

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 231 OF 2016

DISTRICT : NAVI MUMBAI

Mr Jagannath Ramchandra Koli,)
Occ : Head Clerk, R/at: Ganga Arjun CHS,)
'A' Wing, 2nd floor, Room no. 5, Sector-19,)
Shahabaz Belapur, Navi Mumbai.)...**Applicant**

Versus

1. The Director General of Police,)
[Admn], Shahid Bhagat Singh Marg,)
Colaba, Mumbai.)

2. The Special Inspector General of Police,)
Konkan Range, Konkan Bhavan,)
Navi Mumbai.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri B.P Patil (Vice-Chairman) (J)
Shri P.N Dixit (Vice-Chairman) (A)**

RESERVED ON : 06.06.2019

PRONOUNCED ON: 19.06.2019

PER : Shri B.P Patil (Vice-Chairman) (J)

ORDER

1. The applicant has challenged the order dated 1.3.2016 issued by Respondent no. 1, cancelling his promotion on the post of Head Clerk and reverting him to the post of Senior Clerk by filing the present O.A.

2. The applicant was appointed as Clerk-cum-Typist on 2.1.1986, under S.T category as he is belonging to Mahadeo Koli caste. On his appointment, he was posted at Police Commissionerate Office, Thane. In the month of February, 1986, he was transferred to Navi Mumbai Police Commissionerate on the post of Clerk-cum-Typist. He was made permanent as Government servant on 10.10.1990 on the post of Junior Grade Clerk.

3. He was promoted to the post of Senior Clerk from S.T category on 31.3.1997. In the year 2005 he was transferred to the office of Commissioner of Railways, Mumbai. In the year 2006 he was again transferred to Navi Mumbai Police Commissionerate.

4. It is the contention of the applicant that on 16.8.2007 his caste of Koli under S.B.C was validated by the Caste

Scrutiny Committee. The applicant submitted the certificate to the Respondents to that effect. The applicant was promoted as Head Clerk under S.B.C category in April 2011, but he was relieved by the Navi Mumbai Police Commissionerate belatedly. Hence he joined at S.P Office, Alibaug on 10.02.2012.

5. On 22.6.2012, applicant was transferred on the post of Head Clerk at Railways Mumbai and accordingly he joined on the said post on 16.8.2012. Since then he is working on the said post. It is contention of the applicant that on 7.11.2015, Respondent no. 1, issued a notice to him to show cause as to why he should not be reverted from the post of Head Clerk to Senior Grade Clerk. The applicant sought information under R.T.I from the office of Respondents no 1 & 2 by filing several applications. Since he has not received the information, he sought time to file reply to the show cause notice dated 7.11.2015.

6. On 19.12.2015, Respondent no. 1 called upon the applicant to submit his reply to the show cause notice within two days. Therefore, the applicant submitted his detailed reply dated 21.12.2015 to the Respondent no. 1, and also

reserved his right to file additional reply after receiving necessary information sought under R.T.I.

7. On the basis of incomplete reply submitted by the applicant, Respondent no. 1, passed the impugned order dated 1.3.2016 cancelling the promotion of the applicant on the post of Head Clerk and reverted him to the post of Senior Clerk.

8. It is the contention of the applicant that the impugned order has been passed by Respondent no. 1 arbitrarily and without giving him opportunity of hearing. The impugned order is in contravention of the provisions of G.R dated 15.6.1995 and principles laid down by the Hon. High Court of Judicature at Bombay, Nagpur Bench, in case of **Arun S/o Vishwanath Sonone Vs. State of Maharashtra and Others.**

9. It is contention of the applicant that 13 employees were appointed under S.T category like him and were promoted under S.B.C category by order dated 15.6.1995, but Respondent no. 1 had not taken any action against them. Respondent has taken against the applicant only with malafide intention.

10. It is the contention of the applicant that Respondent has raised issue regarding invalidation of the Caste Certificate after 15 years from 15.6.1996. It is contention of the applicant that impugned order is not legal and therefore, has challenged the impugned order by filing the present O.A and prayed to quash and set aside the order dated 1.3.2016 passed by Respondent no. 2.

11. Respondent no. 1 resisted the contention of the applicant by filing his affidavit in reply. He has not disputed the fact that the applicant was appointed on 2.1.1986 as Junior Clerk from S.T category as he belongs to Mahadeo Koli category. He has not disputed the fact that the applicant was considered for promotion to the post of Head Clerk from open category on the basis of seniority of Senior Grade Clerk as on 31.3.1997 and was promoted by order dated 10.2.2012. It is his contention that applicant has not got validated of the Caste Certificate of S.T category on the basis of which he was appointed as Junior Clerk on 2.1.1986.

12. It is contention of Respondent no. 1 that instead of obtaining Caste Validity Certificate of S.T category, applicant

procured Caste Certificate under S.B.C category and obtained Caste Validity Certificate accordingly.

13. It is his contention that applicant belongs to Mahadev Koli caste, which is S.T and he was appointed on the basis of his caste which is under S.T category. It is his contention that the Special I.G of Police, Konkan Range, Navi Mumbai was communicated by D.O letter dated 17.4.2014 to take necessary action in compliance with the standing orders issued by the Government in the G.R issued by G.A.D dated 30.6.2004 and Circular dated 18.5.2013.

14. In compliance with the said directions, the Spl. I.G of Police, Konkan Range, Navi Mumbai, refixed the seniority of the applicant in the cadre of Junior Grade Clerk and Senior Grade Clerk as on 15.5.1995 as well as 14.1.2009, respectively by order dated 3.1.2015.

15. After examining the case of the applicant, it was found that applicant was not entitled for promotion to the post of Head Clerk, which was given to him on the basis of seniority gained by him as he belongs to S.T category. The applicant was considered for promotion to the post of Head Clerk by the respondent from "Open Category" on the basis of seniority list

prepared. On the basis of his seniority in the cadre of Sr. Grade Clerk which was given to him as he belongs to Mahadeo Koli caste, which comes under S.T. Category. Therefore, he was reverted back to the post of Senior Grade Clerk in compliance with the standing orders issued by the Government by Circular dated 18.5.2013.

16. A memorandum was issued to the applicant on 7.4.2015 before taking action. In response to the said show cause notice, applicant had sought time to file reply, but failed to file the reply in the stipulated time. Thereafter, he filed the reply. On considering his reply, Respondent no. 1 passed the impugned order on the basis of G.R dated 30.6.2004 and Circular dated 18.5.2013.

17. It is his contention that the Respondent had taken necessary action against the other employees whose cases are at par with the case of the applicant and there is no mala fide intention on the part of Respondent no. 1 in passing the impugned order. It is his contention that ample opportunity of hearing was given to the applicant before passing the impugned order and principles of natural justice have been

followed. It is his contention that there is no illegality in the impugned order.

18. It is the contention of Respondent no. 1 that applicant belongs to Mahadev Koli Caste, which comes under S.T category. He was appointed under S.T category on 1.1.1986. The applicant has to get verified his Caste Certificate issued under S.T category, but without verifying it, he obtained another Certificate under S.B.C category on 4.12.2006 and got verified it from Caste Scrutiny Committee, Mumbai Division, Mumbai, on 16.2.2007.

19. It is his contention that applicant was not entitled for promotion to the post of Head Clerk, since his seniority has been re-fixed in view of G.R dated 30.6.2004 and 18.5.2013, and therefore, he has been reverted to the post of Senior Grade Clerk. It is his contention that there is no illegality in the impugned order. Therefore, he prayed that the O.A be dismissed.

20. The applicant filed rejoinder to the affidavit and contented that he never requested for promoting him to the post of Head Clerk under any category. He had already submitted his Caste Validity Certificate on 16.8.2007.

Therefore, it was expected that he should be placed in S.B.C category in the seniority list and accordingly he was placed in the seniority list.

21. It is his contention that similarly situated persons have been promoted to the post of Head Clerk, but Respondents have not taken any action against them and Respondents have taken action against the applicant with a malafide intention. The act of the Respondents is vindictive and, therefore, it requires to be quashed and set aside.

22. Respondent no. 1 has filed affidavit in sur-rejoinder and resisted the contention of the applicant by raising similar contentions which has been raised by him in the affidavit in reply and prayed to reject the O.A.

23. We have heard the arguments advanced by Shri K.R. Jagdale, learned Advocate for the applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

24. Admittedly, the applicant belongs to Mahadev Koli caste, which comes under S.T category. The applicant was appointed as Clerk-cum-Typist on 2.1.1986 under S.T

category. Admittedly on 31.3.1997 applicant was promoted on the post of Senior Grade Clerk under S.T category. Admittedly on 4.12.2004 applicant obtained Caste Certificate showing that he is belonging to 'Koli'. On the basis of said Certificate he procured Caste Validity Certificate from Caste Scrutiny Committee, Mumbai Division, Mumbai on 16.8.2007. Admittedly, applicant was promoted on the post of Head Clerk in April, 2011 from S.B.C.

25. There is no dispute about the fact that on 7.10.2015, Respondent no. 1 issued notice to the applicant to show cause as to why he should not be reverted from the post of Head Clerk to Senior Grade Clerk. In response to the same applicant filed his reply on 31.12.2015. After considering his reply, the Respondent no. 1, passed impugned order dated 1.3.2016 and cancelled the promotion of the applicant on the post of Head Clerk and reverted him to the post of Senior Clerk.

26. Learned Advocate for the applicant has submitted that the applicant belongs to Mahadeo Koli caste, which comes under Scheduled Tribe category. He was appointed as a Jr. Clerk on 2.1.1986 as he belongs to S.T. category. He has

argued that on 31.3.1997 he was promoted to the post of Sr. Clerk from the S.T. category. He has submitted that on 15.6.1995 the Government issued G.R. declaring some of the castes including Koli caste as Special Backward Class. He has submitted that initially the applicant has obtained the caste certificate for Mahadeo Koli caste under S.T. category, but after issuance of G.R. dated 15.6.1995 he has obtained caste certificate from S.B.C. category and produced the same before the Caste Scrutiny Committee for validation. The caste Scrutiny Committee verified the validity of the caste of the applicant and validated the caste certificate. On the basis of said validity certificate the applicant was promoted as Head Clerk in the month of April, 2011 under S.B.C. category and accordingly he joined on the said post on 10.2.2012. He has submitted that his services and promotions are protected in view of G.R. dated 15.6.1995 as well as decision rendered by the full bench of Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in case of **Arun S/o Vishwanath Sonone Vs. State of Maharashtra and Others** reported in **2015 (1) Mh. L.J. 457.**

27. Learned Advocate for the applicant has submitted that the res. no. 1 issued notice on 7.11.2015 to the applicant

calling upon him to show cause as to why he should not be reverted from the post of Head Clerk to the post of Sr. Grade Clerk. The applicant sought information regarding similarly situated employees and promotions granted to them but res. nos. 1 & 2 had not supplied the required information to him and therefore he could not be able to file detailed reply to the said notice. The res. no. 1 without giving opportunity of hearing to the applicant passed the impugned order dated 1.3.2016 and reverted him from the post of Head Clerk to the post of Sr. Grade Clerk. He has submitted that principles of nature justice have not been followed by the respondents while passing the impugned order and therefore he prayed to quash the impugned order.

28. Learned Advocate for the applicant has further submitted that there are several similarly situated persons who were initially appointed under S.T. category and promoted from S.B.C. category, but the res. no. 1 had not taken any action against them but res. no. 1 has taken action against the applicant vindictively and therefore impugned order required to be quashed on that ground.

29. Learned Advocate for the applicant has attracted our attention towards the G.Rs. dated 15.6.1995 & 30.6.2004 and submitted that services and the promotions of the applicant have been protected as he is appointed prior to 15.6.1995 but the respondents had not considered the said G.Rs. and passed the impugned order illegally. He has further submitted that even the Govt. Circular dated 18.5.2013 has also protected his services and promotions but the respondents had not considered the said aspects while passing impugned order. Therefore, he has prayed to quash the impugned order by allowing the O.A.

30. Learned Presenting Officer has submitted that full bench of Hon'ble High Court of Judicature at Bombay, Bench at Nagpur has dealt with said issue in case of **Arun S/o Vishwanath Sonone Vs. State of Maharashtra and Others** reported in **2015 (1) Mh. L.J. 457** and held that services and promotions granted to the employees appointed under S.B.C. category can be protected, if their caste certificate is invalidated by the Caste Scrutiny Committee. Learned P.O. has further submitted that applicant belongs to Mahadeo Koli caste which comes under S.T. category. She has argued that other castes including Koli had been included in Special

Backward Class in view of G.R. dated 15.6.1995 but the Mahadeo Koli caste remained as S.T. and there is no change in that regard. She has submitted that as applicant belongs to Mahadeo Koli caste, it is incumbent on his part to get validated his caste certificate from Caste Scrutiny Committee within stipulated time. She has submitted that the consequences regarding failure to file validation certificate are mentioned in G.R dated 30.6.2004 and Circular dated 18.5.2013. She has submitted that the applicant without getting validation certificate from Caste Scrutiny Committee regarding his Mahadeo Koli caste under S.T. category procured another caste certificate dated. 4.12.2004 (page 16) for Koli caste under S.B.C. and also procured validation certificate from Caste Scrutiny Committee on 16.8.2007 (page 15) and produced the same before the respondents and on the basis of said validation certificate he secured promotion on the post of Head Clerk. She has submitted that the applicant was promoted on the post of Sr. Grade Clerk from S.T. category, but he got promotion on the post of Head Clerk from Open category on the basis of S.B.C. certificate produced by him. She has submitted that the applicant gained seniority in the cadre of Sr. Grade Clerk as he belongs

to S.T. category and on the basis of seniority as on 31.3.1997 he was considered for next promotion of Head Clerk by the respondents from Open category and accordingly he was promoted in the year 2011. She has submitted that the applicant's caste certificate under S.T. category was neither validated nor invalidated by the Caste Scrutiny Committee and without complying the guidelines issued in the G.R dated 30.6.2004 and Circular dated 18.5.2013, the applicant got another caste certificate and validation certificate from S.B.C. category. It is her further submission that the Special I.G of Police, Konkan Range, Navi Mumbai was communicated by D.O letter dated 17.4.2014 to take necessary action in compliance with the standing orders issued by the Government in the G.R dated 30.6.2004 and Circular dated 18.5.2013. Accordingly the Special I.G of Police, Konkan Range, Navi Mumbai re-fixed the seniority of the applicant in the cadre of Jr. Clerk and Sr. Grade Clerk as on 15.5.1995 & 14.1.2009 respectively. The applicant was not eligible to get promotion on the post of Head Clerk on the basis of seniority gained by him as he belongs to S.T. category and, therefore he was reverted back to the post of Sr. Grade Clerk. The seniority of the applicant was re-fixed in the cadre of Jr. Clerk

& Sr. Grade Clerk as on 15.5.1995 & 14.1.2009 respectively as per G.R dated 30.6.2004 and Circular dated 18.5.2013 and there is no illegality in the said decision taken by the respondents. She has submitted that services of the applicant has been protected since he has been appointed prior to 15.5.1995 but he has been promoted to the post of Head Clerk on the basis of wrong seniority and therefore no protection is available to him in that regard. Learned P.O. therefore justified the impugned order reverting the applicant from the post of Head Clerk to the post of Sr. Grade Clerk.

31. Learned P.O. has submitted that the principles laid down by full bench of Hon'ble High Court in case of **Arun S/o Vishwanath Sonone Vs. State of Maharashtra and Others** (supra) are not applicable in this case and therefore she has supported the impugned order and prayed to dismiss the O.A.

32. We have gone through the documents on record. On perusal of same it reveals that the applicant was appointed as Jr. Grade Clerk on 2.1.1986 from S.T. category as he belongs to Mahadeo Koli caste. He was promoted as Sr. Grade Clerk on 31.3.1997. On the basis of seniority list of Sr. Grade Clerk as on 31.3.1997 he was considered for promotion of Head

Clerk and accordingly he was promoted by the order dated 10.2.2012. The applicant belongs to S.T. category and he procured caste certificate of the caste Mahadeo Koli at the time of his appointment but he has not got validation of the said certificate from Caste Scrutiny Committee. Without getting validation certificate regarding his caste Mahadeo Koli which comes under S.T. category he procured one more certificate dated 4.12.2004 (page 16) stating that he belongs to Koli caste. On the basis of that he obtained validation certificate from Caste Scrutiny Committee on 16.8.2007 (page 15) on the basis of G.R. dated 15.6.1995 and produced the same before the respondents.

33. On perusal of G.R. dated 15.6.1995 it reveals that the Government has declared some of the castes, which were not included in S.C., S.T. & Special Backward Caste category as Special Backward Class (S.B.C). The caste Koli and some others are included in the said S.B.C. category. It is material to note here that Mahadeo Koli caste is not included in the said S.B.C. category. Not only this, but Mahadeo Koli caste is not removed from S.T. category. Therefore, the contention of the applicant that his caste is in S.B.C. category is not acceptable. The G.R. dated 15.6.1995 does not permit

migration from S.T. to S.B.C. to the persons from Mahadeo Koli caste. Therefore contention of the applicant that he belongs to S.B.C. category in view of G.R. dated 15.6.1995 is not acceptable.

34. The record shows that full bench of Hon'ble High Court has considered the provisions of G.R. dated 15.6.1995 and object behind issuance of the said G.R. by the Government in case of **Arun S/o Vishwanath Sonone** (supra) and observed as follows :-

“57. Now, we deal with the question No.(a) in para 55 of granting protection to persons of Special Backward Category other than “Koshti” and “Halba Koshti”. While tracing out the history of the litigation, in initial paras we have noticed that the controversy is triggered as a result of the decision of the Apex Court in Madhuri Patil's case. It was a case where the candidates belonging to Other Backward Class category of Hindu Koli claimed the benefits meant for the Scheduled Tribes category as the members of a sub caste of Mahadeo Koli, a Scheduled Tribe. The decision in Madhuri Patil's case was rendered on 2.9.1994. As a fall out of the said decision, the State Government found that there were several persons belonging to different castes and claiming to be the members of the said caste of main Scheduled Tribes included in the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of Maharashtra, who started facing difficulties of ouster from the employment in spite of rendering several years of service and their appointments having attained the finality. By issuing the Government Resolution dated 15.6.1995, all such castes identified to be similarly situated, were grouped together as a separate

category of Special Backward Class providing them 2% reservation in the public employment. The following are the castes included in the said Government Resolution.

<i>S. No.</i>	<i>Name of the Caste</i>
<i>1.</i>	<i>Govaris Caste</i>
<i>2.</i>	<i>Mana Caste</i>
<i>3.</i>	<i>1. Koshti, 2. Halba Koshti, 3. Halba Caste, 4. Sali, 5. Lad Koshti, 6. Gadhewal Koshti, 7. Deshkar, 8. Salewar, 9. Padamshali, 10. Devang, 11. Kachi Bande, 12. Patvis, 13. Sarsale, 14. Lade, 15. Jainkoshti.</i>
<i>4.</i>	<i>1. Koli and similar castes, 2. Machhimar Koli, 3. Ahir Koli, 4. Khandeshi Koli, 5. Pankoli, 6. Chandrakant Koli, 7. Ghubale Koli, 8. Panbhare Koli, 9. Suryawanshi Koli, 10. Mangala Koli, 11. Sonkoli, 12. Daiti Koli, 13. Sarbi, 14. Kolis engaged in 'Danger' cultivation in the districts of Nasik, Dhulia and Jalgaon.</i>
<i>5.</i>	<i>1. Munnurwar, 2. Munnurwar, 3. Munnur, 4. Telgu Munnur, 5. Munnurwar Telgu, 6. Munnarkap, 7. Kapewar, 8. Telgu Kapewar, 9. Munnarwad, 10. Telgu Fulmali.</i>

58. Para 4 of the Government Resolution dated 15.6.1995, which is translated, is reproduced below :

“4. The reservation given to the abovementioned' Special Backward Category' will remain as a backlog for direct service recruitment and promotion. The principle of creamy layer will not apply to this category. The persons in the category who have prior to this on the basis of Scheduled Tribe certificate obtained admission in the Government, semi-government services on promotion, they should not be removed from this promotion or service.”

Perusal of the aforesaid provision of the Resolution shows that the instructions are issued that the persons/candidates, who joined the Government service by producing a Caste Certificate belonging to Scheduled Tribe category and have been promoted, should not be removed from service or reverted from the post. The aforesaid position was further clarified in another Government Resolution dated 30.6.2004, and clause (a) therein being relevant is reproduced below :

“(a) The non-tribals who have received recruitment promotion in the government/semi-governmental services on the reserved seats for the Scheduled Tribes prior to 15.6.1995, should not be removed from service or should not be demoted. They should be shown in the constituent to which they belong. Henceforth the reservation benefits entitled to that particular constituent will be due to them and the vacated posts in this manner should be filled from the tribal category.”

In terms of the aforesaid Resolution, the non-tribals, who have received the promotion against the post reserved for Scheduled Tribes prior to 15.6.1995 neither to be removed from service nor to be demoted from the post to which they were promoted. However, these persons should be shown in the constituent to which they belong and the post remaining vacant on account of their leaving the job, should be filled in from the tribal category. The operation of both these Government Resolutions is not restricted to the persons belonging to caste “Koshti” or “Halba Koshti”.

35. On going through the said judgment it reveals that by issuing of said G.R. the Government issued instructions that the persons / candidates, who joined the Government service and have been promoted prior to 15.6.1995 from S.T.

category, should not be removed from service or reverted from the post but no protection was granted to the promotions given after 15.6.1995. Therefore, the applicant is not entitled to get benefit of said principle laid down by the Hon'ble High Court.

36. Hon'ble High Court has also considered the provisions of the Maharashtra Scheduled castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 in the above said decision. As per provisions of sec. 3 of the said Act any person belonging to Scheduled castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste is required to produce caste certificate in order to claim the benefit of any reservation provided to such castes, Tribes of classes in any public employment, has to apply to the competent authority in such form and in such manner as is prescribed for issuance of a caste certificate. The requirement of production of certificate from the competent

authority operates from the date of coming into force of the Act. i.e. from 18.11.2001.

Section 4 of the Act deals with caste certificate to be issued by the Competent Authority. Sec. 4 (2) provides that caste certificate issued by any person, Officer or authority other than the competent authority shall be invalid. The caste certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee. This requirement of making an application under sub sec. (1) of sec. 4 of the said Act to the competent authority operates from the date of coming into force of the said Act. The provision of sub-section (2) of sec. 4 does not have the effect of invalidating the caste certificate issued prior to coming into force of the said Act on 18.10.2001.

Sec. 6 of the said Act deals with verification of caste certificate by Scrutiny Committee. Whosoever desirous of availing of the benefit or concession provided to Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis) for the purposes mentioned in sec. 3, has to make an application well in time in the form and manner prescribed to

the concerned Scrutiny Committee constituted under sub-sec. (1) of sec. 6 of the said Act for verification of such caste certificate and issuance of validity certificate, as contemplated by sub-sec. (2) of sec. 6 of the said Act.

Sec. 7 of the said Act deals with confiscation & cancellation of false certificate while sec. 10 deals with benefits secured on the basis of false caste certificate to be withdrawn.

37. In view of above said provisions it is incumbent on the part of the applicant to apply for verification of caste certificate, which was procured by him at the time of his appointment. He was appointed under S.T. category as he belongs to Mahadeo Koli caste. He procured caste certificate of that caste but failed to produce the same before the Scrutiny Committee for validation as required under sec. 6 of the Act. Instead of getting caste certificate procured by the applicant under S.T. category validated he procured another caste certificate under S.B.C. category on the ground that he belongs to Koli caste and also procured caste validation certificate though he belongs to Mahadeo Koli caste, which is not coming under S.B.C. category. He got promoted on the

post of Sr. Grade Clerk under S.T. category though his caste certificate has not been validated and on the basis of seniority of Sr. Grade Clerk he was promoted to the post of Head Clerk in the year 2012 from Open category.

38. The Government issued G.R. dated 18.5.2013 and decided to protect the services of the applicant and other similarly situated employees who were appointed under S.T. category prior to 15.6.1995. Guidelines have been issued by the Government by issuing of said G.R. and it was directed to the concerned employees to procure caste validation certificate on or before 30.6.2015 failing which services would be terminated by following due procedure. In spite of that the applicant has not applied for validation of his caste under S.T. category. Therefore, the res. no. 2 took the appropriate decision on the basis of G.R dated 30.6.2004 and Circular dated 18.5.2013 and re-fixed the seniority of the applicant in the post of Jr. Clerk and Sr. Grade Clerk as on 15.5.1995 & 14.1.2009 respectively and accordingly issued the order re-fixing seniority of the applicant in the cadre of Jr. Clerk and Sr. Grade Clerk. The applicant was promoted to the post of Head Clerk though he was not under the zone of consideration and therefore he was reverted to the post of Sr.

Grade Clerk. The reasoned order has been passed by the res. no. 2 in that regard. The applicant has not challenged the orders regarding re-fixation of his seniority in the cadre of Jr. Clerk & Sr. Grade Clerk and challenged the order reverting him from the post of Head Clerk to the post of Sr. Grade Clerk. Since the promotion to the applicant on the post of Head Clerk was given in the year 2011, he cannot get protection on the basis of G.Rs. dated 15.6.1995 & 30.6.2004. Therefore, we do not find any force in the submissions of the learned Advocate for the applicant in that regard.

39. We have gone through the decision of Hon'ble High Court in case of **Arun S/o Vishwanath Sonone Vs. State of Maharashtra and Others** (supra). The facts in this case are different than the facts in case of **Arun S/o Vishwanath Sonone** (supra) and therefore the principles laid down in the said decision are not much useful to the applicant. In the said judgment it has been held by the Hon'ble High Court as follows :-

“75. We, therefore, do not enter into the merits of the claim and leave it for the concerned Benches to decide, on the facts and circumstances of each

case, whether the protection need to be granted or not. But we conclude in this judgment that –

(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from the employment or cancellation of appointments that have become final prior to the decision in Milind's case on 28.11.2000,

(ii) upon invalidation of the caste claim by the Scrutiny Committee, the benefits obtained or appointments secured from 28.11.2000 upto 18.10.2001 can be withdrawn or cancelled, depending upon the terms of the employment, if any, in writing,

(iii) the benefits obtained or appointments secured after coming into force of the said Act on 18.10.2001 can be withdrawn or cancelled immediately upon invalidation of the caste claim by the Scrutiny Committee,

(iv) the benefit of protection in service upon invalidation of the caste claim is available not only to the persons belonging to “Koshti” and “Halba Koshti”, but it is also available to the persons belonging to Special Backward Class category on the same terms as is available to “Koshti” and “Halba Koshti”, and

(v) the claim of the persons belonging to Nomadic Tribes, Vimukta Jatis and Other Backward Class category shall be decided on the lines of the decision of the Apex Court in the case of R. Unnikrishnan and another v. V.K. Mahanudevan and others, reported in 2014-(4)-SCC 434.”

40. Even considering the said principles the applicant is not entitled to get protection to his promotion to the post of Head Clerk.

41. Considering the above said facts and documents on record in our considered view there is no illegality in the impugned order reverting the applicant from the post of Head Clerk to the post of Sr. Grade Clerk. Sound & proper reasons have been recorded by the authority while issuing the impugned order and therefore in our view no interference is called in the impugned order. There is no merit in the Original Application. Consequently, it deserves to be dismissed.

42. In view of discussion in foregoing paragraphs the Original Application is rejected with no order as to costs.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(B.P Patil)
Vice-Chairman (J)

Place : Mumbai
Date : =====