

Additional General Manager/Human ... vs Suresh Ramkrishna Burde on 10 May, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2048, 2007 (5) SCC 336, 2007 AIR SCW 3111, 2007 LAB. I. C. 2482, 2007 (4) AIR BOM R 180, 2007 (3) AIR JHAR R 380, (2007) 4 CTC 427 (SC), (2007) 114 FACLR 212, (2007) 4 LAB LN 18, (2007) 4 MAD LJ 515, (2007) 4 MAH LJ 1, (2007) 3 MPLJ 1, (2007) 4 RAJ LW 2983, (2007) 3 SCT 202, (2007) 4 SERVLR 126, (2007) 5 SUPREME 174, (2007) 7 SCALE 112, (2007) 5 BOM CR 57

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Bench: G.P. Mathur, R.V. Raveendran

CASE NO.:

Appeal (civil) 2424 of 2007

PETITIONER:

Additional General Manager/Human Resource Bharat Heavy Electricals Ltd

RESPONDENT:

Suresh Ramkrishna Burde

DATE OF JUDGMENT: 10/05/2007

BENCH:

G.P. Mathur & R.V. Raveendran

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 2424 OF 2007 (@ Special Leave Petition (Civil) No. 19889 of 2004) G.P. Mathur, J.

Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 4.8.2004 of a Division Bench of Bombay High Court (Nagpur Bench) by which the writ petition filed by the respondent Suresh Ramkrishna Burde was disposed of with a direction to reinstate him in service and further that in future he shall not take any benefit as belonging to reserved category of Scheduled Tribe.

3. The respondent herein, Suresh Ramkrishna Burde, claiming himself to be belonging to Halba Scheduled Tribe and after submitting a certificate to the said effect, got an appointment in the Bharat Heavy Electricals Ltd., Hyderabad, as Clerk on 31.5.1982 on a post which was reserved for a

person belonging to Scheduled Tribe. He was promoted as Assistate Grade II on 27.6.1987 and then as Assistant Grade I on 25.6.1994. The Scheduled Tribes Employees Association (Regd. No. 290 BHEL), Hyderabad, made a complaint that the respondent and several others had produced false caste certificates and had thereby got appointment on vacancies which were reserved for members of Scheduled Tribes. The caste certificate produced by the respondent was referred for verification to District Collector, Nagpur, on 30.3.1991 and also to the Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee (for short 'the Scrutiny Committee'). The Scrutiny Committee vide order 30.8.1995 held that the caste certificate produced by the respondent was false and the same was invalidated. The respondent challenged the said order by filing writ petition No. 3229 of 1995 before the Nagpur Bench of Bombay High Court, which was allowed and the matter was remanded back to the Scrutiny Committee for a fresh consideration in accordance with law. The Scrutiny Committee again examined the matter in accordance with the direction of the High Court and also got an enquiry conducted through its Police Vigilance Cell. The enquiry committee took into consideration the primary school record of the respondent and also extracts of the admission register of the school where the respondent's real paternal cousin had his primary education in the year 1945 onwards. The Scrutiny Committee vide its report dated 29.8.2001 found that the respondent belonged to 'Koshti' caste and he did not belong to Halba Scheduled Tribe. This order was again challenged by the respondent by filing writ petition No. 3628 of 2001 before the Nagpur Bench of Bombay High Court wherein an interim stay was granted in favour of the respondent on 1.11.2001. The writ petition was finally disposed of on 17.2.2004 and the relevant portion of the order is being reproduced below: -

"Learned counsel for the petitioner seeks permission to withdraw the present Writ Petition with a liberty to approach the employer of the petitioner by making a representation in view of the observations of the Apex Court in Milind Katware's case reported in 2001 (1) Mh.L.J. as well as in view of the Govt. Resolutions dated 15th June, 1995 and 15th March, 2000, and further prays that a direction be given to the respondent no. 4 employer of the petitioner, to decide the representation of the petitioner on its own merits within the stipulated period.

Permission is granted. Writ Petition is dismissed as withdrawn.

Respondent No. 4 is directed to decide the representation of the petitioner according to the law within a period of six weeks from the date of the receipt of such representation."

Thereafter, the respondent made a representation dated 12.3.2004 to the appellant herein (employer) wherein he prayed that in view of decision of the Supreme Court in State of Maharashtra vs. Milind and others (2001) 1 SCC 4, his services may be protected. This representation was considered by the appellant and was rejected. The services of the respondent were terminated vide order dated 16.7.2004. Feeling aggrieved by the said order the respondent then filed writ petition No. 3142 of 2004 before the Nagpur Bench of Bombay High Court, which, after accepting his undertaking that in future he will not take any advantage of being a member of Scheduled Tribe, was disposed of with a direction that he shall be reinstated in service. The order passed by the High

Court is a brief one and relevant part thereof is reproduced below: -

"It may be noted here that the judgment of the Supreme Court in *State of Maharashtra v. Milind Katware* (Mh L.J. 2001 (1) page-1) is not only the judgment pertaining to that case but it is also a settled law. In fact, the Honourable Supreme Court has accepted the same to be the settled law in various judgments rendered thereafter.

In accordance with the said judgment of Milind Katware the petitioner has already filed an undertaking that he will not take any benefit of Halba Scheduled Tribe in future.

The learned counsel for the petitioner, on behalf of the petitioner, undertakes that, neither the petitioner nor his family members will ever claim any benefit as belonging to Halba Scheduled Tribe. The said undertaking is accepted. The learned counsel for the petitioner also states that the petitioner will abide by the order of Scrutiny Committee, referred in the order dated 16th July, 2004, especially when the undertaking is accepted.

Under the circumstances, we direct the respondent to reinstate the petitioner, as his services were terminated only on the limited ground. We make it clear that the respondent shall not terminate services of the petitioner only on the ground that he does not belong to Halba (Scheduled Tribe). The respondent shall treat the petitioner to be belonging to open category. The writ petition stands disposed of in the above terms."

4. Shri L.N. Rao, learned senior counsel for the appellant, has submitted that the respondent had secured appointment by producing a false caste certificate which showed him to be belonging to Halba Scheduled Tribe when in fact he was not a member of Scheduled Tribe at all and thus he secured appointment on a post which was reserved for a person belonging to the said caste. Learned counsel has submitted that fraud vitiates most solemn transaction and as the respondent had got appointment by fraudulent means, his services were rightly terminated and the High Court has erred in directing his reinstatement after relying upon the decision in the case of Milind though no such principle had been laid down in the said case.

5. Learned counsel for the respondent has supported the judgment of the High Court and has submitted that the respondent had given an undertaking that neither he nor his family members will ever take any benefit as belonging to Halba Scheduled Tribe and in view of the said undertaking the High Court was perfectly right in protecting his services and directing his reinstatement. Learned counsel has also submitted that the judgment of the High Court is in accordance with the Constitution Bench decision of this Court in *State of Maharashtra vs. Milind* (supra) and, therefore, there is no ground on which this Court may interfere with the order passed by the High Court.

6. There is no dispute on facts. After receiving complaints about the caste certificate produced by the respondent the appellant referred the matter for verification to the District Collector, Nagpur on 30.3.1991 and also to the Scrutiny Committee. The Scrutiny Committee, after thorough verification, passed order on 30.8.1995 that the respondent did not belong to the Scheduled Tribe and the caste certificate submitted by him was false. This order was challenged by the respondent and the High Court in writ petition No. 3229 of 1995 remanded the matter back to the Scrutiny Committee for fresh consideration. The Scrutiny Committee again conducted the enquiry through its Police Vigilance Cell associated with the research officer and after thorough examination of the entire material again passed an order on 29.8.2001 that the caste of the respondent was 'Koshti' and he did not belong to Scheduled Tribe. This order was again challenged by the respondent by filing writ petition No. 3628 of 2001. However, at the time of hearing of the writ petition the petitioner sought leave of the court to withdraw the writ petition with liberty to approach the employer by making a representation. The writ petition was accordingly dismissed as withdrawn on 17.2.2004. The effect of the order passed by the High Court is that the order dated 29.8.2001 of the Scrutiny Committee, by which it was held that the respondent belonged to 'Koshti' caste and he is not a member of Scheduled Tribe, attained finality. Therefore, there is no escape from the conclusion that the respondent secured the appointment on a post which was reserved for Scheduled Tribe by producing a false caste certificate.

7. The High Court has granted relief to the respondent and has directed his reinstatement only on the basis of the Constitution Bench decision of this Court in *State of Maharashtra vs. Milind* (2001) 1 SCC 4. In our opinion the said judgment does not lay down any such principle of law that where a person secures an appointment by producing a false caste certificate, his services can be protected and an order of reinstatement can be passed if he gives an undertaking that in future he and his family members shall not take any advantage of being member of a caste which is in reserved category. The questions which required for consideration by the Constitution Bench, are noted in the very first paragraph of the judgment and they are being reproduced below: -

"1) Whether at all, it is permissible to hold enquiry and let in evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950?

2) Whether 'Halba Koshti' caste is a sub-tribe within the meaning of Entry 19 (Halba/Halbi) of the said Scheduled Tribes Order relating to State of Maharashtra, even though it is not specifically mentioned as such?"

After thorough discussion of the matter the conclusions of the Bench are recorded in paragraph 36 of the report. It was held that it is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950. It was further held that the notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only

by law to be made by Parliament and it is not open to the State Governments or courts or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342 and the Constitution (Scheduled Tribes) Order 1950. The law declared by the Constitution Bench does not at all lay down that where a person secures an appointment by producing a false caste certificate, his services can be protected on his giving an undertaking that in future he will not take any advantage of being a member of the reserved category.

8. After interpreting the relevant constitutional or statutory provisions and laying down the law, it is always open to a court to mould the relief which may appear to be just and proper in the facts and circumstances of the case. Some times equitable considerations also come into play while granting a relief. Milind had got admission in a medical course in the year 1985-86 by producing a caste certificate that he belonged to Halba Caste, which was later on invalidated by the Scrutiny Committee. That order was challenged by him by filing a writ petition which was allowed by the High Court. The appeal filed by the State of Maharashtra was allowed by the Constitution Bench of this Court on 28.11.2000, i.e., almost 15 years after he had got admission in the course. By that time Milind had already completed his MBBS course and was practising as a doctor. This Court took notice of the fact that a huge amount of public money is spent on every student studying in the medical course and a qualified doctor on whom public money had been spent does service to the society. The Court, therefore, observed "in these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor". However, it was made clear that he cannot take any advantage as being a member of Scheduled Tribe for any other purpose.

9. An identical controversy was again examined in *R. Vishwanatha Pillai vs. State of Kerala* (2004) 2 SCC 105, which is a decision rendered by a Bench of three learned Judges. The employee in the aforesaid case had got an appointment in the year 1973 against a post reserved for Scheduled Caste. On complaint, the matter was enquired into and the Scrutiny Committee vide its order dated 18.11.1995 held that he did not belong to Scheduled Caste and the challenge raised to the said order was rejected by the High Court and the special leave petition filed against the said order was also dismissed by this Court. He then filed a petition before the Administrative Tribunal praying for a direction not to terminate his services which was allowed, but the order was reversed by the High Court in a writ petition. The employee then filed an appeal in this Court. After a detailed consideration of the matter this Court dismissed the appeal and para 15 of the report, which is relevant for the decision of the present case, is reproduced below: -

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste

certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India, Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception....."

10. In *Bank of India vs. Avinash D. Mandivikar* (2005) 7 SCC 690, the employee had got an appointment on 15.10.1976 on a post which was reserved for a member of Scheduled Tribe. The Scrutiny Committee invalidated the caste certificate on 18.7.1987 which was challenged by the employee. After several rounds of litigation his services were terminated on 28.2.2002. After referring to the decision in the case of *Milind* and some other decisions, this Court allowed the appeal of the employer affirming the order of termination of service of the employee. Paragraph 6 of the report where the principle was laid down reads as under: -

"6. Respondent No. 1-employee obtained appointment in the service on the basis that he belonged to Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eyes of law. There is absolutely no justification for his claim in respect of post he usurped, as the same was meant for reserved candidate."

10. In *R. Vishwanatha Pillai vs. State of Kerala* (2004) 2 SCC 105, which we have referred to earlier, the case of the employee's son, who got admission in an engineering college against a seat reserved for Scheduled Caste, was also considered. The admission in the engineering college was obtained in 1992 and he completed the course in 1996 though under the interim order of the High Court. The appeal was decided by this Court on 7.1.2004. Placing reliance upon paragraph 38 of the judgment in the case of *Milind* (supra), this Court observed that no purpose would be served in withholding the declaration of the result on the basis of examination already taken by the student or depriving him of the degree in case he passes the examination. It was accordingly directed that the student's result be declared and he be allowed to take his degree with the condition that he will not be treated as Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him and he shall be treated to be a person belonging to general category.

11. The principle, which seems to have been followed by this Court is, that, where a person secures an appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. However, where a person has got admission in a professional course like engineering or MBBS and has successfully completed the course after studying for the prescribed period and has passed the examination, his case may, on special facts, be considered on a different footing. Normally, huge amount of public money is spent in imparting education in a professional college and the student also acquires the necessary skill in

the subjects which he has studied. The skill acquired by him can be gainfully utilized by the society. In such cases the professional degree obtained by the student may be protected though he may have got admission by producing a false caste certificate. Here again no hard and fast rule can be laid down. If the falsehood of the caste certificate submitted by the student is detected within a short period of his getting admission in the professional course, his admission would be liable to be cancelled. However, where he has completed the course and has passed all the examinations and acquired the degree, his case may be treated on a different footing. In such cases only a limited relief of protection of his professional degree may be granted.

12. In the case in hand the respondent got appointment on 31.5.1982 on a post, which was reserved for a member of Scheduled Tribe. On receiving complaints the employer referred the matter to the District Collector, Nagpur and also to Scrutiny Committee in March, 1991. The subsequent period has been spent in making enquiry and in litigation as the respondent filed three writ petitions. In view of the principle laid down by this Court we are clearly of the opinion that his services were rightly terminated by the appellant and the High Court was in error in directing his reinstatement. The order passed by the High Court, therefore, has to be set aside.

13. Before parting with the case we would like to observe that the order invalidating the caste certificate had been passed by the Scrutiny Committee at Nagpur and, therefore, the earlier two writ petitions filed by the respondent were maintainable before the Nagpur Bench of Bombay High Court. However, in the third and final writ petition the order under challenge was the order of termination of service which was passed by the appellant on 16.7.2004 at Hyderabad as the respondent was working with the Bharat Heavy Electrical Ltd.'s Heavy Power Equipment Plant, Hyderabad. Therefore, the Nagpur Bench of Bombay High Court had no jurisdiction to entertain the writ petition wherein challenge was raised to the said order. However, in order to cut short the litigation and settle the controversy we have decided the case on merits.

14. Learned counsel for the respondent also sought to take some benefit of a certain Government Order dated 15.6.1995 issued by the State of Maharashtra wherein some reservation in service is provided to members of special backward class. In our opinion the respondent can get no benefit from the same as he is not an employee of Government of Maharashtra but is an employee of a public sector undertaking of Central Government and he secured the appointment long before on 31.5.1982.

15. For the reasons discussed above the appeal is allowed. The judgment and order dated 4.8.2004 of the Bombay High Court (Nagpur Bench), which is under challenge in the present appeal, is set aside. The writ petition filed by the respondent is dismissed.

16. No order as to costs.