

THE CHIEF EXECUTIVE OFFICER,
BHILAI STEEL PLANT, BHILAI

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v.

MAHESH KUMAR GONNADE & ORS.

(Civil Appeal No. 4990 of 2021)

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JULY 11, 2022

[SANJAY KISHAN KAUL AND HRISHIKESH ROY, JJ.]

Service Law: Termination – Challenge to, by Management trainee in PSU-respondent no. I who secured employment to a post earmarked for the reserved category when he did not belong to the Halba ST category – Division Bench set aside the termination order holding that he would be entitled to the benefits of seniority and back wages – On appeal held: When a person secures appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment – As an OBC person, the respondent no. I could not have been permitted to continue in a post meant for the ST category – High Court should not have granted relief by invoking the principles of natural justice, and by advertizing to the ratio in Milind's case which was not applicable to the respondent no. I, and was eventually clarified in Dattatray's case – High Court erred by granting relief to the respondent no. I – However, the emoluments paid to him should not be recovered – Furthermore, respondent no. I not entitled to any pensionary benefit by virtue of his wrongful appointment.

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Allowing the appeal, the Court

HELD: 1.1 The pronouncement in *Dattatray's case* clearly suggests that the High Court misapplied the ratio in *Milind's case*, since the appointment of the respondent no. 1 as Management Trainee (Technical), cannot be compared to the education and appointment of a medical doctor. [Para 12][986-C-D]

1.2 The High Court disregarded the Government's circular dated 11.01.2016 whereby the previous circular (01.10.2011) was cancelled with the specific observation that *Milind's judgment* was clarified subsequently in *Dattatray's case*, by declaring that

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- A when a person secures appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment. In fact, necessary actions were expected to be taken against those who secured unmerited appointment on the basis of false caste certificate. Pertinently, the respondent no.1 could have (but never did) challenge, the circular dated 11.01.2016 which required the Government to cancel such unmerited appointment. [Para 14][987-C-E]
 - 1.3 The respondent no.1 secured employment to a post earmarked for the reserved category, and there is a clear finding by the Caste Scrutiny Committee that the respondent no.1 does not belong to the Halba ST category. The Halba ST certificate (11.09.1987) on the basis of which the respondent No.1 secured employment was cancelled by the Committee on 15.07.2015, and such finding of the Caste Scrutiny Committee remain unchallenged till date. As a consequence, the respondent no. 1 is disentitled to claim any equitable relief by virtue of his long service, particularly when he, despite the notice, avoided the proceedings of the Caste Scrutiny Committee. Also conspicuously, he does not challenge the adverse finding against him. Moreover, it is not the claim of the respondent no.1 that he belongs to the ST category nor did he ever challenge the clarificatory circular (11.01.2016) which cancels the earlier circular (01.10.2011). In such circumstances, an opportunity to the respondent no.1 would be futile because he could not have claimed that he belongs to the ST category since his Halba caste certificate (issued on 11.09.1987) stood cancelled by the Committee. Consequently, as an OBC person, the respondent no.1 could not have been permitted to continue in a post meant for the ST category. The High Court, therefore, should not have granted relief by invoking the principles of natural justice, and by advertizing to the ratio in *Milind's* case which was not applicable to the respondent no.1, and which eventually was clarified in *Dattatray's* case. [Para 15][987-E-H; 988-A-B]
- 1.4 The High Court erred by granting relief to the respondent no.1 who is disentitled to claim any right to continue in a post earmarked for the ST category. The ratio in *Milind's* case was incorrectly applied in the impugned judgment since it is

not the case of the respondent no.1 that he belongs to the ST category. The High Court instead of granting equitable relief to the respondent no. 1, should have held that he cannot continue to usurp the benefits meant for a ST category person. Consequently, the respondent no. 1 being an OBC cannot be retained in a ST category post. However, the emoluments paid to him should not be recovered. Furthermore, the respondent no.1 is disentitled to any pensionary benefit by virtue of his wrongful appointment. [Para 16][988-B-E]

Union of India v. Dattatray & Ors. (2008) 4 SCC 612
: [2008] 2 SCR 1096 – relied on.

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State of Maharashtra v. Milind and Ors. (2001) 1 SCC 4 : [2000] 5 Suppl. SCR 65; Chairman and Managing Director, Food Corporation of India & Ors. v. Jagdish Balaram Bahira & Ors. (2017) 8 SCC 670 : [2017] 11 SCR 271 – referred to.

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Case Law Reference

[2000] 5 Suppl. SCR 65	referred to	Para 5, 12, 14, 15, 16
[2008] 2 SCR 1096	relied on	Para 12, 14, 15
[2017] 11 SCR 271	referred to	Para 8

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4990 of 2021.

From the Judgment and Order dated 09.01.2017 of the High Court of Chattisgarh, Bilaspur in WPS No.675 of 2016.

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Maninder Singh, Sr. Adv., Sunil Kumar Jain, Advs. for the Appellant.

Anupam Lal Das, Sr. Adv., Ashwarya Sinha, Ms. Shubhi Sharma, Ms. Priyanka Sinha, Sumeer Sodhi, Manoj Kumar Singh, Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
HRISHIKESH ROY, J.

- B 1. Heard Mr. Maninder Singh, the learned Senior Counsel appearing on behalf of the appellant. Also heard Mr. Anupam Lal Das, the learned Senior Counsel representing the respondent no. 1. The State of Chhattisgarh is represented by Mr. Sumir Sodhi, the learned counsel.
- C 2. The challenge in this appeal is to the judgment and order dated 09.01.2017 in the WP No. 675/2016 whereby the Division Bench has interfered with the order passed by the Central Administrative Tribunal (for short “CAT”) and granted relief to the writ petitioner (respondent no. 1) whose termination order dated 24.10.2015 was set aside with the declaration that he would be entitled to all the consequential benefits, including seniority and back wages.

RELEVANT FACTS

- D 3. On 11.09.1987, the respondent no.1 obtained a Caste Certificate showing him to be “*Halba*” Scheduled Tribe (hereinafter “ST”) from the Deputy Collector, Durg and on the basis of the said certificate, the respondent no.1 on 18.09.1995, joined service as a Management Trainee (Technical) against a Schedule Tribe quota vacancy at the Bhillai Steel Plant of the Steel Authority of India Limited (SAIL). In 2008, questions were raised on the caste status of the respondent no.1, and his entitlement to the benefits meant for the Scheduled Tribe category, and accordingly, his caste certificate was forwarded to the High-Level Caste Scrutiny Committee, Raipur to determine whether he belonged to *Halba* Scheduled Tribe community or “*Halba/Koshti*” the Other Backward Class (hereinafter “OBC”) community. The Committee, after due inquiry, on 15.07.2015 submitted a report stating that respondent no.1 belongs to *Halba/Koshti* community, which is categorized as OBC in the State of Chhattisgarh, and thus, he does not belong to *Halba* Scheduled Tribe community. Accordingly, the respondent no.1’s *Halba* ST Certificate dated 11.09.1987 was cancelled with the observation that the respondent no.1 failed to produce documents prior to the year 1950 showing him as *Halba*. Following the cancellation of the ST Certificate, the Vigilance Department of the State of Chhattisgarh, on 23.07.2015, issued communication to the employer i.e., Bhillai Steel Plant for necessary action. In consequence thereof, and the adverse finding of the Committee, H order for termination of the respondent no.1’s service was issued on

24.10.2015. The Bhilai Steel Plant also ordered for forfeiture of all the service benefits of the respondent no.1 such as CPF, Gratuity, Pension, Leave Encashment etc. A

4. The respondent no.1 moved the Central Administrative Tribunal (CAT), to challenge the termination but his OA 1115/2015 came to be dismissed *in limine* because he had not challenged the adverse finding (15.07.2015) of the High-Level Caste Scrutiny Committee, Raipur. B

5. Thereafter, the respondent no.1 filed a writ petition before the High Court of Chhattisgarh challenging the CAT's decision and seeking protection of his service. The Division Bench of the High Court by placing reliance on *State of Maharashtra Vs. Milind and Ors.*¹ (hereinafter "Milind") through the impugned judgment granted relief to the writ petitioner. In the process, the High Court overlooked that the writ petitioner opted to abstain from the proceedings of the High-Level Caste Scrutiny Committee. Moreover, by this time it was made clear that *Halba/Koshti* is not a sub-caste of *Halba*. Therefore, the respondent no.1 being an OBC (*Halba/Koshti*) could not have claimed recognition and employment benefits reserved for members of the *Halba* ST community under the *Milind*'s ratio. C

ARGUMENTS BY THE COUNSELS

6.1 Assailing the impugned judgment, Mr. Maninder Singh, the learned Senior Counsel firstly argues that the High Court erroneously relied on the ratio in *Milind* (supra) and also conspicuously missed the point that the relief in the cited case was restricted to the concerned litigant and the ratio was not intended to be of universal application. Placing strong reliance on *Union of India vs. Dattatray & Ors.*² (hereinafter "Dattatray"), the appellant's counsel then argues that the *Milind*'s judgment was made applicable only for the doctor litigant in the larger interest of the society and the ratio thereof, cannot be indiscriminately applied in cases of persons who undeservingly secure public appointments to reserved category jobs. F

6.2 It is the submission of the Senior Counsel for the appellant that the judgment in *Milind* (supra) was clarified by this Court in *Dattatray* (supra) that *Milind* does not propound retention of any person in service who secured employment in a ST category vacancy, on the G

¹(2001) 1 SCC 4

²(2008) 4 SCC 612

- A basis of a false caste certificate. For this reason, the earlier Government Circular dated 1.10.2011 (which on account of *Milind*'s judgment granted protection to the pre 28.11.2000 appointees recruited wrongly under the ST category), was cancelled by the latter circular dated 11.1.2016 issued by the Secretary, GAD, Chhattisgarh with the specific observation that the judgment in *Milind* was clarified by this Court in *Dattatray*. Mr. Maninder Singh, therefore, argues that consequential action was rightly taken in view of the cancellation of earlier circular (1.10.2011).
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6.3 The High Court according to the appellant, erroneously granted relief to the respondent no.1 as he neither challenged the circular dated

- C 11.1.2016 nor the adverse conclusion of the Caste Scrutiny Committee.
- C Therefore, in view of the undisturbed finding that he does not belong to the ST category and the unchallenged Circular (11.1.2016), relief could not have been granted by the High Court. Furthermore, the respondent no.1 never tried to establish the validity of his caste certificate before the High-Power Caste Scrutiny Committee, although, opportunity was
- D afforded to him through a notice, to project his version.

7.1 Per contra, Mr. Anupam Lal Das, the learned Senior Counsel would contend that the respondent no.1 had obtained his caste certificate on 11.09.1987 and joined service as far back as on 18.09.1995 and as such, his service could not have been terminated without issuing him a show cause notice.

7.2 Adverting next to the adverse finding as given by the High-Power Caste Scrutiny Committee to the effect that the respondent no.1 does not belong to the *Halba* ST community, Mr. Das would argue that the adverse conclusion was drawn mainly because the respondent no.1

- F failed to produce any pre 1950 document, showing his caste as *Halba*. But since the respondent no.1's appointment became final prior to 28.11.2000 i.e., the date on which this Court decided the C.A. No.2294/1986 (*State of Maharashtra vs. Milind*), the appointed person even with the adverse finding of the Caste Scrutiny Committee against him, is entitled to retain his job. Furthermore, the Central Government vide its circular dated 10.8.2010 had ordered for protection of employment of those belonging to the *Halba/Koshti* community. Thus, according to the learned Senior Counsel, the High Court, rightly granted relief to the respondent no.1 in his Writ Petition and the same should not be disturbed in this appeal.
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8. The stand of the State of Chhattisgarh (respondent nos.2 and 3) as pleaded in their counter affidavit is that respondent no.1 (not being a ST category person) is disentitled to continue in service, as he secured employment to a post earmarked for the ST category. Moreover, since the respondent no.1 does not belong to the reserved category and secured employment on the basis of a false caste certificate, he was disentitled to any relief in view of the law laid down in *Chairman and Managing Director, Food Corporation of India & Ors. vs. Jagdish Balaram Bahira & Ors.*³ (hereinafter “Jagdish”).

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THE DISCUSSION AND THE DECISION

9. At the outset, given that the *Jagdish* (supra) as relied on by respondent nos.2 & 3 was pronounced on 06.07.2017, almost 6 months after the impugned judgment on 09.01.2017, the same could not have been considered by the High Court. With this prefatory clarification, the issue to be answered in this matter is whether the High Court had correctly relied on the ratio in *Milind* (supra) in granting relief to the writ petitioner (respondent no.1), and whether the impugned decision of the High Court is sustainable in view of the clarification of the *Milind* by the subsequent judgment in *Dattatray* (supra).

10. As can be seen, the High Court granted relief to the respondent no.1 by referring to the decision in *Milind* (supra) with the following words: -

“15. For the aforesaid, we are of the considered view that the impugned judgment rendered by the Central Administrative Tribunal, refusing to extend benefit of Milind’s judgment to the petitioners deserves to be and is hereby set-aside. Consequently, the petitioner’s termination vide order dated 24.10.2015 is also set-aside. The petitioner would be entitled to all the consequential benefits on or after 24.10.2015 including seniority and back wages. However, the petitioner shall not be entitled to any interest on the arrears of salary nor any further benefit on the basis of certificate which has been cancelled by the High Power Caste Scrutiny Committee.”

11. While applying the ratio of *Milind* as above, the High Court, however, failed to take note of the following clarification given in *Dattatray* (supra), regarding the ratio in *Milind*: -

³(2017) 8 SCC 670

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- A *“5.But the said decision has no application to a case which does not relate to an admission to an educational institution, but relates to securing employment by wrongly claiming the benefit of reservation meant for Scheduled Tribes. When a person secures employment by making a false claim regarding caste/tribe, he deprives a legitimate candidate belonging to Scheduled Caste/Tribe, of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of the false certificate so that the post may be filled up by a candidate who is entitled to the benefit of reservation.”*
- B *12. The pronouncement in Dattatray clearly suggests that the High Court misapplied the ratio in Milind, since the appointment of the respondent no. 1 as Management Trainee (Technical), cannot be compared to the education and appointment of a medical doctor.*
- C *13. It must also be borne in mind that the Division Bench of the Chhattisgarh High Court in the common judgment in Writ Appeal No.531 of 2016 (*State of Chhattisgarh & Ors. vs. Dinesh Kumar Sonkusre*) had made the following observations: -*
- E *“40. It would be pertinent to mention that the State of Chhattisgarh was formed w.e.f. 01.11.2000 and the judgment in Milind (supra) was rendered on 28.11.2000 and the protection can only be given to those who were actually “Halba-Koshti” or “Koshti” for the State of Madhya Pradesh and Chhattisgarh prior to 28.11.2000 and were therefore treated as “Halbas”.*
- F *41. Having held so, we want to clarify that the notification dated 11.1.2016 is not bad in law. It will however have to be read in the context of the law laid down by the Apex Court in various judgements as explained by us above. This notification may not apply to those petitioners who have obtained jobs prior to 28.11.2000 provided they have obtained Scheduled Tribe certificate “bona fide” and without suppression or misrepresentation of any facts. In case, a person is not a “Halba Koshti” in relation to State of Madhya Pradesh, then that person is not entitled to any protection of law. If a person has obtained a false certificate by*
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misrepresentation of facts or providing wrong information, then that the person is also not entitled to any protection. It is only those who were actually "Halba Koshti" or "Koshti" believed that they were members of "Halba", a Scheduled Tribe and who got jobs prior to 28.11.2000, are entitled to such protection. This protection cannot be extended to all and sundry. To give an example if "Halba Koshti" from the State of Maharashtra had shifted to State of Madhya Pradesh, then he would not be "Halba Koshti" belonging to Madhya Pradesh and as such, his certificate would be totally false and such a person would not be entitled to any protection."

14. As we notice, the High Court disregarded the Government's circular dated 11.01.2016 whereby the previous circular (01.10.2011) was cancelled with the specific observation that *Milind*'s judgment was clarified subsequently in *Dattatray*, by declaring that when a person secures appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment. In fact, necessary actions were expected to be taken against those who secured unmerited appointment on the basis of false caste certificate. Pertinently, the respondent no.1 could have (but never did) challenge, the circular dated 11.01.2016 which required the Government to cancel such unmerited appointment.

15. As noted earlier, the respondent no.1 secured employment to a post earmarked for the reserved category, and there is a clear finding by the Caste Scrutiny Committee that the respondent no.1 does not belong to the *Halba* ST category. The *Halba* ST certificate (11.09.1987) on the basis of which the respondent No.1 secured employment was cancelled by the Committee on 15.07.2015, and such finding of the Caste Scrutiny Committee remain unchallenged till date. As a consequence, the respondent no.1 is disentitled to claim any equitable relief by virtue of his long service, particularly when he, despite the notice, avoided the proceedings of the Caste Scrutiny Committee. Also conspicuously, he does not challenge the adverse finding against him. Moreover, it is not the claim of the Respondent no.1 that he belongs to the ST category nor did he ever challenge the clarificatory circular (11.01.2016) which cancels the earlier circular (01.10.2011). In such circumstances, an opportunity to the respondent no.1 would be futile because he could not have claimed that he belongs to the ST category since his *Halba* caste certificate

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- A (issued on 11.09.1987) stood cancelled by the Committee. Consequently, as an OBC person, the respondent no.1 could not have been permitted to continue in a post meant for the ST category. The High Court, therefore, should not have granted relief by invoking the principles of natural justice, and by adverting to the ratio in *Milind* (supra) which was not applicable to the respondent no.1, and which eventually was clarified in *Dattatray* (supra).
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16. The above would show that the High Court clearly fell into an error by granting relief to the respondent no.1 who is disentitled to claim any right to continue in a post earmarked for the ST category. The ratio in *Milind* (supra) was incorrectly applied in the impugned judgment since it is not the case of the respondent no.1 that he belongs to the ST category. According to our understanding of the circumstances, the High Court instead of granting equitable relief to the Respondent no. 1, should have held that he cannot continue to usurp the benefits meant for a ST category person. Indeed the Division Bench should have said "*the game is up*"

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- D as was pronounced by Shakespeare in the play *Cymbeline* when the character stood exposed for what he actually was. Consequently we are of the opinion that the Respondent no. 1 being an OBC cannot be retained in a ST category post. However the emoluments paid to him should not be recovered. It is further held that the respondent no.1 is disentitled to any pensionary benefit by virtue of his wrongful appointment.
- E It is ordered accordingly. The appeal therefore stands allowed, leaving the parties to bear their own costs.

Nidhi Jain

Appeal allowed.