

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 30/2019(D.B.)

Ashok Anil Sikdar
Aged about 42 years.,
Occu: Service: R/o. Plot No.3, Sanane
Layout, Jaitala, Nagpur-36.

Applicant.

Versus

- 1) State of Maharashtra, through
Department of Home
Ministry Mantralaya, Mumbai-32.
- 2) Director General of Police, State of
Maharashtra, Shahid Bhagatsingh
Road, Kulaba, Mumbai.
- 3) Commandant, State Reserve Police
Force, Group No.-13, Vadsa
(Desaiganj), Dist. Gadchiroli,
Camp at Nagpur.

Respondents

Shri P.B.Patil, 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: - 24th June 2022.

JUDGMENT**Per :Member (I).****Judgment is reserved on 17th June, 2022.****Judgment is pronounced on 24th June, 2022.**

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

2. In this application notice dated 29.10.2018 (Annexure A-10) issued by respondent no.3 calling upon the applicant (and others) to furnish Caste Validity Certificate till 27.01.2019 is impugned. The impugned notice further states that failure to comply with this direction would lead to discharge from service forthwith as provided under Section 10 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 (hereinafter referred to as "The Act").

3. Case of the applicant is as follows.

Family of the applicant migrated to West Bengal from East Pakistan as Refugees in 1964. In 1971 they shifted from West Bengal to Bahadarpur, Tehsil Chamorshi, (now) District Gadchiroli (Annexure A-1 & A-2, respectively). In 1994, after passing S.S.C.

examination the applicant registered his name with Employment Exchange from whom he received a call letter to appear for recruitment to the post of Armed Police Constable in S.R.P.F.. In his School Leaving Certificate (Annexure A-4) his caste was recorded as **“Namosudra”** which was in the list of Scheduled Castes in the State of West Bengal. It was not, however, included in the list of Scheduled Castes in the State of Maharashtra. Hence, there was no question of the applicant submitting Caste Certificate as he was not entitled to claim benefits of reservation in the State of Maharashtra. The caste **“Namosudra”** was not included in the Constitution Scheduled Castes Order, 1950 (Annexure A-5) or the list of Scheduled Castes for the State of Maharashtra prepared as per the amendment of 1976 (Annexure A-6). By order dated 09.09.1997 (Annexure A-7) the applicant was appointed to the post from Open Category and posted at Jalna. In July, 2013 the applicant was called upon to furnish Caste Validity Certificate. He gave reply to this communication by affidavit (Annexure A-8) dated 24.07.2013. He received identical communication in September, 2017 and gave reply (Annexure A-9) dated 13.09.2017 as to why there was no question of submitting Caste Validity Certificate as the caste to which he belonged was not recognised as a Scheduled Caste in the State of Maharashtra. The

applicant was not appointed even initially to the post earmarked for SC Category. Obviously, this could not have been done in any case because in the State of Maharashtra “**Namosudra**” is not notified as a Scheduled Caste. In these facts rigours Section 10 of the Act could not have been attracted. Consequently, the impugned order cannot be sustained. Hence, this application for following reliefs-

- (a) quash and set aside the impugned show cause notice Dt. 29 Dec, 2018 issued by respondent No.3 Commandant S.R.P.F. Group-13 at Annexure-A-10 with further declaration that the provisions of Section-10 of Maharashtra Act No.XXIII/2021 are not attracted in the present case, therefore no action can be taken against applicant on basis of said section and the G.Rs issued on basis of the same;***
- (b) hold and declare that the appointment of applicant cannot be treated against Schedule Caste Category and the action of respondent issuing impugned show cause notice Dt.29.12.2018 is void and illegal;***
- (c) allow this application with cost;***
- (d) grant any other suitable relief to which the applicant is entitled in the facts and circumstances of the present case.***

4. Reply of respondent no.3 is at p.p. 48 to 57. He has resisted the application on the following grounds.

The applicant made a representation (Annexure R-3-I) dated 07.04.2006 staking a claim to promotional post reserved for Scheduled Caste. He was also promoted. This fact is suppressed by him. Entry in his service book (Annexure R-3-II) falsifies stand of the applicant that he was not appointed initially against the post reserved for Scheduled Caste candidates. In the order of appointment Caste of the applicant is mentioned as “**Namosudra**” (S.C.) (Annexure R-3-III). In a meeting of Selection Committee dated 18.03.2006, minutes of which are at Annexure R-3-IV, name of the applicant was considered for the promotional post of Naik Police Constable. The Committee decided to get the caste of the applicant verified from the Scrutiny Committee. After considering reply/representation dated 07.04.2006 given by the applicant he was promoted to the post of Naik Police Constable by order (Annexure R-3-VII). He was further promoted by order dated 30.12.2014 (Annexure R-3-VIII) for a period of eleven months on certain conditions. By communication dated 11.12.2018 (Annexure R-3-VIII) respondent no.2 directed all the concerned offices to obtain Caste Validity Certificate from the concerned employees. This was in accordance with GRs dated 12.12.2011 and 18.05.2013, and also various provisions of the Act which provide for termination of

services if Caste Certificate is found to be invalid. In this background the impugned notice dated 29.12.2018 (Annexure R-3-XI) was issued which is just and proper.

5. It is not in dispute that caste of the applicant is “**Namosudra**” which is notified as a Scheduled Caste in West Bengal but not in Maharashtra. It follows that there was no question of the applicant staking any claim to appoint him on a post reserved for Scheduled Caste, in the State of Maharashtra. Mere mention of caste in the documents furnished by the applicant while applying for the post could not have automatically led to the conclusion that he was seeking appointment from reserved category (S.C.). It is the contention of the applicant that he was appointed to the post from Open Category and this was the reason why in the order of appointment there was no condition precedent calling upon the applicant to furnish Caste Validity Certificate. Contention of the respondents, on the other hand, is that the applicant was appointed from the reserved category of Scheduled Caste. According to them, this will become apparent from the entry taken in his service book (Annexure R-3-II). It is a matter of record that this entry states that caste of the applicant is “**Namosudra**” about which there is no dispute. The entry further states that it is a Scheduled Caste. In the

State of Maharashtra this caste is not notified as a Scheduled Caste. It is the contention of the applicant that this entry was mechanically taken on the basis of entry to the said effect made in his School Leaving Certificate (R-3-IV). Prima facie, we find merit in this submission. Merely on the basis of aboveresferred entry, without anything more, it cannot be concluded that appointment of the applicant was made on the post reserved for Scheduled Caste Category. It may be reiterated that benefit of reservation could not have been claimed by the applicant in the State of Maharashtra nor could it have been extended to him by the State of Maharashtra since the caste to which he belongs is not notified as a Scheduled Caste in the State of Maharashtra.

6. The respondents have relied on the representation dated 07.04.2006 made by the applicant (Annexure R-3-I). In this representation the applicant stated -

मा.समादेशक कार्यालय आदेश क्रमांक आस्था१/जेस्टता सुची /२५९३ /०५ नागपूर दिनांक २१.०५.२००५ अन्वये जेस्टता यादी कंपनी कार्यालयात आलेली असून मला कंपनी कार्यालयातून पोलीस शिपाई याचे जेस्टता नुसार यादीत माझा अनुक्रम नं.१२१ असून माझी जात नमोशुद्र (एस.सी.) आहे. परंतु मला पदोन्नती मधुन वगळून माझ्यापेक्षा जेस्टता यादीत अनुक्रम नं.१३७, (महार एस.सी.) व अनुक्रम नं.१४६ (महार एस.सी.) यांना नाईक सपोशि पदाची पदोन्नती मिळालेली आहे.

माझी बदली तारीख २०.०९.१९९७ असून सदर कर्मचा-याचा जेस्टता यादीपेक्षा माझा नं. त्याच्यापेक्षा वर आहे आणि जात पण नमोशुद्र एस.सी.आहे. परंतु मला नाईक सपोशि पदोन्नती मधुन वगळण्यात आलेले आहे.

करिता श्रीमानजी जेस्टता यादीनुसार न्याय मिळून मला नाईक सपोशि पदोन्नती मिळण्यास नम्र विनंती.

7. On 18.03.2006 meeting of Selection Committee was held to consider issue of promotion. Minutes of this meeting are at Annexure R-3-VI. These minutes state-

१.अनुसुचित जाती :- ४ पदे

१.अ.क.८९ सपोशि/३०७ पी.पी.उंदीरवाडे, जात-महार

२.अ.क.९४ सपोशि/३०५ पी.एल.सहारे, जात-महार

३. अ.क.१०४ सपोशि/३१९ अ.अ.सिकदार, जात-नमोशुद्र

४. अ.क.१०७ सपोशि/३६६ एन.एस.भैसारे, जात-महार

५. अ.क.११३ सपोशि/३४४ डी.एन.जनबंधु, जात-महार

उपरोक्त कर्मचा-यांपैकी अ.क.३ वरील कर्मचारी यांची जात नमोशुद्र असून महाराष्ट्र राज्यात अनुसुचित जातीत ही जात मोडत नाहीत. त्यामुळे प्रथम त्यांचे जातीची जात पडताळणी पथकाकडून पडताळणी करण्यात येवून जात पडताळणी पथकाचे अभिप्राय / प्रमाणपत्र प्राप्त झाल्यानंतर त्यांना पदोन्नती देण्याचा विचार करण्यात येईल.

8. Thereafter, by order dated 26.12.2006 (Annexure R-3-VII) the applicant was promoted to the post of Naik Police Constable. The order is as under-

या कार्यालयाचे आदेश क्र. आस्था-१/पदोन्नती/१७७०/०६, दि.३/४/०६ अन्वये या गटातील नापोशि पदावर पदोन्नती देण्यात आली. त्यामध्ये खालील सपोशि यांना पदोन्नती देण्यात आलेली नसल्याने खालील सपोशि यांना दि.३.४.०६ पासून नापोशि पदावर पदोन्नती देण्यात येत आहे.

१. सपोशि/१४५ ए.एच.जायभान वंजारी, भज(क) (भजक) सध्या प्रतिनियुक्तीवर, शस्त्र निरीक्षण शाखा, पुणे.

२. सपोशि/३१९ अ.अ.सिकदार, नमोशुद्र एस.सी. (एस.सी.)

9. In the month of July, 2013 the Department called upon the applicant to furnish his Caste Validity Certificate of S.C. category. To this communication the applicant gave reply (Annexure A-8) on affidavit stating therein-

१. माझी व माझे कुटुंबाची जात “नमोशुद्र” आहे. परंतु शाळेत नाव घालताना माझ्या पालकांनी “नमोशुद्र (एस.सी.)” ही जात चुकीने नोंदविलेली होती. ती चुकीची असून मी “नमोशुद्र” या जातीचा आहे.
२. मी दिनांक २०.०९.१९९७ रोजी महाराष्ट्र पोलीस दलात पोलीस शिपाई या पदावर नियुक्त झालो. माझे बहादुरपुर प्राथमिक शाळा, गडचिरोली, यांची शाळा नोंद रजिस्टर “नमोशुद्र (एस.सी.)” ही जात नमूद असल्याने मी सुद्धा “नमोशुद्र” जातीचाच आहे.
३. माझा “नमोशुद्र (एस.सी.)” जमातीचा दावा मी या प्रतिज्ञापत्राद्वारे परत घेत असून मी आता “नमोशुद्र” ही जात महाराष्ट्र राज्याच्या जी.आर. मध्ये अस्तित्वात नाही. म्हणून या जातीचा जात प्रमाणपत्र आणि जात वैधता प्रमाणपत्र बनू शकत नाही.
४. माझे वडील हे पुर्वीचे पश्चिम बंगालचे असून ते सन १९६४ मध्ये भारतामध्ये आले. तसेच महाराष्ट्र राज्यात जिल्हा गडचिरोली, गांव बहादुरपुर या ठिकाणी १९६४ पासून कायम रहिवासी आहे.
५. पश्चिम बंगालमध्ये नमोशुद्र ही जात असून महाराष्ट्रात एस.सी.नाही तर खुल्या प्रवर्गात येत आहे. माझा जन्म दि.०६.०५.१९७७ रोजी झालेला असून महाराष्ट्र राज्यातील गांव बहादुरपुर, जिल्हा गडचिरोली येथे झाला. मी खुल्या प्रवर्गात येत असल्यामुळे जातीचे प्रमाणपत्र किंवा जात वैधता प्रमाणपत्र किंवा कोणताही कागदपत्र सादर करू शकत नाही. करिता माझा खुला प्रवर्ग असल्याने प्रतिज्ञापत्र लिहून देत आहे.

10. Thereafter, by order dated 30.12.2014 (Annexure R-3-VIII) the applicant was promoted to the post of Armed Police Hawaldar. In this order it was stated-

राज्य राखीव पोलीस बल गट क्र.१३ नागपूर यांचे आस्थापनेवरील खालील सशस्त्र पोलीस नाईक यांना वेतनश्रेणी रुपये ५२००-२०२०० + ग्रेड पे २४०० + विशेष वेतन रु.५६०/- मध्ये या आदेशाचे दिनांकापासून सशस्त्र पोलीस हवालदार पदावर निव्वळ तात्पुरत्या स्वरूपात ११ महिन्यांच्या कालावधीसाठी खालील अटीच्या अधिन राहून पदोन्नती देण्यात येत आहे.

अ.क्र.	हुद्दा	ब.न.	नाव	सध्याची नेमणुक	पदोन्नतीनंतरची नेमणुक
१	नापोशि	३१९	अशोक सिकदार	एसपीयु (प्रतिनियुक्ती)	एसपीयु (प्रतिनियुक्ती)
२	नापोशि	२०६	पत्रु वामन हेडाऊ	सी कंपनी	सी कंपनी
३	नापोशि	१३३	साधु ढोलु गावडे	ई कंपनी	ई कंपनी

अटी :-

१) हि पदोन्नती निव्वळ तात्पुरत्या स्वरूपाची असून आपल्यापेक्षा ज्येष्ठ कर्मचा-यांनी जात वैधता प्रमाणपत्र सादर केल्यावर किंवा ते पदोन्नती करिता पात्र ठरल्यावर ती आपोआप संपुष्टात येईल म्हणजेच उपरोक्त नमुद कर्मचा-यांना त्यांचे मूळ पोलीस नाईक पदावर पदावनत करण्यात येईल.

२) X X X X X

३) X X X X X

४) X X X X X

५) X X X X X

11. So far as order of promotion dated 30.12.2014 is concerned, before it was passed the applicant had explicitly stated on affidavit (Annexure A-8) that his caste being "Namosudra", he was not entitled to get benefit of reservation in the State of Maharashtra.

12. So far as previous order of promotion of the applicant dated 26.12.2006 (which was made effective from 02.04.2006) is concerned, the Selection Committee was aware even then that caste of the applicant i.e. “**Namosudra**” did not fall under the category of Scheduled Caste in the State of Maharashtra.

13. It was submitted by Shri. P.B.Patil, learned Advocate for the applicant that in the facts and circumstances of the case the ratio of the judgment of the *Bombay High Court delivered 25.06.2015 (Kalkatu son of Rajendra Mujumdar versus State of Maharashtra and Others)* (Annexure A-11) will squarely apply. In this case the petitioner belonged to “**Namosudra**” which is notified as a Scheduled Caste in the State of West Bengal but not so notified in the State of Maharashtra. He was appointed against a post reserved for Scheduled Caste. He worked for almost 22 years. It was found that he was not guilty of suppression of any material fact. It was held that for his appointment on a post reserved for Scheduled Caste his employer was more at fault. In these facts, the High Court held that he was entitled to limited relief of protection of his services by considering him as a candidate belonging to Open/General category for all purposes including promotional benefits, and benefits received by

him on account of erroneous treatment as a person belonging to reserved category were liable to be recovered / withdrawn.

14. The respondents, on the other hand, have relied on ***“Chandrabhan versus State of Maharashtra and Others (2021) 9 Supreme Court Cases 804.”*** In this case inter-alia Section 10 of the Act and ratio laid down in ***Food Corporation of India versus Jagdish Balaram Bahira (2017) 8 SCC 670*** were considered. 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 (Vimukt 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 cooperation, 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 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) x x x

4) x x x

Following observations made in the case of Jagdish (supra) were also relied upon.

The regime which obtained since 2-9-1994 under the directions in [Madhuri Patil \[Madhuri Patil v. Commr., Tribal Development, \(1994\) 6 SCC 241 : 1994 SCC \(L&S\) 1349\]](#) 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 was held by relying on the aforequoted observation in the case of Jagdish (supra)-

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.

15. The respondents have further relied on the “*Pradeep Singh S/o Chatrapalsingh Chandel versus State of Maharashtra and three others*) (judgment dated 19.11.2019 delivered by this Bench in O.A.No.858/2018. In this case the facts were as follows-

4. The applicant received letter dated 23/1/2003 issued by the respondent no.4. By this letter the applicant was called upon to produce his Caste Certificate for verification by the Caste Scrutiny Committee. The applicant submitted his Caste Certificate in the year 2007 and

informed that his Caste was "Thakur" and he was member of Scheduled Tribe (S.T.). The Caste Certificate of the applicant was verified by the Caste Scrutiny Committee and the Caste Scrutiny Committee invalidated the Certificate informing that the applicant was not member of Scheduled Tribe (S.T.). The respondent no.3 issued a show cause notice to the applicant dated 25/7/2017. It was mentioned that the applicant was appointed on a post reserved for the S.T. and the Caste Scrutiny Committee invalidated the Caste Certificate of the applicant, therefore, the applicant was called upon to show cause why his services should not be terminated. It is contention of the applicant that thereafter the impugned order Annex-A-1 came to be passed and his services were terminated by the respondent no.1.

The respondents have also relied on the judgment dated 08.04.2019 delivered by this Bench in O.A.No.761 of 2017 (**Rajashri Shekhar Selukar versus State of Maharashtra and two others**). In this case the applicant was appointed on 29.05.1999 as Accounts Officer, Group-B on being recommended by M.P.S.C., on the post reserved for Scheduled Tribe. She was asked to submit her Caste Validity Certificate. She failed to do so. Therefore, order of her termination was passed. She challenged it by filing the O.A.. While dismissing the O.A. this Tribunal relied on paras 46 and 49 in the case of Jagdish (supra) which read as under-

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 castes/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."

16. The respondents have also relied on “**Chairman and Managing Director of Food Corporation of India and Other versus Jagdish Balaram Bahira and others (2017 (4) Mh.L.J. 898)**”

We have reproduced portions of this judgment while referring to the cases of “**Chandrabhan**” and “**Rajashri**” (supra).

The respondents also want place reliance on the following observation in the case of Jagdish (supra).

48. The Full Bench judgment of the Bombay High Court in Arun Sonune (supra) has essentially construed the judgments in Kavita Solunke (supra) and in Shalini (supra) as having impliedly overruled the earlier Full Bench judgments in Ganesh Rambhau Khalale and Ramesh Kamble. In view of the conclusion which we have arrived at in regard to the earlier decisions rendered by the two Judge Benches in Kavita Solunke (supra) and Shalini (supra), we are unable to subscribe to the view expressed by the Full Bench in Arun Sonone (supra). The judgment of the Full Bench of the Bombay High Court in Arun Sonone (supra) holds that (i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from employment or cancellation of appointments that have become final prior to the decision in Milind (supra) on 28 November 2000; (ii) the benefit of protection in service upon invalidation of the caste claim is available not only to persons belonging to Koshti and Halba Koshti but is also available to persons belonging to the special backward category on the same terms. The High Court has even gone to the extent of holding that the decision in Milind (supra) was in the nature of prospective overruling of the law which was laid down by the Bombay High Court. The above view of the Bombay High

Court is clearly unsustainable. Neither the judgment in Milind (supra) nor any of the judgments of this Court which have construed it have held that Milind (supra) was an exercise in prospective overruling. The High Court was in error in holding so. The decision of the Full Bench in Arun Sonone (supra) is unsustainable. The Full Bench had evidently failed to notice that cases where the protection was granted by this Court following the invalidation of a caste claim was in exercise of the power conferred by [Article 142](#) of the Constitution, depending upon the facts and circumstances of each case. The jurisdiction under [Article 142](#) is clearly not available to the High Court in the exercise of its jurisdiction under [Article 226](#). The High Court erred in arrogating that jurisdiction to itself.

17. The impugned notice dated 29.12.2018 (Annexure A-10) had called upon the applicant (and others) to furnish Caste Validity Certificate. In the last para of this order it is stated-

करिता आपणास या नोटीसद्वारे कळविण्यात येते की, आपण दिनांक-२७/०१/२०१९ पर्यंत जात वैधता प्रमाणपत्र या कार्यालयास सादर करावे. दिलेल्या दिनांकास आपण जात वैधता सादर न केल्यास महाराष्ट्र अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती , इतर मागास वर्ग व विशेष मागासवर्ग (जातीचे प्रमाणपत्र देण्याचे व त्यांच्या पडताळणीचे विनियमन) अधिनियम-२००० मधील कलम-१० नुसार आपली सेवा समाप्त करण्याची कार्यवाही करण्यात येईल, याची नोंद घ्यावी.

18. The crux of the matter is whether Section 10 of the Act would be attracted in the facts of the case. Relevant portion of Section 10 of the Act reads as under-

----- or secures any appointment in the Government, local authority or in any other company or cooperation, 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.

19. There is no conclusive material on record to hold that by producing Certificate of Caste the applicant secured appointment to the post reserved for such caste. He could not have prima facie, done so because the caste to which he belongs is not notified as a Scheduled Caste in the State of Maharashtra. Before he was promoted by orders dated 26.12.2006 and 30.12.2014 the concerned authorities were fully aware about his caste and that it was not notified as a Scheduled caste in the State of Maharashtra. Yet, the authorities proceeded to promote him.

20. All these circumstances taken together lead us to conclude that there is no irrefutable material to hold that in the instant case Section 10 of the Act is attracted. In the absence of such material it would not be just and proper to allow the respondents to proceed under Section 10 of the Act because consequence of this provision is rather drastic. As a result, the impugned notice dated 29.10.2018 (Annexure A-10) cannot be sustained, and the same is quashed and set aside qua the applicant. It is, however, made clear that if the respondents, after

conducting proper scrutiny of the entire material on the record, including whether the initial appointment of the applicant was made against a post reserved for Scheduled Caste, why and how he was promoted twice presumably against the post reserved for a Scheduled Castes candidate in spite of having knowledge that the caste to which he belongs is not notified as a Scheduled Caste in the State of Maharashtra, come to the conclusion that Section 10 of the Act is attracted in this case, they would be at liberty to take necessary steps against the applicant as provided thereunder. The Original application is allowed in these terms and C.A. is disposed of with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 24/06/2022

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 : 24/06/2022.
and pronounced on
Uploaded on : 24/06/2022.