

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.820/2015.

Chandrabhan Harichandra Parate,
Aged about 50 yrs.,
Occ-Service,
R/o 63, %aibhav+, Agrasen Road,
Zenda Chowk, Dharampeth, Nagpur.

Applicant

-Versus-

1) The State of Maharashtra,
Through its Principal Secretary,
Department of Revenue and Forests,
Mantralaya, Mumbai-440 032.

2) The State of Maharashtra,
Through its Additional Chief Secretary (Service),
General Administration Department,
Mantralaya, Mumbai-440 032.

Respondents

Shri N.D. Thombre, the Ld. Counsel for the applicant.
Shri H.K. Pande, learned P.O. for the respondents.

Coram:- Hon'ble Shri Rajiv Agarwal,
Vice-Chairman (A) and
Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

Per:-Vice-Chairman (J)

JUDGMENT

(Delivered on this 11th day of August 2017.)

Heard Shri N.D. Thombre, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

2. The applicant Chandrabhan Harichandra Parate belongs to Halba community which comes under Scheduled Tribes (ST) category. He came to be recommended by Maharashtra Public Service Commission (MPSC) for the post of Tehsildar on 4.11.1987. On 4.5.1988, respondent No.1 informed the applicant to submit documents in respect of verification of his caste and the applicant submitted the same on 23.5.1988. On 7.7.1988, respondent No.1 informed the applicant that it was not possible for them to issue appointment to the applicant on the post of Probationary Tehsildar unless he produces caste validity certificate issued by Director of Tribal Research and Training Institute (M.S.), Pune.

3. According to the applicant, respondent No.1 issued appointment orders to nine candidates on the post of Probationary Tehsildar from 21st batch of 1986 on 12.8.1988. However, the applicant was not appointed, though he belongs to the same batch. Thereafter another seven persons from the same batch of 1986 were appointed vide order dated 30.11.1988. But the applicant was not given appointment.

4. The applicant appeared before the Caste Scrutiny Committee, Pune for interview on 22.7.1988. Respondent No.1, however, did not accept caste validity certificate issued by the Committee and the appointment was not given. Matter of the applicant was, therefore, kept before the Review Committee i.e. the Secretary, Department of Tribal Development, Mantralaya, Mumbai and vide communication dated 4.12.1989, the Committee came to the conclusion that once the validity certificate was issued on 13.4.1989, there was no question of interference in the said certificate.

5. After continuous persuasion, the applicant was appointed as Probationary Tehsildar, Amravati Division, Amravati vide order dated 18.1.1990 and accordingly he joined at Amravati on 20.1.1990.

6. On 5.6.1990, the applicant made representation to respondent No.1 to give him proper placement in the seniority list, since the candidates junior to the applicant were appointed earlier to him and were even promoted to the post of Deputy Collector. Respondent No.1 informed the applicant that his name will be included in the seniority list for the period from 1.1.1986 to 21.12.1990.

7. After completion of probation period of two years, the applicant was given regular appointment on 20.1.1994. One Shri

Shankar Dattatraya Balvir (Belmare) was shown senior to the applicant and, therefore, the applicant filed a representation. The candidates belonging to the same batch of the applicant were promoted to the post of Deputy Collector, but the applicant was not considered. The applicant was finally promoted as Deputy Collector, on 15.11.1997. In the seniority list of 1.1.1990 to 31.12.2008 in the cadre of Deputy Collector, Shri Balvir was shown at Sr.No.143 whereas the applicant was at Sr. No. 198 and, therefore, the applicant took objection. In the meantime, record was burnt in the Mantralaya due to fire on 21.6.2012.

8. In the meantime, on 17.7.2003, the Caste Scrutiny Committee, Nagpur has cancelled the caste validity certificate issued to the applicant. The applicant challenged the said action by filing W.P. No. 6029/2012. In the said case, the Hon'ble High Court quashed and set aside the order of cancellation of caste validity certificate dated 17.7.2003 and remanded the matter back to the Caste Scrutiny Committee, Nagpur. After remand, the Caste Scrutiny Committee, Nagpur gave a decision on 29.9.2013 and invalidated the caste claim of the applicant. On 26.2.2014, the Divisional Commissioner, Nagpur forwarded the representation dated 11.2.2014 to respondent No.1 for appropriate decision. But no steps have been taken by respondent

No.1 to give proper placement in the seniority of the cadre of Tehsildar as well as Deputy Collector to the applicant.

9. The applicant in this O.A. is claiming following reliefs:-

(i) Direct the respondent No.1 to treat the date of appointment of the applicant in the cadre of Tehsildar alongwith his other batch-mates of 21st batch of 1986 and after this take necessary steps to give proper placement in the seniority of Tehsildar and thereafter in the cadre of Dy. Collector and then the Additional Collector.

(ii) Direct the respondents to settle the entire claim of service of the applicant including the deemed date, i.e. 30.9.1988 on which Shri Shankar Dattatraya Balvir (Bailmare) came to be appointed on the post of Tehsildar and deemed date of promotion dated 10.6.1996 on the post of Dy. Collector alongwith his batch-mates, by considering the effect of reservation policy.

(iii) Grant all the consequential benefits to the applicant after giving proper placement in the seniority list in the cadre of Tehsildar and the Dy. Collector and Additional Collector.

(iv) Direct the respondents to consider the representation of the applicant dated 3.3.2015 (A-37), considering the earlier assurances given to the applicant by the respondents.+

10. Respondent No.1 filed affidavit in reply. Most of the facts have been admitted. It is stated that against the order and judgment passed by the Honble High Court in W.P. No. 2153/2016 on 6.4.2016, the applicant has preferred Special Leave Petition (S.L.P.)

bearing No.17041/2016 before the Hon^{ble} Supreme Court and in the said S.L.P., the Hon^{ble} Supreme Court was pleased to pass the following order:-

Leave granted. If the petitioner is in service, he shall not be removed on the ground that he was appointed on the basis of the caste certificate produced by him. Be it noted, we have said so because if the petitioner is treated to be belonging to Koshti caste, he would still be entitled to continue in service.+

11. In view of the aforesaid order of the Hon^{ble} Supreme Court, services of the applicant have been protected. It is stated that the issue regarding invalidation of caste certificate of the applicant pending before the Hon^{ble} Supreme Court and the same is not yet adjudicated and, therefore, the respondent is unable to take a decision of proper placement of the applicant in the seniority list as well as further consequential benefits. Once issue involved in S.L.P. is finally decided by the Hon^{ble} Supreme Court, appropriate decision will be taken.

12. From detailed facts on record in foregoing paras, we are satisfied that the fact that the applicant, though is claiming to be belonging to Halba Koshti caste which comes under ST category, the competent committee has invalidated the caste claim of the applicant

and, therefore, the applicant has failed to prove that he belongs to Halba Caste which comes under ST category. The very initial appointment of the applicant is thus under jeopardy. The Honble Supreme Court has recently considered all the cases concerning caste invalidation of the candidates in the case of **Chairman and Managing Director, Food Corporation of India and others V/s Jagdish Balaram Bahira and others with number of C.As in Civil Appeal No. 8926/2015.** The judgment is delivered in the said case on 6.7.2017.

13. In para No.57 of the aforesaid judgment, the Honble Supreme Court has drawn conclusion as under:-

57. For these reasons we hold and declare that,

- (i) The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in **Milind** were in pursuance of the powers vested in this Court under Article 142 of the Constitution.
- (ii) Since the decision of this Court in **Madhuri Patil** which was rendered on 2nd September 1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for (a) the issuance of caste

certificate, (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government, (c) the procedure for the conduct of investigation into the authenticity of the claim, (d) cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine, (e) withdrawal of benefits in terms of termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category, and (f) prosecution for a criminal offence.

- (iii) The decisions of this Court in **R. Vishwanatha Pillai** and in **Dattatray** which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual- such an appointment to a post or admission to an educational institution--on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered *void or non est*.
- (iv) The exception to the above doctrine was in those cases where this Court exercised its

power under Article 142 of the Constitution to render complete justice.+

14. So far as case of the applicant is concerned, conclusion drawn in para Nos. (iii) and (iv) above are material. It has been stated whether benefit is secured by the individual---such an appointment to the post or admission to an educational institution---on the basis that the candidate belongs to a reserved category for which the benefit is reserved, invalidation of caste or tribe claim upon verification would result in the appointment or, as the case may be, admission being rendered *void or non est*. If the aforesaid conclusion is taken into consideration, very initial appointment of the applicant can be rendered *void or non est*. The only exception to this aforesaid doctrine is in those cases whether the Court exercises its power under Article 142 of the Constitution to render complete justice.

15. In the present case, case of the applicant is before consideration before the Hon^{ble} Supreme Court in S.L.P. (Civil Appeal) No. 10704/2016 and it seems that for the time being, the applicant's services have been protected.

16. In view of the aforesaid observation, we do not find any reason to doubt action on the part of respondent No.1 for not taking any decision on the representation of the applicant. In view of

the submission made by respondent No.1 in its affidavit in reply that once issue involved in the S.L.P. is finally decided by the Honble Supreme Court, appropriate action in respect of applicant's prayer for placement in the seniority list, so also other benefits will be taken in the light of order which may be passed by the Honble Supreme Court in the S.L.P. filed by the applicant, we therefore, do not find it proper to interfere in the matter at this juncture. Hence, we proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

(Rajiv Agarwal)
Vice-Chairman (A)