

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 193/2020(D.B.)

Ramsingh S/o Dasarathsingh Chauhan,
Aged about 66 years., Occupation : Retired,
Bapu Nagar, Umathe Layout,
Post : Nalwadi, Tehsil and Dist. Wardha

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs
Department, Mantralaya, Mumbai-32.

- 2) Dean,
Government Ayurved Hospital,
Raje Raghuji Nagar,
Sakkardara, Nagpur.

Respondents

Shri S.P.Palshikar, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 4th July 2022.

JUDGMENT

Per :Member (I).

Judgment is reserved on 23th June, 2022.

Judgment is pronounced on 4th July, 2022.

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

2. In this O.A. order dated 03.12.2019 (Annexure A-10) passed by respondent no.1 imposing the following punishment on conclusion of departmental enquiry is impugned.

त्याअर्थी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील नियम-६ अन्वये प्रदान करण्यात आलेल्या शक्तीचा वापर करून शासन असे आदेश आहेत की, महाराष्ट्र अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती, इतर मागासवर्ग व विशेष मागास प्रवर्ग (जातीचे प्रमाणपत्र देण्याचे व त्यांच्या पडताळणीचे नियंत्रण) अधिनियम २००० मधील कलम - १० (१) नुसार “श्री.रा.द.चव्हाण, प्रशासकीय अधिकारी (सेवानिवृत्त) यांना देण्यात येत असलेले तात्पुरते निवृत्तीवेतन तात्काळ बंद करण्यात येऊन त्यांना कोणतेही सेवानिवृत्तीविषयक लाभ अनुज्ञेय ठरणार नाहीत” ही शिक्षा देण्यात येत आहे.

3. Case of the applicant is as follows.

By order dated 09.03.1981 (Annexure A-1) the applicant was appointed as a Clerk in the respondent department. He submitted Caste Certificate (Annexure A-2) dated 21.07.1979 in which his caste was stated to be “Thakur” a Scheduled Tribe. Caste Scrutiny Committee, by order dated 03.01.2012 (Annexure A-3) invalidated his caste claim. For want of challenge order dated 03.01.2012 has

attained finality. The applicant was served with a charge sheet dated 13.12.2013 (Annexure A-5). The charges were of securing appointment by producing a false Caste Certificate (which was subsequently invalidated). The applicant retired on superannuation on 31.12.2013 as Assistant Administrative Officer (Annexure A-6). It was communicated to him that the departmental enquiry initiated against him would continue. The enquiry officer vide report dated 12.01.2017 (Annexure A-7) held all three charges to be proved against the applicant. The Disciplinary Authority issued a show caused notice (Annexure A-8) as to why proposed punishment be not imposed. To this notice the applicant gave a reply (Annexure A-9). The impugned order was then passed imposing the punishment. Relevant part of the impugned order is quoted hereinabove. Hence, this application.

4. Reply of respondent no.1 is at pp.59 to 72. According to respondent no.1 the applicant produced Caste Certificate at the time of his initial appointment, he was asked to furnish Caste Validity Certificate and Caste Certificate produced by him was ultimately invalidated by the order dated 03.01.2012 which has attained finality since the applicant did not challenge it before any Judicial Forum. Though the applicant stood retired on superannuation the enquiry

which was initiated when he was in service, continued and resulted in the impugned order which is passed in terms of Section 10 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, which cannot be faulted.

Section 10 of the Act reads as under-

“10. Benefits secured on the basis of false Caste Certificate to be withdrawn. (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 Co- operative 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 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.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma, or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled,

on cancellation of such Caste Certificate, by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.”

5. It was argued by Shri S.P.Palshikar learned counsel for the applicant that the impugned order cannot be reconciled with the fact that subsequently some of the retiral benefits were given to the applicant. We have quoted operative part of the impugned order. This order states that by way of punishment no retiral benefits would be payable to the applicant “कोणतेही सेवानिवृत्ती विषयक लाभ अनुज्ञेय ठरणार नाही ही शिक्षा देण्यात येत आहे.”

Communication dated 14.07.2021 (Exhibit R-4 at page 82) states as follows-

उपरोक्त विषयांकित प्रकरणी मुळ अर्ज क्र.१९३/२०२० श्री.रामसिंग द. चव्हाण विरुद्ध महाराष्ट्र शासन व इतर यांनी न्यायालयात याचिका दाखल केलेली आहे. त्याअनुषंगाने श्री.रा.द. चव्हाण, प्रशासकीय अधिकारी, सेवानिवृत्त शासकीय आयुर्वेद रुग्णालय, नागपूर यांना खालील प्रमाणे सेवानिवृत्ती लाभ प्रदान करण्यात आलेले आहे.

अ.क्र.	तपशिल	देयक क्रमांक व दिनांक	देय रक्कम	प्रमाणक क्रमांक व दिनांक	शेरा
१	भविष्य निर्वाह निधी	२०७/३१.१०. २०१३	५,३९,०३१/-	३४२/२०.११. २०१३	प्रथम लाभ
२	भविष्य निर्वाह निधी	२१२/१४.११. २०१३	४१,०१५/-	४३४/२२.११. २०१३	उर्वरित अंतिम रक्कम
३	गट विमा योजना	२२९/०५.१२. २०१३	९१,५००/-	१५८/२७.१२. २०१३
४	सेवानिवृत्ती नंतरचा प्रवास भत्ता देयक	२७५/२१.०१. २०१४	१२,४७६/-	७३६/३०.०१. २०१४
५	अर्जित रजा रोखीकरण	०९/०५.०४. २०१४	३,६८,२९६/-	३२४/१५.०४. २०१४
६	तात्पुरती सेवानिवृत्ती रक्कम	माहे नोव्हेंबर २०१३ ते माहे ऑगस्ट २०१९ पर्यंत दरमहा तात्पुरते से.नि. वेतन अदा करण्यात आले.	

सदर माहिती आपले माहितीस्तव व पुढील कार्यवाहीस्तव सादर.

It is true that contents of the aforequoted chart cannot be reconciled with operative part of the impugned order. However, this discrepancy will not help the applicant in successfully assailing the impugned order. The chart at page 82 shows that some of the retiral benefits were paid to the applicant before the impugned order was

passed. It is not the case of the respondent department that it proposes to recover payments so made.

6. On behalf of the applicant reliance is placed on "*D.V.Kappor Versus Union of India and Others (AIR 1990 Supreme Court 1923)*". In this case the Apex Court was considering *inter-alia* rule 9 of Civil Services Pension Rules, 1972. It was submitted that Rule 9 of Civil Services Pension Rules is in *pari materia* with the relevant provision in MCS (Pension) Rules, 1982. In the above referred case it is held-

Rule 9 of the rules empowers the President only to with- hold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under [Art. 41](#) of the Constitution. The impugned 'order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of

punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

7. The applicant has further relied on "*Vijay Vs Deputy Director and Member Secretary and Others*" judgment dated 28.02.2011 delivered by the Hon'ble Supreme Court in Civil Appeal Nos.2182-2183 of 2011 arising out of SLP (C) Nos.3410-3411/2008. In this case it is held-

"The appellant was appointed under the Scheduled Tribe category in the year 1974. His certificate was referred to the Scrutiny Committee in the year 1999 and it was invalidated thereafter. It is the conceded position that consequent to the interim order granted by us the appellant had also continued to be in service and has retired in February, 2011. In view of these facts we do not at this belated stage feel that the appellant should be non-suited, notwithstanding the fact that his certificate has been invalidated by the Scrutiny committee and his writ petition has also been dismissed by the High Court.

We accordingly dispose of the appeals in the above terms and direct that the appellant shall be

deemed to have continued in service till the date of his superannuation. The appellant will be given his retiral dues as per law."

8. In reply, learned P.O. has relied on *Darshan Singh S/o Shri Ganga Singh Vs Union of India and Three Others (2016 SCC Online CAT 230)*. In this case it is held-

The High Court / Tribunal does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. They have to see whether there is violation of natural justice and fair play or any procedural irregularity committed by the inquiry officer, Disciplinary authority and due procedure was adopted strictly in accordance with the service rule.

The P.O. has further relied on *SECRETARY, A.P. SWRE I SOCIETY Vs J.PRATAP AND OTHERS (2002) 10 Supreme Court Cases 430*. In this case it is held-

Normally, this Court would not have entertained a petition like the present pertaining to employment of two individuals but for the fact that the allegation against the respondents were serious and permitting

the perpetrators to get away with it will only encourage further similar cases. It is quite obvious that the respondents want to steal a march over their compatriots by showing that they had attained the higher degree of BA and laying of claim for promotion. The action of the said respondents in producing fake degree and trying to perpetrate the fraud not only on the institution which was a school but also on other colleagues is clearly unpardonable. There was no occasion or justification for the High Court to have shown magnanimity in a matter like this.

For the aforesaid reasons, this appeal is allowed, the decision of the Single Judge as well as the Division Bench of the High Court is set aside and the order of punishment imposed by the appellant is confirmed.

9. The P.O. has also relied on “Chandrabhan Vs State of Maharashtra and Others (2021) 9 Supreme Court Cases 804”. In this case it is held-

9. Considering various questions including the observations made in paragraph 38 of the decision of this Court in Milind and the impact of the aforesaid legislation enacted by the State, a three-Judge Bench of this Court in Food Corporation of India & Others v. Jagdish Balaram Bahira, concluded as under: (Food Corpn. Of India case, SCC pp.727-29 & 731-32, paras 62, 66 & 69)

62. The regime which obtained since 2-9-1994 under the directions in Madhuri Patil was granted a statutory status by the enactment of Maharashtra Act 23 of

2001. [Section 7](#) provides for the cancellation and confiscation of a false caste certificate whether it was issued before or after the commencement of the Act. The expression “before or after the commencement of this Act” indicates that the Scrutiny Committee constituted under [Section 6](#) is empowered to cancel a caste certificate whether it was issued prior to 18-10-2001 or thereafter. [Section 10](#) which provides for the withdrawal of benefits secured on the basis of a false caste certificate which is withdrawn is essentially a consequence of the cancellation of the caste certificate. Where a candidate has secured admission to an educational institution on the basis that he or she belongs to a designated reserved category and it is found upon investigation that the claim to belong to that category is false, admission to the institution necessarily falls with the invalidation of the caste certificate. Admission being founded on a claim to belong to a specified caste, tribe or class, it is rendered void upon the claim being found to be untrue. The same must hold in the case of an appointment to a post. Therefore, the absence of the words “before or after the commencement of this Act” in [Section 10](#) makes no substantive difference because a withdrawal of benefit is an event which flows naturally and as a plain consequence of the invalidation of the claim. Moreover, as we have seen even prior to the enactment of the State legislation, the benefit which was secured on the basis of a caste claim was liable to be withdrawn upon its invalidation. [The Act](#) has hence neither affected vested rights nor has it imposed new burdens. [The Act](#) does not impair existing obligations in [Sections 7 and 10](#).

It is further held-

10. The conclusions arrived at by this Court in Jagdish Balaram Bahira are thus clear that the impact of

the legislation which came into effect on 17.10.2001 must have full and unhindered effect and operation.

The P.O. has also relied on *Employers In Relation to the Management of Bhalgora Area (Now Kustore Area) Of Bharat Coking Coal Limited Vs Workmen Being Represented By Janta Mazdoor Sangh (2021) 10 Supreme Court Cases 717.* In this case it is held-

18. Fraudulent practice to gain public employment cannot be countenanced to be permitted by a Court of law. The workmen here, having hoodwinked the Government Undertaking in a fraudulent manner, must be prevented from enjoying the fruits of their ill- gotten advantage. The sanctity of public employment, as a measure of social welfare and a significant source of social mobility, must be protected against such fraudulent process which manipulates and corrupts the selection process. Employment schemes floated by the State for targeted groups, can absorb a finite number of workmen. To abuse the legitimate process therefore would mean deprivation of employment benefits to rightful beneficiaries. The Courts as sentinel of justice must strive to ensure that such employment programmes are not manipulated by deceitful middlemen, thereby setting up a parallel mechanism of Faustian Bargain. Often, desperate job aspirants' resort to such measures to compete for limited

vacancies, but this Court cannot condone false projections so as to circumvent the statutorily prescribed procedure for appointments. Such illegal practices must be interdicted by the Courts.

10. In the instant case the punishment of not paying retiral benefits to the applicant was passed in terms of Section 10 of the above referred Act. Second proviso to sub-rule (ix) of Rule 5 of the MCS (Discipline and Appeal) Rules, 1979, empowers the authority to impose any other penalty in any exceptional case by recording special reasons in writing. In the facts and circumstances of the case, we find that the impugned order does not suffer from any infirmity. Both the rulings sought to be relied upon by the applicants are distinguishable on facts. The impugned order is passed as per Section 10 of the Act. The authority had power to impose such punishment. There is no scope to interfere with the impugned order while exercising powers of judicial review. The Rulings relied upon by the P.O. fully support the impugned order.

For all these reasons the Original Application is liable to be, and the same is hereby, dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 04/07/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 04/07/2022.
and pronounced on
Uploaded on : 04/07/2022.