

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.385/2012.

Bhimrao Sampat Ingle,
Aged about 55 years,
Occ-Service,
R/o Aras Layout, Buldana.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests ,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Buldana.

Respondents

ORIGINAL APPLICATION NO.386/2012.

Tejrao Shamrao Muradkar,
Aged about 50 years,
Occ-Service,
R/o Janephal, Tq. Mehkar,
Distt. Buldana.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests ,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Buldana.

Respondents

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ORIGINAL APPLICATION NO.387/2012.

Dipak Kesharao Ingle,
Aged about 50 years,
Occ-Service,
R/o Tulshi Nagar, Buldana.

Applicant**-Versus-**

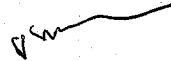
- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests ,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Buldana.

Respondents**ORIGINAL APPLICATION NO.395/2012.**

Manik Sampat Khode,
Aged about 53 years,
Occ-Service,
R/o Deoki Nagar, Near Gajanan Vatiki,
Shegaon, Distt. Buldana.

Applicant**-Versus-**

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests ,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Buldana.

Respondents

Shri G.K. Bhusari, Ld. Counsel for the applicants.
Shri P.N. Warjekar, learned P.O. for the respondents.

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

Dated: - 29th March 2017.

Order

Heard Shri G.K. Bhusari, the learned counsel for the applicants and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. All these four matters are being disposed of by this common judgment since the issue involved in all these O.As is the same.

3. The applicants in these O.As have been appointed as Junior Clerk by respondent No.2 in Scheduled Tribe (ST) category. They are claiming exemption of caste Koli (Mahadeo). The Caste Scrutiny Committee has invalidated their caste claim and, therefore, respondent No.2 directed them to submit their original caste certificates from which it was noticed that they belong to caste Koli which is recognized as Special Backward Class (SBC). The respective applicant received first time bound promotion and the also the benefit of Ashwashit Pragati Yojana (Career Progressive Scheme) i.e. the



second time bound promotion. Since their caste validity claim was invalidated by the Competent Committee, respondent No.2 issued a show cause notice to them and finally vide impugned order dated 24.5.2012 they were treated as newly appointed w.e.f. 15.6.1995 and it was directed to re-fix the salary of the applicant, considering that they are appointed on 15.6.1995. According to the applicants, they have been appointed long back prior to 15.6.1995 and, therefore, the action on the part of respondent No.2 to treat them as newly appointed w.e.f. 15.6.1995 is illegal and arbitrary. The applicants have, therefore, claimed that the order dated 24.5.2012 issued by respondent No.2 treating them as newly appointed w.e.f. 15.6.1995, be quashed and set aside.

4. The details of respective applicants as regards their date of appointment, date of invalidating their caste certificates, date of first time bound promotion and second time bound promotion etc. are given as under:-

| O.A.No. | Date of appointment as Jr. Clerk | Caste claim | Date of invalidation of caste certificates by competent committee | Date of first time bound promotion | Date of second time bound promotion | Date of issuance of show cause notice | Date of impugned order. |
|----------|----------------------------------|----------------|---|------------------------------------|-------------------------------------|---------------------------------------|-------------------------|
| 385/2012 | 17.2.1984 | Koli (Mahadeo) | 30.12.1999 | 29.2.1996 | 29.2.2008 | 28.9.2011 | 24.5.2012 |
| 386/2012 | 17.2.1984 | Koli (Mahadeo) | 22.7.2002 | 19.8.2002 | 29.2.2008 | 28.9.2011 | 24.5.2012 |
| 387/2012 | 17.2.1984 | Koli (Mahadeo) | 27.1.2003 | 18.8.2003 | 22.2.2008 | 28.9.2011 | 24.5.2012 |

| | | | | | | | |
|----------|-----------|-------------------|-----------|-------------------------------------|-----|-----|-----------|
| 395/2012 | 17.2.1984 | Koli (Mahadeo) | 13.1.1998 | 15.3.1996 (regular promotion) | --- | --- | 24.5.2012 |
|----------|-----------|-------------------|-----------|-------------------------------------|-----|-----|-----------|

5. In all these O.As, respondent No.2 has filed affidavits. Affidavit in reply has been sworn in by one Ganesh Netajirao Pawar, Naib-Tehsildar in the office of Collector, Buldana in O.A. No.386/2012. In O.A. No.385/2012, affidavit in reply on behalf of respondent No.2 has been sworn in by one Narayan D. Kulkarni, Superintendent in the office of Collector, Buldana. In O.A. No.387/2012, affidavit in reply on behalf of respondent No.2 has been sworn in by one Ganesh Pawar, Naib-Tehsildar in the office of Collector, Buldana. In O.A. No.395/2012, affidavit in reply on behalf of respondent No.2 has been sworn in by one Ashok Rambhau Rathod, Tehsildar, Buldana. The sum and substance of the defence taken by respondent No.2 in all these O.As is one and the same. According to the respondents, as per G.Rs dated 15.6.1995 and 24.6.2004, the applicants were not entitled to first time bound promotion from 1996 and in fact they were to be treated as new employees w.e.f. 15.6.1995 and, therefore, they will be entitled to first time bound promotion w.e.f. 15.6.2007. Similarly, they were entitled to second time bound promotion after completion of 12 years' service from 15.7.2007. However, the time bound promotion was wrongly given to them and,

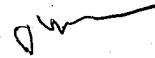
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therefore, it was necessary to withdraw those time bound promotion pay scales. The show cause notices were issued to the applicants and after giving them due opportunity, action was taken in view of the G.R. dated 24.6.2004. The respondents tried to justify the action taken by them.

6. The learned counsel for the applicants submits that the action on the part of the respondents to treat the applicants as fresh appointee w.e.f. 15.6.1995 is illegal, as the said G.R. itself shows that those who are appointed prior to 15.6.1995 are protected. The learned counsel for the applicants submits that all the applicants have been appointed in the year 1984 i.e. long back prior to issuance of the G.R. dated 15.6.1995.

7. The tenor of the impugned orders passed in all these O.As is one and the same and, therefore, for the purpose of convenience, only one impugned order i.e. in O.A. No. 385/2015 is reproduced as under:-

“श्री. बी.एस. इंगळे, अक्वल कारकून, विशेष भूसंपादन अधिकारी (इ व द) जि. का. बुलडाणा यांची लिपिक टंकलेखक म्हणून नियुक्ती दिनांक १७.२.१९८४ रोजी कोळी महादेव (अनुसुचित जमाती) या संवर्गातून झालेली आहे. ते कोळी महादेव या जातीचे वैधता प्रमाणपत्र सादर करू शकले नाही. त्यामुळे त्यांनी संदर्भाकित शासन निर्णय दिनांक १५.६.१९९५ व २४.६.२००४ च्या तरतुदीनुसार कोळी (विशेष मागास प्रवर्ग



या जातीचा स्वीकार केलेला आहे व विशेष मागास प्रवर्गाची वैधता देखील सादर केलेली आहे.

परंतु त्यांची मुळ नियुक्ती अनुसूचित जमाती संवर्गातील असल्यामुळे संदर्भाकित शासन निर्णय क्र. १ नुसार त्यांची जात वैधता जरी झालेली नसली व त्यांची नियुक्ती दिनांक १५.६.१९९५ पूर्वीची असल्यामुळे सेवेतून काढून न टाकता सेवेसाठी दि. १५.६.१९९५ हि ज्येष्ठता देण्यात येत आहे. संबंधित आस्थापना अधिकारी यांनी श्री. बी.एस. इंगळे, अव्वल कारकून यांची १५.६.१९९५ ला नव्याने नियुक्ती झाली असे गृहीत धरून त्यांची वेतन निश्चिती करण्यात यावी. तसेच सदर वेतन निश्चितीच्या आधारे आजपर्यंत नव्याने वेतन निश्चिती करून सदर वेतन निश्चिती वेतन पडताळणी पथकाकडून तपासून घेण्यात यावी. वेतन निश्चितीच्या नोंदी ह्या सेवा पुस्तकावर घेण्यात याव्या. तसेच यापुढे ज्येष्ठता यादिसाठी माहिती पाठवीतांना संबंधित कर्मचार्यांची नियुक्ती १५.६.१९९५ दर्शविण्यात यावी.

दि. १५.६.१९९५ हि ज्येष्ठता दिल्यामुळे त्यांना दि. १७.२.१९९६ रोजी देण्यात आलेली प्रथम कालबद्ध पदोन्नती तसेच दि. १७.२.२००८ पासून देण्यात आलेली द्वितीय कालबद्ध पदोन्नती अनुज्ञेय ठरत नाही. त्यांना प्रथम कालबद्ध पदोन्नती दि. १५.६.२००७ पासून अनुज्ञेय राहिल. तसेच द्वितीय कालबद्ध पदोन्नती दि. १५.६.२०२० मध्ये अनुज्ञेय राहिल. केलेल्या कार्यवाहीचा अहवाल संबंधित आस्थापना अधिकारी यांनी सेवा पुस्तकाच्या प्रतीसह व वेतन निश्चिती आदेशासह या कार्यालयास सादर करण्यात याव्यात. अर्जदाराची विशेष मागास प्रवर्गातून दि. २६.७.२००७ पासून (अ. का. ज्येष्ठता २६/०७/२००७) झालेली कार्यात्मक पदोन्नती कायम ठेवण्यात येत आहे.

वरील कार्यवाही केल्यामुळे अर्जदारास यापूर्वी अतिरिक्त प्रदान झालेले असले तरी त्याबाबतची वसुली करण्यात येऊ नये. वेतन निश्चितीच्या नंतरच्या महिन्यापासून नव्याने निश्चित केलेल्या वेतनाप्रमाणे वेतन व भत्ते काढण्यात यावे”.



Perusal of the said order clearly shows that the services of all these applicants have been protected and it was decided not to remove them from service. It was also decided not to recover the amount already paid to the applicants on account of time bound promotion. The said order also refers to the G.R. dated 24.6.2004 issued by Government of Maharashtra and it seems that the action has been taken as per the G.R. dated 24.6.2004. It is material to note that the G.R. dated 24.6.2004 which is at Annexure A-9 in O.A. No. 385/2012 has not been challenged in this O.A.

Vide G.R. dated 24.6.2004, the Government of Maharashtra has taken the following decision:-

“विशेष मागास प्रवर्गातील ज्या अधिकारी / कर्मचारी यांनी दि. १५ जुन १९९५ पूर्वीच अनुसूचित जमातीच्या प्रमाणपत्राच्या आधारे शासकीय / निमशासकीय सेवेत प्रवेश मिळविला असेल अथवा पदोन्नती प्राप्त केलेली असेल अशा अधिकारी / कर्मचार्यांना उपरोक्त क्रमांक १ येथील दि. १५ जुन १९९५ च्या शासन निर्णयाद्वारे संरक्षण देऊन अशा संरक्षित केलेल्या अधिकारी / कर्मचार्यांची सेवा जेष्ठता दि. १५ जून १९९५ अशी विचारात घेण्यात यावी.”

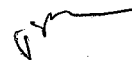
8. From the aforesaid decision, it is crystal clear that the Govt. of Maharashtra has decided to protect the services of persons who could not produce caste validity certificates or whose caste validity certificates have been invalidated by the competent authority from 15.6.1995. Even the promotion which was given prior to



15.6.1995 has been protected. However, for all purposes, said employees who have been appointed prior to 15.6.1995 under reserved categories, but whose caste certificates have been invalidated\ by the competent authority are treated as fresh employees w.e.f. 15.6.1995, even though their caste validity certificates have been invalidated.

9. None of the applicants in the present O.As have been given time bound promotion or the promotion prior to 15.6.1995 and, therefore, there was no question of reversion or denial of benefit obtained by them prior to 15.6.1995. The Government has rightly decided to protect the services of the applicants as well as not to recover the amount of time bound promotion already paid to them. What the Government has done is that the employee whose caste validity certificate has been invalidated and who were appointed prior to 15.6.1995, have been treated as regular employees from 15.6.1995 and not on the basis of said action which has been taken vide impugned letter dated 24.5.2012. The said action seems to be in conformity with the G.R. dated 24.6.2004 and, therefore, action on the part of the respondents cannot be held to be illegal.

10. The learned counsel for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court, Mumbai



in **Arun Vishwanath Sonone V/s State of Maharashtra and others reported in 2015 (1) Mh.L.J. 457.** I have carefully gone through the said judgment. In the said judgment, in fact the G.Rs issued by Govt. of Maharashtra on 19.5.1995 and 30.6.2004 have been considered. The G.R. 24.6.2004 on the basis of which the impugned orders in these O.As have been passed, was not subject matter of that judgment. In the said judgment, the Hon'ble High Court has observed in para 75 as under:-

"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 needs 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 benefit obtained or appointments secured after coming into force of the said

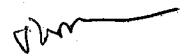


Act on 18.10.2001 can be withdrawn or cancelled immediately upon invalidation of the caste claim by the Scrutiny Committee,

- (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 also available to the persons belonging to S.B.C. 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 O.B.C. category shall be decided on the lines of the decision of the Apex Court in the case of R.s Unnikrishnan and another V/s V.K. Mahanudevan and others, reported in 2014 (4) Mh.L.J. (S.C.) 1 = 2014 (4) SCC 434."

11. In the present case, the impugned order is based on the G.R. dated 24.6.2004 which is not challenged in these O.As and, therefore, action taken by respondent No.2 seems to be legal and action has been taken after giving due opportunity to the applicants by issuing show cause notices.

12. The learned counsel for the applicants submits that the applicants have not received time bound promotion scales on the basis of their caste, but on the basis of completion of 12 years and 24 years of continuous service and, therefore, invalidation of caste certificates makes no difference. It is further material to note that the



time bound promotion scales are granted after completion of 12 years and 24 years of continuous service in the category. If the applicants' appointment is treated as fresh appointment w.e.f. 15.6.1995 then, their earlier service cannot be counted for giving such benefits and, therefore, the respondent seems to have rightly decided to withdraw such time bound promotion pay scales to the applicants by deciding not to recover arrears.

13. In view of the discussion in foregoing paras, I proceed to pass the following order:-

(i) The O.A. Nos. 385, 386, 387 & 395 of 2012 stand dismissed with no order as to costs.

sd/-

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

pdg