MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 858/2014

Smt. Mandakini D/o Harisingh Nagore,
R/o C/o N.R. Wankhede,
Near I.T.I. College, Juna Mhada Colony,
Wardha, Tah. and Distt. Wardha. ---------- **Applicant.**

Versus

1) The State of Maharashtra,
through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-440 032.

2) The District Registrar, Collector
and Collector of Stamp,
Collector Compound,
Wardha, Tah. and Distt. Wardha.

3) The Deputy Inspector of General of Registration, Nagpur
New Administrative Building,
Nagpur No. 2, Divisional Commissioner Office,
Civil Lines, Nagpur-1.,
Office A- Wing 3rd Floor, Nagpur,
Tah. and Distt. Nagpur.

4) Inspector General of Registrar,
Pune (M.S.).
In front of Council Hall, New Administrative Building,
Pune, Tah. and Distt. Pune. ---------- **Respondents**

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1. Shri P.B. Patil, Advocate for the applicant.
2. Shri P.N. Warjurkar, Presenting Officer for respondents.

Coram:- **Rajiv Agarwal : Vice-Chairman.(A)**
&
J.D. Kulkarni : Vice-Chairman (J)

Dated: - 25/4/2017

ORDER **PER V.C. (J)**

The applicant in this O.A. has challenged the impugned order dated 19/7/2008, issued by the Respondent no. 2. The same order reads as under :-

" आदेश :

ज्याअर्थी जिल्हा निबंधक वर्धा यांचे आदेश क्र. आस्था/लिपिक मुल्यांकन/४३०-३२/ ८६, दिनांक ०९/०४/१९८६ चे आदेशान्वये कु. एम. एच. नागोरे यांची सहजिल्हा निबंधक कार्यालय, वर्धा यांचे आस्थापनेवर विमुक्त जाती व भटक्या जमाती प्रवर्गातील राखीव कनिष्ठ लिपीक या पदावर नियुक्ती करण्यांत आली.

ज्याअर्थी विभागीय जाती प्रमाणपत्र पडताळणी समिती नागपूर यांनी त्यांचे आदेश क्रमांक विसकज/जाप/०४.०५ याचीका १५११/९०/०५-०६ /११२, दिनांक २९/०८/२००५ अन्वये कु. एम एच नागोरे यांचा विमुक्त जाती प्रवर्गातील राजपुत भामटा जातीचा दावा अवैध असल्याचा निर्णय दिलेला आहे.

त्याअर्थी सन -२००१ चा महाराष्ट्र अधिनियम क्र. २३ मधील कलम १० (१) मधील तरतुदीनुसार कु. एम एच नागोरे यांना शासकीय सेवेतून तात्काळ सेवानिवृत्त करण्यात येत आहे. कु. एम एच नागोरे यांना शासकीय सेवेतील कोणतेही लाभ अनुज्ञेय राहणार

नाही. तथापि त्यांना भविष्य निर्वाह निधी व गट विमा योतनेची रक्कम अनुज्ञेय राहील."

2. From the facts, it seem that the applicant came to be appointed as Junior Clerk in the office of Respondent the no. 2 on 9/4/1986. According to the applicant, he was appointed from the 'Open' category. However, according to the respondents, he was appointed from the category of D.T.N.T.

3. The applicant submitted that he was shown to be candidate of N.T. category by the respondents department unilaterally. The applicant's claim for caste 'Rajput Bhamta' was referred to the Collector, Wardha and the Collector, Wardha without giving any reasons rejected his caste claim on 4/5/1990. Being aggrieved by the said order, the applicant filed W.P. no.1511/1990 before the Hon'ble High Court of Judicature of Bombay, Bench at Nagpur on 28/6/1990. The

Hon'ble High Court vide order dtd. 29/6/1990 granted status-quo order and therefore, the applicant continued in service.

4. Vide order dtd. 9/6/2004 the Hon'ble High Court directed the Caste Scrutiny Committee to decide the applicant's caste claim and the order passed by the Collector on 4/5/1990 was set aside.

5. The Caste Scrutiny Committee passed the final order and rejected applicant's claim and in view of that rejection, the Collector, Wardha passed the order dtd. 1/12/2007 to accommodate the applicant in 'Open' category and she was given seniority w.e.f. 15/6/1995 in the 'Open' category. However, vide order dtd. 19/7/2008, the District Registrar-cum-District Collector, Wardha terminated the applicant's services. The said termination has been challenged in this O.A.

6. According to the ld. counsel for the applicant the applicant had filed number of representations as such on 23/7/2008, 25/7/2008, 29/7/2008, 6/8/2008, 14/8/2008,

17/8/2008, 15/9/2008, 16/9/2008 , 29/9/2008 and 7/10/2008 collectively (Annexure-A-9). The Registrar vide letter dtd. 14/10/2008 informed the applicant that it was not possible to take her in the job. The applicant thereafter again filed number of representations i.e. 20/10/2008, 7/4/2009, 15/10/2010 and 28/11/2008 and requested that she shall be granted pensionary benefits and also requested to release her increments and claimed arrears. The applicant thereafter again made a representation dtd. 16/7/2010. She was intimated on 4/8/2010 that she was not entitled to pension since her services have been terminated. On 4/9/2010, the applicant again made a representation pointing out that she was accommodated in 'Open' category as per the order dtd. 1/12/2007. The applicant also filed a representation for personal hearing but finally the applicant's claim has been rejected by the Joint District Deputy Registrar, Wardha vide impugned order dtd. 11/7/2011 and therefore, the applicant has been constrained to file this O.A. The applicant has claimed that the order dtd. 19/7/2008, Annexure-A-7 be

quashed and set aside and it be declared that she is entitled to continuity of service with full back wages and all other benefits admissible to her post from the date of her termination on 19/7/2008 till the date of her retirement i.e. 31/10/2008 and the Respondent no. 2 to 4 be directed to pay all pensionary and retiral benefits to the applicant as per 4th, 5th and 6th Pay Commission along with interest.

7. The Respondent no. 2 to 4 have resisted the claim by filing reply-in-affidavit. According to the respondents, the applicant was appointed as Junior Clerk vide order dtd. 9/4/1986 on temporary basis on the post which was reserved for the category of 'भटक्या विमुक्त जाती' i.e. D.T.N.T. She had been given appointment on the condition that she may be removed from her service at any time and that her appointment was temporary in nature.

8. Since the applicant's claim for caste validity was rejected, she approached the Hon'ble High Court and the matter was remanded back to the Caste Scrutiny Committee.

Since the Caste Scrutiny Committee invalidated the caste certificate of the applicant, her services were terminated as per the provisions of Section 10(1) 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. The applicant kept silent till 2014 and now approached the Tribunal. It is stated that the O.A. is barred by limitation.

9. According to the respondents, the applicant's claim for caste validity has been rejected vide order dtd. 29/8/2005 by the competent authority. There is no cause of action for the applicant to approach this Tribunal. The applicant has failed to prove that she is eligible for grant of pensionary benefits and she is not entitled to get pensionary benefits as per Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982. The Respondent no. 2 filed another affidavit on 21/1/2017 and justified the order of dismissal of the applicant .

10. We have heard the learned counsel for the applicant and the learned Presenting Officer for the respondents. We have also perused affidavits, affidavit-in-reply and various documents placed on record by the respective parties.

11. From the material on record and the arguments put forth, it is clear that admittedly the applicant has been appointed to the post of Clerk on 9/4/1986. According to the applicant, she was appointed from the 'Open' category and mentioned her caste as a formality but her case was referred to the Caste Scrutiny Committee for validation of her caste. Admittedly, from 1986 till the matter was referred to the Caste Scrutiny Committee as per the directions of the Hon'ble High Court, the applicant's caste certificate was not verified and finally the decision came from the Competent Caste Scrutiny Committee on 29/8/2005. The Caste Scrutiny Committee came to the conclusion that the applicant belongs to 'Rajput' and not 'Rajput Bhamta' as claimed by the applicant. The said decision taken by the Committee is as under :-

" याचिका कर्त्याने मा. उच्च न्यायालयात राजपूत भामटा जातीचा विमुक्त जाती प्रवर्गातिल जाती दावा सादर केलेला आहे. सदर जाती दाव्याचा समर्थनार्थ त्यांना सबळ पुरावे सादर करण्याकरिता संधी देण्यात आली आहे. परंतु त्यांनी स्वतःच्या जातीच्या प्रमाणपत्राव्यतिरिक्त दुसरे कोणतेही शालेय अथवा महसुली सादर केलेले नाही. त्यांच्या प्राथमिक शाळा सोडल्याच्या दाखल्यात त्यांची जात राजपूत नमूद आहे. त्यामुळे त्या राजपूत भामटा जातीच्या नाहीत हे सिद्ध होते. उमेदवारास राजपूत भामटा जाती दावा समर्थनार्थ पुरावे सादर करण्यास पुरेशी संधी देवुनही पुरावे सादर न केल्यामुळे कार्यकारी दंडाधिकारी, वर्धा यांनी दिनांक ८.८.१९७८ अन्वये उमेदवारास दिलेले राजपूत भामटा जातीचे प्रमाणपत्र रद्द करून उमेदवाराचा राजपूत भामटा जातीचा दावा अवैध असल्याचा समिती निर्णय घेत आहे. "

12. From the aforesaid observations of the Committee, it is clear that the applicant was held to be belonging to the caste "Rajput' and not 'Rajput Bhamta'.

13. Though it is stated that the applicant had applied from the 'Open' category, neither the applicant nor the

respondents have placed on record any documentary evidence to show as to whether the applicant really applied from 'Open' category or from the reserved category. The original application form of the applicant has not been placed on record.

14. The learned counsel for the applicant submits that the case of the applicant was being considered from the 'Open' category and in fact a decision was taken to include the applicant in 'Open' category by the Respondent no. 2. The copy of such decision has been placed on record by the applicant at Annexure-A-6, from which it seems that the Respondent no. 2 had decided to include the applicant in 'Open' category. The learned P.O. has invited our attention to the minutes of the meeting annexed along with the reply-in-affidavit of the Respondent no. 2. Perusal of the said minutes of the meeting shows that earlier in view of various Govt. Resolutions in the field, it was decided to treat the applicant as a candidate from 'Open' category due to invalidation of her caste certificate. However, the said decision finally seems to

have been revoked and it was decided to terminate the applicant.

15. We have also perused the minutes of the meeting in which the G.Rs. issued from time to time have been considered. There is a reference to the G..R. dtd. 30/6/2004 whereby protection has been given by the Govt. to those who are appointed on or before 15/6/1995 in Govt. employment. The copy of the said G.R. is marked exhibit 'X' for the purposes of identification. The title of the said G.R. is " अनुसूचित जमातीच्या राखीव जागांवर सरळसेवा /पदोन्नती झालेल्या बिगर आदिवासी अधिकारी/कर्मचा-यांना शासकीय/निमशासकीय सेवेत संरक्षण देणेबाबत ". The Govt. has taken decision in this regard as under :-

> "ज्या बिगर आदिवासींनी अनुसूचित जमातीच्या राखीव जागांवर दिनांक १५ जून १९९५ च्या पूर्वी शासकीय किंवा निमशासकीय सेवेत नोकरी किंवा पदोन्नती मिळविलेल्या आहेत त्यांना सेवेतून काढण्यात येवू नये किंवा पदावनत करू नये. त्यांना ते ज्या घटकाचे आहेत , त्या घटकात दाखविण्यात यावे. यापुढे त्यांना त्या त्या घटकाचे आरक्षणाचे फायदे देय राहतील. अशाप्रकारे रिक्त झालेली पदे आदिवासी जमातीमधून भरण्यात यावी"

16. The learned P.O. submits that this G.R. is applicable only in cases of promotion. We are unable to accept this contention for the simple reason that the title shows that even those who are appointed directly on the reserved posts have been protected. In the present case, the applicant was appointed in 1986, i.e., much prior to 15/6/1995 and her caste validity claim has been invalidated for the first time by the competent authority on 29/8/2005. In such circumstances, there is no reason as to why protection has not been provided to the applicant.

17. The learned counsel for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in the case of ***Chandrapal Ratan singh Rajput –Vs. Divisional Caste Scrutiny Committee, Amravati Division, and Others reported in 2016 (7) ALL MR 530***. In para no. 4 of the said judgment, the Hon'ble High Court has observed as under :-

Para 4: " ***Admittedly, the petitioner, based upon the caste certificate as belonging to "Rajput***

Bhamta " which was granted by the District Magistrate on 25/02/1991 and based upon then existing provisions of law the employer confirmed the services of the petitioner on 28/03/1994, on a condition that the petitioner should get his caste certificate scrutinized from the District Magistrate/Collector, Buldana. The District Magistrate by order dated 25/02/1991 had confirmed/granted Caste Validity to the petitioner and intimated to the respondent No. 2 accordingly. However, the respondent/employer issued letter to the petitioner and called upon him to produce a Caste Validity Certificate on basis of Government Resolution Dt.05/07/1997. The petitioner, accordingly participated in the proceedings initiated before the Scrutiny Committee placed on record to justify his caste claim, the documents including the documents of other relatives referring to the caste in question. There are no direct document to support the case. The Vigilance Cell report is also not in favour of the petitioner. The conclusion of the Scrutiny Committee is restricted to caste "Rajput". There is no observation and/or finding given with regard to

any sort of fraud or misrepresentation by the petitioner at any point of time. The basic authority, at the relevant time, in fact, validated the caste claim of the petitioner as " Rajput Bhamta". Therefore, as submitted , the petitioner throughout pursuing his claim bonafidely. "

18. We are also within the knowledge of the judgment delivered by the Full Bench of the Hon'ble High Court in the case of ***Arun Vishwanath-Vs- State of Maharashtra and others reported in 2015 (1) MhLJ 457,*** *wherein* in Paras No. 52 and 53 it is held as follow :-

Para 52 :" ***We are, therefore, of the view that the ratio of the Full Bench decision in Ganesh Rambhau Khalale vs. State of Maharashtra and others, reported in 2009 (2)Mh.L.J.788, in holding that the clarificatory direction issued in Milind's case " that the admissions and appointments that have become final shall remain unaffected by this judgment" was one issued under Article 142 and it was not the direction under Article 141 of the***

Constitution of India, runs contrary to the ratio of the decisions of the Apex Court, more particularly the last two decisions of the Apex Court in cases of Kavita Solunke and Shalini, and hence it remains no longer good law and a binding precedent. Consequently, we overrule the decisions of the Division Benches of this Court in Rajendra Ramaji Mahisbadwe –vs. Joint Commissioner and Vice Chairman, reported in 2013 (3) Mh.L.J. 393; and Archana Dadarao Pethkar –Vs. Joint Commissioner and Vice Chairman, reported in 2013(3) Mh.L.J.764. We confirm the view taken by the other Division Benches of this Court in the cases of Prabhakar Nandanwar vs. Joint Commissioner and Vice Chairman Scheduled Tribe Certificate, Caste Scrutiny Committee and others, reported in 2013 (1) Mh.L.J. 156, and Mahendrakumar Namdeorao Hedaoo vs. Scheduled Tribe Caste Scrutiny Committee, Nagpur and others, reported in 2014(4) Mh.L.J.958, which is in conformity with the ratio of the decisions of the Apex Court in Kavita Solunke and Shalini's cases. So far as the decisions of the Division Benches of this Court in the cases of Vijaya Deorao Nandanwar vs. Chief

Officer, Municipal Council, Wardha, reported in 2013 (5) Mh.L.J. 153; Pradip Gajanan Koli vs. State of Maharashtra, reported in 2014(3) Mh.L.J. 779; and Rakesh Sukajuji Dafade vs. State of Maharashtra, reported in 2014(4) Mh.L.J. 307, are concerned, we concur with the view to the extent it is in conformity with the decisions of the Apex Court in Kavita Solunke and Shalini's cases.

Para 53: ***In view of above, we answer question No. 1 in the affirmative, holding that the relief of protection of service after invalidation of caste claim can be granted by the High Court on the basis of the decision of Hon'ble Supreme Court in the case of Kavita Solunke vs. State of Maharashtra and others, reported in 2012(5) Mh.L.J.(S.C.)921 = (2012) 8 SCC 430, and the subsequent decision in the case of Shalini vs. New English High School Association and others, reported in 2014(2)Mh.L.J.(S.C.)913 = (2013) 16 SCC 526."***

19. In the aforesaid paras, it has been held that the appointments or promotion made up to 15/6/1995 in public

employment on the basis of caste certificates against the posts reserved for any of the backward category stand protected in terms of the G.Rs. dtd. 15/6/1995 and 30/6/2004 and shall not be disturbed and the appointments that have become final between 15/6/1995 to 28/11/2000 shall remain unaffected in view of the decision of the Apex Court in Milind's case.

20. We have also perused the order passed by the Caste Scrutiny Committee in the case of the applicant. In the said order, the Caste Scrutiny Committee nowhere stated that the applicant has played any fraud. The Committee admitted that the applicant's caste was 'Rajput' and not 'Rajput Bhamta'. But the observation was based on the ground that the applicant has failed to produce any evidence in support of his claim. There is no observation and/or finding given with regard to any sort of fraud or misrepresentation by the petitioner. In our opinion, the case of the applicant should have been considered as almost similar to that considered by the Hon'ble High Court in the circumstances on which the

learned counsel for the applicant has placed reliance. In the present case also the applicant was appointed on the post of Clerk in 1986 and her claim for caste validity has been rejected in 2005. Admittedly, the applicant has served till she was terminated and the termination order came to be passed just before few months of her retirement on superannuation. Considering all these aspects, we are of the opinion that the applicant's services ought to have been protected as per the G.R. dated 30/6/2004 and she should have been given benefits of pension etc.

21. On a conspicuous discussion in the foregoing paras, we are therefore of the opinion that it will be in the interest of justice and equity to grant pensionary benefits to the applicant considering her termination as retirement on superannuation, though premature.

22. The learned P.O. submits that the applicant's claim was rejected by the Caste Scrutiny Committee in 2005 and she has been terminated vide order dtd. 19/7/2008 and

therefore, the applicant should have filed the petition within one month from the date of termination. It is true that the order of termination is dtd. 19/7/2008. However, in the O.A., the applicant has claimed her entitlement to the pensionary and retiral benefits having served continuously for more than 22 years and since the matter has been considered on merits, it will not be in the interest of justice and equity to deny the claim to the applicant on technical aspects particularly, when the applicant is claiming pensionary benefits, denial of which is continuous cause of action.

23. In view of the discussion in the foregoing paras, we pass the following order :-

a) The O.A. is partly allowed.

b) The respondents are directed to treat the applicant as retired on superannuation with effect from the date of her alleged termination.

c) The applicant be given protection of the G.R. dtd. 30/6/2004 .

d) The respondents are directed to consider the claim of the applicant for pension and pensionary benefits considering her continuous

service from the date of appointment till her termination i.e. 19/7/2008 and shall grant all pensionary and retiral benefits considering her service as such.

e) Necessary action shall be taken within 6 months from the date of this order.

f) No order as to costs.

sd/-

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

sd/-

(Rajiv Agarwal)
Vice-Chairman (A)

Skt.