

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 921 OF 2014

DISTRICT : SATARA

Shri Sanjay Vishwasrao Jadhav,)
Residing at Civil Colony, Khandoba Mal,)
Plot No. 71, Sambhaji Nagar,)
MIDC Satara, Dist-Satara 415 003.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary, Water Resources)
Department, Mantralaya,)
Mumbai 400 032.)
2. Superintending Engineer,)
Koyana Construction Circle &)
Zonal Officer, Kolhapur Circle,)
Satara, Dist-Satara.)
3. Superintending Engineer,)
Irrigation Project Circle,)



Krishna Nagar, Satara, Dist-Satara.)

4. Executive Engineer,)
Jihe Kathapur Lift Irrigation)
Division, Krishna Nagar,)
Satara, Dist-Satara.)...**Respondents**

Shri R.K Mendadkar, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 11.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri R.K Mendadkar, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 19.9.2014, passed by the Respondent no. 2, terminating his services.

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3. Learned Counsel for the Applicant argued that the Applicant was appointed as Assistant Store Keeper on 12.8.1999 on the basis of his Caste Certificate of 'Thakar' Scheduled Tribe (S.T) on the establishment of the Respondent no. 2. The Caste Certificate of the Applicant was referred to the Scheduled Tribe Certificate Scrutiny Committee, Pune on 16.11.2004 for verification. By order dated 28.5.2010, the Caste Certificate of the Applicant was invalidated by the Scrutiny Committee. The Applicant applied for appointment from open category and by order dated 5.10.2010 (Exhibit 'C' on page 36 of the Paper Book) the Applicant was treated as belonging to open category, by the Respondent no. 2. However, by order dated 25.9.2013, the Applicant was asked by the Respondent no. 4 to show cause why action should not be taken against him in terms of G.R dated 18.5.2013. The Applicant filed reply on 14.10.2013. He pointed out that G.R dated 18.5.2013 has been stayed by the Hon'ble High Court in Writ Petition no 6813/2013. The Respondent no. 2 passed order dated 9.9.2014 terminating the services of the Applicant with retrospective effect from 4.6.2010. Learned Counsel for the Applicant argued that the service of a Government servant cannot be terminated with retrospective effect. Learned Counsel for the Applicant argued that a policy decision was already taken to treat the Applicant from open category so there was no question of terminating his services. However, the termination order was passed

arbitrarily. Learned Counsel for the Applicant stated that the Respondents have no powers to invoke Section 10(2) 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 Caste Certificate Act). This Act will apply prospectively. The Applicant joined service on 12.8.1999, before the Act came into force. As section 10(1) of the Act is not applicable in this case, Section 10(2) cannot be applied. Learned Counsel for the Applicant relied on the judgment of the Full Bench of Bombay High Court in the case of **Arun Sonane Vs. State of Maharashtra** which mandates protection of services of a person appointed up to the date on which the Caste Certificate Act came into force. Learned Counsel for the Applicant also relied on the judgment of Hon'ble Supreme Court in the case of **DATTU NAMDEO THAKUR Vs. STATE OF MAHARASHTRA & ORS, reported in 2012(1) SCC 549.**

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant joined service on the basis of a false S.T Certificate which was invalidated by the Caste Scrutiny Committee on 4.6.2010. The Applicant filed Writ Petition no. 6854/2010 in Hon'ble Bombay High Court against the order of the Scrutiny Committee, which was dismissed by

Hon'ble High Court by order dated 15.10.2010. Learned Presenting Officer argued that the services of the Applicant were terminated under 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 Caste Certificate Act). It is true that the Applicant was granted benefits of Time Bound Promotion under the mistaken belief that on invalidation of his Caste Certificate, he would be continued in service as open candidate. However, the said benefit have been withdrawn by order dated 25.3.2013, as such benefit was granted to him by mistake. Learned Presenting Officer argued that no policy decision was taken to treat the Applicant as open candidate. Letter at Exhibit 'C' does not prove that. The matter was under consideration The Applicant's services were terminated after he was given a show cause notice. Learned Presenting Officer argued that Hon'ble High Court in Writ Petition no. 6813/2013 by interim order dated 10.6.2014 has granted relief to petitioners in that Writ Petition only regarding G.R dated 18.5.2013. As per this G.R issued by the Government, the Applicant's services have been terminated. Learned Presenting Officer argued that the protection in service is given to those whose S.T Certificate is invalidated, but who procure Certificate of S.B.C category. The Applicant belongs to open category and his Caste Certificate of S.T

category was false and fraudulent. Learned Presenting Officer argued that Hon'ble Supreme Court judgment in DATTU's case (supra) is not applicable in the present case.

5. Section 10(1) and 10(2) of the Caste Certificate Act are reproduced below:-

“Benefits secured on the basis of false Caste Certificate to be withdrawn 10(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Cooperative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived

24

by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.”

The Applicant has argued that the application of this section is prospective as the language shows ‘whoever not being person belonging to..... or secures an appointment in the Government.....’. If a person had secured job before this Act came into force this section will not apply. This contention is upheld by full bench judgment of Hon’ble Bombay High Court in SONONE’s case (supra).

Hon’ble Bombay High Court in ARUN SONONE’s has held as follows:-

“73. 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:-

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- (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."

However, in para (iv), it is stated that:-

"(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 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 Category shall be decided on the lines of the decision of the Apex Court in the case of R. UNNIKRISHNAN & ANR Vs V.K MAHANUDEVAN & ORS reported in 2014 (4) Mh.L.J (SC)1 = 2014(4) SCC 434."

6. It is quite clear that the protection in service is provided to only those who belong to Special Backward Class category and whose S.T Certificate were invalidated. Protection is also provided to those who are

found to belong to N.T, V.J and O.B.C category, after cancellation of S.T Certificates. However, there is no mention of a person, who does not belong to any of these categories. The applicant is found to belong to open category and he is not entitled to protection in service as per aforesaid judgment. In para 74 of the aforesaid judgment, Hon'ble High Court has held that whether a Caste Certificate was obtained by practicing fraud depends on the facts of each case and it has to be decided on the basis of material on record. On perusal of the order of the Scheduled Tribe Certification Scrutiny Committee, Pune dated 28.5.2010 (Exhibit 'B', page 16), the following facts are gleaned, viz. (i) many relative of the Applicant, including his father, brother, sister and the Applicant himself were recorded as 'Maratha' in School records. Many of his relatives in the birth register was recorded as 'Maratha'. The Committee has noted that: "The only entry 'Thakar' does not denote the incumbent belongs to Thakar, Scheduled Tribe. This type of similar issue is discussed before Hon'ble High Court in Writ Petition no **657 of 1997 in PANDURANG HANMANT YESARDEKAR Vs. STATE OF MAHARASHTRA & ORS**, in which Hon'ble High Court was pleased to observe as follows:-

“....this clearly shows that mention of or reliance to Thakar or Thakur alone would not be sufficient to determine to which community a candidate belongs

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to whether Scheduled Tribe or OBC or Nomadic Tribe. Therefore, only on the basis of the documents showing caste Thakar or Thakur without further details would be difficult to determine whether a candidate belongs to Scheduled Tribe, OBC or Nomadic Tribe. In the present case, the Committee found that the documents produced by the Petitioner at Sr. Nos 3 to 7 are related to the Thakar caste and not Thakar, Scheduled Tribe. We also perused the documents and found that the documents at Sr. Nos 3 to 7 would not help the petitioner to assert that he belongs to Thakar Scheduled Tribe.”

In para 14 of the order, the Committee has observed:-

“14. From above discussion, it is clear that the applicant is well aware about his caste status that he does not belong to Thakar, Scheduled Tribe, but only with an ill intention to avail the concessions and facilities meant for genuine Scheduled Tribes, he has obtained the Caste Certificate as belonging to Thakar, Scheduled Tribe. This similar issue has been discussed before the Hon'ble Supreme Court of India in SLP (Civil) No. 16372/1995, State of Maharashtra Vs. Milind & Ors.” (emphasis supplied).

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7. From the above discussion, it is quite clear that the Applicant had obtained a false Certificate with ill intention to avail the concessions and facilities meant for genuine Scheduled Tribes. In our view this is a case of securing the benefits by practicing a fraud. The Applicant was given a show cause notice before his services were terminated, which he had obtained by submitting a false Caste Certificate. The Applicant cannot claim any protection in service as per the Full Bench judgment of Hon'ble High Court. As he has obtained service by practicing fraud, he is not eligible to get any protection in service.

8. The Applicant's Writ Petition no. 6854/2010 against the order of the Scrutiny Committee was dismissed by Hon'ble Bombay High Court by order dated 15.10.2010. The other judgment cited by the Applicant, viz. **DATTU NAMDEO THAKUR Vs. STATE OF MAHARASHTRA** has been discussed by the Full Bench of High Court in **ARUN SONONE's** case (supra). It was held that decision of Hon. High Court in DATTU's case was in exercise of powers under Article 142 of the Constitution of India. The decision of Division Bench of Bombay High Court in **A.P RAMTEKKAR's** case (which was based on **DATTU's** case) was not held as binding precedent by the Full Bench judgment of Hon'ble High Court. The Respondents could have and should have terminated the services of the Applicant from the date of

invalidation of his Caste Certificate, i.e. w.e.f 28.5.2010 or 4.6.2010, when the copies of the said order were endorsed to the Applicant and the Respondents. However, the order was passed on 9.9.2014.

9. The termination of order with retrospective effect cannot be upheld and the order dated 9.9.2014 will be deemed to be effective from the date of its issuance. Subject to this, this Original Application is dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 11.08.2016

Dictation taken by : A.K. Nair.