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R. VISHWANATHA PILLAI
v.
STATE OF KERALA AND ORS.

JANUARY 7, 2004

B [V.N. KHARE, CJ., ASHOK BHAN AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

C *Constitution of India, 1950; Article 311/All India Services Act, 1951; Section 3(1)/All India Services (Discipline and Appeal) Rules, 1969; Rules 6, 7(1)(2):*

D *Appointment of appellant against a post reserved for Scheduled Caste allegedly on the basis of a false certificate—Challenge to—Anthropological enquiry reveals that he does not belongs to Scheduled Caste community—Affirmed by the Scrutiny Committee and the High Court—SLP/Review Petition dismissed by the Supreme Court.*

E *Termination of services of incumbent without following due procedure—Challenge allowed by CAT holding that service of the appellant be not terminated without complying with the procedure laid down under Article 311 of the Constitution and Rules—Reversed by the High Court—On appeal, Held: Appointment of the incumbent cancelled not on the ground of misconduct but on the findings that he does not belongs to Scheduled Caste community—Constitutional safeguard provided in terms of Article 311 of the Constitution have been followed—Rules 6/7 of the Rules complied with—Since caste certificate found to be false, appointment of the incumbent was no appointment in the eyes of law—He usurped the post meant for a reserved candidate—Hence, he cannot claim such right which accrues to a Government Servant by virtue of holding a post in the Government service within the meaning of Article 311 of the Constitution—In the facts and circumstances of the case, he cannot plead equity nor the Court could examine it, nor he could claim his salary/pension since such right flows from a valid and legal appointment.*

G *Educational Institution—Reservation—Admission against reserved quota—Non declaration of result on completion of the course—Challenge to—Held: Since Caste Certificate was cancelled, incumbent cannot be allowed*

H

to take any benefit flowing from Caste Certificate—He would be treated as a person belonging to general category—However, non—declaration of result not going to affect the other party adversely—Hence, result may be declared.

Appellant was appointed as Assistant and later promoted as Deputy Superintendent of Police against the posts reserved for Scheduled Caste allegedly on the basis of false caste certificate. On receipt of a complaint, State Government ordered anthropological enquiry into the caste status of the appellant by the Kerala Institute for Research, Training & Development Studies of Scheduled Caste & Scheduled Tribes (KIRTADS). KIRTADS found that the appellant did not belong to Scheduled Caste community. Later, pursuant to the judgment of the Supreme Court on similar issue in *Kumari Madhur Patil v. Additional Commissioner*, [1994] 6 SCC 241, State Government constituted a Scrutiny Committee and referred the enquiry into the caste status of the appellant to the Committee. The Committee rejected the claim of the appellant. Aggrieved, appellant filed a petition which was dismissed by the High Court. The Special leave Petition and thereafter review petition was dismissed by the Supreme Court.

In the meanwhile, appellant filed O.A. before the Central Administrative Tribunal seeking direction to the State Government restraining them to terminate his services as per the proceedings of the Scrutiny Committee and without complying with the conditions laid down under Article 311 of the Constitution and the provisions of All India Service (Discipline and Appeal) Rules. Central Administrative Tribunal allowed the petition. Hence the present appeal.

Son of the appellant (appellant in the connected appeal No.90/2004) took admission in a Regional Engineering College against reserved quota. The Scrutiny Committee, constituted by the State Government, pursuant to the directions of the Supreme Court in a case on the same issue, cancelled the community certificate issued to him and consequently his admission was cancelled. He filed writ petitions for issuance of directions to the college authorities to permit him to appear in the examination. High Court allowed the petitions subject to the condition that result should not be published without obtaining further orders on the subject. Later, Writ petition as well as review petition was dismissed by the High Court. Special leave petition and later review petition was also dismissed by the Supreme Court. A Civil Miscellaneous Petition was filed by the appellant before

A the High Court and an Interlocutory Application was filed before the Supreme Court for declaration of his result. High Court dismissed the petition.

B In appeal to this Court, it was contended that decision of the Constitution Bench of this Court in Kumari Madhuri Patil's case to the extent that "admission or appointment can be cancelled without notice to the candidate" requires to be reconsidered since protection provided under Article 311 of the Constitution and Rules made thereunder cannot be taken away by a Judicial pronouncement; and that the appellant was entitled to Constitutional protection.

C In the connected appeal, it was contended that the appellant had become ineligible to apply for admission afresh to any other professional course; and that withholding of examination result would cause him grave and irreparable hardship.

D Dismissing Civil Appeal No. 89 of 2004 and allowing Civil Appeal No.90 of 2004, the Court

E HELD: 1.1. The misconduct alleged against the appellant was that he entered the service against reserved post meant for the Scheduled Caste/Scheduled Tribe on the basis of a false caste certificate and later promoted as Deputy Superintendent of Police against a post reserved for Scheduled Caste candidate. The Certificate was found to be false and consequently his appointment was cancelled. This action has been taken not for any misconduct of the appellant during his tenure as civil servant but on the finding that he does not belong to the Scheduled Caste as claimed by him before his appointment to the post. [369-H; 370-A-B]

F 1.2. In terms of the safeguards provided in Article 311 of the Constitution, due opportunity was given to the appellant to put-forth his point of view and defend himself. The issuance of a fresh notice under the Rules for proving the same misconduct which has already been examined by an independent body constituted under the direction of this Court, the decision of which has already been upheld upto this Court would be repetitive as well as futile. [370-E-F]

G 1.3. The order imposing penalty on the appellant has been passed by the Central Government as he was an IPS officer. The act or omission H on the part of the appellant pertains to the period prior to his joining the

service. Hence, there is no non-compliance of Rules 6 or 7 of the Rules. A
[371-A-B]

1.4. The appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. His appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. He cannot be allowed to take advantage of his own fraud in entering the service, and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. [371-C-F] B C D

Iswar Dayal Sah v. State of Bihar, (1987) Lab. I.C. 390 and *Rita Mishra v. Director, Primary Education, Bihar*, AIR (1988) Patna 26, approved.

1.5. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal appointment. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. [373-C] E F

1.6. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. Hence equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud. [373-E] G

1.7. Keeping in view the fact that the termination order against the H

A appellant in the present case was passed subsequent to the order of this Court in *Kumari Madhuri Patil's* case, it cannot be held that the law laid down in the said case is being applied retrospectively. Procedure/Rule laid down in *Kumari Madhuri Patil's* case is being applied to a case in which fraud was detected after the judgment. [373-G-H; 374-A]

B *Kumari Madhuri Patil v. Additional Commissioner*, [1994] 6 SCC 241, relied on.

2. The appellant had completed the course of his studies in the year 1996 under the interim orders of this Court which were subject to the final orders to be passed in the writ petition. No purpose would be served in withholding the declaration of the result of the incumbent on the basis of the examination already taken by him or depriving him of the degree in case he passes the examination. Hence his result be declared and he be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him. His caste certificate is cancelled. Henceforth, he will be treated as a person belonging to the general category for all purposes. [376-H; 377-A-C]

State of Maharashtra v. Milind and Ors., [2001] 1 SCC 4, followed.

E *Kumari Madhuri Patil v. Additional Commissioner*, [1994] 6 SCC 241, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 89 of 2004.

F From the Judgment and Order dated 28.7.2000 of the Kerala High Court in O.P. No. 10840 of 1997.

WITH

(C.A. No. 90 of 2004.)

G R.N. Trivedi, Additional Solicitor General, Ranjit Kumar, Kailash Vasdev, E.R. Kumar, P.H. Parekh, K.R. Sasiprabhu, Ms. V. Mohana, Ajay Agarwal, Ms. Sushma Suri and Shreekant N. Terdol for the appearing parties.

The Judgment of the Court was delivered by

H **BHAN, J.** Leave granted.

This judgment shall dispose of both the Civil Appeals bearing Civil Appeal No. 89 of 2004 (arising out of SLP) No. 18503 of 2000) and Civil Appeal No.90 of 2004 (arising out of SLP) No. 12261 of 2001), arisen from a common order dated 28.7.2000 passed by the High Court of Kerala. The former has been filed by R. Vishwanatha Pillai challenging the order of the High Court wherein the High Court has set aside the order of the Central Administrative Tribunal in which a direction was issued to the State not to remove the appellant from service without complying with the provisions of Article 311 of the Constitution and the rules framed thereunder. High Court held that the appellant was not entitled to the protection provided under Article 311 of the Constitution and the Rules framed thereunder as the appellant had obtained appointment on the basis of false caste certificate and would be deemed not to have been appointed to the service validly ever. The second appeal has been filed by his son Vimal Ghosh V. whose admission to the Regional Engineering College, Calicut has been cancelled on the basis that he obtained admission to the College against the seat reserved for a Scheduled Caste on the basis of false caste certificate. After the passing of the order by the High Court, an order removing the appellant from service was passed on 11.10.2000 by the appointing authority.

We shall take up the Civil Appeal No.89 of 2004 (arising from the SLP) No. 18503 of 2000) first and shall deal with the other appeal separately.

In the school record the caste of R. Vishwanatha Pillai (hereinafter referred to as "the appellant") was recorded as "Veduvar Pillai". His father was one Radhakrishna Pillai. He was a "Nair" by caste. His mother's caste was "Veduvar Pillai". "Nair" as well as "Veduvar Pillai" are forward castes. The caste of his brother and other two sisters in the school record was also recorded as belonging to forward caste. Appellant obtained a community certificate on 14.10.1969 from the Tahsildar, Ambalappuzha stating that he was a member of the "Vettuvan" community. On the basis of this certificate he was able to get an appointment as Assistant in the Legislative Secretariat in the year 1973 against a post reserved for Scheduled Caste. In the year 1977 he was selected as direct recruit to the post of Deputy Superintendent of Police against a seat reserved for Scheduled Caste on the basis of caste certificate obtained by him. He was subsequently promoted and included in the cadre of Indian Police Service (IPS). The Government of Kerala on the basis of a complaint received, ordered a full fledged anthropological enquiry into the caste status of the appellant. It was alleged that the appellant did not belong to the Scheduled Caste and had usurped the post meant for Scheduled

A Caste. The preliminary investigation was conducted by the Kerala Institute for Research, Training & Development Studies of Scheduled Caste and Scheduled Tribes (for short "KIRTADS") which is a department under SC/ST Development Department which conducts anthropological investigation into the caste status of individual, whenever it is doubted. The appellant was served with a notice. He participated in the enquiry conducted by the
B KIRTADS and during the enquiry (1992) the appellant claimed that he belonged to "Kuruvan" community which is also a Scheduled Caste community as per the Scheduled Caste order of Kerala. KIRTADS after examining both the oral and documentary evidence submitted a report stating that the appellant did not belong to Scheduled Caste community, as claimed.

C Pursuant to the judgment of this Court in *Kumari Madhuri Patil v. Additional Commissioner*, [1994] 6 SCC 241, the Government of Kerala constituted a Scrutiny Committee by a notification dated 8.5.1995. The enquiry into the caste status was referred to the said Scrutiny Committee. The appellant was duly notified by the said Scrutiny Committee. Initially, the appellant
D challenged the authority of the Scrutiny Committee before the High Court but subsequently participated in the proceedings and entered appearance through counsel and submitted the documentary evidence in support of his claim of being Scheduled Caste before the Committee. The appellant submitted 117 documents. The Scrutiny Committee by an order dated 18.11.1995 rejected the claim of the appellant in a well considered and elaborate order. The
E appellant challenged the order of the Scrutiny Committee in the High Court of Kerala in O.P. No. 963 of 1996. The petition was dismissed by the Division Bench on 26.2.1997 by a reasoned order. The order of the Scrutiny Committee was upheld. The special leave petition bearing No. 11199 of 1997 filed against the order of the High Court was dismissed on 1.5.1998. The review
F petition in the order of the SLP was also dismissed on 12.8.1998.

Thereafter, the appellant filed O.A. No. 340 of 1997 before the Central Administrative Tribunal (Ernakulam Bench) seeking direction against the respondents not to terminate the service of the appellant based on the proceedings of the Scrutiny Committee, and also not to terminate the service
G without satisfying the conditions laid down in Article 311 of the Constitution of India along with the provisions of All India Service (Discipline and Appeal) Rules, 1969 (hereinafter referred to as "the Rules"). The Central Administrative Tribunal allowed the O.A. on 24.4.1997 and directed that the service of the appellant be not terminated without following the procedure laid down in
H Article 311 and also under the Rules. The said decision of the Central

Administrative Tribunal was challenged before the High Court of Kerala by the State of Kerala in O.P. No. 10840 of 1997. A

The High Court by the impugned order accepted the writ petition and reversed the order of the Central Administrative Tribunal. It was held that the question regarding the caste status of the appellant stood settled in the earlier proceedings upto this Court and was no longer debatable. The competent authority had found that the appellant did not belong to Scheduled Caste. The very basis of his appointment was taken away. Since his appointment was no appointment in the eye of law, the appellant could not claim any right to the post to which he was appointed on the basis of a false caste certificate thereby usurping the post meant for a Scheduled Caste. It was held that the appellant would not be entitled to the protection provided under Article 311 of the Constitution of India as well as the Rules framed thereunder. The High Court relied upon the judgment of this Court in *Kumari Madhuri Patil's* case (supra). After the judgment of the High Court the appellant was removed from service by an order dated 12.10.2000. Aggrieved against the said order the present appeal has been filed. B C D

At the admission stage notice was issued on the contention raised by the counsel for the appellant that the decision of this Court in *Kumari Madhuri Patil's* case (supra) required reconsideration in so far as it directs that "admission or appointment can be cancelled without notice to the candidate" being contrary to the provisions of Article 311 of the Constitution of India. Later on 19.2.2002 it was suggested to the Court that the order of dismissal be substituted by an order of compulsorily retiring the appellant or an order of removal from service to protect the pensionary benefits as he had rendered about 27 years of service. This was not accepted by the respondents. E

Shri Ranjit Kumar, learned senior counsel appearing for the appellant fairly conceded that the question regarding the validity of the caste certificate has become final after the dismissal of the Special Leave Petition No. 11199 of 1997 and is no longer debatable. F

It was contended on behalf of the appellant that the decision of this Court in *Kumari Madhuri Patil's* case (supra) directed that "admission or appointment can be cancelled without notice to the candidate" requires to be reconsidered. According to him the protection under Article 311 of the Constitution of India and the Rules made thereunder cannot be taken away by a judicial pronouncement and the appellant would be entitled to the G H

A constitutional protection provided to him under Article 311 of the Constitution and the Government was required to comply with the All India Service (Discipline and Appeal) Rules, 1969 before terminating his services.

In *Kumari Madhuri Patil's* case (supra) the admissions were taken by two sisters to the professional courses on the basis of false caste certificate produced by them, which were cancelled after the report submitted by the Verification Committee to the effect that the certificates produced by the appellants therein were false and that the appellants did not belong to the Scheduled Castes/Scheduled Tribes. The Court observed that all citizens were to be treated equally. That the Constitution guaranteed to the citizens equality before law and the equal protection of law. Though Articles 14 and 15 (1) prohibit discrimination among citizens but Article 15 (4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article 16(1) requires equality of opportunity to all citizens in the matters of appointment to an office or a post under the Union or a State Government or a Public Undertaking etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of castes not adequately represented in the services under the State. That the admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. Thereafter the Court laid down the procedure for the grant of social status certificate, its due verification and the examination by the Scrutiny Committee of its genuineness. If the certificate was found to be genuine then no further action was required to be taken but if the caste certificate produced was found to be false or fraudulently obtained then immediate action was required to be taken. The findings recorded by the Scrutiny Committee were made final and conclusive which could not be challenged in any suit or any proceedings except in the High Court under Article 226 of the Constitution of India. The Scrutiny Committee was required to communicate its report under a registered cover to the educational institution as well as the appointing authority. The educational institution or the appointing authority on receipt of the said report was required to cancel the admission/appointment without any further notice to the candidate and debar the candidate from the further study or continue in office in a post. This was done to simplify the procedure for grant of the social status certificate as well as its scrutiny, and, if found to be false the follow-up action to be taken. It was done primarily for quick disposal of such matters so that the genuine Schedules Castes and Scheduled Tribes persons

are not deprived of the benefits conferred on them under the Constitution of India and to debar the non genuine Scheduled Castes and Scheduled Tribes from taking advantage of the benefit conferred under the Constitution on the basis of false caste certificate obtained by them by committing a fraud. The persons who had obtained admission or got the appointment on the basis of false caste certificate thereby usurping the seat/post reserved for the Scheduled Castes/Scheduled Tribes were required to be weeded out by prompt action. It was held:

“13. The Admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude.”

Article 311 provides that a member of a civil service of the Union or the State shall not be dismissed or removed by any authority subordinate to that by which he was appointed. That the employee shall not be dismissed or removed or reduced in rank except after an inquiry, in which he has been informed of the charges against him and to give a reasonable opportunity of being heard in respect of those charges. In exercise of the power conferred by sub-section (1) of Section 3 of the All India Services Act, 1951, the Central Government, in consultation with the Governments of the States concerned, framed the All India Services (Discipline and Appeal) Rules, 1969. These Rules lay down the detailed procedure as to the manner in which the action is required to be taken against a delinquent public servant. Relying upon the Article 311 and provisions of the Rules, it was contended by Shri Ranjit Kumar, learned senior counsel for the appellant, that the service of the appellant could not be terminated without following the procedure laid therein.

We do not find any substance in this submission. The misconduct alleged

- A against the appellant is that he entered the service against reserved post meant for the Scheduled Caste/Scheduled Tribe on the basis of a false caste certificate. While appointing the appellant as Deputy Superintendent of Police in the year 1977, he was considered as belonging to the Scheduled Caste. This was found to be wrong and his appointment is to be treated as cancelled.
- B This action has been taken not for any misconduct of the appellant during his tenure as civil servant but on the finding that he does not belong to the Scheduled Caste as claimed by him before his appointment to the post. As to whether the certificate produced by him was genuine or not was examined in detail by the KIRTADS and the Scrutiny Committee constituted under the orders of this Court. Appellant was given due opportunity to defend himself.
- C The order passed by the Scrutiny Committee was upheld by the High Court and later on by this Court. On close scrutiny of facts we find that the safeguards provided in Article 311 of the Constitution that the Government servant should not be dismissed or removed or reduced in rank without holding an inquiry in which he has been given an opportunity to defend himself stands complied with. Instead of departmental inquiry the inquiry has been conducted
- D by the Scrutiny Committee consisting of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) The Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer having intimate knowledge in the verification and
- E issuance of the social status certifies, who were better equipped to examine the question regarding the validity or otherwise of the caste certificate. Due opportunity was given to the appellant to put-forth his point of view and defend himself. The issuance of a fresh notice under the Rules for proving the same misconduct which has already been examined by an independent
- F body constituted under the direction of this Court, the decision of which has already been upheld upto this Court would be repetitive as well as futile. The second safeguard in Article 311 that the order of dismissal, removal and reduction in rank should not be passed by an authority subordinate to that by which he was appointed has also been met with. The impugned order terminating the services of the appellant has been passed by his appointing
- G authority.

Rule 6 of the Rules provides the penalties 'major' or 'minor' which can be awarded to the delinquent officer on being found guilty of misconduct alleged against him. Rule 7(1) provides that where a member of the service has committed any act or omission, either before his appointment or

H subsequently, which renders him liable to any penalty specified in Rule 6,

then, the penalty of dismissal, removal or compulsorily retirement shall not be imposed in the case of Central Government employee except by an order of the Central Government {Rule 7(2)}. In the present case, the order has been passed by the Central Government as the appellant was an IPS officer. The act or omission on the part of the appellant pertains to the period prior to his joining the service. There is no non-compliance of Rules 6 or 7 of the Rules.

This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

In *Ishwar Dayal Sah v. State of Bihar*, (1987) Lab.I.C. 390, the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was

A entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and therefore void. B was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly C flow. It was held:

“If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possible flow from such a tainted force. In such a situation, the question is whether the person concerned is D at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Art. 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Art. 311 is not attracted.”

E The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education, Bihar*, AIR (1988) Patna 26. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench F held:

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that G the very appointment is illegal and is non est in the eye of law. no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow it.”

H We agree with the view taken by the Patna High Court in the aforesaid cases.

It was then contended by Shri Ranjit Kumar, learned senior counsel for the appellant that since the appellant has rendered about 27 years of service the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission, as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

Another point argued by the learned senior counsel for the appellant was that the law laid down by this Court in *Kumari Madhuri Patil's* case (supra) would operate prospectively and could not be applied in the case of the appellant. We do not find any substance in this submission as well. The judgment in *Kumari Madhuri Patil's* case (supra) was delivered on 2.9.1994. Inquiry against the appellant had started in the year 1988 by KIRTADS. Report of the Inquiry Committee is dated 11.4.1994. Report of the Scrutiny Committee is dated 18.11.1995. The order of removal from service is dated 11.10.2000. Keeping in view the fact that the order was passed subsequent to the order of this Court it cannot be held that the law laid down in *Kumari Madhuri Patil's* case (supra) is being applied retrospectively. Because of this decision cases which were concluded prior to the judgment of the Court are not being reopened. Procedure/Rule laid down in *Kumari Madhuri Patil's*

A case (supra) is being applied to a case in which fraud was detected after the judgment.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same.

B *Civil Appeal No. 90 of 2004* (arising from the SLP (C) No. 12261 of 2001)

C Appellant herein is the son of R. Vishwanatha Pillai, the appellant in Civil Appeal No.89 of 2004 (arising from the SLP (C) No. 18503 of 2000). He was born on 10.6.1974. His caste was shown as Scheduled caste in the school record at the time of admission. He applied for the admission to the Regional Engineering College at Calicut against a seat reserved for a Scheduled caste candidate. He was given admission on the basis of the caste certificate dated 22.6.1992. The Scrutiny Committee constituted under the orders of this Court on 18.11.1995 held that the appellant's father did not belong to the Scheduled caste and cancelled the community certificate issued to him. D Consequently, the caste certificate issued to the appellant was cancelled. On the basis of the KIRTADS report and the findings of the Scrutiny Committee communicated to the Regional Engineering College, Calicut the admission of the appellant was cancelled and his name was removed from the rolls of the College.

E This order was challenged by the appellant in the High Court by filing a writ petition being O.P. No. 18774 of 1995. In the writ petition the appellant filed an application praying for the issuance of a direction to the College to permit the appellant to appear for the 6th semester examination which was to commence on 6.12.1995. On 15.12.1995 the High Court allowed the F appellant to appear in the 6th semester examination subject to the condition that result be not published without obtaining further orders from the Court. Later on, on a similar application filed by the appellant he was allowed to continue the studies in the College and sit for the 7th and 8th semester examinations. Pursuant to the permission granted by the High Court the G appellant appeared for 6th, 7th and 8th semester examinations but the result was not declared. Appellant completed his engineering course in the year 1996.

The writ petition filed by the appellant was dismissed by the Division Bench on 26.2.1997. Review Petition No. 174 of 1997 for the review of the H aforesaid order was also dismissed by the Division Bench on 3.7.1997.

Appellant, thereafter, filed Special Leave Petition (Civil) No. 13524 of 1997 in this Court, which was dismissed on 1.5.1998. Review Petition filed for the review of the order dated 1.5.1998 was also dismissed on 12.8.1998. Thereafter, the appellant filed interlocutory application in this Court seeking declaration of the results of 6th, 7th and 8th semester examinations taken by him. The said interlocutory application was not entertained by the Registry of this Court and put up before the Court for orders.

Thereafter, the appellant filed Civil Misc. Petition No. 30521 of 2000 in O.P. No. 18774 of 1995 in the High Court for direction to the respondents to publish the results of the 6th, 7th and 8th semester examinations of the appellant on whatever condition the Court imposed. He moved the application as he had completed his course in the year 1996 and had appeared in all the examinations though under the orders of the Court. It was pleaded by him that he had become ineligible to apply for admission to any other professional college as he had become over age. It was further stated by him that he did not make any false claim as to his caste. Because of his father is declared Scheduled caste at that time he was issued the caste certificate. That the withholding of the appellant's result and consequently his degree would not give any material advantage to the respondent but on the other hand the same would cause grave and irreparable loss and hardship to the appellant and would gravely affect his future career. He relied upon two judgments of this Court, namely, *Kumari Madhuri Patil's* case (supra) as well as a Constitution Bench judgment of this Court in *State of Maharashtra v. Milind and Ors.*, [2001] 1 SCC 4 in which in spite of fact that caste certificate produced by the candidate was found to be false, the result of the candidate was directed to be declared with the stipulation that in future the candidate shall not take any benefit/advantage on the basis of false caste certificate obtained by him/her.

We have heard learned counsel for the parties. In *Kumari Madhuri Patil's* case (supra) the Court while upholding the cancellation of the social status fraudulently obtained by the candidate allowed her to appear in the final year examination of the MBBS course with the rider that she would not be entitled to take any benefit in future on the basis of the social caste certificate obtained by her. It was observed:

"18. The Delay in the process is inevitable but that factor should neither be considered to be relevant nor be an aid to complete the course of study. But for the fact that she has completed the entire

A course except to appear for the final examination, we would have directed to debar her from prosecuting the studies and appearing in the examination. In this factual situation no useful purpose would be served to debar her from appearing for the examination of final year MBBS. Therefore, we uphold the cancellation of the social status as Mahadeo Koli fraudulently obtained by Km Suchita Laxman Patil, but she be allowed to appear for the final year examination of MBBS course. *She will not, however, be entitled in future for any benefits on the basis of the fraudulent social status as Mahadeo Koli.* However, this direction should not be treated and used as a precedent in future cases to give any similar direction since the same defeats constitutional goals.”

[Emphasis supplied]

In *State of Maharashtra v. Milind and Ors.*, (supra), a Constitution Bench of this Court while permitting the candidate to retain the degree obtained by him even though his claim as member of the Scheduled Tribe was rejected observed:

E “Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this length of time it is for nobody’s benefit to annul his admission. Huge amount is spent on each candidate for completion of joining of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect *the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose.* 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.”

[Emphasis supplied]

In this case we find that the appellant had joined the Regional Engineering College in the year 1992. He completed the course of his studies in the year 1996 under the interim orders of this Court which were subject to the final orders to be passed in the writ petition. No purpose would be served in withholding the declaration of the result on the basis of the examination already taken by him or depriving him of the degree in case he passes the examination. In terms of the orders passed by the Constitution Bench of this Court in *State of Maharashtra v. Milind and Ors.*, (Supra) we direct that his result be declared and he be allowed to take his degree with the condition he will not be treated as a Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him. His caste certificate has been ordered to be cancelled. Henceforth, he will be treated as a person belonging to the general category for all purposes.

For the reasons stated above, the appeal is allowed and the impugned order dated 15.3.2002 passed by the High Court of Kerala is set aside.

S.K.S.

C.A. No. 89/04 dismissed.

C.A. No. 90/04 allowed.