Kavita Solunke vs State Of Maharashtra & Ors on 9 August, 2012

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Bench: Fakkir Mohamed Ibrahim Kalifulla, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5821 OF 2012
(Arising out of S.L.P. (C) No.33716 of 2009)

Kavita Solunke …Appellant

Versus

State of Maharashtra and Ors. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. The High Court of Judicature at Bombay has while dismissing Writ Petition No.1810 of 2008 filed by the appellant herein refused to interfere with the order dated 20th February, 2008 passed by the Scheduled Tribe Certificate Scrutiny Committee, Amravati. The Committee in turn had declared that the appellant was a 'Koshti' by Caste and not a 'Halba' which is a notified Scheduled Tribe. The facts giving rise to the present appeal lie in a narrow compass and may be summarised as under:

> Shri Shivaji High School, Dongaon, of which respondent No.5 happens to be the Head Master, invited applications in terms of advertisement dated 20th July, 1995 against three vacant posts of teachers in the said school. One each of these two posts was reserved for Scheduled Caste and Scheduled Tribe Candidates. The third post

was ostensibly in open category and required a minimum qualification of B.P.Ed., which the appellant herein did not possess. The appellant claiming to be a 'Halba' applied for the solitary post reserved for the Scheduled Tribe candidates and was appointed as a low grade co-teacher in the pay scale of Rs.1200-2040 with effect from 1st August, 1995 or the date she joined the said post. The appointment was on probation for an initial period of two years which was duly approved by the Zila Parishad Education Officer in terms of his order dated 12th July, 1996. It is not in dispute that the appellant satisfactorily completed the period of probation and was confirmed in service as an Assistant Teacher in due course.

A decade after her initial appointment, respondent No.5 asked the appellant to get her caste credentials verified from the Scheduled Tribe Certificate Scrutiny Committee. The appellant complied with the said direction and submitted her certificate to the Committee concerned, which in turn forwarded it for a proper vigilance inquiry. In the course of the said inquiry, the school record of the appellant was also looked into which showed that the appellant's father was a 'Koshti' by caste which caste was not a Scheduled Tribe in Maharashtra.

The Committee, therefore, concluded that the Caste Certificate of the appellant was invalid and accordingly cancelled the same. This led to the school passing an Order dated 23rd February, 2008 whereby the services of the appellant were terminated with immediate effect. The termination Order said:

".....You were appointed on the post reserved for candidate of Scheduled Tribes. At the time of appointment you produced certificate showing that you belong to the category of Scheduled Tribes. There after the said Certificate was sent for verification to the Caste Scrutiny Committee. The said Committee after giving opportunity of hearing and adducing of evidence decided the enquiry and came to the conclusion that you do not belong to the category as mentioned in the certificate produced by you and consequently invalidated the caste certificate produced by you are not entitled to continue on the post as the post is reserved for the candidate of Scheduled Tribes Community." Aggrieved by the above, the appellant filed an appeal before the School Tribunal under Section 9 of the Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977 which failed and was dismissed by the Tribunal by its order dated 25th September, 2008. The appellant then preferred a writ petition before the High Court of Nagpur challenging the order passed by the Scheduled Tribe Certificate Scrutiny Committee invalidating her caste claim. The High Court saw no reason to interfere and dismissed the said petition by the order impugned before us. The High Court observed:

"... neither the petitioner personally nor through her agent appeared before the Caste Scrutiny Committee nor submitted any reply to the Vigilance Cell Inquiry Report. Perusal of the order of Caste Scrutiny Committee further reveals that the Vigilance Cell collected the document dated 18.10.1956 i.e., extract of School entry in respect of

> father of the petitioner, wherein caste of father of the petitioner mentioned as "Koshti". Similarly, the another document collected by the Vigilance Cell further shows that the petitioner does not belong to "Halba" Scheduled Tribe. Petitioner also failed to establish affinity with the "Halba" Scheduled Tribe. In the circumstances, the conclusion arrived at by the Caste Scrutiny Committee is just and proper and needs no interference."

3. The present appeal assails the correctness of the above order as already noticed.

4. Learned counsel appearing for the appellant raised a short point before us. He contended that the appointment of the appellant having attained finality, could not have been set aside on the ground that Koshti- Halbas were not 'Halbas' entitled to the benefit of reservation as Scheduled Tribes. Relying upon the decision of the Constitution Bench of this Court in State of Maharashtra v. Milind (2001) 1 SCC 4, it was urged by the learned counsel that the appellant was entitled to the protection of continuance in service, no matter 'Halba-Koshtis' were not recognised as 'Halbas' by this Court. The High Court had not, according to the learned counsel, correctly appreciated the decision of this Court in Milind's case (supra) and thereby fallen in an error in dismissing the writ petition filed by the appellant. He also placed reliance upon the Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training dated 10th August, 2010 whereby protection against ouster of those appointed in the Scheduled Tribe category had been extended to persons appointed on the basis of their being 'Halba-Koshti' in the State of Maharashtra. It was further urged that relying upon the said subsequent development, this Court had allowed one Raju Gadekar, a candidate similarly placed as the appellant to seek the benefit under the circular by moving a suitable application before the High Court. There was according to the learned counsel no reason to take a different view in the case of the appellant, especially when this Court had in Milind's case (supra) followed in subsequent decisions, extended protection against ouster from service to those appointed in the Scheduled Tribe category on the basis of the certificates showing the persons appointed to be a 'Koshti-Halba' by caste.

5. On behalf of the respondent, it was urged that the decision of this Court in Milind's case (supra) was distinguishable from the facts of the case at hand inasmuch as that case dealt with admission to a professional course and not with appointment to any public office. It was further argued that the decision of this Court in Milind's case (supra) had been explained by this Court in subsequent decisions including R. Vishwanatha Pillai v. State of Kerala (2004) 2 SCC 105; State of Maharashtra v. Sanjay K. Nimje (2007) 14 SCC 481; Bank of India v. Avinash D. Mandivikar (2005) 7 SCC 690 and Union of India v. Dattatray (2008) 4 SCC 612 and the benefit limited only to cases arising out of admission to professional courses where the candidate had already completed the course and their ouster would result in no benefit to anyone.

6. In Milind's case (supra), the Constitution Bench of this Court was examining whether Koshti was a sub-tribe within the meaning of Halba/Halbi as appearing in the Constitution (Scheduled Tribes) Order, 1950. The respondent in that case had obtained a Caste Certificate from the Executive Magistrate to the effect that he belonged to 'Halba' Scheduled Tribe. He was on that basis selected for appointment to the MBBS Degree Course in the Government Medical College for the session

1985-86 against a seat reserved for Scheduled Tribe candidates. The certificate relied upon by the respondent-Milind was sent to the Scrutiny Committee, the Committee recorded a finding after inquiry to the effect that the respondent did not belong to Scheduled Tribe. In an appeal against the said Order, the Appellate Authority concurred with the view taken by the Committee and declared that the respondent-Milind belonged to 'Koshti Caste' and not to 'Halba Caste' Schedule Tribe.

7. In a writ petition filed against the said order by Milind, the High Court held that it was permissible to examine whether any sub-division of a tribe was a part and parcel of the tribe mentioned therein and whether 'Halba-Koshti' was a sub-division of the main tribe 'Halba' within the meaning of Entry 19 in the Constitution (Scheduled Tribes) Order, 1950. The High Court further held that Halba-Koshti was indeed a sub-tribe of Halba appearing in the Presidential Order.

8. In an appeal filed against the above order of the High Court, this Court held that the Courts cannot and should not expand their jurisdiction while dealing with the question as to whether a particular caste or sub- caste, tribe or sub-tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Articles 341 and 342. Allowing the State Government or the Courts or other authorities or tribunals to hold an inquiry as to whether a particular caste or tribe should be considered as one included in the Schedule to the Presidential order, when it is not so specifically included would lead to problems. This Court declared that the holding of an inquiry or production of any evidence to decide or declare whether any tribe or tribal community or part thereof or a group or part of a group is included in the general name, even though it is not specifically found in the entry concerned would not be permissible and that the Presidential Order must be read as it is.

9. Having said so, this Court noticed the stand taken by the Government on the issue of 'Halba-Koshti' from time to time and the circulars, resolutions, instructions but held that even though the said circulars, instructions had shown varying stands taken by the Government from time to time relating to 'Halba-Koshti' yet the power of judicial review exercised by the High Court did not extend to interfering with the conclusions of the competent authorities drawn on the basis of proper and admissible evidence before it. This Court observed:

> ".....The jurisdiction of the High Court would be much more restricted while dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution. These being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having examined all relevant materials and having recorded a finding that Respondent 1 belonged to "Koshti" caste and has no identity with "Halba/Halbi" which is the Scheduled Tribe under Entry 19 of the Presidential Order, relating to the State of Maharashtra, the High Court exceeded its supervisory jurisdiction by making a roving and in-depth examination of the materials afresh and in coming to the conclusion that "Koshtis" could be treated as "Halbas". In this view the High Court could not upset the finding of fact in exercise of its writ jurisdiction."

10. What is important is that this Court noticed the prevailing confusion arising out of different circulars and instructions on the question of 'Halba-Koshti' being Scheduled Tribes. Dealing with the observations made by the High Court and referring to circulars, instructions and resolution issued by the Government from time to time, this court observed:

> "33. The High court in paras 20 to 23 dealt with circulars/resolutions/ instructions/orders made by the Government from time to time on the issue of "Halba-Koshtis". It is stated in the said judgment that up to 20-7-1962 "Halba-Koshtis" were treated as "Halbas" in the specified areas of Vidarbha. The Government of Maharashtra, Education and Social Welfare Department issued Circular No. CBC 1462/3073/M to the effect that "Halba-Koshtis" were not Scheduled Tribes and they are different from "Halba/Halbis". In the said circular it is also stated that certain persons not belonging to "Halba" Tribe have been taking undue advantage and that the authorities competent to issue caste certificates should take particular care to see that no person belonging to "Halba-Koshtis" or "Koshti" community is given a certificate declaring him as a member of Scheduled Tribes. On 22-8- 1967 the abovementioned circular of 20-7-1962 was withdrawn. Strangely, on 27-9-1967, another Circular No. CBC-1466/9183/M was issued showing the intention to treat "Halba-Koshti" as "Halba". On 30-5-1968 by Letter No. CBC-1468-2027-O, the State Government informed the Deputy Secretary to the Lok Sabha that "Halba-Koshti" is "Halba/Halbi" and it should be specifically included in the proposed amendment Act. The Government of Maharashtra on 29-7-1968 by Letter No. EBC-1060/49321-J-76325 informed the Commissioner for Scheduled Castes and Scheduled Tribes that "Halba-Koshti" community has been shown included in the list of Scheduled Tribes in the State and the students belonging to that community were eligible for the Government of India Post-Matric Scholarships. On 1-1-1969 the Director of Social Welfare, Tribal Research Institute, Pune, by his Letter No. TRI/I/H.K./68-69 stated that the State Government could not in law amend the Scheduled Tribes Order and that a tribe not specifically included, could not be treated as Scheduled Tribe. In this view the Director sought for clarification. The Government of India on 21-4-1969 wrote to the State Government that in view of Basavalingappa case "Halba-Koshti" community could be treated as Scheduled Tribe only if it is added to the list as a sub-tribe in the Scheduled Tribes Order and not otherwise. Thereafter, few more circulars were issued by the State Government between 24-10-1969 and 6-11-1974 to recognise "Halba-Koshtis" as "Halbas" and indicated as to who were the authorities competent to issue certificates and the guidelines were given for inquiry. There was again departure in the policy of the State Government by writing a confidential Letter No. CBC-1076/1314/Desk-V dated 18-1-1977. The Government informed the District Magistrate, Nagpur, that "Halba-Koshtis" should not be issued "Halba" caste certificate. Thereafter, few more circulars, referred to in para 22 of the judgment, were issued. It may not be necessary to refer to those again except to the circular dated 31-7-1981 bearing No. CBC-1481/(703)/D.V. by which the Government directed that until further orders insofar as "Halbas" are concerned, the School Leaving Certificate should be accepted as valid

> for the purpose of the caste. Vide resolution dated 23-1-1985 a new Scrutiny Committee was appointed for verification of caste certificates of the Scheduled Tribes. The High Court had observed in para 23 of the judgment that several circulars issued earlier were withdrawn but the said circular dated 31-7-1981 was not withdrawn. For the first time on 8- 3-1985 the Scrutiny Committee was authorised to hold inquiry if there was any reason to believe that the certificate was manipulated or fabricated or had been obtained by producing insufficient evidence. Referring to these circulars/resolutions the High Court took the view that the caste certificate issued to Respondent 1 could be considered as valid and up to 8-3-1985 the inquiry was governed by circular dated 31-7-1981. The High Court dealing with the stand of the State Government on the issue of "Halba-Koshti", from time to time, and also referring to circulars/resolutions/instructions held in favour of Respondent 1 on the ground that the appellant was bound by its own circulars/orders. No doubt, it is true, the stand of the appellant as to the controversy relating to "Halba-Koshti" has been varying from time to time but in the view we have taken on Question 1, the circulars/ resolutions/instructions issued by the State Government from time to time, some times contrary to the instructions issued by the Central Government, are of no consequence. They could be simply ignored as the State Government had neither the authority nor the competency to amend or alter the Scheduled Tribes Order.
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> But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

11. A careful reading of the above would show that both the High Court as also this Court were conscious of the developments that had taken place on the subject whether 'Halba-Koshti' are 'Halbas' within the meaning of the Presidential Order. The position emerging from the said circulars, resolutions and orders issued by the competent authority from time to time notwithstanding, this Court on an abstract principle of law held that an inquiry into the question whether 'Halba-Koshti' were Halbas within the meaning of the Presidential order was not legally permissible.

12. The appellant before us relies upon the above passage extracted above to argue that her appointment had attained finality long before the judgment of this Court was delivered in Milind's case and even when she was found to be a 'Koshti' and not a 'Halba' by the Verification Committee, she was entitled to protection against ouster.

13. We find merit in that contention. If 'Halba-Koshti' has been treated as 'Halba' even before the appellant joined service as a Teacher and if the only reason for her ouster is the law declared by this Court in Milind's case, there is no reason why the protection against ouster given by this Court to

appointees whose applications had become final should not be extended to the appellant also. The Constitution Bench had in Milind's case noticed the background in which the confusion had prevailed for many years and the fact that appointments and admissions were made for a long time treating 'Koshti' as a Scheduled Tribe and directed that such admissions and appointments wherever the same had attained finality will not be affected by the decision taken by this Court. After the pronouncement of judgment in Milind's case, a batch of cases was directed to be listed for hearing before a Division Bench of this Court. The Division Bench eventually decided those cases by an order dated 12th December 2000 (State of Maharashtra v. Om Raj (2007) 14 SCC 488) granting benefit of protection against ouster to some of the respondents on the authority of the view taken by this Court in Milind's case. One of these cases, namely, Civil Appeal No.7375 of 2002 arising out of SLP No.6524 of 1988 related to the appointment of a 'Koshti' as an Assistant Engineer against a vacancy reserved for a 'Halba/Scheduled Tribe candidate. This court extended the benefit of protection against ouster to the said candidate also by a short order passed in the following words:

> "4. Leave granted.
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> 5. The appellant having belonged to Koshti caste claimed to be included in the Scheduled Tribe of Halba and obtained an appointment as Assistant Engineer. When his appointment was sought to be terminated on the basis that he did not belong to Scheduled Tribe by the Government a writ petition was filed before the High Court challenging that order which was allowed. That order is questioned in this appeal. The questions arising in this case are covered by the decision in State of aharashtra v. Milind1and were got to be allowed, however, the benefits derived till now shall be available to the appellant to the effect that his appointment as Assistant Engineer shall stand protected but no further. The appeal is disposed of accordingly."

14. Reference may also be made to Punjab National Bank v. Vilas (2008) 14 SCC 545. That too was a case of appointment based on a certificate which was later cancelled on the ground that 'Halba Koshti' was not the same as 'Halba' Scheduled Tribe. The High Court had set aside the termination of the service of the affected candidates relying upon a Government resolution dated 15th June 1995 as applicable to Punjab National Bank. While upholding the said order, H.K. Sema, J. held the candidate to be protected against ouster on the basis of the resolution. V.S. Sirpurkar, J., however, took a slightly different view and held that the appointment made by the Bank having become final the same was protected against ouster in terms of the decision of the Constitution Bench in Milind's case (supra). The question whether the Government resolution protected the candidates against ouster from service was for that reason left open by His Lordship. Reliance in support of that view was placed upon the decision of this Court in Civil Appeal No. 7375 of 2000 (wrongly mentioned in the report as Civil appeal No. 3375 of 2000) mentioned above. The Court observed:

> "The situation is no different in case of the present respondent. He also came to be appointed and/or promoted way back in the year 1989 on the basis of his caste certificate which declared him to be Scheduled Tribe. Ultimately, it was found that since a "Koshti" does not get the status of a Scheduled Tribe, the Caste Scrutiny Committee invalidated the said certificate holding that the respondent was a Koshti

> and not a Halba. I must hasten to add that there is no finding in the order of the Caste Scrutiny Committee that the petitioner lacked in bona fides in getting the certificate. I say this to overcome the observations in para 21 in Sanjay K. Nimje case. But it is not a case where the respondent pleaded and proved bona fides. Under such circumstances the High Court was fully justified in relying on the observations made in Milind case. The High Court has not referred to the judgment and order in Civil Appeal No. 3375 of 2000 decided on 12-12-2000 to which a reference has been made above. However, it is clear that the High Court was right in holding that the observations in Milind case apply to the case of the present respondent and he stands protected thereby".

15. Our attention was drawn by counsel for the respondents to the decision of this Court in Addnl. General Manager/Human Resource BHEL v. Suresh Ramkrishna Burde (2007) 5 SCC 336 in which the protection against ouster granted by the decision in Milind's case was not extended to the respondent therein. A bare reading of the said decision, however, shows that there is a significant difference in the factual matrix in which the said case arose for consideration. In Burde's case, the Scrutiny Committee had found that the caste certificate was false and, therefore, invalid. That was not the position either in Milind's case nor is that the position in the case at hand. In Milind's case, the Scrutiny Committee had never alleged any fraud or any fabrication or any misrepresentation that could possibly disentitle the candidate to get relief from the Court. In the case at hand also there is no such accusation against the appellant that the certificate was false, fabricated or manipulated by concealment or otherwise. Refusal of a benefit flowing from the decision of this Court in Milind's case may, therefore, have been justified in Burde's case but may not be justified in the case at hand where the appellant has not been accused of any act or omission or commission of the act like the one mentioned above to disentitle her to the relief prayed for. The reliance upon Burde's case (supra), therefore, if of no assistance to the respondent.

The decision of this Court in State of Maharashtra v. Sanjay K. Nimje (2007) 14 SCC 481 relied upon by learned counsel for the respondents was distinguished even by V.S. Sirpurkar, J. in Vilas's case. The distinction is primarily in terms whether the candidate seeking appointment or admission is found guilty of a conduct that would disentitle him/her from claiming any relief under the extraordinary powers of the Court. This Court found that if a person secures appointment or admission on the basis of false certificate he cannot retain the said benefit obtained by him/her. The Courts will refuse to exercise their discretionary jurisdiction depending upon the facts and circumstances of each case. The following passage from decision in the Nimje's case is apposite:

> "In a situation of this nature, whether the Court will refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India or not would depend upon the facts and circumstances of each case. This aspect of the matter has been considered recently by this Court in Sandeep Subhash Parate v. State of Maharashtra (2006) 7 SCC 501."

16. Applying the above to the case at hand we do not see any reason to hold that the appellant had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an

undeserved benefit in the matter of appointment as a Teacher. There is, therefore, no reason why the benefit of protection against ouster should not be extended to her subject to the usual condition that the appellant shall not be ousted from service and shall be re-instated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained and which was 10 years after its issue cancelled by the Scrutiny committee.

17. In the result, we allow this appeal, set aside the order passed by the High Court and direct the reinstatement of the appellant in service subject to the condition mentioned above. We further direct that for the period the appellant has not served the institution which happens to be an aided school shall not be entitled to claim any salary/back wages. She will, however, be entitled to continuity of service for all other intents and purposes. The respondent shall do the needful within a month from the date of this order. The parties are left to bear their own costs.

.....J. (T.S. Thakur) .....J. (Fakkir Mohamed Ibrahim Kalifulla) New Delhi August 9, 2012