

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 260/2016 (S.B.)**

Smt. Jayashree Rajendra Chimurkar,  
Aged about 50 years, Occ. Service as Clerk in Forest  
Department, r/o Surendra Nagar, Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary, Revenue and Forest Department,  
Mantralaya, Mumbai-400 032.
- 2) Principal Chief Conservator of Forests,  
Civil Lines, Nagpur.
- 3) Conservator of Forests,  
Chandrapur Circle, Civil Lines,  
Chandrapur.

**Respondents.**

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**S/Shri R.S. & P.S. Parsodkar, Advocates for the applicant.**

**Shri H.K. Pande, P.O. for the respondents.**

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**Coram :- Hon'ble Shri Anand Karanjkar,  
Member (J).**

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**Date of Reserving for Judgment : 15<sup>th</sup> October, 2019.**

**Date of Pronouncement of Judgment : 14<sup>th</sup> November, 2019.**

**JUDGMENT**

**(Delivered on this 14<sup>th</sup> day of November,2019)**

Heard Shri R.S. Parsodkar, learned counsel for the  
applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The important question involved in this application is whether a Government servant whose entry in the service is illegal can claim any protection. The facts in brief are as under –

3. The applicant was appointed in service as a Clerk on 15/01/1990. The applicant was appointed in Scheduled Tribe (S.T.) category, but the Caste Scrutiny Committee invalidated her caste claim holding that the applicant was not belonging to Halba community. It is claimed that as per the G.R. dated 15/6/1995 the service of the applicant was protected.

4. It is submission of the applicant that as she joined the service on 15/1/1990, therefore, after completion of 12 years service she was given 1<sup>st</sup> time bound promotion i.e.in the year 2002. According to the applicant, she was entitled for the 2<sup>nd</sup> time bound promotion in the year, 2014.

5. It is contended that the respondents passed the order dated 18/5/2015 mentioning that the date of entry of the applicant in service was fixed as 15/6/1995; therefore, the applicant was eligible for the 1<sup>st</sup> time bound promotion after 15/6/2007. In consequence of this, the respondents passed the order dated 28/3/2016 and revised the pay of the applicant and directed to recover the Grade Pay. It is contention of the applicant that as she joined the duty in the service in the year 1990, therefore, as per the G.R. issued by the Government

after completion of 12 years she became eligible for the 1<sup>st</sup> time bound promotion and it was rightly granted to her. It is contention of the applicant that entire action of the respondents is illegal and therefore the communications dated 18/5/2015 and 28/3/2016 are illegal and the recovery order be quashed. It is also prayed by the applicant that the respondents be restrained from recovering the Grade Pay and they be directed to give second time bound promotion to the applicant as Head Clerk w.e.f. 15/1/2014 along with the arrears.

6. The respondent nos.2&3 have filed their reply which is at page no.41. It is not disputed that the entry of the applicant in the service was from S.T. category vide order dated 15/1/1990, and after joining the duty the Caste Scrutiny Committee invalidated the caste claim. According to the respondents, as per the G.R. dated 27/5/2002 the service of the applicant was protected and she was given deemed date of appointment as 15/6/1995. According to the respondents, as per this policy of the Government it is rightly held by the respondents that the applicant was not entitled for the 1<sup>st</sup> time bound promotion in the year 2002, but she was entitled for the 1<sup>st</sup> time bound promotion on completion of 12 years of service from 15/6/1995. It is submitted that there is no illegality committed by the respondents. It is submitted by the respondents that the applicant is not entitled for the relief of 2<sup>nd</sup> time bound promotion from 15/1/2014. In this background, the

respondents have submitted that the application is devoid of merit and it is liable to be dismissed.

7. I have heard the submissions on behalf of the applicant and on behalf of the respondents. In the present case the material question is whether the applicant who secured appointment on a post reserved for S.T. category can claim any benefit and protection in this application. The similar legal issues are decided by the Hon'ble Apex Court in case of **Chairman and Managing Director, Food Corporation of India & Ors. Vs. Jagdish Balaram Bahira & Ors. 2017 (4) Mh.L.J.,898.** The Hon'ble Apex Court in Para-41 of the Judgment has placed reliance on the Judgment in case of **R.Vishwanatha Pillai Vs. State of Kerala.** The material observations are as under -

*"41 Since the decision of the Bench of three judges in **R. Vishwanatha Pillai Vs. State of Kerala** (supra) the position of law which has been laid down by this Court is that where an appointment to a post or admission to an educational institution is made against a vacancy which is reserved for a Scheduled Caste or Tribe or a socially and educationally backward class, the invalidation of the claim of the candidate would result in the appointment or, as the case may be, the admission being void and non est. This principle has been followed by another judgment of three Judges in Dattatray (supra). The same position has been propounded by a two judge bench in Bank of India Vs. Avinash Mandivikar (supra). The formal termination of an employment or the withdrawal of admission is a necessary consequence which flows out of the invalidation of the caste or tribe claim. The only exception to this principle consists of those cases where, in exercise of the power conferred by [Article 142](#), the Court considered it appropriate and proper to*

*protect the admission which was granted or, as the case may be, the appointment to the post”.*

8. In Para-49 the Hon’ble Apex Court has observed that “We do not find any merit in the submission which has been urged on behalf of the persons whose castes/ tribes claims have been invalidated that Maharashtra Act No. XXIII of 2001 cannot apply to admissions or appointments which were made prior to the date on which the Act came into force”. In Para-53 it is observed as under –

*“53 Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that government is bound by its own circulars is well-settled but it cannot apply in a situation such as present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.”*

9. The Hon’ble Apex Court ultimately refused to give any protection to the persons who entered the service on the basis of false caste claim.

10. As a matter of fact in view of the observations in Para-53 of the Judgment it was not permissible for the Government, to issue G.R. for giving any protection to the Government servants whose caste claims were invalidated. In the present case, the facts are that the applicant is retained in service by the respondents and this action itself is in contravention of the law laid in the case of **Chairman and Managing Director, Food Corporation of India & Ors. Vs. Jagdish Balaram Bahira & Ors. 2017 (4) Mh.L.J.,898.**

11. As the entry of the applicant in service was itself illegal and in view of the law laid down by the Hon'ble Apex Court she is not entitled for any protection, therefore, it is not possible to accept the submission that the applicant is entitled for the benefits of time bound promotions as per the scheme. As it is held by the Hon'ble Apex that the Government servant who entered the service on the post reserved for S.C. or S.T. on the basis of false caste certificate, then such entry in the Government service is *void* and *non est*, therefore, it is not possible to accept that such person has a right to claim any relief in relation to the service. In view of this discussion, I am compelled to say that the applicant is not entitled for any benefit in the present O.A. and if any relief is granted to the applicant, then it would be violation of the law laid down in the case of **Chairman and Managing Director,**

**Food Corporation of India & Ors. Vs. Jagdish Balaram Bahira &**

**Ors. 2017 (4) Mh.L.J.,898.** Hence, the following order –

**ORDER**

The O.A. stands dismissed. No order as to costs.

**Dated** :- 14/11/2019.

**(A.D. Karanjkar)  
Member (J).**

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 14/11/2019.  
and pronounced on

Uploaded on : 14/11/2019.