A JAYASHREE

v.

THE DIRECTOR COLLEGIATE EDUCATION

(Civil Appeal No. 1559 of 2022)

B FEBRUARY 22, 2022

[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 – s.4(4) – Respondent-State terminated the services of the appellant on the basis that she was found to be not belonging to the Scheduled Tribe community to which she had applied and was given appointment – Held: s.4(1) of the Act declares that appointment in respect of reserved categories are to be made as provided therein – s.4(4) of the Act provides that appointment made in contravention of s.4(1) is 'voidable' – The expression 'voidable' in the context and object of the Act and more importantly constitutional value of equality would mean that appointments to the reserved vacancies are meant only for those who are deserving by being members of the said community alone – Under the Rules, an applicant for appointment seeking reservation is expected to make an application for obtaining a validity certificate of his caste certificate – As appellant secured a caste certificate prior to the enactment of the Act, it required validation under r.7 – Thus, appointment of the appellant was clearly tentative and dependent on her producing the proof of her valid certificate – There is no dispute that the aspect of the appellant not belonging to the Scheduled Tribe community had attained finality for the reason that though the appellant challenged the order of the Scrutiny Committee before the Divisional Commissioner, he had affirmed the order and in fact, there was no challenge to these decisions holding that the appellant did not belong to the Scheduled Caste Community – Once it is found that the appellant did not belong to the Scheduled Tribe community, it attracted s.4(4) – The appointment became voidable – Giving an opportunity to the appellant under these circumstances when the finding as regards her not belonging to the Scheduled Tribe became final, would have been a futile exercise – Her continuance in service would deprive a member of the Schedule Tribe Community of an

opportunity which was usurped by the appellant – Thus, order of termination was not bad in law – However, interest of justice would require that the amounts sought to be recovered shall not be recovered from the appellant – Service law – Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Rules, 1992 – r.7.

Disposing of the appeal, the Court

HELD: 1. It is true that section 4(1) of the Act declares that appointment in respect of reserved categories are to be made as provided therein. The impact of a contravention is dealt with in section 4(4). It may be that the appointment made in contravention of Section 4(1) of the Act has to be avoided. But the mere fact that the Law Giver has used the word 'voidable', cannot, in the context, detract from the gravity of the matter. The matter is not to be judged from the need for an act by the employer. The scheme of the Act appears to be in tune with the Constitutional mandate which is to reserve appointments in favour of the deserving categories as are covered under Articles 341 and 342 of the Constitution, inter alia. In other words, appointments are to be made inter alia in favour of the Scheduled Tribes. If an appointment is made in contravention of the said mandate then it is, no doubt, declared voidable. The expression 'voidable' in the context of the Act and the object of the Act and more importantly, and the constitutional value of equality would mean that appointments to the reserved vacancies are meant only for those who are deserving by being members of the said community alone. If any person other than a member of the reserved community is appointed, it would clearly constitute an infringement of the rights of the genuinely deserving members of the said Scheduled Tribes. Furthermore, even the applicants applying under the general categories could be adversely affected. [Paras 7, 9][740-B; 741-E-H; 742-A]

2. Under the Rules, an applicant for appointment seeking reservation is expected to make an application for obtaining a validity certificate of his caste certificate. In this case, the appellant secured a caste certificate from a Tehsildar under an Executive

A **Order prior to the Act being enacted. The Rules contemplate an applicant seeking a validity certificate. In other words, the caste certificate relied upon by a candidate had to be validated under Rule 7. The appointment could not have been made under Rule 9 of the Rules which proscribes appointment except upon**
B **production of a validity certificate. Therefore, the scheme of the Rules, in short, appears to be that the applicant must obtain a validity certificate contemplated under Rule 7 and only thereupon, the appointment could be made as contemplated under Rule 9. It would appear, however, that the appellant who was appointed by order dated 16.01.1996 did not as such produce the validity**
C **certificate. The appointments were being made on the basis that the verification will be done under Rule 7 in connection with the validity certificate. It is in 2001 that the competent committee came to the conclusion that the appellant did not belong to Scheduled Tribe community. Therefore, appointment of the**
D **appellant was clearly tentative and dependent on the appellant producing the proof of her certificate being valid and genuine. [Paras 11, 12, 13][742-E-H; 743-A-C]**

3. Giving an opportunity to the appellant under the circumstances in question when the finding as regards her not
E **belonging to the Scheduled Tribe has become final would have been a futile exercise. No other course could have been adopted by the employer in the circumstances concerned. Keeping in mind the fact that her continuance in service would deprive a member of the Scheduled Tribe community of an opportunity which was usurped by the appellant in the first place would be sufficient**
F **answer to the case that it would not have been a futile exercise. The termination of service of the appellant in the face of the finality attained regarding her not belonging to Scheduled Tribe community is a crucial fact which deprives an employer of any discretion in the matter of terminating her services. At the time**
G **of the termination of service, the appellant was 40 years. It is not as if the appellant was on the verge of retirement. Being voidable under Section 4(4) of the Act, and bereft of any choice, the facts not being in dispute, and to allow an usurper to continue being a palpable illegality and a constitutional sin, in the context, action**

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by the competent authority terminating the services is perfectly valid. Therefore, this Court did not agree with the argument that the order of termination was bad in law. [Para 16][745-D-G]

Chairman and Managing Director, Food Corporation of India and Others v. Jagdish Balaram Bahira and Others **2017 (8) SCC 670 : [2017] 11 SCR 27;** *Dhurandhar Prasad Singh v. Jai Prakash University and others* **(2001) 6 SCC 534 : [2001] 3 SCR 1129 – relied on.**

R. v. Paddington Valuation Officer, ex p Peachey Property Corpn. Ltd. **(1965) 2 All ER 836 – referred to.**

Case Law Reference

[2017] 11 SCR 271	**relied on**	**Para 4**
[2001] 3 SCR 1129	**relied on**	**Para 9**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1559 of 2022.

From the Judgment and Order dated 11.12.2018 of the High Court of Karnataka, Dharwad Bench in Writ Petition No. 101462 of 2018(S-KAT).

S.N. Bhat, Sr. Adv., D.P. Chaturvedi, Tarun Kumar Thakur, Ms. Parvati Bhat, Ms. Anuradha Mutatkar, Advs. for the Appellant.

V.N. Raghupathy, Adv. for the Respondent.

The Judgment of the Court was delivered by

K. M. JOSEPH, J.

1. Leave granted.

2. By the impugned order, the High Court has dismissed the writ petition filed by the appellant against the order passed by the Karnataka Administrative Tribunal, Bengaluru rejecting the OA filed by the appellant against the order dated 24.03.2014. By order dated 24.03.2014, the respondent-State has purported to terminate the services of the appellant on the basis that the appellant was found to not belong to the Scheduled

A Tribe community purporting to belong to which the appellant applied and was given appointment. Further by the impugned order, the appellant has been called upon to pay the amounts which she has received.

3. Heard Mr. S. N. Bhat, learned senior counsel appearing for the appellant, and Mr. V. N. Raghupathy, learned counsel appearing for the B respondent.

4. Learned senior counsel for the appellant would submit that the High Court has proceeded on the basis of the judgment of this Court reported in *Chairman and Managing Director, Food Corporation of India and Others* v. *Jagdish Balaram Bahira and Others* 2017(8) C SCC 670. The complaint is that the High Court has not examined the scope of The Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 (hereinafter referred to as 'Act' for brevity) and The Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Rules, 1992 (hereinafter referred to D as 'Rules' for brevity).

5. He would draw our attention to Sections 4(1) and 4(4) of the Act which reads as follows:

> "4. Reservation of appointments or posts etc.- (1) After the E appointed day, while making appointments to any office in a civil service of the State of Karnataka or to a civil post under the State of Karnataka, appointments or posts shall be reserved for the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes to such extent and in such manner as may be specified from time to time in the order made by the Government F under clause (4) of Article 16 of the Constitution of India.
>
> xxx xxx xxx
>
> (4) All appointments made in contravention of the provisions of this section shall be voidable."

G On the basis of the same, he pointed out Section 4(4) contemplates that the appointment in contravention of Section 4(1) is not void, but it will be voidable. This goes to the root of the matter and had it been a case where the law declares it would be void, it would have been different. In conjunction with this aspect of the matter, learned senior counsel H would complain again that no notice was served on the appellant before

the order of termination was issued. He would, undoubtedly, point out that under the Act and the Rules, authorities have purported to find that the appellant did not deserve appointment under the quota of reservation made for the Scheduled Tribe community. He would submit that appellant was at the time, under the impression that the appellant whose caste is 'Talawara', was to be treated as belonging to the 'Hindu Tokare Koli' community which is a Scheduled Tribe. Thereafter, he took us to the judgment of this Court in *Chairman and Managing Director, Food Corporation of India and Others* (supra). He would point out that the principles enunciated in the said case countenancing recovery of the benefits received may not be applicable. In this regard, he harnessed the plea that there was no fraud practiced by the appellant in securing the appointment in question and the Scheduled Tribe certificate. Therefore, this would warrant his submission that no recovery should be made. In fact, besides pointing out that even the termination was illegal as it was done without following the principles of nature justice, he would point out that had the appellant been provided with an opportunity, she could have placed circumstances which may have dissuaded the authorities from issuing the order of termination. Another argument which he raised is based on Rule 7B of the Rules. Rule 7B reads as follows:

> "7B. Monetary benefits secured on the basis of false caste certificate to be withdrawn: -Any amount paid to any person by the Government or any other agency by way of scholarship, grant, allowances or other financial benefits on the basis of false caste certificate shall without prejudice to any 'other action be liable to be recovered from such person."

He would contend that the amount which could be recovered under the Rules would not cover the salary and allowances which are sought to be recovered.

He would further contend that should this Court not be inclined to accept his argument, in exercise of power under Article 142 of the Constitution, the Court may grant relief against the order for recovery. He pointed out that the appellant has worked all these years and has earned the salary.

6. Learned counsel for the respondent, on the other hand, would point out that it is self-evident from the order which has been produced before this Court also that ample opportunity was given to the appellant

A to make good her case that she belongs to the Scheduled Tribe community. She having failed in the matter cannot now set up a case as projected. He supports the impugned Judgment.

FINDINGS

B 7. It is true that section 4(1) of the Act declares that appointment in respect of reserved categories are to be made as provided therein. The impact of a contravention is dealt with in section 4(4). The contention that the legislature has only made it voidable and not void and, therefore, it is sufficient to salvage the appointment of the appellant unless and until, an opportunity is granted to the appellant and therefore, the principles C in *Chairman and Managing Director, Food Corporation of India and Others* (supra) would not apply, does not appeal to us.

8. We may notice, no doubt, that in a case where a valuation list came to be impugned, contending that it was void, Lord Denning, M.R. held[1]:

D "It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more ado. The other kind is when the invalidity does not make the list void E altogether, but only voidable. In that case it stands unless and until it is set aside. In the present case the valuation list is not, and never has been, a nullity. At most the first respondent — acting within his jurisdiction — exercised that jurisdiction erroneously. That makes the list voidable and not void. It remains good until it is set aside."

F 9. This Court, after referring to the aforesaid case, inter alia, in the decision reported in *Dhurandhar Prasad Singh vs. Jai Prakash University and others, (2001) 6 SCC 534*, held:

G "22. Thus the expressions "void and voidable" have been the subject-matter of consideration on innumerable occasions by courts. The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration

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[1] R. v. Paddington Valuation Officer, ex p Peachey Property Corpn. Ltd. [(1965) 2 All H ER 836 : (1966) 1 QB 380 : (1965) 3 WLR 426 (CA)]

is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable."

It may be that the appointment made in contravention of Section 4(1) of the Act has to be avoided. But the mere fact that the Law Giver has used the word 'voidable', cannot, in the context, detract from the gravity of the matter. The matter is not to be judged from the need for an act by the employer.

The scheme of the Act appears to be in tune with the Constitutional mandate which is to reserve appointments in favour of the deserving categories as are covered under Articles 341 and 342 of the Constitution, *inter alia*. In other words, appointments are to be made *inter alia* in favour of the Scheduled Tribes. If an appointment is made in contravention of the said mandate then it is, no doubt, declared voidable. The expression 'voidable' in the context of the Act and the object of the Act and more importantly, and the constitutional value of equality would mean that appointments to the reserved vacancies are meant only for those who are deserving by being members of the said community alone. If any person other than a member of the reserved community is appointed, it would clearly constitute an infringement of the rights of the genuinely

A deserving members of the said Scheduled Tribes which is the category with which we are concerned. Furthermore, even the applicants applying under the general categories could be adversely affected.

10. No exception can be taken to the termination of the service for another reason. The vacancy which would result upon the termination
B of the appointment of the appellant would become available to a deserving member of the reserved category. We may also notice that in the appointment order of the appellant, it has been communicated that appointments are temporary and liable to the cancelled and subject to verification.

C "2. These appointments are purely temporary in nature, if any of the information are proved to be false appointment will be cancelled and legal actions will be taken against such candidates.

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Sl. No.	Sl. No. as per selection list	Candidates name and address	Reservation	College posted for	Remarks
1	2	3	4	5	6
05	30	Smt. Jayashree Srimantha Choudary, Gowligalli, Athani, Belgaum	Scheduled Tribe	Government First Grade College, Naragunda	Against vacant position

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11. In fact, under the Rules, an applicant for appointment seeking reservation is expected to make an application for obtaining a validity certificate of his caste certificate. In this case, the appellant secured a caste certificate from a Tehsildar under an Executive Order prior to the
F Act being enacted. The Rules contemplate an applicant seeking a validity certificate. In other words, the caste certificate relied upon by a candidate had to be validated under Rule 7.

12. The appointment could not have been made under Rule 9 of the Rules which proscribes appointment except upon production of a
G validity certificate. Therefore, the scheme of the Rules, in short, appears to be that the applicant must obtain a validity certificate contemplated under Rule 7 and only thereupon, the appointment could be made as contemplated under Rule 9. It would appear, however, that the appellant who was appointed by order dated 16.01.1996 did not as such produce the validity certificate. The appointments were being made on the basis

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that the verification will be done under Rule 7 in connection with the validity certificate. It is in 2001 that the competent committee came to the conclusion that the appellant did not belong to Scheduled Tribe community.

Whatever, that may be, the fact remains that the appellant does not have a case that the appellant produced a validity certificate as contemplated under Rule 7 read with Rule 9 at the time of her appointment.

13. Therefore, appointment of the appellant was clearly tentative and dependent on the appellant producing the proof of her certificate being valid and genuine. There is no dispute that the aspect of the appellant not belonging to the Scheduled Tribe community has attained finality for the reason that though the appellant challenged the order of the Scrutiny Committee before the Divisional Commissioner, he has affirmed the Order and in fact, there is no challenge to these decisions holding that the appellant does not belong to the Scheduled Caste Community. Once it is found that the appellant does not belong to the Scheduled Tribe community, it attracted Section 4(4). The appointment became voidable.

14. In a situation where the law provides that the appointment is voidable, an act of the employer seeking to avoid the appointment is all that is required. As to whether it should be accompanied by compliance with natural justice is a different matter. The decision taken by the appointing authority to avoid the appointment is in keeping with the requirement under Section 4(4). Therefore, we see no merit in the contention of the appellant that since section 4(4) does not declare the appointment void, it would not attract the power of respondent to terminate the appointment of the appellant or that the principles in FCI (supra), will not apply.

15. In fact, in this regard, we notice another circumstance. The Government of the respondent-State issued circular dated 11.03.2002 by which it gave an opportunity to surrender the certificate with certain benefits. It, *inter alia*, reads as follows:

"Preamble:

In Government Order read at (1) above the following benefits available to the Scheduled Tribes were extended to the persons belonging to the Nayak, Naik, Beda, Valmiki, Priwara and

A Talawara communities pending decision of Government of India to treat these communities as synonyms of Nayaka.

a) Reservation in admission to educational institutions.

b) Educational concessions.

B It was also directed that no penal or disciplinary action shall be taken and prosecution if any launched shall be kept in abeyance and shall not be pursued against persons belonging to these communities for having obtained caste certificates as belonging to 'Nayaka' community. Suspension orders if any in such cases shall be revoked and persons retrenched if any shall be reinstated.

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GOVERNMENT ORDER NO: SWD 713 SAD 93, BANGALORE, DATED: llTH MARCH, 2002

In partial modification of Government Order read at (1) and (2) Government are pleased to order as under;

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1. The benefits of reservation in admission to educational institutions and educational concessions extended to Pariwara, Talwara, Maaleru, communities in G.Os read at (1) and (2) and Besta and Koli Communities accordingly cease. All persons of these communities who have obtained ST caste certificates shall surrender them immediately to the issuing authority for cancellation. They shall not be liable for penal action provided they surrender their certificates. The issuing authority shall cancel such certificates.

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2. Whether it comes to the notice of the appointing authority that ST certificate has been issued to a persons belonging to these communities and which has not been surrendered or cancelled necessary action shall be taken for cancellation of such certificate by the issuing authority, with due regard to the principles of justice.

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The benefits of reservation obtained by the persons in para (1) in educational and employment based on the wrong caste certificate issued by the competent authorities as ST and which have become final may also be not disturbed accordingly.

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1. Enquires pending before the various Departments, Verification Committee, Appellate authorities, CRE cell and other authorities stands abated or dropped.

2. Action shall be taken to withdraw the cases filed before any court.

3. Suspension orders if any in such cases stands revoked.

4. Pensionary benefits that are withheld shall be released."

There is no case of the appellant that she surrendered her certificate after 2001 when the findings went against her. Therefore, the appellant cannot have a cause of action based on the said order also.

16. The High Court has proceeded on the basis that it is futile to have given the appellant an opportunity before the order of termination. True, the principles of natural justice have been highlighted by the appellant which is a part of the mandate of Article 14 itself. However, an exception to the principle would be a case where it is entirely futile to provide an opportunity. Giving an opportunity to the appellant under the circumstances in question when the finding as regards her not belonging to the Scheduled Tribe has become final, in our view would have been a futile exercise. No other course could have been adopted by the employer in the circumstances concerned. We are of the view that keeping in mind the fact that her continuance in service would deprive a member of the Scheduled Tribe community of an opportunity which was usurped by the appellant in the first place would be sufficient answer to the case that it would not have been a futile exercise. The termination of service of the appellant in the face of the finality attained regarding her not belonging to Scheduled Tribe community is a crucial fact which deprives an employer of any discretion in the matter of terminating her services. At the time of the termination of service, the appellant was 40 years. It is not as if the appellant was on the verge of retirement. Being voidable under Section 4(4) of the Act, and bereft of any choice, the facts not being in dispute, and to allow an usurper to continue being a palpable illegality and a constitutional sin, in the context, action by the competent authority terminating the services is perfectly valid. Therefore, we do not agree with the argument that the order of termination was bad in law.

17. As far as the argument that Rule 7B does not empower the employer to recover the allowances is concerned, we are not inclined to

A accept the same. We notice that the Rule is widely worded. The words 'financial benefits' and 'allowances' would, at any rate, particularly having regard to the context of the Act and the object of the Act which is to deter persons who set up false claims and claim reservation from reaping the fruits of illegal appointments. We may also notice that section 10 (2) of the Maharasthra Act which was the subject matter of the B judgment in *Chairman and Managing Director, Food Corporation of India and Others* (supra) is a *pari materia* with Rule 7B of the Rules. Therefore, we see no merit in this argument.

18. No doubt, this Court in *Chairman and Managing Director, Food Corporation of India and Others* (supra) has been persuaded C by the reasoning that Section 7 is to be read with Section 10 of the said Act. *The Court concluded* that there is no need to esablish *mens rea* on the part of the employee in the matter of securing of appointment. The Court noted that Section 7 required that it be established that there was fraud. Such a provision as such which is *pari materia* with Sect*ion* D *7 is conspicuous by its absence in the Act and the Rules.*

The fact is that the certificate of the appellant does not even show that she actually belongs to the Scheduled Tribe community in question. The authority has found that the family members of the appellant are shown as belonging to the Talawara community and in none of the E caste certificates it is shown that any of her relatives belongs to the Scheduled Tribe community in question. All her relatives were 'Talawara' by caste. *We do not think we should accede to the said argument*. She did not also surrender the certificate also. The appellant even perseveres in her claim in the special leave petition that she belongs to 'Tokare Koli', (the scheduled tribe in question) even after cancellation F of her certificate has attained finality.

19. The only question which remains is whether the appellant should be called upon to pay the entire amount which she has earned on the basis of her appointment. The fact remains that the appellant has worked and has been paid salary. It is not conceivable that the appellant G would have expended the amounts which she would have earned. Nor it is a case where she has been paid for a period for which she has not worked. There is an appeal to exercise our powers under Article 142 of the Constitution made with reference to the judgment in *Chairman and Managing Director, Food Corporation of India and Others* (supra), H which power, is undoubtedly not available to the High Court.

In the circumstances of this case, while finding the order impugned otherwise flawless, we would think that the interest of justice would require that we order that the amounts sought to be recovered shall not be recovered from the appellant. Thus, while we confirm the impugned order of the High Court, we direct that in the circumstances of this case, no recovery shall be made from the appellant based on the impugned order.

No orders as to costs.

Appeal is disposed of in the above terms.

Devika Gujral Appeal disposed of.