

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 6430 OF 2004**

Rajendra Ramchandra Dhakate,
Aged 32 adult, residing at
Shiv Tirth Apartment, Flat No.6,
1st Floor, Near Dr. Shelke's Dispensary,
Shani Nagar, Badlapur (West),
Dist. Thane.

....Petitioner.

Vs.

1 State of Maharashtra
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2 Mumbai Metropolitan Region
Development Authority,
Through its Commissioner
having its office at Bandra-
Kurla Complex, Plot No.C-14-15,
Bandra (East), Mumbai-51.

....Respondents.

Mr. R.K. Mendadkar for the Petitioner.

Ms. S.S. Bhende, AGP for the Respondent No.1.

Mr. S.S. Pakale, i/by Mr. A.R. Belge for the Respondent No.2.

**CORAM : SMT. VASANTI A. NAIK AND
C.V. BHADANG, JJ.**

DATE : 21st JANUARY 2015.

ORAL JUDGMENT (PER SMT. VASANTI A. NAIK, J.):-

By this Petition, the Petitioner challenges the order of his
termination dated 26.5.2004 and seeks the protection of his services in view

of the law laid down by the Full Bench of this Court in the Judgment dated 22.12.2014 in Writ Petition No. 5297 of 2013.

The Petitioner claims to belong to Halba Scheduled Tribe. The Executive Magistrate had granted a caste certificate to the Petitioner in the year 1981. On the basis of the caste certificate, the Petitioner was selected on the post of Junior Engineer by the Respondent No.2 on 25.4.1995 and an appointment order was issued in favour of the Petitioner on 21.7.1995. The Petitioner joined the services of the Respondent No.2 and the caste certificate of the Petitioner was send by the Respondent No.2 to the Scrutiny Committee for verification. The caste claim of the Petitioner was verified and the Scrutiny Committee found that the Petitioner does not belong to Halba Scheduled Tribe, but is Koshti by caste. The caste claim of the Petitioner was invalidated by the Scrutiny Committee in the year 2002. After the invalidation of the caste certificate, a charge-sheet was issued to the Petitioner. It was alleged by the Respondent No.2 in the charge-sheet that the Petitioner had secured the employment on a false claim. The inquiry was conducted and the Petitioner was held guilty. The Respondent No.2 terminated the services of the Petitioner. The Petitioner has challenged the termination order by the instant Petition. In the meanwhile, the Petitioner had challenged the invalidity of his caste claim before this Court, but this Court did not find favour with the case of the Petitioner and the order of the Caste Scrutiny Committee was confirmed.

It is submitted on behalf of the Petitioner by placing reliance on the Judgment dated 22.12.2014 in Writ Petition No. 5297 of 2013 and others that it is a fit case for protecting the services of the Petitioner. It is stated by placing reliance on the Judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra Vs. Milind Katware*,¹ that since there was a confusion whether Halba Koshtis were Halbas by caste, it was necessary to protect the services of the persons belonging to the Koshti caste. It is stated that this Court has considered the law laid down by the Hon'ble Supreme Court in the case of *Milind (Supra)* and various other judgments, to grant protection of services to the persons appointed on the post reserved for the backward classes, including the Scheduled Tribes as is the case in the present case. It is stated that mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or cancellation of the employment that had become final before 28.11.2000, i.e. the date of decision in the case of *Milind (Supra)*.

It is stated that the Petitioner was appointed in the year 1995 and his services are liable to be protected by the Respondent No.2, in view of the Judgment of the Hon'ble Supreme Court in the case of *Milind (Supra)* and in view of the Judgment of the Full Bench of this Court, dated 22.12.2014 in Writ Petition No. 5297 of 2013. It is stated that though a

1 (2001) 1 SCC 4

reference is made in the order of the Scrutiny Committee that the Petitioner has falsely claimed to belong to Halba Scheduled Tribe with an intention to grab the concessions meant for the Scheduled Tribes, it is stated that there is nothing in the order of the Scrutiny Committee to show that the Petitioner has secured the employment by practicing fraud or by producing a false and fraudulent caste certificate.

The learned counsel for the Respondent No.2 supported the order of termination and submitted that the termination of the services of the Petitioner was not only because of the invalidation of his caste claim, but the same was based on the inquiry report, which showed that the Petitioner had misconducted himself by securing the employment on a false claim that he belongs to the Scheduled Tribes. It is submitted that the Scrutiny Committee has also observed that the Petitioner has manipulated the basic document, that is the caste certificate with an intention to grab the concessions meant for the Scheduled Tribes. The learned counsel sought for the dismissal of the Writ Petition.

On hearing the learned counsel for the parties and on a perusal of the Judgment of the Hon'ble Supreme Court in the case of *Milind (Supra)*, as also the judgment of the Full Bench of this Court dated 22.12.2014 in Writ Petition No. 5297 of 2013 and others, along with the order of the Scrutiny Committee dated 30.6.98, it appears that the Respondent No.2 is liable to protect the services of the Petitioner. Though it

is observed by the Scrutiny Committee in the order dated 30.6.1998 that the Petitioner had manipulated the caste certificate with an intention to grab the concessions meant for the Scheduled Tribes, there is nothing on record to show that the Petitioner had played fraud while securing the certificate of Halba Scheduled Tribe. Mere observation in the order of the Scrutiny Committee that the caste certificate was manipulated, would not be enough to hold that the Petitioner had practiced a fraud and secured a false caste certificate for claiming the benefits available to the Scheduled Tribes. Since there was some confusion whether the Koshti caste falls in the Scheduled Tribes, like the Tribe Halba and since the State Government had also considered Koshti caste to belong to the Scheduled Tribes for some time, the Hon'ble Supreme Court had thought it fit to protect the services of the employees that had become final at the time of rendering of the Judgment in the case of *Milind (Supra)*. The Petitioner was admittedly appointment in the year 1995 and had attained permanency after the completion of two years of service. The Departmental inquiry conducted by the Respondent No. 2 did not pertain to any other charge or charges of misconduct and only related to the charge that the Petitioner had secured the employment by producing the false caste certificate. We do not find, on a reading of the Judgment of the Hon'ble Supreme Court in the case of *Milind (Supra)* and the Full Bench Judgment of this Court dated 22.12.2014 in Writ Petition No. 5297 of 2013 and others, that the Petitioner had

secured the certificate of Halba Scheduled Tribe by practicing fraud on the Competent Authority. That is not the case, either of the Scrutiny Committee or of the Respondent No.2. In the facts of the case, the services of the Petitioner are required to be protected.

Hence, for the reasons aforesaid, the Writ Petition is allowed. The impugned order of termination is set aside. The Respondent is directed to reinstate the Petitioner in service within a period of two weeks, with continuity of service on the Petitioner furnishing an undertaking that neither the Petitioner nor his progeny would henceforth claim the concessions meant for the Scheduled Tribes. The Petitioner would, however, not be entitled to the backwages or arrears of salary for the period from the date of his termination till the date of his reinstatement.

Rule is made absolute in the aforesaid terms, with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)