

# SUPREME COURT OF INDIA

Gajanan Marotrao Nimje

Vs.

Reserve Bank of India

C.A.No.10396/2018

(Kurian Joseph and S.Abdul Nazeer,JJ.,)

11.10.2018

## JUDGMENT

**Kurian Joseph,J.,**

SLP(C) No. 13011/2018

1. Leave granted.

2. The appellants have been in the service of respondent/Reserve Bank of India for about two decades or more and majority of them are in the fag end of their service. We are informed that some of them have even superannuated. The appellants are before this Court, aggrieved by the judgment dated 13.04.2018 whereby the Division Bench of the High Court has issued a direction to terminate them from service and also to recover all the benefits they have earned in service. Such an order was passed on the basis that none of the appellants belong to the Scheduled Tribe category whereas their initial appointment was on that basis.

3. This litigation has a little other background. In Writ Petition No.1512 of 2004 before the same High Court at the same Nagpur Bench had occasion to deal with the same issue. It appears, the writ petitioners in all the matters taking note of the efflux of time of were not inclined to go for a verification of the caste status, bereft of any supporting materials in view of the lapse of long years.

4. At paragraph 18 of the common common judgment dated 01.11.2012 it has been hence held as follows:-

"18. ...It is declared that the petitioners would be entitled to protection of their appointments. It is further declared that if any benefits are granted after 28.11.2000 on the basis that they belong to Scheduled Tribes, the respondent Authorities are at liberty to withdraw the said benefits and restore the position as on 28.11.2000. The respondents to take further necessary steps in accordance therewith."

5. Based on the judgment referred to above, the Reserve Bank of India issued a comprehensive circular on 01.07.2013. The relevant paragraphs of the circular read as follows:-

"As you are aware, the issues relating to verification of Caste Certificate and its validation, non-submission of documents for verification of the caste/tribe claims by the concerned employees have been persisting for a long time and have been matter of concern for the Bank. With a view to resolving the problem, the entire gamut of the issues related to scrutiny of Caste Certificate etc. has been reviewed and it has been decided to take action as under:

A.The services of the employees belonging to Halba, halba Koshti/Koshti caste /community, who were appointment against vacancies reserved for the Scheduled Tribe and who have been confirmed in the services of the Bank before November 28, 2000, may be protected. Such employees, thereafter, will be treated as employees belonging to General Category, with the following conditions.

(i) The employee concerned would give an undertaking to the effect that he/she would give up their claim as belonging to Scheduled Tribes and would not seek any benefits in support of their claim subsequently.

(ii)No benefit will accrue to them on the basis of reservation after the aforesaid date i.e. November 28, 2000.

(iii) The above decision is subject to outcome of the Writ Petition No.1562 of 2004 filed before the High Court of Judicature at Bombay Bench at Nagpur. The undertaking as mentioned at (i) above shall be obtained from employees concerned before issuing the office order protecting their services in the Bank.

B. The services of other employees belonging to Scheduled Tribe appointed against vacancies reserved for Scheduled Tribe and, who have not submitted their Caste Certificate for verification/validation and/or their Caste Certificate has been invalidated etc. and have been confirmed in the services of the Bank before November 28, 2000 may also be protected. Such employees, thereafter, may be treated as belonging to General Category on the conditions indicated against A(i) to (iii) on pre page."

6. The High Court has unfortunately missed to take note of this circular while passing the impugned judgment. It is also significant to note the prayers in the writ petition leading to the impugned judgment. Prayers (a) to (f) read as follows:-

"(a) by an appropriate writ, order and/or direction, direct the respondent no.1- Reserve Bank of India to keep the respondent Nos.5 to 140 below the last candidate in the seniority list of Open Category as on 28th of November, 2000;

(b) by an appropriate writ, order and/or direction, hold that the respondent Nos.5 to 140 are not entitled for any benefit including the benefit of Time Bound Promotion, Assured Promotion, Personal Promotion etc. before the last Open Category Candidate in the seniority list Open Category Candidates as on 28th of November, 2000;

(c) by an appropriate writ, order and/or direction, direct the respondent No.1-Reserve Bank of India to withdraw the benefits granted to the respondent Nos.5 to 140 after they are treated as Open Category Candidates with effect from 28th of November, 2000;

(d) by an appropriate writ, order and/or direction, direct the respondent No.1-Reserve Bank of India to fill in the backlog of Scheduled Tribe Category as on 28th of November, 2000 pursuant to the absorption of respondent nos.5 to 140;

(e) by an appropriate writ, order and/or direction, direct the respondent No.1-Reserve Bank of India to recover the benefits including the arrears of salary extended to respondent Nos.5 to 140;

(f) by an appropriate writ, order and/or direction, direct the respondent no.1-Reserve Bank of India to withdraw the Office Order Staff No.89/2013-14, dated 24th of December, 2013."

7. Apparently, there was some confusion with regard to the implementation of the judgment dated 01.11.2012 in the judgment in Writ Petition No.1512/2004 and connected matters.

8. Based on the recent judgment of this Court passed in *Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others, reported in'*, the High Court passed the impugned order directing the termination and recovery of the benefits.

9. We are afraid, in the peculiar background of the appellants and the history of the previous litigation of the same issue, the High Court is not justified in passing such an omnibus order. There is no case for anybody leave alone the writ petitioners that at the time of entry in service, the appellants played any fraud. There was no case that the petitioners therein had played any fraud in obtaining the certificate or employment. In any case the appellants, it is pointed out that, even assuming that they do not belong to Scheduled Caste or Scheduled Tribe, fall either under the most backward or under the backward category, who were also entitled to some reservation at the time of recruitment. In order to avoid any litigation on this aspect only, the High Court in its wisdom passed the judgment dated 1.11.2012, that all the petitioners therein will be put in the general category.

10. It will be relevant to note that the common judgment dated 01.11.2012 was challenged before this Court and the special leave petition(s) and the review petition(s) were also dismissed.

11. Having regard to the background, as above, we are of the view that the appellants are entitled to the protection granted by the same High Court in the judgment dated 1.11.2012 in Writ Petition No.1512/2004. In any case the parties to the writ petition cannot be disturbed collaterally and the judgment operated as a judgment in rem in view of the circular dated 1.7.2013 issued by the Reserve Bank of India and since the litigations were pursued by the respective associations.

12. Therefore, these appeals are disposed of as follows:- In partial modification of the impugned judgments, it is ordered that all the appellants shall be placed below the last of the general category candidate as on 28.11.2000 and will be continued as such till their superannuation. All the benefits which the appellants earned as reserved category candidates after 28.11.2000 will be surrendered/recovered. After 28.11.2000 the benefits available to the reserved category candidates will be given to the members of the reserved category regarding whom there is no dispute. There shall be no recovery of any 6 benefits from the employees who are already superannuated. Action, if any, taken pursuant to the impugned judgment(s) will stand recalled and modified to the extent indicated hereinabove. Needless to say that the notification dated 24.12.2013 will be appropriately reconsidered. In view of this judgment, we request the High Court to dispose of all the contempt proceedings initiated against the officers of the Reserve Bank of India for non-implementation of the impugned judgment dated 13.04.2018.

13. Pending applications, if any, shall stand disposed of.

14. There shall be no orders as to costs.

Judgment Referred.

<sup>1</sup>(2017) 8 SCC 0670