

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 761 of 2017 (DB)**

Rajshree Sekhar Selukar,  
Aged about 45 years, Occ. At present nil,  
R/o 205, Building No.3,  
Vidarbha Premier Housing Society,  
Gandhisagar, Mahal, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Finance,  
Mantralaya, Mumbai-400 032.
- 2) The Director of Accounts and Treasuries,  
Thakersey House 3<sup>rd</sup> floor,  
Mumbai Port Trust,  
Besides Foreign Post Office,  
Ballaro Estate, Mumbai-400 001.
- 3) The Joint Director,  
(Vocational Education).  
Having its office at Civil Lines,  
Nagpur.

**Respondents.**

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**S/Shri S.P. Palshikar, P.K. Dhomne, Advocates for the applicant.**

**Shri M.I. Khan, P.O. for the respondents.**

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**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri Anand Karanjkar, Member (J).**

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**JUDGMENT**

**Per : Anand Karanjkar : Member (J).**

**(Delivered on this 8<sup>th</sup> day of April,2019)**

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant is challenging order dt/19-6-2017 passed by the respondent No.1, thereby terminating service of the applicant. The applicant was appointed in service on 29-5-1999 as Accounts Officer Group B as recommended by M.P.S.C. on post reserved for Schedule Tribe. The respondent No.1 by letter dt/6-3-1098 called upon the applicant to submit the caste validity certificate, it was informed by the applicant that she had already submitted caste validity certificate to M.P.S.C. and thereafter she was appointed. No action was taken by the Government till 19-6-2017.

3) It is contended that in case of Arun Sonone vs State of Maharashtra (2015 (1) Mh.L.J. page 457) the Hon'ble Full Bench of Bombay High Court granted protection to the Government Servants appointed in service before coming in to force of the Maharashtra Scheduled Caste, Scheduled Tribe, Denotified Tribes Act No.XXIII. Thereafter the respondent No.1 directed the Government employees to submit caste validity certificates, but the certificate was already submitted by the applicant. The respondent No.1 issued G.R. dt/18-5-2013 and made it compulsory for all Government Employees to submit caste validity certificate.

4) It is submitted that it was apprehension of the applicant that there was threat to her employment, therefore, she filed W.P.No.3968/2017 in which notices were issued to the respondents and direction was issued on 28-6-2017 to maintain status quo. The applicant served the copy of the interim order on the respondents on 3-7-2017. It is grievance of the applicant that she was under impression that her service was protected by the interim order, but on 6-7-2017 she received order dt/19-6-2017 issued by the respondent No.1, thereby terminating her service.

5) The applicant is challenging her termination mainly on the ground that this order is in violation of the direction issued by the Hon'ble Constitution Bench of the Apex Court in case of State of Maharashtra vs Milind Katware (2001) 1 S.C.C. 4. It is contention of the applicant that in case of State of Maharashtra vs Milind Katware it was made clear that the admissions and appointments which became final were unaffected. It is submitted that the appointment of the applicant was confirm, therefore, the respondent No.1 had no authority to terminate the service of the applicant.

6) The second ground of the attack is that the respondent No.1 issued the termination order without giving opportunity of hearing to the applicant, consequently the order is in violation of law , therefore, it be set aside.

7) The third ground of attack is that the respondents have passed the back dated order after receiving the interim order to maintain status quo, therefore, the action of the respondents is apparently illegal, it be quashed and the applicant be reinstated in service with all consequential reliefs.

8) The respondents have resisted the application and have justified their action. It is contended that the caste validity certificate submitted by the applicant was provisional it was issued subject to the final decision in SLP No.16372 which was pending before Hon'ble Apex Court. It is submitted that after judgment in case of State of Maharashtra vs Milind Katware, the caste validity certificate of the applicant was of no use. The applicant was called upon to produce caste validity certificate but there was no response, therefore, the effect was that the applicant was not member of Scheduled Tribe and she was not entitled to have protection. It is submitted by the respondents that the Hon'ble Apex Court in case of Chairman & M.D. FCI vs Jagdish 2017 Mh.L.J. 898 has explained the law laid down in case of State of Maharashtra vs Milind Katware, and overruled the judgment in case of Arun Sonone on which reliance is placed by the applicant. It is denied that the termination order is back dated and the applicant was entitled for the hearing. It is submitted that as the

appointment of the applicant was illegal, therefore, there was no propriety to give opportunity of hearing, it was futile business.

9) We have heard submissions on behalf of the applicant and the respondents. The case of the applicant is mainly based on the judgment in case of State of Maharashtra vs Milind Katware and the judgment in case of Arun Sonone. We have gone through the judgment in case of Chairman & M.D. FCI vs Jagdish 2017 Mh.L.J. 898, in para 46 & 49 of the judgment following observation are made-

Para 46 *“Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. Once the legislature has stepped in, by enacting Maharashtra Act XXIII of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in Milind spoke on 28 November, 2000. The state law has been enforced from 18 October 2001. Judicial directions must be consistent with law. Several decisions of two Judge Benches noticed earlier, failed to take note of Maharashtra Act XXIII of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the*

*area was unregulated by statute. Shalini noted the statute but misconstrued it.”*

*Para 49 “We do not find any merit in the submission which has been urged on behalf of the persons whose casts/tribes claims have been invalidated that Maharashtra Act XXIII of 2001 cannot apply to admissions or appointments which were made prior to the date on which the Act came into force.”*

10) Ultimately the Hon'ble Apex Court overruled the judgment in case of Arum Sonone and other similar cases. The learned PO has invited our attention to judgment in W.P. No.6247/2015 Organisation of Rights of Tribals vs State of Maharashtra and others, decided on 1-2-2018. In the Writ Petition, it was contention of the petitioner that protecting the services of the employees after the invalidation of their caste claim would be a fraud on the constitution in view of observations made in para 46 & 57 of the judgment in case of Chairman and M.D. FCI vs Jagdish and others. The Hon'ble Division Bench Bombay High Court at Nagpur accepted the submission and allowed the writ petition. The Hon'ble Division Bench in the last para of the judgment has held that

*“The part of the government resolution that provides for the protection of services of the employees appointed between 15-6-1995 and 17-10-2001 despite the invalidation of their caste claim is hereby quashed and set aside.”*

11) As the issues raised by the applicant are already decided by the Hon'ble larger Bench of the Apex Court in case of Chairman & M.D. vs Jagdish 2017 (4) Mh.L.J. 898 and the W.P. No. 6247/2015 decided on 1-2-2018, therefore, we are of the firm view that no relief can be granted to the applicant. So far as question of opportunity of hearing is concerned, in view of the law laid down in case of Union of India vs Raghuwar Pal Singh Civil Appeal No.1636/2012 decided on 13 March 2018, by larger bench of the Hon'ble Apex Court, as the appointment of the applicant is illegal the defect cannot be rectified or cured, therefore, it will be futile business. There is no evidence to accept that back dated termination order was passed by the respondent No.1 to nullify the interim order passed by the Hon'ble High Court, therefore, we do not see any merit in this ground. In view of the above discussion, we pass the following order.

12) The O.A. stands dismissed no order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 08/04/2019.**

\*dnk.