

# SUPREME COURT OF INDIA

Shalini

Vs.

New English High Sch. Assn.

C.A.No.10997 of 2013

(T.S. Thakur and Vikramajit Sen, JJ.)

12.12.2013

## JUDGMENT

**Vikramajit Sen, J.**

1. Leave granted. This Appeal challenges the Order of the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench passed on 25.11.2009 in L.P.A. No.527 of 2009 affirming the Order of the learned Single Judge who had dismissed the Appellant's Writ Petition essentially on the opinion of the Three-Judge Bench in *Union of India vs. Dattatray*<sup>1</sup>. The Order impugned before the learned Single Judge was that of the School Tribunal, Nagpur which had granted reinstatement of the Appellant with continuity of service and full back wages. The Appellant had been employed as an Assistant Teacher against a vacancy earmarked for Scheduled Tribe candidate, she having filed a Caste Certificate dated 8.7.1974 issued by the Competent Authority testifying her to belong to the "Halba Scheduled Tribe Category". The question before us is indeed a vexed one, as are all conundrums arising out of claims for Scheduled Caste or Scheduled Tribe status and resultant benefits. The confusion is made worst confounded because of exclusions or inclusions of certain castes or classes of people keeping only electoral advantages in mind. Retrospectively is inherent in subsequent enumerations under Articles 341 and 342 since those selections are immutable or unalterable; all change therefore, is only clarificatory in content, because the endeavour of Parliament is to make the enumerations more detailed by mentioning sub-castes or the synonyms of the selected castes and tribes. The inclusion of new castes/tribes was intended by the framers of the Constitution to be impermissible, in order "to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President" as per the Constituent Assembly oration of Dr. Ambedkar, which stands accepted by the Apex Court

at least twice, as in *State of Maharashtra vs. Milind*<sup>2</sup>, and *E.V. Chinnaiah vs. State of A.P.*<sup>3</sup>. We have to decide whether the Appellant's employment was justifiably terminated because a Caste Scrutiny Committee after a passage of several decades, found her disentitled to claim the benefits enuring to Halbas.

2. In *R. Vishwanatha Pillai vs. State of Kerala*<sup>4</sup>, this Court found that the caste certificate procured by the Appellant was false ab initio. It repelled the argument that a fresh notice should have been issued in compliance with Article 311 of the Constitution of India as a prelude to the imposition of any punishment postulated by that provision, on the premise that the appointment itself was illegal and void, thereby disentitling the Appellant from Constitutional protection. This Court also rejected the plea that since the Appellant had put in 27 years of service the order of dismissal should be converted to compulsory retirement or removal from service so that pensioner benefits could be availed of. The question which immediately begs to be cogitated upon is whether these harsh consequences should nevertheless ensue and obtain even if no fraud, mendacity or manipulation is ascribable to the person who has claimed and enjoyed Scheduled Caste advantages.

3. This slant in the situation arose in *State of Maharashtra vs. Om Raj*<sup>5</sup>, whereby several appeals came to be decided simply on the basis of *Milind*, the gist of which was that protection so far as the benefit then claimed on the strength of being Koshtis would be preserved, but the incumbent would not be entitled to any further benefit in the future. To remove confusion, *State of Maharashtra vs. Viswanath*<sup>6</sup>, has also been decided in *Om Raj* with other appeals. In *Punjab National Bank vs. Vilas*<sup>7</sup>, the employee had provided a Halba Scheduled Tribe Certificate and gained employment in 1989 which was invalidated by the Scheduled Tribe Scrutiny Committee leading to the termination of the Respondent's service by an order dated 4.2.2002. Drawing from the previous decision in *Milind* this Court reiterated that Scheduled Tribe status had not been conferred either on Halba Koshti or Koshti but on 'Halba' alone. This Court, thus, once again protected the employment of the Respondent but clarified that he would not be entitled to claim further promotion in the Scheduled Tribe category. It was also declared that the Government Resolution dated 30.6.2004 would apply to all employment with the "government/semi-government and Boards, Municipalities, Municipal Corporations, District Councils, Cooperative Banks, government undertakings, etc.

4. Almost one year later this very question, which has led to a deluge of litigation already, received the attention of a Three-Judge Bench in *Dattatray*. The Respondent, claiming to belong to the Scheduled Tribe 'Halba', was appointed as Assistant Professor of Psychiatry in G.B. Pant Hospital, New Delhi against a post reserved for Scheduled Tribes. A verification of the Certificate of Scheduled Tribe disclosed that he did not belong to the Halba Tribe. The second challenge to this finding, before the High Court, also proved to be futile. However, on what has been held to be a misinformed reading of the Constitution Bench decision in *Milind*, the High Court thought it fit to protect his service. The Three-Judge Bench referred to two other decisions of this Court namely *Bank of India vs.*

*Avinash D. Mandivikar*<sup>8</sup> and *BHEL vs. Suresh Ramkrishna Burde*<sup>9</sup> and noting that the employee had falsely claimed that he belonged to the Scheduled Tribe/Halba, set aside the judgment of the High Court. Whilst it permitted settlement of employee-Doctor's terminal benefits it placed an embargo on his receiving any pensionary benefits. This conclusion was arrived at by the Three-Judge Bench without noting *State of Maharashtra vs. Sanjay K. Nimje*<sup>10</sup>, where the impugned Order passed by the Division Bench of the High Court of Judicature at Bombay directing the reinstatement of a person belonging to the 'Koshti' Tribe, (not even 'Koshti-Halbas') was set aside.

5. It is evident that there is a plethora of precedents on this aspect of the law, and perhaps for this reason Counsel for the parties were remiss in drawing our attention in the present proceedings to the detailed judgment in *Kavita Solunke vs. State of Maharashtra*<sup>11</sup>, in which one of us, Thakur J, had analysed as many as eleven precedents including those discussed above. After reviewing all the judgments it was held, in the facts and circumstances of that case, that since that party had not intentionally or with dishonest intent fabricated particulars of a scheduled tribe with a view to obtain an undeserved benefit in the matter of appointment, she was entitled to protection against ouster from service, but no other benefit. In view of the comprehensive yet concise consideration of case law in Solunke, any further analysis would make the present determination avoidably prolix, and therefore our endeavour will be to cull out the principles which would be relevant for deciding suchlike conundrums. These are - (a) If any person has fraudulently claimed to belong to a Scheduled Caste or Scheduled Tribe and has thereby obtained employment, he would be disentitled from continuing in employment. The rigour of this conclusion has been diluted only in instances where the Court is confronted with the case of students who have already completed their studies or are on the verge of doing so, towards whom sympathy is understandably extended; (b) Where there is some confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status, such as issuance of relevant certificates to persons claiming to be 'Koshtis' or 'Halba Koshtis' under the broadband of 'Halbas', protection of employment will be available with the rider that these persons will thereafter be adjusted in the general category thereby rendering them ineligible to further benefits in the category of Scheduled Caste or Scheduled Tribe as the case may be; (c) this benefit accrues from the decision of this Court inter alia in *Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar*<sup>12</sup>, which was rendered under Article 142 of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions/Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it was in Milind that the Constitution Bench clarified that 'Koshtis' or 'Halba-Koshtis' were not entitled to claim benefits as Scheduled Tribes and it was the 'Halbas' alone who were so entitled. A perusal of the judgment in *M. Vilas by Sirpurkar J*, as well as Solunke makes it clear that this protection is available by virtue of the decisions of this Court; it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature; (d) Where a Resolution or Legislation exists, its *raison d'etre* is that protection is justified in presenti (embargo on removal from service or from reversion) but not in futuro (embargo on promotions in the category of

Scheduled Caste or Scheduled Tribe).

6. A reading of the impugned Judgment requires us to clarify an important aspect of the doctrine of precedence. Dattatray is the only Three-Judge Bench decision, and therefore indisputably holds pre-eminence. However, by that time several decisions had already been rendered by Two-Judge Benches some of which have already been discussed above. It was within the competence of Dattatray Bench to overrule the other Two-Judge Benches. Despite the fact that it has not done so the per incuriam principle would not apply to the decision because it was a larger Bench. However, no presumption can be drawn that the Dattatray Three-Judge Bench decision was of the opinion that the earlier Two-Judge Bench decisions had articulated an incorrect interpretation of the law. That being so, the Two-Judge Bench views may still be relied upon so long as the ratio of Dattatray is not directly in conflict with their ratios. It is therefore imperative to distill the ratio of Dattatray, which we have already discussed in some detail. We need only reiterate therefore that the Three-Judge Bench was perceptibly incensed with the falsity of the claim of the employee to Scheduled Caste/Scheduled Tribe status. That was not a case where a legitimate claim of consanguinity to a 'Halba Koshti', 'Koshti' or 'Gadwal Koshti' etc. had been made, which was at the inception point considered to be eligible to beneficial treatment admissible to Scheduled Tribes, later to be reversed by the Constitution Bench decision in Milind and declared to be the entitlement of Halbas only. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with Scheduled Castes or Scheduled Tribes etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant Authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulosity and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste/Scheduled Tribe.

7. We must now reflect upon the Government Resolution dated 15.6.1995 passed by the Government of Maharashtra. Virtually it grants status quo as regards employment inasmuch as it states that those persons who, on the basis of Caste Certificates, already stand appointed or promoted in the Government or Semi-Government, shall not be demoted or removed from service. Thereafter, the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, '2000 Act') was passed by the Legislature and received the assent of the President. Section 10 thereof reads thus:

“10. Benefits secured on the basis of false Caste Certificate to be withdrawn.

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes of Special Backward Category secures admission in any education institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other company or corporation, owned or controlled by the Government or in any Government aided institution or co-operative society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.”

In essence, the Section cancels with pre-emptive effect any benefit that may have been derived by a person based on a false caste certificate. Whilst “Caste Certificate” has been defined in Section 2(a) of the 2000 Act, “False Caste Certificate” has not been dealt with in the Definitions clause. There is always an element of deceitfulness, in order to derive unfair or undeserved benefit whenever a false statement or representation or stand is adopted by the person concerned. An innocent statement which later transpires to be incorrect may be seen as false in general sense would normally not attract punitive or detrimental consequences on the person making it, as it is one made by error. An untruth coupled with a dishonest intent however requires legal retribution. It appears to us that

Section 10 applies in the Dattatray mould only. It was obviously for this reason that in Vilas, Sema J, was of the opinion that the 2000 Act did not apply to the facts before it whereas Sirpurkar J, after concurring with Sema J, granted protection albeit under Article 142 of the Constitution of India. In Nimje another Two-Judge Bench held that Government Resolution dated 15.6.1995 would continue to apply even after the passing of the 2000 Act so long as the appointment had taken place prior to 1995. There is, therefore, palpable wisdom in the Office Memorandum dated 10.8.2010 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training to the effect that “it has been decided that the persons belonging to the ‘Halba Koshti/Koshti’ caste who got appointment against vacancies reserved for the Scheduled Tribes on the basis of Scheduled Tribe certificates, issued to them by the competent authority, under the Constitution (Scheduled Tribes) Order, 1950 (as amended from time to time) relating to the State of Maharashtra and whose appointments had become final on or before 28.11.2000, shall not be affected. However, they shall not get any benefit of reservation after 28.11.2000.

8. The Appellant before us has been in service since 6.11.1981 on the strength of her claim of consanguinity to ‘Halba Scheduled Tribe’ duly predicated on a Certificate dated 8.7.1974 issued by the Competent Authority. Avowedly she was appointed in a vacancy earmarked against the Scheduled Tribe category. She was confirmed as Assistant Teacher with effect from 1.1.1984. Respondent nos.1 and 2, by order dated 17.9.1989 appointed the Appellant as Assistant Head Mistress. Thereafter on 28.4.1994 she was promoted as Head Mistress by an order of even date, subject to production of Caste Validity Certificate. It is not clear when the certificate produced by the Appellant was referred to the Caste Scrutiny Committee, Nagpur for verification, but the said Committee by Order dated 20.8.2003 held it to be invalid. The learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench granted protection in service on the basis of Government Resolution dated 15.6.1995 by his order dated 2.9.2003 in Writ Petition No.3500 of 2003. Protracted litigation thereafter ensued eventually resulting in the filing of another Writ Petition No.4532 of 2004 in which a learned Single Judge by order dated 11.11.2009 set aside the reinstatement order passed by the School Tribunal, Nagpur which came to be affirmed by the Division Bench in the impugned Order which was of the opinion that Dattatray prohibited the extension of any protection to the Appellant. Having come to that conclusion, the Division Bench did not think it necessary to consider the plethora of precedents, albeit of Two-Judge Benches where protection had in fact been granted. Be that as it may, we think that since there was no falsity in the claim of the Appellant and therefore that she cannot be viewed as having filed a ‘false’ Caste Certificate, the rigours of Section 10 of the 2000 Act would not apply to her case. A perusal of the Order of the Scheduled Tribe Caste Certificate Committee, Nagpur shows that the Committee was satisfied that her claim to the caste of ‘Gadwal Koshti’ was correct but that she did not belong to ‘Halba’ Scheduled Tribe. Government Resolution dated 15.6.1995 specifically declares that the following were basically backward in social, economic and educational viewpoint and were therefore “special backward class” vide Government Resolution dated 7.12.1994:

“Sr. No.

Name of the Caste

1. ....

2. ....

3. (1) Koshti (2) Halba Koshti (3) Halba Caste (4) Sali  
(5) Ladkoshti (6) Gadwal Koshti (7) Deshkar (8)  
Salewar (9) Padmashali (10) Dwang (11) Kachi Dhande (Glass occupation) (12)  
Patwos (13) Satpal (14) Sade (15) Dhankoshti.”

[Emphasis supplied]

9. It requires specialized bodies such as Caste Scrutiny Committees, specialised lawyers, seasoned bureaucrats etc. to decipher which category a relatively backward, or ostracized or tribal person falls in. Can it therefore seriously be contended that a person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later on found not to belong to an envisaged Scheduled Tribe but to a special backward class be visited with termination of her employment? We think that that is not the intent of the law, and certainly was not what the Three-Judge Bench was confronted with in Dattatray. In our opinion, therefore, the Appellant should have been debarred from any further advantage that would enure to persons belonging to the ‘Halba’ Tribe.

10. Accordingly, we direct reinstatement of the Appellant in service but without any back wages. With the passage of time it is possible that there may be another incumbent as Head Mistress of the Respondent No.1-School and we think that it would not be equitable to remove such person. However, if this post falls vacant before the Appellant reaches the age of retirement or superannuation she shall be re-appointed to that post but with no further promotion as a Scheduled Tribe candidate unless she is otherwise entitled as a special back-ward class candidate. The Appeal stands disposed of accordingly. The parties shall bear their respective costs.

Judgment referred

<sup>1</sup>2008 (4) SCC 0612

<sup>2</sup>2001 (1) SCC 0004

<sup>3</sup>2005 (1) SCC 0394

<sup>4</sup>2004 (2) SCC 0105

<sup>5</sup>2007 (14) SCC 0488

<sup>6</sup>C.A.No.7375 of 2000

<sup>7</sup>2008 (14) SCC 0545

*82005 (7) SCC 0690*

*92007 (5) SCC 0336*

*102007 (14) SCC 0481*

*112012 (8) SCC 0430*

*122008 (9) SCC 0054*