Bombay High Court
Gopal G. Nipane vs Hindustan Aeronautics Ltd. And ... on 20 February, 2006
Equivalent citations: 2006 (3) MhLj 376
Author: F Rebello
Bench: F Rebello, R Dalvi
JUDGMENT F.I. Rebello, J.

1. Rule. Heard forthwith. The petitioner at the time of his dismissal from service was working as Senior Manager (Customer Services) with respondent No. 1. The petitioner was recruited in the service of the respondent No. 1 against a reserved post. The petitioner for that purpose produced his school leaving certificate which disclosed that the petitioner belonged to Halba Scheduled Tribe. The petitioner joined the respondent No. 1 initially as Management Trainee and was appointed by letter dated 12th August, 1978. On completion of training the petitioner joined the respondent No. 1 as Grade II Officer on 12th November, 1979. On 13th November, 1983 the petitioner was promoted as Deputy Chief Inspector/Deputy Manager and was promoted as Chief Inspector/Manager on 11th November, 1986. The petitioner was transferred to Nasik Division as Grade IV Officer in Customer Service on 2nd April, 1994. It is the case of the petitioner that the reservation Roster Point in promotion is applicable only upto Grade IV and the petitioner was given benefit of reservation in promotion accordingly. On 1st July, 1996 he was promoted as Senior Manager as Grade V Officer and was confirmed on 1st October, 1997.

2. It is the case of the petitioner that after completion of 11 years service with respondent No. 1 the petitioner's caste certificate was referred to the Scrutiny Committee at Pune on 23rd February, 1989. The petitioner forwarded the necessary documents as required by the Committee. On 19th June, 1999 the petitioner received a communication from the Scheduled Tribe Scrutiny Committee, Nagpur, requiring the petitioner to appear before the Committee for interview and hearing on 29th June, 1999. As the petitioner received the letter only on 28th June, 1999 it was impossible for the petitioner to collect the required data and/or documents and reach Nagpur on 29th June, 1999 for the hearing. The petitioner accordingly addressed a letter to the Scrutiny Committee and clarified the fact and sought to be represented through an Advocate. The Committee, however, intimated to the petitioner, that he be available personally. The petitioner once again made a request to be represented through Advocate. According to the petitioner the Committee vide order dated 18th October, 1999 intimated the finding of the Committee that the petitioner does not belong to the Halba Scheduled Tribe and as such his claim as belonging to Halba Scheduled Tribe was invalidated. The petitioner preferred Writ Petition No. 2323 of 2000 at Nagpur Bench. That petition came to be dismissed by order dated 19th June, 2001. It appears that the petitioner had also filed S.L.P. which has been dismissed.

3. The petitioner thereafter received a charge memorandum dated 3rd August, 2001 containing the imputation of misconduct. The main charge was that the petitioner had been appointed and promoted against a reserved post for Scheduled Tribe and that the Scrutiny Committee had held the petitioner as not belonging to Halba S. T. As the petitioner was called upon to submit a detailed reply to the charge memorandum, the petitioner filed detailed reply on 1st October, 2001 raising various grounds therein and relied on the judgment of the Apex Court in State of Maharashtra v.

Milind Katware 2001(1) Mh.L.J. (SC) 1 : 2001(1) SCC 4 as also other office memorandum in force from time to time issued by the Government of Maharashtra. In spite of reply the respondents proceeded with the enquiry. As such he filed Writ Petition No. 38 of 2001 before this Court. The petitioner withdrew the said petition. The disciplinary proceedings were continued and concluded on 5th June, 2003. After complying with the procedural requirements of show cause and reply a second show cause notice dated 23rd June, 2003 was issued to which he submitted his say on 11th July, 2003. By order dated 16th August, 2004 the Disciplinary Authority dismissed the petitioner from the service with immediate effect. Aggrieved the petitioner preferred an Appeal and as the Appellate Authority was not disposing of the Appeal within reasonable time he filed Writ Petition before this Court being Writ Petition No. 5230 of 2004. The petition was disposed of with a direction to the respondent therein to dispose of the appeal within 8 weeks. The Appellate Authority confirmed the order of the Disciplinary Authority and refused to interfere with the punishment imposed. It is the case of the petitioner that this was based on the judgment of the Apex Court in R. Vishwanathan Pillai v. State of Kerala and Ors. 2004 SCC (L and S) 350. It is the case of the petitioner that the Appellate Authority failed to consider the judgment in State of Maharashtra v. Milind Katware and various orders passed by the Division Benches of this Court wherein it was observed that in future the petitioner will not claim any of the benefits or concession as are available to the candidates belonging to the Scheduled Tribes. It is the case of the petitioner that he is also entitled to similar reliefs and consequently the present petition. No reply has been filed on behalf respondents 1 to 3 but they have relied on the judgments in support of the orders. The petitioner has also filed compilation of judgments.

4. At the outset it may be noted that the petitioner is employed with Hindustan Aeronautics Ltd. which is a Government of India Undertaking. In other words it is only those Rules on reservation made by the Central Government which would govern the conditions of service of the petitioner and not rules made by State of Maharashtra.

Shri Sadanand Surya Gavit, Deputy Secretary, Tribal Development Department of the State of Maharashtra has filed an affidavit and in para 4 it is clearly set out that G. R. dated 15th June, 1995 and 30th June, 2004 are applicable only to the employees working under the offices of the State Government, semi Government, Corporations, Private Aided Institutions, etc. and not applicable to the employees working under the Central Government.

With this background we shall now examine whether the petitioner is entitled to protection of his services as contended by him and whether the judgments of the Division Benches of this Court would be applicable to him.

It is true that the State of Maharashtra issued G. R. dated 30th June, 2004 wherein it is clarified that non-tribal person, who has joined the service prior to 15th June, 1995 or who was promoted on the post, which is reserved for Scheduled Tribe prior to 15th June, 1995, cannot be removed or demoted from the service. The entire substratum of the petitioner's argument is that the G. Rs. of the State of Maharashtra would be applicable and in that context his services ought to have been protected and he should not have been dismissed from service. As set out in the affidavit of respondent No. 4, the said G.Rs. would not be applicable, as the petitioner was employed in a

Central Government Undertaking. The Central Government has not provided any such protection. That leaves only the judgment in Milind (supra) to be considered.

5-6. Let us, therefore, have a look at the judgment of the Apex Court to find out whether a person who was appointed against a reserved post, based on a caste/tribe certificate if that caste/tribe certificate is invalidated, is entitled to protection of his services either on the ground of long service and/or that the matter had not been referred to the Committee for long time. We will necessarily have to take a look at the earlier judgments before Milind (supra) also.

The first judgment is in the case of Kumari Madhuri Patil and Anr. v. Additional Commissioner, Tribal Development and Ors. 1994 SCC (L and S) 1349. It is not necessary to advert to the judgment in extenso. Suffice it to say that we may gainfully refer to what has been set out in para 16 of the judgment. This is what the Apex Court said:

When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and wary in considering such cases.

In that case one sister had completed her M.B.B.S. Course. Even though the Court upheld the cancellation of the certificate which was fraudulently obtained she was allowed to appear for the final year M.B.B.S. Examination with direction that she would not be entitled to any benefits on the basis of the fraudulent social status as Mahadeo Koli. The Court also observed as under:

However, this direction should not be treated and used as a precedent in future cases to give any similar directions since the same defeats constitutional goals.

Insofar as the sister of Suchitra Laxman Patil even though she was midway of her studies in BDS in the end of second year, it was held that she cannot continue her studies with her social status as Mahadeo Koli and the concessions which she might have got on that account. The Court, however, stated that if she was eligible for obtaining admission as a general candidate she may continue her studies. In other words she was not protected.

7. The next judgment which will have to be considered and which is relied upon is in the case of State of Maharashtra v. Milind and Ors. 2001 SCC (L and S) 117, a judgment of the Constitution Bench. In that case the petitioner claimed as belonging to Halba/Halbi, Scheduled Tribe. The claim of the candidate was rejected. A writ petition came to be filed which was allowed. It is not necessary on the facts of this case to go through the various findings. The first issue was (1) whether it was permissible to hold enquiry and let in evidence to decide or declare that any tribe or tribal Community or part of or group whether any tribe or tribal Community is included in the general name even though not specifically mentioned in the entry concerned 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 the State of Maharashtra, even though it is not specifically mentioned as such? Respondent before the Apex Court aggrieved by the decision

of the Caste Scrutiny Committee had preferred a petition which was allowed. Against that order the State preferred an appeal. While disposing of the appeal the Court observed as under:

35. In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better-placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

However, in the meantime as the respondent had completed medical studies and was practising as a Doctor the Court chose not to interfere with the decree obtained. This is what the Court observed:

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 affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

The judgment was pronounced on November 28, 2000.

Our attention is then invited to an order dated October 5, 2001 in Sanjay Madhusudan Punekar v. State of Maharashtra in Civil Appeal No. 7008 of 2001 [since reported as 2002 (2) Mh.L.J. (SC) 300] of the Apex Court. Leave was granted. The appeal was disposed of in the following terms:

This Court has now decided the question of law against the appellant. At the same time, it has taken notice of the passage of time and, therefore, made its order prospective keeping unaffected appointments that had become final. This is an appropriate case in which to apply the same principle having regard to the fact that the appointment of the appellant was made long back. Therefore, the only order that needs to be made is to say that the judgment of this Court in State of Maharashtra v. Milind and Ors. 2001(1) Mh.LJ. (SC) 1 : 2001(1) SCC 4 shall not affect the appointment of the appellant.

We may point out here that the certificate provided by the petitioner was not Halba-Koshti, but Halba.

We may now consider whether the judgment of the Apex Court in Milind Katware (supra) will only apply to cases after November 28, 2000. One of the issues in Milind, was whether Halba-Koshti is a sub-tribe within the meaning of Entry 19 (Halba/Halbi). The State Government it appears, issued various circulars/resolutions/instructions from time to time, sometimes contrary to the instructions issued by the Central Government. The Court held that those instructions of the State Government could be simply ignored. In paragraph 38, the Court held that in view of the interim orders "we make it clear that the admissions and appointments that have become final, shall remain unaffected by the judgment." The interim order passed has not been placed before us, whether it was in respect of parties before the Apex Court or in respect of all those claiming benefit on the ground of belonging to "Halba-Koshti". The order dated 5th October, 2001 in Sanjay M. Punekar (supra), a xerox copy of which was produced before us indicates that the Court observed that the order had been made prospective. After so saying the Court has observed that the judgment in Milind (supra) should not affect the appointment.

Milind Katware has been considered by another Bench of the Apex Court in the case of Bank of India and Anr. v. Avinash D. Mandivikar and Ors. . We may gainfully refer to para 10 of the judgment which deals with the case of Milind (supra):

The protection under Milind case cannot be extended to respondent I 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 1 employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him.

From these observations it will be clear that the judgment in Milind (supra) has been understood in the context of the special circumstances of that case. This would be so considering the observation of the Apex Court right from Madhuri Patil (supra), R. Vishwanatha Pillai (supra) and Bank of India (supra).

8. We may now extract some of the observations from R. Vishwanatha Pillai's case. In that case the appellant before the Apex Court was a Deputy Superintendent of Police. In 1977 he was considered as belonging to the Scheduled Caste. His caste claim was subsequently negated. Based on that the appellant was removed from service. Earlier he had filed an O. A. to contend that his services should not be terminated without satisfying the condition laid down in Article 311 of the Constitution of India along with other relevant provisions. The Apex Court noted that the termination was not for any misconduct of the appellant during his tenure as civil servant, but on the finding that he does not belong to Scheduled Caste as claimed by him before his appointment to the post. Then the Court observed as under:

His appointment was no appointment in the eye of the 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.

The Court then further proceeded to observe as under:

In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

It was contended that the appellant there had put in 27 years of service and the punishment ought to be substituted by an order of compulsory retirement. To that argument the Apex Court observed as under:

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.

It was then sought to be contended that law laid down in Kumari Madhuri Patil's case would operate prospectively and in that case it was being applied retrospectively. The same was answered in the following words:

Because of this decision cases which were concluded prior to the judgment of the Court are not being reopened. Procedure/rule laid down in Kumari Madhuri Patil case is being applied to a case in which fraud was detected after the judgment.

9. We then come to the recent judgment of the Apex Court in the case of Bank of India (supra) dealing with the protection. After referring to various judgments and the issue of delay in initiation of action the Apex Court stated thus:

When an action is founded on fraud the question of any reasonable period for initiation of action is clearly immaterial. By granting protection to respondent I 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 the Scheduled Castes and Scheduled Tribes.

On the facts of that case the Court held as under:

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

Specifically dealing with the delayed reference the Court held as under:

By accepting the findings of the Scrutiny Committee that respondent 1 employee did not belong to a Scheduled Tribe, the observations about the delayed reference lose 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.

The Apex Court then stated thus:

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

Various judgments as to what would amount fraud have been set out therein and approved.

10. It is thus clear that on a consideration of all these judgments, a person who obtains a caste certificate based on fraud is not entitled to any protection. It would be no answer in such situations to contend that the entries in some documents were made by the parents and in these circumstances the child cannot suffer the consequences. The certificate being a creature of a fraud all such subsequent actions must also fail. A beneficiary of a fraudulent document cannot contend that fraud was not played by him and as such he ought to be protected. In our opinion this would only be to frustrate the object of the constitutional provisions granting protection to S.Cs. and S.Ts. as envisaged under Articles 341 and 342 of the Constitution of India read with Articles 15 and 16. Holders of a false caste certificate should not be entitled to an equitable relief nor should this Court in its extra-ordinary jurisdiction interfere with the orders of punishment imposed or action taken for cancellation of admission. This Court must take notice that in spite of clear pronouncement of the law by the Apex Court, candidates with fraudulent certificate are still seeking admission against reserved seats in colleges or for jobs. If the Constitution has to have a meaning for those whom the reservation is given considering their social and economic backwardness, Courts should not allow the extra-ordinary jurisdiction to be misused by persons claiming protection, when the admission or appointment was based on false or fraudulent certificate. The Apex Court has only made exceptions

in a rare case where the student had already completed studies with a rider that it should be wary in considering such cases. Insofar as appointments based on fraudulent certificates, there can be no protection. The judgment in Milind (supra) will have to be considered on the touchstone of Madhuri. Patil (supra), Vishwanatha Pillai (supra) and Bank of India (supra) and as explained in Bank of India.

11. Concluding, therefore, we are clearly of the opinion that the judgment in Milind has been explained by subsequent judgments of the Apex Court. So explained the protection is not available to a person, however, long years he has served or because reference was made after a considerable gap of time or answered after long time as long as it is found that the certificate produced is a creature of fraud. We may note that using the judicial process which in most cases takes a long time, candidates take interim orders and then seek protection on the ground that they have completed their studies or are serving for a long time. This again is to frustrate the Constitutional Scheme. The law envisages no such protection to such a person. On the facts of this case the action against the petitioner was based on the enquiry conducted by the appropriate committee which found the petitioner as not belonging to Halba S.T. His challenge to the decision of the committee was rejected upto the Apex Court.

12. In that light of the matter Rule discharged. In the circumstances of the case there shall be no order as to costs.