 6 BomCR 190 : (2008) 2 MhLj 322

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No's. 2099, 2183, 2239, 3980, 4578 and 6502 of 2006 and 6637 of 2005

Prashant Khawas

APPELLANT

Vs

State of Maharashtra
and Others

RESPONDENT

Date of Decision: Jan. 25, 2008

Acts Referred:

Constitution of India, 1950 – Article 226, 227, 342

Citation: (2008) 2 ALLMR 572 : (2008) 6 BomCR 190 : (2008) 2 MhLj 322

Hon'ble Judges: R.V. More, J; A.P. Lavande, J

Bench: Division Bench

Advocate: S.R. Narnaware, for the Appellant; N.W. Sambre, Government Pleader, K.S. Joshi, Assistant Government Pleader, S.M. Puranik, V.K. Paliwal, R.S. Sundaram and S.W. Deshpande, for the Respondent

Judgement

R.V. More, J.

Rule in all the petitions. Rule returnable forthwith. Heard learned Counsel for the parties. Since, common question of law

arises in all these petitions, they are being disposed of by common judgment.

2. All the petitioners, in the present writ petitions (hereinafter referred to as "the petitioners" for the sake of brevity) claim common relief for

protection of their services in view of the judgment of the Hon'ble Apex Court in State of Maharashtra v. Milind and Ors. 2001(1) Mh.LJ. 1

(hereinafter referred to as "MHind's Case" for the sake of brevity) as they were appointed prior to 28-11-2000, on which date the judgment was

delivered by the Hon"ble Apex Court. The petitioners claimed to be belonging to Halba-Scheduled Tribe which is listed at Sr. No. 19 in the

Presidential Order 1950 and obtained caste certificate from the competent Authority showing them to be belonging to Halba-Scheduled Tribe. The

petitioners, on the basis of caste certificates, secured employment with the respondents. The Caste Certificates of the petitioners, thereafter, in due

course were sent for scrutiny by the respondents to the Scheduled Tribe Caste Scrutiny Committee and the Caste Scrutiny Committee

invalidated/cancelled the caste certificates granted by the competent Authority in favour of the petitioners. The petitioners, apprehending

termination of their services, challenged the order of the Caste Scrutiny Committee by filing the present petitions. In Writ Petition No. 3980/2006,

2183/2006 and 2239/2006, this Court passed interim orders in petitioners" favour. The services of the petitioners; except services of petitioner in

Writ Petition No. 6637/2005, are not terminated.

3. The petitioners have restricted their prayer to the protection of their services only. They have also given undertaking that they or their progeny

will not claim any benefit as are available to the members of Scheduled Tribe in case their services are protected.

4. Mr. Narnaware, learned Counsel for the petitioners submitted that petitioners were appointed much prior to 28-11-2000 on which date the

landmark judgment of the Hon"ble Apex Court in Milind"s case was delivered. Hence, the services of the petitioners are liable to be protected in

view of the observations in para 36 of Milind"s case and catena of judgments delivered by the Hon"ble Apex Court. In order to substantiate his

contention, the learned Counsel for the petitioner also relied upon a number of judgments. Some of the relevant judgments amongst them are as

under:

(i) State of Maharashtra v. Milind and Ors. 2001(1) Mh.LJ. 1, (ii) State of Maharashtra and Ors. v. Om Raj and Ors. Civil Appeal No.

3102/1988 and 17 ors. (iii) Sanjay Madhusudan Puneekar v. State of Maharashtra and Ors. 2002(2) Mh.LJ. 300 , (iv) R. Vishwanatha Pillai Vs.

State of Kerala and Others, , (v) Deputy General Manager, Syndicate Bank v. Dada and Ors. in SLP (Civil) No. 9980/2004, decided on 21-2-

2005, (vi) Bank of India and Another Vs. Avinash D. Mandivikar and Others, , (vii) Central Warehouse Corporation v. Jagdishkumar V.

Panjankar and Anr.; SLP (Civil) No. 25644/2004, dated 16-1-2007, (viii) Punjab National Bank and Anr. v. Vilas Govindrao Bokade and Anr.

2007(3) Mh.LJ. 805.

5. Per contra, Mr. Sambre, learned Government Pleader for the State, relied upon the provisions of Section 10 of the Maharashtra Scheduled

Caste, 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 (hereinafter referred to as ""the Act"" for the sake of brevity), which has

come into force on 18-10-2001. He submitted that Section 10 of the Act provides that on cancellation of caste certificate by the Committee, the

petitioners are liable to be discharged from the said employment forthwith and the benefit enjoyed by them or derived by virtue of the said

appointments are required to be withdrawn. The learned Government Pleader also relied upon the following judgments:

(i) Sonali Vs. State of Maharashtra and Others, , (ii) Nutan Vidarbha Shikshan Mandal v. The Presiding Officer, School Tribunal, Amravati and

Ors. 2007(2) Mh.LJ. 440 : 2007(2) ALL MR 60 , (iii) Malti Vs. The State of Maharashtra and Others, , (iv) State of Maharashtra and Ors. v.

Sanjay K. Nimje 2007(3) Mh.LJ. 795, (v) Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna

Burde, , (vi) Bank of India and Another Vs. Avinash D. Mandivikar and Others, , (vii) R. Vishwanatha Pillai Vs. State of Kerala and Others, .

6. Mr. Sambre, the learned Government Pleader, has made two fold submissions. Firstly, in view of the provisions of Section 10 of the said Act,

the petitioners" services cannot be protected inasmuch as the ratio laid down by the Division Bench of this Court in the above said decisions shows

that the said Act is retrospective in operation. Secondly, the Hon"ble Apex Court in State of Maharashtra and Ors. v. Sanjay K. Nimje;

Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. v. Suresh Ramkrishna Burde, Bank of India and Anr. v. Avinash D.

Mandivikar; and R. Vishwanatha Pillai v. State of Kerala and Ors. (supra) refused to protect the services of the similarly situated candidates and,

therefore, the petitioners cannot claim benefit of observations of the Apex Court in para 36 in Milind"s case.

7. Mrs. Joshi, the learned A.G.P. contended that the petitioner in Writ Petition No. 3980/2006 has not challenged show cause notice u/s 10 of the

said Act. She further submitted that the petition is filed belatedly. The services of the petitioner in Writ Petition No. 6637/2005 are already

terminated on 5-6-2006 and the remedy is to approach the Maharashtra Administrative Tribunal and not this Court. She further submitted that the

petitioner in this case has given undertaking but the same is conditional.

8. Mr. Sundaram, learned Counsel appearing for respondent in Writ Petition 6502/2006, submitted that once the caste claim of the petitioners are

invalidated, the appointments become illegal and if the appointments have become illegal, no protection can be granted. He further submitted that

the concession given by the Hon"ble Apex Court in Milind"s case (supra) is not applicable in the facts and circumstances of the present case.

9. Mr. Paliwal, learned Counsel for respondent No. 3 in W.P. No. 2183/2006 submitted that the petitioner in this petition should not be given

protection in view of the invalidation of his caste claim.

10. Mrs. Deshpande, learned Counsel appearing for respondent No. 3 in Writ Petition 2099/2006 and 4578/2006 contended that the petitioners

are not entitled to any protection as they have fraudulently obtained the caste certificates, which are subsequently invalidated by the Caste Scrutiny

Committee. She also adopted the arguments of Mr. Sambre, learned Government Pleader for the State.

11. Having heard learned Counsel for the respective parties and having gone through the judgments cited at bar, we are of the opinion that the

petitioners deserve to be granted protection to their services. The petitioners have secured employment with the respondents prior to 28-11-2000

on which date the Hon"ble Apex Court delivered judgment Milind"s case, overruling the Division Bench Judgment of the Bombay High Court

delivered on 4-9-1985. The petitioners obtained caste certificate showing them to belong to Halba-Scheduled Tribe which were subsequently

invalidated by orders of the Caste Scrutiny Committee, which orders are also impugned in the present writ petitions.

12. The Constitution Bench of the Apex Court delivered judgment in Milind"s case on 28-11-2000. The Apex Court by this judgment overruled

the decision of the Division Bench of the Bombay High Court in Milind Sharad Katware v. State of Maharashtra 1987 Mh.LJ. 572. The Division

Bench of Bombay High Court in above judgment has held that Halba-Koshti is sub division of Halba-Halbi as per entry 19 in part IX of the

Constitution (Scheduled Tribes) Order, 1950. It was also held that it was permissible to hold enquiry whether any sub division of a Tribe, though

not mentioned in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act is a part and parcel of the Tribe mentioned therein. The

Apex Court though overruled the above judgment of the Bombay High Court, protected admissions and appointments which have already become

final.

13. Prior to Milind"s judgment (supra) delivered by the Apex Court, judgment of this Court in Abhay Shrawanji Parate v. State of Maharashtra

and Ors. 1984 Mh.LJ. 289 was holding the field, in which it was held that Halba-Koshiti were included in the entry of Halba-tribe. This Division

Bench judgment in Abhay Parate"s case was challenged before the Hon"ble Apex Court by the State of Maharashtra by filing Special Leave

Petition. However, the Hon"ble Apex Court refused to grant leave in the said matter and held that the finding recorded by the High Court in the

said case would be confined and applicable only to the petitioner before the High Court. The Hon"ble Apex Court, however, had kept the larger

issue open and granted liberty to raise the said issue before the Hon"ble Apex Court in appropriate case.

14. After the judgment in the case of Abhay Shrawanji Parate v. State of Maharashtra and Ors. (supra) another Division Bench decided the case

of Milind Sharad Katware and Ors. v. State of Maharashtra and Ors. (supra) on 4-9-1985. By this judgment the Division Bench reiterated that it

is permissible to enquire whether any sub division of tribe, though not mentioned in the Scheduled Caste and Scheduled Tribe Order (Amendment)

Act, is a part and parcel of the tribe mentioned therein and held that the Halba-Koshti is sub division of Halba-Halbi as per the entry 19 in part IX.

This judgment of the Division Bench was challenged by the State of Maharashtra by filing the SLP No. 16372/1985 i.e. Milind"s case.

15. The Hon"ble Apex Court while deciding the Stay Application in the SLP No. 16372/1985 (Milind"s case) on 14-7-1986 passed the following

order.

There will be no order of stay of the judgment of the High Court but subject to the condition that ""Halba Koshti"s"" will be entitled to admission to

the seats reserved for Scheduled Tribes on the basis of the High Court judgment, provided the authorities granting admission are satisfied that they

and their parents have an income of less than Rs. 7200/- per annum.

If there are not sufficient number of eligible members of Scheduled Tribes seeking admission on the basis of reservation for Scheduled Tribes, then

to the extent to which any vacancy may remain unfilled within the reserved quota, such vacancies may go to the scheduled castes and failing

members of the Scheduled Castes, such vacancies as may still remain filled may go to ""Halba-Koshti"" even if they and their parents have an income

of more than Rs. 7200/- per annum. The order of preference amongst such Halba-Koshtis shall be in accordance with their income. Those have

lesser income being entitled to priority over those having higher income.

The Constitution Bench of the Hon"ble Apex Court ultimately delivered the judgment on 28-11-2000 and held that it is not at all permissible to

hold any enquiry or lead any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal

community is included in the general name even though it is not mentioned in the concerned entry in the Constitution (Scheduled Tribes) Order,

1950. It was further held that the Scheduled Tribe must be read as it is and it is not permissible to say that the tribe, sub-tribe, part of or group of

any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribe Order, if they are not specifically mentioned in it. The

Hon"ble Apex Court further held that it is not open to the State Government or the Courts or Tribunals or any other Authority to amend or alter list

of Scheduled Tribes specified in the Notification issued under Clause (1) of Article 342 and consequently the Division Bench judgment of the High

Court in Milind Sharad Katware v. State of Maharashtra (supra) was quashed and set aside.

16. The question posed before the Constitution Bench of the Apex Court in Milind's case was two fold. Firstly, whether it is permissible to hold

enquiry to decide that any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned

entry and secondly, whether Halba Koshti caste is a tribe within the meaning of Entry 19 of the Scheduled Tribe Order relating to the State of

Maharashtra. Respondent No. 3-Adivasi Sangharsha Samiti, appeared before the Hon"ble Apex Court through counsel and it was argued on their

behalf that the decision in this case will have a great impact on large number of candidates.

The Hon"ble Apex Court, while answering question No. 2 observed in para No. 31 as under:

...The High Court exceeded its supervisory jurisdiction by making a roving and in-depth examination of the materials afresh and in coming to the

conclusion that "Koshtis" could be treated as "Halbas". In this view the High Court could not upset the finding of fact in exercise of its writ

jurisdiction. Hence, we have to essentially answer the question No. 2 also in the negative. Hence, it is answered accordingly.

17. The Constitution Bench, while dealing with Milind's case, was aware of the fact that a large number of candidates will be affected because of

the adjudication of this case and hence in paragraph 36 observed as under:

...Having regard to the passage of time in the given circumstances including interim orders passed by this Court in SLP (C) No. 16372/1985 and

other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

It can, thus, be seen that in view of the above decision, the question as to whether Halba-Koshtis in the Vidarbha region in the State of

Maharashtra are Scheduled Tribe was under shadow of doubt for a considerable length of time. In the case of Abhay Shrawanji Parate v. State of

Maharashtra and Ors. (supra) the Division Bench of the Bombay High Court had taken a view that Halba-Koshtis are entitled to the benefit of

tribe Halba. The Hon"ble Apex Court did not interfere in the SLP filed against the judgment in Abhay Parate's case. However, the Hon"ble Apex

Court admitted the SLP challenging order of the High Court in Milind Sharad Katware and Ors. v. State of Maharashtra and Ors. (supra) and

passed interim orders as stated above. Till the judgment of the Apex Court in Milind's case (supra) Halba-Koshtis were treated as Halbas which

position was, for the first time, disturbed by the Hon"ble Apex Court. In these peculiar facts and circumstances, we are of the considered opinion

that the observations of the Hon"ble Apex Court in paragraph 36 are made not only to protect the interests of the respondent-Milind but the

similarly situated candidates also. The Hon"ble Apex Court, protected the admissions and appointments of the candidates which are made final

prior to the decision in that case. Had the Apex Court wanted to protect admission of respondent-Milind only, in that case, the observations in

paragraph 36 that, ""all the admissions and appointments, which are made final shall remain unaffected"" would not have been made. Obviously, the

Hon"ble Apex Court had made the decision expressly prospective making it clear that it may not apply to the candidates whose appointments and

admissions have already made final.

18. The Division Bench in Sanjay Madhusudan Puneekar v. State of Maharashtra and Ors. (supra) held that the Constitution Bench decision of the

Hon"ble Apex Court in Milind"s case is prospective in nature thereby keeping unaffected the appointments that had become final. Yet another

Division Bench of the Hon"ble Apex Court in its judgment and order dated 12-12-2001 in Civil Appeal No. 3102/1998 State of Maharashtra and

Ors. v. Om Raj and Ors. (supra) granted protection to the admissions and appointments which are already made prior to the judgment of the

Apex Court in the Milind"s case. The applicant before the Hon"ble Apex Court, in this case belonged to Koshti caste and claimed to be included

in the Scheduled Tribe of Halba. The Division Bench of the Hon"ble Apex Court relied upon the judgment in Milind"s case and extended the

benefits of observations made by the Constitution Bench to the applicant.

19. In Central Warehouse Corporation v. Jagdishkumar Panjankar and Anr. (supra) the Hon"ble Apex Court was considering the similar issue.

The Hon"ble Apex Court in the case made the following observations:

...The question came up before the Bombay High Court that whether Koshtis is a sub-caste of Halba or not, this question was decided by the

Bombay High Court and it was held that Koshtis is sub-caste of Halba (ST) and every Koshtis may be treated as a Halba 1987 MH LJ 572. This

matter came up in SLP before this Court and this Court reserved the judgment and took the view that the Koshtis is not a sub-caste of Halba.

However, while disposing of that appeal their Lordships said in last two lines which reads:

We make it clear that admissions and appointments that have become final shall remain unaffected by this judgment.

The Constitution Bench made it very clear that those who have been given benefit of being as a Koshtis sub-caste of Halba ST category, their

appointments though bad shall not be disturbed. Thereafter, many matters followed and learned Counsel invited our attention to various orders

passed by this Court from time to time wherein liberal view had been taken that those who have been given benefits shall not be revoked but they

will not be entitled to benefit in future. Similar is the position here also in the present case.

The appellant was appointed as warehouse Assistant Grade II and thereafter on 2-2-1996 as an Accountant in direct recruitment quota reserved

for the SC/ST candidates. He is working right from 1984 as an Assistant Grade II of Warehouse but from 2-2-1996 he is working as Accountant

against ST category. Though he should not have been given this benefit because he belongs to Koshtis caste and Koshtis caste is not the sub-tribe

caste of Halba, but the fact is that the judgment of Bombay High Court had held the field from 1987 onwards and this was reversed by this Court

in 2001, by the Constitution Bench made while many appointments were made on that basis. Therefore, keeping in view the equity in favour of the

respondent herein, we are not inclined to interfere with the order passed by the Bombay High Court but we make it clear that respondent shall not

be entitled to any future benefit following this judgment and treating him to Koshtis as sub-tribe of Halba. The appeal is consequently dismissed.

Plain reading of the above observations reveals that the Division Bench in the similar case extended the protection to the appellant though he

belonged to Koshti caste and this protection was granted in view of Division Bench judgment of the Bombay High Court in Milind Sharad

Katware v. State of Maharashtra (supra) which was holding the field from the year 1985 and observations of the Hon"ble Apex Court in the

Milind"s case in paragraph No. 36.

20. The question before the Hon"ble Apex Court in Punjab National Bank v. Vilas Bokade and Anr. was whether Government Resolution dated

15-6-1995 protects the candidates appointed prior to the said resolution. The respondent, in this case, claiming to be belonging to Halba

Scheduled Tribe and his services came to be terminated on invalidation of the caste certificate by the Caste Scrutiny Committee. The High Court

set aside the termination, which decision was challenged before the Hon"ble Apex Court. The Hon"ble Apex Court held that the respondent

otherwise stands protected by the judgment in Milind"s case and also judgment in Civil Appeal No. 3375 of 2000 decided on 12-12-2000.

21. In view of the observations made by the Apex Court State of Maharashtra v. Milind and Ors.; State of Maharashtra and Ors. v. Om Raj and

Ors.; Sanjay Madhusudan Puneekar v. State of Maharashtra and Ors.; Central Warehouse Corporation v. Jagdishkumar Panjankar and Anr.;

Punjab National Bank v. Vilas Bokade and Anr. (cited supra), we are of the considered opinion that the petitioners are also entitled to protection

of their services.

22. Now, we shall consider the submissions of Mr. Sambre, learned Government Pleader. So far as reliance placed by Mr. Sambre, learned G.P.

on R. Vishwanatha Pillai v. State of Kerala and Ors. (supra) is concerned, the Hon"ble Apex Court was considering two appeals one, R.

Vishwanath Pillai v. State of Kerala and Ors.; and Vimal Ghosh V. v. State of Kerala and Ors. R. Vishwanath Pillai obtained caste certificate of

belonging to "Vettuvan" community which was recognised as Scheduled Caste though he belongs to ""Veduvar Pillai"" which was higher caste. The

Hon"ble Apex Court observed that R. Vishwanath Pillai has usurped the post meant for Scheduled Caste and obtained appointment on the basis

of the said caste certificate. In these circumstances, the Hon"ble Apex Court refused to protect the services. However, the protection to the

admission of his son was granted in terms of the judgment of the Hon"ble Apex Court in Milind"s case.

We are of the considered opinion that the ratio of R. Vishwanath Pillai cannot be made applicable to the petitioners' cases. The petitioner in that

case claimed to be belonging to "Vettuvan" community when actually he belongs to the higher caste. The facts in R. Vishwanath Pillai's case are

totally different than the facts of the present case and the ratio cannot be made applicable to the facts and circumstances of the present case.

23. So far as the decision of the Apex Court in Bank of India v. Avinash D. Mandivikar (supra) is concerned, it is not clear as to whether the

employee concerned therein also belonged to Halba-Scheduled Tribe. The principle applied by the Hon'ble Apex Court in this case is that when

the action is founded on fraud, the question of unreasonable period for initiation of action is immaterial. Dealing with the contentions of the

respondent therein that the respondent was entitled to protection as granted in Milind's case, the Hon'ble Supreme Court in paragraph No. 10

observed as under:

The protection under the Milind's case (supra) cannot be extended to the respondent No. 1 employee as the protection was given under the

peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. This Court noted that on

a doctor public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent No. 1-

employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him.

With great respect, we are of the opinion that this decision is not applicable to the facts and circumstances of the present case. Reference to para

No. 36 in Milind's case would show that the Apex Court has made it clear that admissions and appointments that have become final shall remain

unaffected by judgment and this observation was made having regard to the passage of time and in the given circumstances. Plain reading of

paragraph No. 36, in our considered opinion, would not restrict protection only to petitioner in that case.

24. The Apex Court in State of Maharashtra and Ors. v. Sanjay K. Nimje was considering the protection granted to the candidate by Government

Resolution dated 15-6-1995. The respondent, in this case, was appointed on 29-6-1995 and, therefore, the Apex Court held that the protection

of the Government Resolution cannot be granted in favour of the respondent. In para 21, the Apex Court specifically observed that it is not a case

where the respondent pleaded and proved bona fide. The Apex Court also held that the said Act, being Legislative Act would prevail over the

Government Resolution. Therefore, in our opinion, the ratio cannot be made applicable to the facts and circumstances of the present case.

25. So far as the decision of the Apex Court in Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. v. Suresh Ramkrishna

Burde (supra) is concerned, we are unable to place reliance upon this decision in view of the observations of Constitution Bench of the Apex

Court in paragraph 36 of the judgment in Milind's case. The decision of the Apex Court in Sanjay Madhusudan Puneekar v. State of Maharashtra

and Ors. (supra) was also not pointed out before the Division Bench, which specifically held that operation of the judgment in Milind's case is

prospective in nature. In view of this, the ratio laid down in this case also is not applicable to the facts and circumstances of the present cases.

26. So far as reliance placed by Mr. Sambre on Ku. Sonali d/o Krishna Mohadikar v. State of Maharashtra and ors. is concerned, we are of the

considered opinion that it has no application having regard to the facts and circumstances of the present case. In this case the caste certificate was

granted to the petitioner on 31-7-1995 i.e. after Government Resolution dated 15-6-1995. The petitioner got admission for the course of Bachelor

of Architecture after judgment in Milind's case was delivered and after the said Act came into force. Obviously, the petitioner in this case was not

entitled to the protection. In our considered opinion, this case has no application in the facts and circumstances of the present cases.

27. So far as reliance placed by Mr. Sambre, learned Government Pleader on Division Bench Judgments in *Nutan Vidarbha Shikshan Mandal v.*

The Presiding Officer, School Tribunal, Amravati and Ors. and Malti Deoram Koli v. State of Maharashtra and Ors. is concerned, we are of the

opinion that the reliance is misplaced. The Division Bench of this Court held that the statutory provisions cannot be overridden by the Government

Resolutions. It was further held that once the statutory provision denies protection to the person, no Government Resolution, providing protection

contrary to the said statutory provision can be enforceable at law. It was also observed that the subject matter, which is covered by an Act cannot

be allowed to be encroached upon by the Government Resolution. The issue before the Division Bench was not about the specific protection

granted by the Constitution Bench of the Apex Court in *Milind's* case. The Division Bench was considering the protection granted by the

Government Resolution and the effect after coming into force of the said Act. We are of the considered opinion that this judgment is not at all

applicable in the facts and circumstances of the present cases.

28. Now, let us consider the submission of Mr. Sambre, learned Government Pleader, that in view of the provisions of Section 10 of the Act, once

caste claim is cancelled or invalidated by the Caste Scrutiny Committee, then the concerned person is liable to be discharged from the employment

forthwith. Admittedly, the Act came into force on 18-10-2001 and prior to coming into force of this Act judgment in *Milind's* case was delivered

by the Constitution Bench of the Hon^{ble} Apex Court on 28-11-2000 granting protection to the admissions and appointments which have become

final. Now, the question is whether the protection granted by the Constitution Bench of the Apex Court in *Milind's* case can be said to be nullified

in view of subsequent enactment of the Act. We are of the considered opinion that the answer is in the negative. Provisions of Section 10 of the

Act are essentially penal in nature. It is well settled that where any statute provides for penal consequence, then the said statute is necessarily to be

prospective in nature and cannot apply retrospectively. For the very reason, we are of the opinion that the said Act has not taken away the

protection granted by Constitution Bench of the Apex Court. In Punjab National Bank and Anr. v. Vilas Bokade and Anr. (supra) the issue before

the Division Bench of the Apex Court was whether the respondent therein is entitled to protection of Milind's case (supra) as well as protection of

Government Resolution dated 29-6-1995. The petitioner in that case argued that such protection cannot be granted in view of the fact that under

provisions of Section 10 of the Act, the protection of Government Resolution was not available. In paragraph No. 5 and 10, the Hon"ble Apex

Court observed as follows:

5. It is not necessary for us to consider the question as to whether protection provided in the Government Resolution dated 15-6-1995 is

applicable to a bank employee like the respondent since the protection is provided in Milind's case in no uncertain terms. This Court has very

specifically observed at the end of para 38 as under:

Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and

other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

(This was of course after discussing the factual situation in that case and particularly noting the prejudice that could be caused to the respondent

Milind in view of the period of 15 years spent in finalizing the issue of his caste status)

10. If the respondent even otherwise stands protected by Milind's judgment as also the judgment in Civil Appeal No. 3375 of 2000 decided on

12-12-2000, then it would be unnecessary to decide as to whether the Government Resolution dated 15-6-1995 provides protection to the

petitioner or not. The respondent, therefore, ought to get the limited protection in terms of the judgment in CA 3375 of 2000 and no further.

Plain reading of the above observations reveals that the Apex Court granted protection to the respondent in view of Milind's case in spite of the

arguments of the petitioner therein that protection of the above said Government Resolution is not available in view of provisions of Section 10 of the Act.

In view of the above, we find no substance in the arguments of the learned Government Pleader that the provisions of Section 10 of the Act are retrospective in nature.

29. So far as contention of Mrs. Joshi, learned A.G.P. in Writ Petition No. 3980/2006 is concerned, we find no merit in it. She submitted that the

Scrutiny Committee invalidated the Caste Certificate on 20-4-2005 and the petition is filed belatedly in the year 2006. The fact remains that the

interim order is granted in favour of the petitioner in this case on 4-8-2007 and the petitioner's services are not terminated. In the circumstances,

we are of the opinion that the protection to the petitioner cannot be denied on the ground of laches.

30. Mrs. Joshi, in Writ Petition No. 6637/2005 argued that the petitioner's services are already terminated and the remedy is of the petitioner to

approach the Maharashtra Administrative Tribunal. We are of the considered opinion that having held that the petitioner is entitled to protection to

his services in terms of Milind's decision, of the Hon'ble Apex Court, it is unreasonable now to ask the petitioner to approach the Maharashtra

Administrative Tribunal for reinstatement. In our opinion, in exercise of our jurisdiction under Article 226 and 227 of the Constitution and in the

interest of justice, the petitioner's services deserve to be reinstated.

We also do not find any merit in the submissions of Mr. Sundaram, learned Counsel for the respondent in Writ Petition No. 6504/2002 that if the

appointment become illegal, protection cannot be granted. The Constitution Bench of Apex Court granted protection to the services of Halba

Koshti appointed prior to 28-11-2000 i.e. on the day on which judgment in Milind's case was delivered and having held that the petitioners are

also entitled to similar protection, the arguments of Mr. Sundaram also does not hold any water.

In view of the discussion made above, we do not find any substance in the submissions of learned Counsel Mr. Paliwal and Mrs. Deshpande. In

view of the judgment of the Hon"ble Apex Court in Milind"s case, it is difficult for us to find any substance in the submissions of the learned

Counsel and as such the same deserves rejection.

32. In the facts and circumstances mentioned above, we find that the arguments advanced on behalf of the respondents seem to be eclipsed by the

law laid down in the landmark Judgment of the Constitution Bench of the Hon"ble Apex Court in Milind"s case, which stands as a lighthouse while

deciding the controversy involved in the present petitions. We are of the considered opinion that the petitioners deserve to be granted protection of

their services. Needless to mention that we have held that the services of the petitioners, who claimed to be Halbas and were appointed in different

reserved posts with the respondents prior to the decision in Milind"s case are entitled to be protected although their caste certificates were

invalidated by the Scrutiny Committee.

33. In view of the above discussion, we pass the following order:

(i) The services of petitioners in Writ Petition Nos. 3980/2006, 2183/2006, 6502/2006, 4578/2006, 2239/2006 and 2099/2006 are ordered to

be protected in terms of Constitution Bench Judgment of the Hon"ble Apex Court in State of Maharashtra v. Milind and Ors. 2001 (1) Mh. L.J. 1.

It is made clear that the petitioners and their progeny will not claim any of the benefits as are available to the members of the Scheduled Tribe.

(ii) Order dated 25-6-2007, terminating services of the petitioner in Writ Petition No. 6637/2005, is hereby quashed and set aside. Respondent

No. 4 is directed to reinstate the petitioner in the services within a period of six weeks. However, the petitioner would not be entitled to wages

from the date of termination till reinstatement. It is made clear that the petitioners and his progeny will not claim any of the benefits as are available

to the members of the Scheduled Tribe.

(iii) Rule is made absolute in all the petitions in the above terms with no order as to costs.