

## **Bank Of India & Anr vs Avinash D. Mandivikar & Ors on 14 September, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 3395, 2005 (7) SCC 690, 2005 AIR SCW 4477, 2005 LAB. I. C. 4164, 1 (1) SERVLJ 47 SC, (2005) 4 ALLMR 1023 (SC), (2005) 6 ALL WC 5165, 2005 (4) ALL MR 1023, 2005 (7) SCALE 272, 2005 (2) UJ (SC) 1332, 2005 (9) SRJ 97, 2005 (7) SLT 226, (2005) 8 JT 326 (SC), 2005 (8) JT 326, (2006) 1 SERVLJ 47, 2005 SCC (L&S) 1011, (2005) 7 SCJ 80, (2005) 107 FACLR 610, (2005) 3 LABLJ 1122, (2005) 4 ESC 598, (2005) 4 LAB LN 56, (2005) 4 MAH LJ 409, (2005) 5 SERVLR 780, (2005) 4 MPLJ 303, (2005) 4 SCT 336, (2005) 6 SUPREME 344, (2005) 7 SCALE 272, (2006) 1 BOM CR 300**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, H.K. Sema**

CASE NO.:

Appeal (civil) 347 of 2004

PETITIONER:

Bank of India & Anr.

RESPONDENT:

Avinash D. Mandivikar & Ors.

DATE OF JUDGMENT: 14/09/2005

BENCH:

ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:

**J U D G M E N T** ARIJIT PASAYAT, J.

Appellants call in question legality of the judgment rendered by a Division Bench of the Bombay High Court holding that the respondent no.1 (hereinafter referred to as the 'employee') was to be reinstated in the post in which he was appointed with continuity of service with back wages. It was further held that he was not entitled to promotion as he did not belong to Scheduled Tribe.

The background facts sans unnecessary details are as follows:

The respondent joined the services of the appellant no.1-Bank on 15.10.1976 under the reserved category of Scheduled Tribe. He was on probation for a period of six

months and thereafter his services came to be confirmed. In 1984 he was promoted in the reserved category to the post of Junior Management Scale I. He was asked to submit fresh caste certificate in the revised form as he was promoted in the reserved category. His caste certificate was referred to the Committee For Scrutiny And Verification Of Tribe Claims, Pune Division, Pune (in short the 'Scrutiny Committee') for verification on 13th June, 1987. The Scrutiny Committee invalidated the caste certificate by order dated 18th July, 1987. The same was challenged before the High Court in Writ Petition no.3680/1994. The matter was remanded to the Scrutiny Committee for fresh hearing. Again by order dated 17th June, 1995 the Scrutiny Committee invalidated the caste certificate. The matter was again remanded by the High Court by order dated 7th August, 1996. The Scrutiny Committee by order dated 24th December, 1998 invalidated the caste certificate. The said order was challenged before the Bombay High Court by filing writ petition which was withdrawn with liberty to file fresh writ petition. Another writ petition was filed which was disposed of by order dated 12th April, 2001. It was prayed that enquiry proceedings were initiated by the employer, and if any adverse decision is given by the Enquiry Officer or his services are affected by any order passed by the disciplinary authority on the basis of the finding of the Enquiry Officer, liberty may be granted to challenge the legality of the order of the Scrutiny Committee and the disciplinary proceedings. The prayer was accepted and the writ petition was dismissed as withdrawn granting opportunity as afore-noted. The Enquiry Officer submitted report holding that the charges were proved and the disciplinary authority after issuing show cause notice terminated the services of respondent no.1-employee by order dated 28th February, 2002. The said order of termination was challenged before the Bombay High Court primarily on the ground that the proceedings for verification of the caste certificate were not initiated within reasonable period. The High Court found substance in such plea. It was noted that though respondent no.1-employee joined the services of the Bank in 1976, the reference was made in the year 1987. It was held that the period was not reasonable for initiation of proceedings. The High Court accordingly held that the proceedings were not initiated validly. Having held so, it was further held that respondent no.1-employee does not belong to Scheduled Tribe and, therefore, was not entitled to promotion in the next higher rank. Direction was given to reinstate in the post he was appointed with continuity of service with back wages.

Learned counsel for the appellants submitted that the view taken by the High Court is clearly erroneous. The High Court has not interfered with the invalidation order of the Scrutiny Committee. The conclusions of the High Court are contrary in terms. On one hand, it has been held that the reference was not made within reasonable time. On the other hand, it has been held that respondent no.1 did not belong to Scheduled Tribe. This conclusion obviously is based on the order of invalidation passed by the Scrutiny Committee. When an action is founded on fraud the question of any reasonable period for initiation of action is clearly immaterial. By granting protection of the respondent no.1- employee the High Court has in essence nullified the object for which scrutiny of the caste claim is made and the purpose for which reservation

has been made for Scheduled Caste and the Scheduled Tribes.

Per contra, learned counsel for respondent no.1- employee submitted that the High Court has taken equitable view. Reference was made to a decision of the Constitution Bench of this Court in *State of Maharashtra v. Milind and Ors.* (2001(1) SCC 4); more particularly para 38 thereof which did not disturb the admissions which had become final but it was held that in future no benefit in the status of Scheduled Tribe was to be conferred.

In *Kumari Madhuri Patil and Anr. v. Additional Commissioner, Tribal Development and Ors.* (1994 (6) SCC 241) the object for granting certain benefits to persons belonging to Scheduled Caste and Scheduled Tribe and the approach to be adopted in matters where benefits are fraudulently obtained was highlighted. At para 13 of the judgment it was, inter alia, noted as follows:

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational

institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems

expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/ guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

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.

It was urged by learned counsel for the respondent no.1-employee that there was no fraud practiced and it was, in fact, under a bona fide belief that the claim was made and there is no finding about any fraud having been practiced by the employee. The Scrutiny Committee examined the various documents and came to a definite conclusion that documents were manipulated to present false claim.

Stand of the respondent no.1-employee is to the effect that he has put in nearly three decades of service and has about three years to go before retirement, and in terms of the High Court's order he has been denied promotion. Therefore, the order of the High Court is an equitable order.

A similar plea about long years of service was considered by this Court in *R. Vishwanatha Pillai v. State of Kerala and Ors.* 2004(2) SCC 105) to be inconsequential. In para 19 it was observed:

"It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks

equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

The protection under the Milind's case (supra) cannot be extended to the respondent no.1-employee as the protection was given under the peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. This Court noted that on a doctor public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent no.1-employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him.

We find the conclusions of the High Court to be contradictory. On one hand the High Court faulted the reference which was made after about ten years and on the other hand accepted the findings of the Scrutiny Committee that the respondent no.1 did not belong to Scheduled Tribe as was held by the Scrutiny Committee. Mere delay in making a reference does not invalidate the order of the Scrutiny Committee. If the High Court felt that the reference was impermissible because of long passage of time, then that would have made the reference vulnerable. By accepting the findings of the Scrutiny Committee that the respondent no.1- employee did not belong to Scheduled Tribe, the observations about the delayed reference loose significance. The matter can be looked into from another angle. When fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. This Court in *Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.* (JT 2005 (7) SC 530) dealt with effect of fraud. It was held as follows in the said judgment:

"14. ....Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false'.

15. This aspect of the matter has been considered by this Court in *Roshan Deen v. Preeti Lal* (2002 (1) SCC 100) *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* (2003 (8) SCC 311), *Ram Chandra Singh's case* (supra) and *Ashok Leyland Ltd. v. State of T.N. and Another* (2004 (3) SCC 1).

16. Suppression of a material document would also amount to a fraud on the court. (see *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996 (3) SCC 310) and *S.P. Chengalvaraya Naidu's case* (supra).

17. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the

former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav's case (supra).

18. In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722)

19. These aspects were recently highlighted in the State of Andhra Pradesh and Anr. v. T. Suryachandr Rao (2005 (5) SCALE 621)"

Therefore, mere delayed reference when the foundation for the same is alleged fraud does not in any way affect legality of the reference.

Looked from any angle the High Court's judgment holding that the respondent no.1-employee was to be reinstated in the same post as originally held is clearly untenable. The order of termination does not suffer from any infirmity and the High Court should not have interfered with it. By giving protection for even a limited period, the result would be that a person who has a legitimate claim shall be deprived the benefits. On the other hand, a person who has obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does not even have a shadow of right even to be considered for appointment.

The appeal is allowed but without any order as to costs.