

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.68 OF 2016

DISTRICT : MUMBAI

Shri Pramod Narayan Chinchghare.)
Age : 50 years, working as Inspector of)
Stamps in the Head Office at Nagar Bhavan)
Fort, Mumbai 400 023.)...**Applicant**

Versus

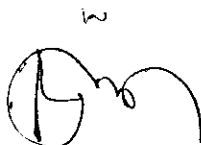
1. The State of Maharashtra.)
Through the Secretary,)
Finance Department,)
Mantralaya, Mumbai - 400 032.)
2. Additional Controller of Stamps.)
Mumbai having its office at Nagar)
Bhavan, Fort, Mumbai 400 023.)
3. Inspector General of Registration &)
Controller of Stamps, M.S, Pune.)...**Respondents**

Shri R.K. Mendadkar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)



DATE : 02.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The Applicant having been appointed way back on 4.9.1992 as a Clerk-cum-Typist through Halba Scheduled Tribe category, but having got his Tribe claim invalidated on 24.05.1999 and later on got his status as Halba Special Backward Class validated on 28.04.2015 is aggrieved by the impugned order dated 02.12.2015 whereby he was given breaks and was reverted from the present post, which was second promotional post back to the Clerical post.

2. We have perused the record and proceedings and heard Shri R.K. Mendadkar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. The Applicant, as already indicated at the threshold belongs to Halba-Koshti Caste. In this matter, he was given a Certificate as far back as on 03.08.1988 by the Executive Magistrate at Nagpur. As at that point in time, he was a competent authority to issue such Certificates and despite needless name calling and trying



to denigrate the Applicant in the Affidavit-in-reply, there is not even a particle of material to suggest that the Applicant played any sharp practice much less any fraud, etc. in obtaining the said Certificate. At the most, what really happened was that when his Certificate was placed before the concerned Caste Scrutiny Committee, his claim was rejected. That *ipso-facto* does not amount to fraudulent obtaining of the said Certificate and this conclusion could be reached by the very case law that the learned P.O. cited before us in **Surendra Vs. State of Maharashtra, 2006(1) MLJ 308 (b)**. Failing to substantiate the claim does not necessarily point to the fraudulent securing of the Certificate. We must, therefore, hold that on facts, it has to be held that the Applicant did not commit any fraud in obtaining the said Certificate and ultimately and at the highest, he failed to substantiate his claim before the Caste Scrutiny Committee.

4. Now, the Applicant came to be appointed as Clerk-cum-Typist. He was duly recommended by Maharashtra Public Service Commission (MPSC) and he joined the Office of the Superintendent of Stamps, Mumbai. The 1st Respondent hereto is the State of Maharashtra in Finance Department. The 2nd Respondent is the Additional Controller of Stamps and the 3rd

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Respondent is the Inspector General of Registration and Controller of Stamps.

5. On 1.10.1992, from the same category, he came to be promoted to the post of Supervisor of Stamps. In the meanwhile, his Caste Certificate came to be invalidated on 24th May, 1999 vide Exh. 'C' (Page 19 and 20 of the Paper Book (PB)). That order was made by the Committee for Scrutiny and Verification of Tribe claim.

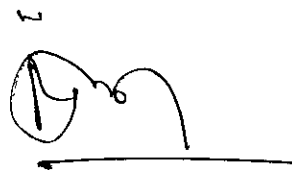
6. Thereafter, an action was directed to be taken against the Applicant by the order of the General Administration Department, a copy of which is at Exh. 'D' (Page 22 of the P.B.) dated 4th September, 1999. The Deputy Controller of Stamps in the Office of the Chief Controller, Mumbai was directed to take action under the G.R. of 15.06.1995.

7. It is pleaded by the Applicant without any effective denial in the Affidavit-in-reply that a departmental enquiry proceedings (DE) came to be initiated against the Applicant and a decision was taken to place him at the bottom of the seniority list in that particular cadre.



8. In the meanwhile, on 2.1.2006, the Applicant came to be promoted to the post of Inspector of Stamps, Class-III. That was the second promotion that he got in his career so far. Thereafter, it appears that in the year 2012, the Applicant was directed to produce the Caste Validity Certificate with regard to the Special Backward Class. Such a Certificate came to be issued, a copy of which is at Exh. 'E' (Page 23 of the P.B.) and is dated 27th September, 2012. The Caste Validity Certificate came to be issued on 7.4.2015. It is, therefore, very clear from the above discussion that whatever action was to be taken against the Applicant in 1992 had been taken. We in this OA are not called upon to render any decision thereabout. We have to take it, as it was. But very pertinently, the Applicant not only continued to be in service, but was rewarded with two promotions, one each before and after the 1999 action against him. Thereafter, it is now firmly established that his caste claim under Special Backward Class has been finally acknowledge with a seal of approval thereof from the Caste Scrutiny Committee.

9. Even then, a show cause notice came to be issued to the Applicant on 24th September, 2015, a copy of which is at Exh. 'G' (Page 25 of the P.B.). It was therein mentioned inter-alia (in Marathi) that the Applicant had

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applied from ST category for the post of Clerk Typist, Class-III. His certificate was invalidated, and therefore, he was called upon to show cause as to why action should not be taken against him under the provisions of 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 (23 of 2001) (to be hereinafter called as the said Act). The Applicant apparently showed cause, etc. which did not satisfy the authorities and ultimately, the order herein impugned dated 2nd December, 2015 came to be made. It was therein alleged that the Applicant submitted the false Certificate. That aspect of the matter has already been ruled out by us at the outset with the guidance of **Surendra** (supra). The stand of the Applicant was in effect that once having been punished already by putting his name below the last candidate of that particular batch, any further action would run into the teeth of the Rule against, double jeopardy was apparently not accepted and in the ultimate analysis, both his promotions were nullified and he was reverted to the clerical post.

10. By an interim order made by one of us (R.B. Malik, Member-Judicial) dated 22.01.2016 *inter-alia* relying



upon **Arun Vs. State of Maharashtra, 2015 (1) MLJ 457 (F.B)**, the state of affairs that the Applicant continued to hold the post of Inspector was defined as 'Status Quo' and the parties were directed to maintain the same till the next date. Thereafter, by an order of 14.06.2016, the said order was continued till further orders and the hearing of the OA was expedited and as an expedited OA, it was heard on the last occasion.

11. We are quite in agreement with Mr. Mendadkar, the learned Advocate for the Applicant that in the contextual connotation peculiar hereto, the impugned action would run into the teeth of the Rule against the double jeopardy. The fact remains that the Respondents took a particular action in accordance with the position such, as it obtains at that point in time. They very clearly moved with an idea to impose punishment and we must repeat that we are not, here in this OA, going to nor can we be permitted to scrutinize that order.

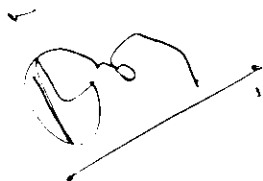
12. But even otherwise, there being no allegations of foul-play against the Applicant in the matter of securing of the said Certificates which aspect of the matter has been discussed with the guidance from **Surendra** (supra), even otherwise no action can be taken against him. Quite

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pertinently, with all that the Respondents would now want to agitate against the Applicant, they themselves have given promotion to him which was in fact the second promotion in the 2006. Pertinently, the offending Caste Certificate, if one might use that phrase was obtained in the year 1988. That is because the Certificate of 2012 passed muster with the Scrutiny Committee. If one went by the Judgment of the Full Bench in **Arun** (supra), Placitum (i), Paras 33 to 35, our finding that no action can be taken against the Applicant would be further fortified. Even otherwise, reading the Full Bench Judgment in **Arun** (supra), would go a long way in upholding the claim of the Applicant.

13. We may also mention that as far as **Surendra** (supra) is concerned which was cited by the learned P.O. and a copy of which is annexed to the Affidavit-in-reply, apart from the aspect already discussed above, the rest of it is an authority which should guide the Caste Scrutiny Committee.

14. The upshot, therefore, is that the impugned order will have to be struck down and it will have to be made clear that the Applicant should be allowed to continue in

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the post of Inspector of Stamps as if no vitiating circumstance attaches to him.

15. The impugned communication/order (Exh. 'A') is hereby quashed and set aside. The Respondents are directed to let the Applicant continue to function in the capacity that he is working at present on the strength of the interim order made in this OA, as if no vitiating factor attaches to him and he be treated as any other Government employee holding that post in every aspect of the service matter. The interim order gets merged with this final order. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
02.08.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
02.08.2016

Mumbai
Date : 02.08.2016
Dictation taken by :
S.K. Wamanse.