

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 32/2017

Dr. Madhukar S/o Pundlik Parchand,
aged about 63 years, Occ. Service,
r/o Plot no.81, Deendayal Nagar, Saraswati Housing
Society, Nagpur-440 022.

Applicant.

Versus

- 1) The State of Maharashtra through Secretary,
Medical Education and Drugs Department
having its office at Mantralaya, Mumbai-400 032.
- 2) Director Medical Education and Research
having office at St. George Hospital 4th floor,
D'mello Road, Fort, Mumbai.
- 3) Dean,
Indira Gandhi Government Medical College,
Nagpur.
- 4) Dr. Smt. Anuradha Shrikhande,
aged about 62 years,
Professor and Head of Department of Pathology,
Indira Gandhi Government Medical College,
Nagpur.
- 5) Dr Umeshchandra Tiwari,
aged about 60 years,
Professor and Head of Department of Ophthalmology,
Government Medical College,
Akola.
- 6) Dr. B.N. Bangde,
aged 63 years
Professor and Head of Department of Ophthalmology,
Shri Vasantrao Naik Government Medical College,
Yavatmal.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos. 1 to 3.

None for respondent nos. 4 to 6.

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

JUDGEMENT

(Delivered on this 23rd day of June,2017)

Heard Shri S.P. Palshikar, Id. Counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for R-1 to 3. None for R-4 to 6.

2. The applicant Dr. Madhukar Pundlik Prachand was appointed in the Government service as Assistant Professor (Anatomy) and was posted as such at Indira Gandhi Government Medical College (IGMC), Nagpur in 1984. He was appointed as Associate Professor in 1989 and thereafter as a Professor of Anatomy in 1995 and at present he is serving as a Professor and Head of the Department of Anatomy in IGMC, Nagpur. His initial appointment was for reserved category, i.e., Scheduled Tribe 'Halba'. The applicant is due for next promotion as a Dean considering his seniority-cum-merit.

3. The respondents have published a final seniority list on 25/4/2016 in respect of Professors as on 1/1/2016. In the said list the applicant has been shown at sr.no.6. The applicant was expecting his turn for the promotion of Dean. The Departmental Promotion

Committee considered the candidates for promotion to the post of Dean in its meeting dated 2/12/2016. The respondent no.2 issued a communication / order dated 19/12/2016, whereby the respondent no.6, Dr. B.N. Bangde has been promoted as Dean ignoring the legitimate claim of the applicant. The applicant has, therefore, filed representation on 26/12/2016, but it was not considered and therefore the applicant has filed this O.A.

4. In the original O.A. the applicant claimed that the order dated 19/12/2016 whereby the respondent no.6 has been promoted to the post of Dean be quashed and set aside and respondent nos.1&2 be directed to consider the applicant's case for promotion to the post of Dean.

5. The O.A. was however subsequently amended and it is prayed that the conduct and action on the part of the respondents in not considering the applicant's name for the promotion to the post of Dean only because he has not furnished the Caste Validity Certificate is wholly erroneous. It is further stated that the promotion to the applicant cannot be denied on the ground of not furnishing the Caste Validity Certificate in view of the Judgment delivered by the Hon'ble High Court Bench at Aurangabad in case of **Shrikant Chandrakant Saindane Vs. State of Maharashtra & Ors., reported in 2012 (1) Mh.L.J.,787.**

6. It is stated that the applicant's claim for Caste Validity is pending before the competent Caste Scrutiny Committee since 1987 and no decision has yet been taken on his claim. Since strict action has been taken against applicant he was required to file O.A. No. 356/2016 and his services have been protected.

7. In the reply-affidavit the respondent nos. 1 to 3 have admitted most of the facts. Admittedly, the applicant was appointed as Assistant Professor under reserved category i.e., S.T. It is stated that even till today the applicant has not produced the Caste Validity Certificate and therefore his name was not considered for promotion to the post of Dean. It was his bounden duty to provide the Caste Validity Certificate. His earlier appointment as well as promotion was subject to production of Caste Validity Certificate from the Competent Authority. In fact, the respondents were to take action for not producing the Caste Validity Certificate against the applicant and the applicant was to be removed from the service however he approached before the Tribunal by filing O.A.No. 404/2014 and because of the interim relief granted in the said O.A., the applicant is still in service.

8. As regards the order of promotion of Dean is concerned, it is stated that the Competent Committee has taken decision and has promoted one Dr. Rekha Daver as Dean as per the order dated 9/2/2017. The Director of Medical Education and Research, Mumbai

has already issued a notice to applicant on 15/4/2014 to submit Caste Validity Certificate or otherwise he may recommend to the Government regarding termination of the services of the applicant and the said matter is pending before this Tribunal.

9. The learned counsel for the applicant has placed reliance on the Judgment in the case of **Shrikant Chandrakant Saindane Vs. State of Maharashtra & Ors., reported in 2012 (1) Mh.L.J.,787.** In the said case the Hon'ble High Court has observed as under :-

“No doubt, that the purpose of the said condition is with a noble aim of ensuring that the reserved seat should be occupied by a candidate belonging to that particular reserved category and no candidate or person, not belonging to reserved category, should usurp the said post. However, at the same time, the Court cannot ignore the fact that it is not in the hands of the candidates to obtain the certificate before they appear for interview or apply for a particular post. If the impugned condition is upheld, an eventuality cannot be ruled out that a candidate will have to wait till he reaches the maximum age to apply for the post and is given the validity certificate after he becomes age bar. In such a situation, a candidate belonging to a particular backward class, would be deprived of availing the benefits, though, in law, he is entitled to. If an ineligible candidate, who is appointed on the post reserved for reserved category, is found to be not belonging to that category and his caste claim is invalidated, his services will be liable to be terminated forthwith and he shall stand discharged from the services in terms of sub-section (1) of section 10 of the Caste Certificates Act,2000. In that view of the

matter, condition no.7 in the Government Resolution dated 5th November is unreasonable and liable to be struck off and accordingly, is struck off.”

10. The learned counsel for the applicant submits that the claim of the applicant is pending before the Caste Validity Certificate since 1987 and till today no decision has been taken.

11. The learned counsel for the applicant also placed reliance on the Judgment delivered by this Tribunal in O.A.356/2016 in the case of **Shri Sanjay Vasant Sonawane Vs. State of Maharashtra & Ors.**, delivered on 25/10/2016. In the said case also this Tribunal was pleased to protect the services and the respondents were directed to consider the case of the applicant for Time Bound Promotion and for the normal promotional prospects just as in case of any other Govt. Employees subject to production of Caste Validity Certificate within a period of three months. However, in the said order it was also observed as under :-

“It appears quite clearly that what the applicant cannot be heard to say is to shift the burden on to the employer for getting the Validity Certificate. It would be his responsibility to take steps to secure the Caste Scrutiny Certificate and if a procedure is prescribed in that direction, to follow the same. Beyond that even on the applicant no other responsibility or onus is cast. In this view of the matter, therefore, we are quite clearly of the view that once the applicant was appointed in

1999 and so far the issue of Caste Validity continues to be under consideration, subject thereto he will have to be treated as any other Government employee in the matter of time bound promotion as well as normal promotions. If he cannot take any undue advantage, he cannot be put to any undue disadvantage either”.

12. It is material to note that admittedly the applicant was appointed for reserved category and his appointment was subject to production of Caste Validity Certificate. The applicant did not produce the Caste Validity Certificate. During his service period the applicant was promoted on various posts and those promotions were also subject to production of Caste Validity Certificate. Admittedly, the applicant has not produced the Caste Validity Certificate till today, though it was duty of applicant to produce Caste Validity Certificate and he cannot take disadvantage of the fact that the Competent Committee did not decide his case.

13. Recently the Hon'ble High has dealt the question of “invalidation of Caste Certificate: Grant of relief of protection of service” in the case of **Arun Vishwanath Sonone Vs. State of Maharashtra & Ors.**, by its Full Bench. The said case has been reported in **2015 (1) Mh.L.J.,457**. In para nos. 65, 66 & 75 of the said order the Hon'ble Full Bench has observed as under :-

“65. The factual position to which the law laid down is to be applied, is stated as under :

(a) Before coming into force of the said Act on 18-10-2001, the appointments and promotions were made against the post reserved for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Classes category (consolidatedly called as “the backward class category”) merely on the basis of the production of the Caste Certificates issued by the Competent Authorities with or without the condition of producing a caste validity certificate.

(b)The decision in Madhuri Patil's case was delivered by the Apex Court on 2-9-1994, and by issuing the Government Resolutions dated 15-6-1995 and 30-6-2004, all the appointments and promotions made up to 15-6-1995 against a post reserved for backward class category are protected and such appointments and promotions cannot be cancelled.

(c) After coming to force of the said Act on 18-10-2001, no appointments and/or promotions could be made without production of a caste validity certificate under sub section (2) of Section 6 of the said Act, but it is a fact that some such appointments have been made.

(d) In terms of the decision in Milind's case, all the appointments that have become final up to 28-11-2000 stand protected subject to the conditions as under :

(i) that upon verification by the Scrutiny Committee, the Caste Certificate produced to secure an appointment, is not found to be false or fraudulent,

(ii) that the appointee shall not take any advantage in terms of promotion or otherwise after 28-11-2000 solely on the basis of his claim as a candidate belonging to any of the backward class categories in respect of which his claim is invalidated by the Scrutiny Committee, and

(iii) that it shall be permissible for the Competent Authority to withdraw the benefits or promotions obtained after 28-11-2000 as a candidate belonging to backward category for which the claim has been rejected.

66. In view of the law, which we have laid down, the relief of protection of service after invalidation of caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in the cases of Kavita Solunke v. State of Maharashtra and others, reported in 2012(8) SCC 430, and Shalini v. New English High School Association and others, reported in (2013)16SCC526. The manner and the extent to which such protection is to be made available, is laid down as under :

(a) The appointments or promotions made upto 1561995 in public employment on the basis of the Caste Certificates against a post reserved for any of the backward class categories, stand protected in terms of the Government Resolutions dated 1561995 and 3062004 and shall not be disturbed, and the appointments that have become final

between 1561995 and 28112000 shall remain unaffected in view of the decision of the Apex Court in Milind's case.

(b)The grant of protection in terms of the Government Resolutions dated 1561995 and 3062004 and 63 of 75 the decision in Milind's case, shall be subject to the following conditions :

(i) that upon verification by the Scrutiny Committee, the Caste Certificate produced to secure an appointment, is not found to be false or fraudulent,

(ii) that the appointee shall not take any advantage in terms of the promotion or otherwise after 28-11-2000 solely on the basis of his claim as a candidate belonging to any of the backward class categories, in respect of which his claim is invalidated by the Scrutiny Committee, and

(iii) that it shall be permissible for the Competent Authority to withdraw the benefits or promotions obtained after 28112000 as a candidate belonging to backward class category for which the claim has been rejected.

(c) Any appointments that have become final against a post reserved for any of the categories of backward class on the basis of the production of Caste Certificate without incorporating a specific condition in the order of appointment that it is it is subject to production of caste validity certificate after 28-11-2000 and before coming into force of the said Act on 18-10-2001 shall also remain protected subject to the conditions mentioned in clause (b) of para 64.

(d) After coming into force of the said Act on 18-10-2001, no benefit or appointment can be obtained or secured in any public

employment against a post reserved for any of the backward class categories merely on the basis of the production of a caste certificate and without producing a caste validity certificate from the Scrutiny Committee. Such appointments are not protected and shall be liable to be cancelled immediately upon rejection of the caste claim by the Scrutiny Committee.

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) Mh.L.J. (S.C.) 1 = 2014 (4) SCC 434.”

14. In the Judgment the case decided by the Hon'ble High Court in **Milind's** case has been considered.

15. It is to be noted that in the present case the respondents' authorities have decided to take action against the applicant for not producing the Caste Validity Certificate right from beginning and in fact the respondents have decided to remove the applicant from service. However said action has been challenged before this Tribunal and the applicant is in service because of the interim relief granted in the said O.A. Even though the applicant's services may be protected in view of the various decisions already referred in the Judgment of **Arun Vishwanath Sonone Vs. State of Maharashtra & Ors.**, as stated supra, the applicant cannot take benefit of the promotion in the caste without producing the Caste Validity Certificate. Since the applicant has failed to produce Caste Validity Certificate for whatever reason, coercive action was proposed against the applicant (which was stayed by the Tribunal), the respondent has committed no

wrong in not considering his case for promotion to the post of Dean as the applicant has not produced the Caste Validity Certificate. I, therefore, do not find any illegality in the action taken by the respondents. Hence, the following order :-

ORDER

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

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

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