

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2523 OF 2004

Gangadhar Diwalu Parate,
Aged about 43 years,
Occupation : Officer,
State Bank of India, R/o
Takiya Ward, Samrudhi
Nagar, Bhandara.

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PETITIONER

// VERSUS //

1] The State Bank of India,
through its Chief General
Manager, Local Head Office,
New Administrative Building,
Madam Cama Road,
Mumbai-400 021,

2] The General Manager,
The State Bank of India,
Local Head Office,
New Administrative Building,
Madam Cama Road,
Mumbai-400 021.

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RESPONDENTS

Mr. R.S. Parsodkar, Advocate for petitioner.

Mr. S.N. Kumar, Advocate for respondents.

CORAM : B.R. GAVAI & INDIRA K. JAIN, JJ.

DATED : JULY 3, 2015.

ORAL JUDGMENT (PER B.R. GAVAI, J.).

The petition is taken up for hearing by consent.

2] Though the petitioner has approached this Court challenging the termination dated 3.6.2004, the petitioner has restricted his claim in the petition for protection of his service in view of the judgment of the Apex Court in the case of **State of Maharashtra .vs. Milind Katware reported in 2001(1) Mh. L.J. 1** and the Office Memorandum issued by Government of India dated 10.8.2010.

3] The petitioner who claimed to be belonging to 'Halbi' Scheduled Tribe was appointed on 15.3.1989 as Cashier-cum-Clerk. The appointment of the petitioner was on the basis of the petitioner's claim of belonging to Scheduled Tribe. Subsequently, the Selection Committee after considering the case of the petitioner had promoted him as an Officer in the Junior Management Grade Scale- I with effect from 1.8.1999. The said promotion of the petitioner was under regular channel on merit-cum-seniority.

4] Though the learned Counsel appearing on behalf of the respondent Bank strenuously urged that the second promotion of the

petitioner was also on the basis of petitioner's claim of belonging to Scheduled Tribe, no documents are placed on record to substantiate the said claim.

5] The Apex Court in the case of **Milind Katware** (cited supra) had held that all appointments which had become final prior to 28.11.2000 were to be protected. Not only this, but the Union of India on the basis of the said judgment issued Office Memorandum dated 10.8.2010 to give effect to the judgment of Hon'ble Apex Court.

6] The issue as to whether the directions issued by the Apex Court were referable to Article 141 or Article 142 of the Constitution of India was pending before the larger Bench of this Court. The larger Bench of this Court in the case of **Arun Sonowane .vs. State of Maharashtra reported in 2015 Vol. I Mh. L.J. 457** has held that law laid down by the Apex Court was under Article 141 of the Constitution of India. As such, this Court under Article 226 of Constitution of India is empowered to protect the services of such of candidates who are covered by Milind Katware's case.

7] We find that since the promotion of the petitioner was on

the basis of merit-cum-seniority and that too in regular channel, the same cannot be considered to be promotion on the basis of belonging to Scheduled Tribe.

8] In that view of the matter, we are inclined to allow the petition. It is held that the petitioner's appointment dated 15.3.1989 as well as promotion dated 1.8.1999 are entitled to be protected. Needless to state that the petitioner would not be entitled to any of the benefits on the basis of his claim of belonging to Scheduled Tribe.

9] Consequently, rule is made absolute in terms of prayer clause (a). There will be no order as to costs.

10] C.A.W. No. 1205/15 stands disposed of accordingly.

J. **JUDGE**

JUDGE.