

B. H. KHAWAS

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v.

UNION OF INDIA & OTHERS

(Civil Appeal No. 9182 of 2012)

AUGUST 12, 2016

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[ADARSH KUMAR GOEL AND A.M. KHANWILKAR, JJ.]

Service Law – Termination of provisional appointment prior to confirmation – Validity – Appellant provisionally appointed against post reserved for Scheduled Tribe, subject to verification of caste certificate – Caste Certificate Scrutiny Committee opined that appellant did not belong to “Halba” Scheduled Tribe as claimed by him, but belonged to caste “Koshti” which was not a Scheduled Tribe – Accordingly, department terminated the appointment of appellant on ground that he did not belong to Scheduled Tribe – Held: Appointment of appellant was provisional and subject to verification of his caste claim of Halba, through proper channel – Appointment in terms of the appointment letter, was to a temporary post and was so treated by the department and thus was not final – Nothing brought on record by the appellant to show that his post was treated as confirmed by the department before issuance of termination order – High Court right in restoring the termination order.

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Dismissing the appeal, the Court

HELD: 1.1 The moot question in the present case is: whether the subject appointment of the appellant to the post of “Chemical Examiner” in Customs and Central Excise Department has in fact become final? Unlike the confirmed appointment of the appellant to the post of Assistant Chemist, in the Geological Survey of India, his appointment to the post of “Chemical Examiner” in the Customs and Central Excise Department was provisional and subject to verification of his caste claim of “Halba”. It was not treated as final by the Department till the impugned termination order was issued. Nothing has been brought on record by the appellant to show that his appointment on that post was in fact treated as confirmed

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A by the concerned Department, before issuing the impugned order of termination. [Para 9] [780-D-F]

1.2 Admittedly, the appellant was appointed to the post of Chemical Examiner in the Customs and Central Excise Department, pursuant to the appointment letter. Condition No. (vii) therein unambiguously mentioned that as the appointment of the appellant was against the post reserved for Scheduled Tribes, it was provisional and subject to verification of his caste certificate through a proper channel. The caste certificate of the appellant was already under scrutiny in terms of reference made by the Controller General, of the Indian Bureau of Mines, Nagpur, where the appellant was appointed in similar manner on the post reserved for Scheduled Tribes. Appointment of the appellant as Chemical Examiner Grade-I in Customs and Central Excise Department in terms of appointment letter, was to a temporary post, on provisional basis and subject to verification of his caste certificate through a proper channel. [Para 10] [780-H; 781-A-D]

State of Maharashtra vs. Milind and Others (2001) 1 SCC 4: 2000 (5) Suppl. SCR 65 – distinguished.

Kavita Solunke v. State of Maharashtra and Ors. (2012) 8 SCC 430 : 2012 (7) SCR 251; *Shalini v. New English High School Association and Others* (2013) 16 SCC 526 : 2013 (12) SCR 807; *R. Ummikrishnan and Another v. V. K. Kahanudevan and Others* (2014) 4 SCC 434 : 2014 (1) SCR 350 – held inapplicable.

Union of India v. Dattatray s/o Namdeo Mendhekar & Ors. (2008) 4 SCC 612 : 2008 (2) SCR 1096 – referred to.

1.3 Appellant not entitled for any relief on the finding that his appointment as Chemical Examiner in the Customs and Central Excise Department had not attained finality. The Scrutiny Committee had unambiguously held that the appellant does not belong to “Halba” community, a notified Scheduled Tribe in Maharashtra. High Court was right in allowing the writ petition filed by the Department restoring the termination order. [Para 13] [782-E, G]

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Case Law Reference

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|------------------------|-------------------|--------|---|
| 2000 (5) Suppl. SCR 65 | distinguished | Para 5 | A |
| 2008 (2) SCR 1096 | referred to | Para 5 | |
| 2012 (7) SCR 251 | held inapplicable | Para 6 | |
| 2013 (12) SCR 807 | held inapplicable | Para 6 | B |
| 2014 (1) SCR 350 | held inapplicable | Para 6 | |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9182 of 2012.

From the Judgment and Order dated 08.02.2012 of the High Court of Judicature at Bombay in the Writ Petition No. 7101 of 2005.

Rakesh K. Khanna, Sr. Adv., Aseem Mehrotra, Mrs. (Dr.) Rashmi Khanna, Ms. Shefali Jain, Ms. Anandita, Ms. Preeja Nair, Rajesh Prasad Singh, Advs. for the Appellants.

Yashank Adhiyaru, Sr. Adv., Rajiv Nanda, Ms. Rekha Pandey, B. K. Prasad, Advs. for the Respondents.

The Judgment of the Court was delivered by

A.M. KHANWILKAR, J. 1. This appeal challenges the judgment of the Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 7101 of 2005 dated 8th February 2012. The High Court reversed the decision of the Central Administrative Tribunal, Bombay Bench at Mumbai in OA No. 419 of 2004, dated 3rd March, 2005. The Tribunal had allowed the original application filed by the appellant whilst setting aside the termination order dated 8th June, 2004 and instead had directed the respondents to re-instate the appellant in service.

2. Briefly stated, the appellant was appointed as “Chemical Examiner Grade–I” in the Customs and Central Excise Department in the pay scale of Rs. 3000-100-3500-125-4500, *vide* appointment letter dated 16th June, 1995, subject to fulfilling terms and conditions mentioned herein. As the appellant was appointed against the vacancy reserved for Scheduled Tribe, Condition (vii) of the said Appointment Letter is of some relevance. It reads thus:-

“(vii). In case you belong to Scheduled Caste/Tribe, the appointment is provisional and is subject to verification of Scheduled Caste/Tribe certificate through proper channels

A and if on verification, your claim to belong to Scheduled Caste
or Scheduled Tribe, as the case may be, is found to be false,
your services will be terminated forthwith without assigning
any reason and without prejudice to such further action that
may be taken under the Indian penal Code for production of
 B false certificate.”

(emphasis supplied)

3. Before joining the post of Chemical Examiner in the Customs and Central Excise Department on 21st November, 1995, the appellant had worked in other Departments of the Government of India; on being
 C selected through the Union Public Service Commission, to the post of “Senior Technical Assistant” in the Indian Bureau of Mines from 14.02.1985 to 12.05.1986; as an “Assistant Chemist (Group B Gazetted)” in the Geological Survey of India between 15.05.1986 to 31.05.1989; as
 D “Chemist (Groups A Gazetted)” in the Indian Bureau of Mines between 05.06.1989 up to 12.04.1994; and as “Deputy Director (Ind. Hygiene)” in the Directorate General Factory Advice Services and Labour Institutes from 13.04.1994 to 10.11.1995. The appellant was declared confirmed in the grade of “Assistant Chemist” w.e.f. 15.05.1988 vide notification dated 05.05.1995. All these appointments were made against the Scheduled Tribe reserved category. However, lastly, the appellant joined
 E the Customs and Central Excise Department as “Chemical Examiner Grade I”, from 21st November, 1995 pursuant to appointment order dated 16th June, 1995. He was working on that post till his services were terminated vide order dated 8th June, 2004, consequent to the decision of the Caste Certificate Scrutiny Committee – that the appellant belonged to caste “Koshti”, which is not a Scheduled Tribe in the State of
 F Maharashtra.

4. When the appellant was appointed in the Indian Bureau of Mines, as Chemist in Group A, the said Department vide letter dated 13th January, 1989 had referred his case for Caste Certificate scrutiny to the Caste Certificate Scrutiny Committee, Nagpur. The Scrutiny Committee after
 G due enquiry answered the reference vide order dated 16th January, 2001. It found that the appellant belongs to Caste “Koshti”, which is not a Scheduled Tribe. That decision of the Scrutiny Committee was challenged by the appellant by way of a Writ Petition No. 376 of 2001, before the High Court of Judicature at Bombay, Nagpur Bench at Nagpur, as having
 H been passed in violation of procedural compliances. That contention

commended to the High Court, as a result of which the decision of the Scrutiny Committee was quashed and set aside and the matter was remanded to the Scrutiny Committee for redetermination of the claim afresh. After fresh enquiry in terms of the High Court decision, vide order dated 10th February, 2003, the Scrutiny Committee finally opined as follows:-

" After considering all the documents and facts & in exercise of the powers vested vide Government Resolution, Corrigendum and Maharashtra Act quoted in the preamble at Sr. No.1 to 3 above, the Caste Scrutiny Committee has come to the conclusion that Shri Bhojraj Haribahu Khawas does not belong to the Halba, Scheduled Tribe and as such his claim towards the same is held invalid. And his caste Certificate of his belonging to "Halba", Scheduled Tribe granted by the Executive Magistrate, Nagpur Vide R.C. No.181/MRC-81/81/82, dated 14.9.81 is hereby cancelled."

5. On receipt of the said order of the Caste Certificate Scrutiny Committee, the appellant made representations to the Chairman, Central Board of Excise and Customs on 20.01.2004 and 21.01.2004. The substance of the representations was founded on the caste certificate issued by the Executive Magistrate, dated 14th September, 1986, which, the appellant asserted was obtained bona-fide and in good faith on the basis of the school record indicating that the appellant belongs to Caste "Halba", a notified Scheduled Tribe in Maharashtra. The appellant further asserted that he did not furnish false information of his caste; and more so the question whether or not "Koshti" caste belongs to "Halba" Scheduled Tribe was subject matter of immense debate and was conclusively answered by the Constitution Bench of the Supreme Court in the case of **State of Maharashtra vs. Milind and Others**¹, decided on November 28, 2000. The appellant thus contended that his appointment already made on the basis of the caste certificate issued prior to that decision was protected even in terms of the dictum of the Constitution Bench in Milind's case. This stand of the appellant, however, did not find favour with the Department. The Government of India, Ministry of Finance, Department of Revenue, New Delhi instead issued an Office Order No. F.No.A-12026/7/91-Ad.II-B, dated 8th June, 2004, cancelling the appointment of the appellant on the ground that the appellant does

¹ (2001) 1 SCC 4

- A not belong to Scheduled Tribe. This decision was the subject matter of challenge before the Central Administrative Tribunal by way of Original Application No. 491 of 2004. The Tribunal acceded to the contention of the appellant that the appointment made prior to the decision in Milind's case will have to be protected. The objection of the respondents that the observation of the Constitution Bench in Milind's case was not applicable to "appointments" was rejected. The Tribunal noted that, in a large number of cases, the Bombay High Court has protected the appointments of persons belonging to caste "Koshti" following the dictum of the Constitution Bench in Milind's case. Accordingly, the Tribunal allowed the original application and directed re-instatement of the appellant in service by setting aside the order of termination. The operative order of the Tribunal reads thus:

"On the whole, we think that applicant has to be given similar benefit as has been given by the Hon'ble High Court of Bombay in a number of cases. We direct the respondents to reinstate the applicant as his services were terminated only on the limited ground of his not belonging to Halba S/T Community. The order dated 8.6.2004 is quashed and set aside. We, however, make it clear that neither the applicant nor his children will claim any further benefit available to a S/T candidate and they shall be treated as belonging to Open Category. It is also clarified that the respondents are free to take any action against the applicant regarding his service for any other reasons than his not belonging to Halba S/T community."

- F Against this decision, the Department filed a writ petition before the High Court, being Writ Petition No. 7101 of 2005. The Division Bench of the Bombay High Court, relying on the decision of three Judges' Bench of this Court in the case of **Union of India v/s. Dattatray s/o Namdeo Mendhekar and Ors**², allowed the writ petition and restored the termination order dated 8th June, 2004. The appellant has, therefore, approached this Court by way of present appeal.

6. The principal argument of the appellant is that the decision of the Constitution Bench in Milind's case itself protects all appointments which have become final. The decision of the three Judges' Bench relied by

H ² (2008) 4 SCC 612

the High Court in the impugned judgment has been considered and explained in the subsequent decisions in the case of **Kavita Solunke v/s State of Maharashtra and Ors.**³, **Shalini v/s New English High School Association and Others**⁴ and in **R. Unnikrishnan and Another v/s V.K. Kahanudevan and Others**⁵. According to the appellant, following the consistent view of this Court, the appointment, even in the case of the appellant, should be protected. For, the claim of the appellant was not a false claim, but a *bona fide* claim founded on the entries in the school record and the certificate issued by the Executive Magistrate. It is not a case of false or dishonest claim set up by the appellant; or for that matter fabrication of records or reliance placed on fraudulent caste certificate.

7. Per contra, the respondents contend that the principle stated in the subsequent decisions of this Court will be of no avail to the appellant. In that, the appellant was appointed on a provisional basis and subject to verification of his caste certificate through a proper channel. The Caste Certificate Scrutiny Committee having finally considered the factual position and opined that the appellant does not belong to caste "Halba", a notified Scheduled Tribe but belongs to caste "Koshti", was not entitled to continue on the post reserved for Scheduled Tribes.

8. Before we proceed further, it would be apposite to reproduce the relevant portion from the decision of the Constitution Bench, in Milind's case which is the fulcrum for claiming protection by the appellant. In paragraph 38, in that decision, the Court observed thus:-

"38. 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 maybe he is practicing 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 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

³ (2012) 8 SCC 430

⁴ (2013) 16 SCC 526

⁵ (2014) 4 SCC 434

A *circumstances, this judgment shall not affect the degree*
obtained by him and his practicing 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
 B *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 matters, we make it clear that the
admissions and appointments that have become final, shall
remain unaffected by this judgment.”

C (emphasis supplied)

The last sentence in this paragraph is crucial. The Court made it clear that the admissions and appointments that have “become final” shall remain unaffected, by its judgment.

D 9. The moot question in the present case is: whether the subject
 appointment of the appellant to the post of “Chemical Examiner” in
 Customs and Central Excise Department has in fact become final?
 Unlike the appointment of the appellant to the post of Assistant Chemist,
 in the Geological Survey of India, was confirmed in terms of Notification
 No. 1225 B/A-31013/Asstt. Chemist/95-19C, dated 5.5.1995 with effect
 E from 15th May, 1988, his appointment to the post of “Chemical Examiner”
 in the Customs and Central Excise Department with which we are
 concerned was provisional and subject to verification of his caste claim
 of “Halba”. It was not treated as final by the Department till the impugned
 termination order was issued. Nothing has been brought to our notice by
 F the appellant to show that his appointment on that post was in fact treated
 as confirmed by the concerned Department, before issuing the impugned
 order of termination. Had it been a case of termination from the post of
 “Assistant Chemist”, on which the appellant was confirmed by the
 concerned Department, the argument canvassed by the appellant would
 have assumed some significance and could be tested with reference to
 G the recent decisions of this Court pressed into service by the appellant.

10. Admittedly, the appellant was appointed to the post of Chemical
 Examiner in the Customs and Central Excise Department, where he
 joined on 24th November, 1995, pursuant to the appointment letter bearing
 No. F.No.A-12026/7/91-AD.II-B, dated 16th June, 1995. Condition No.
 H (vii) therein unambiguously mentions that as the appointment of the

appellant was against the post reserved for Scheduled Tribes, it was provisional and subject to verification of his caste certificate through a proper channel. The caste certificate of the appellant was already under scrutiny in terms of reference made by the Controller General, of the Indian Bureau of Mines, Nagpur, where the appellant was appointed in similar manner on the post reserved for Scheduled Tribes. The mere fact that the Scrutiny Committee was not able to complete the enquiry on the question of validity of caste certificate, before the appellant resigned from the services of the Indian Bureau of Mines and joined another Department of Government of India, that would not extricate the appellant from the requirement of verification of his caste claim of "Halba", a notified Scheduled Tribe in Maharashtra. For, the appointment of the appellant as Chemical Examiner Grade-I in Customs and Central Excise Department in terms of Appointment Letter Dated 16th June, 1995 (Annexure P10), was to a temporary post, on provisional basis and subject to verification of his caste certificate through a proper channel. In such a case, the principle expounded in the decisions relied by the appellant will have no application.

11. In the case of **Kavita Solunke** (*supra*), it was not in dispute that the appellant had satisfactorily completed the period of probation and was confirmed in service as an Assistant Teacher in due course. Enquiry in respect of her caste claim was insisted upon "after a decade" from her initial appointment, obviously after the decision in Milind's case. The Court held that the appointment of the appellant having attained finality could not be disturbed. Indeed, the Court noted that there was nothing to indicate that the caste certificate of the appellant was false, fabricated or manipulated by concealment or otherwise. That observation is in the context of the matter in issue before the Court, for passing an order in equity. Even in the next case, in **Shalini** (*supra*) which follows the dictum in Kavita's case, it is seen that the appointment of the appellant as an Assistant Teacher had attained finality as she was in service since 6th November, 1981 and confirmed w.e.f. 1st January, 1984, for which the Court held that the same should not be disturbed. Similarly, in the case of **Unnikrishnan and Another** (*supra*), the Court was dealing with the matter where the caste claim was already made subject matter of challenge before the Court and was upheld. It was a case where a judicial order passed *inter partes* had become final on that issue. In that case, the caste claim enquiry was insisted because of the subsequent Presidential Order excluding the concerned caste from the entry notified

A under notification dated 31st August 2007. The Court, *inter alia*, opined that it was not open to reconsider the settled judicial pronouncement on the caste claim *inter partes*.

B 12. In none of the cases pressed into service by the appellant, the appointment, as in this case, was on provisional basis and subject to verification of caste certificate through proper channel. It necessarily follows that the principle expounded in the three decisions referred to above, can have no application to the case on hand. Indubitably, if the argument of the appellant was accepted, it would inevitably mean that all appointments made before 28.11.2000 must be protected even though it had not become final. That would also mean that all caste certificates issued to persons belonging to “Koshti” community, as being “Halba” Scheduled Tribe in Maharashtra, prior to November 28, 2000 (the day on which Milind’s case was decided by the Constitution Bench), have been validated irrespective of the opinion of the Scrutiny Committee qua those certificates. That cannot be countenanced. For, caste “Koshti” is neither a synonym nor part of a notified Scheduled Tribe “Halba” in Maharashtra.

C 13. Considering the above, the appellant is not entitled for any relief on the finding that his appointment as Chemical Examiner in the Customs and Central Excise Department vide appointment letter dated 16th June, 1995 had not attained finality. Notably, the Caste Certificate Scrutiny Committee has finally answered the factum of caste claim of the appellant on the basis of relevant material, which is indicative of the fact that in the relevant official record pertaining to even the close relatives of the appellant (grandfather and uncle), the caste recorded is “Koshti” and occupation shown as weaving separately. The appellant has allowed that decision of the Caste Certificate Scrutiny Committee dated 10th February, 2003/22nd April, 2004 to attain finality. The Scrutiny Committee has unambiguously held that the appellant does not belong to “Halba” Community, a notified Scheduled Tribe in Maharashtra. The High Court was, therefore, right in allowing the writ petition filed by the Department and to restore the termination order dated 8th June, 2004.

G 14. Accordingly, we find no merit in this appeal; the same is dismissed with no order as to costs.

Divya Pandey

Appeal dismissed.

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