

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 29 OF 2014

(Deepak Yadavrao Gotefode Vs. Dy Director (R) & Member Secretary, S.T.C.C.S. Committee, Nagpur & another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. R. Narnaware, Advocate for the petitioner.
Smt. B. H. Dangre, Government Pleader for respondent No.1.
Shri Rohit Deo, Assistant Solicitor General of India for respondent No.2.

CORAM : B. R. GAVAI AND
P. N. DESHMUKH, JJ.
DATED : 04 DECEMBER, 2015

Heard.

2. Two preliminary objections were raised by the Union of India; (1) that, since the petitioner is an employee of Union of India, he will have to first approach to the Central Administrative Tribunal (CAT) and cannot approach to this Court directly, and (2) that, subsequent orders passed by this Court or by the learned Central Administrative Tribunal operate as *res judicata* and as such petition deserves to be dismissed on that ground.

3. Since the Larger Bench of this Court in the case of Arun s/o Vishwanath Sonone Vs. State of Maharashtra & others – 2015 (1) Mh.L.J. 457 has taken a view that in the matter of grant of protection to the reserved category employees whose claim of belonging to a particular caste tribe are invalidated, as to whether an earlier judgment and order between the parties would operate

as a *res judicata* or not is a mixed question of fact and law and it will have to be decided on the facts of each case, we will only decide the first preliminary objection and postpone the decision on the second objection, since it pertains to merits of the matter.

4. In respect of first objection, the learned Assistant Solicitor General of India submitted that in view of clear pronouncement of law in the case of L. Chandra Kumar Vs. Union of India & others-(1997) 3 SCC 261, which is followed by the Apex Court in the case of *Kendriya Vidyalaya Sangathan and another Vs. Subhash Sharma* – (2002) 4 SCC 145 and in the case of *Rajeev Kumar & another Vs. Hemraj Singh Chauhan & others* – (2010) 4 SCC 554, if the petitioner seeks any relief with respect to the service matter, he has to approach the Tribunal at the first instance since Their Lordships in unequivocal terms held that in the matter for which the Tribunals have jurisdiction, parties are required to approach the said Tribunal first.

5. There cannot be any quarrel with the proposition laid down by the Hon'ble Apex Court, relied upon by the learned A.S.G.I. In the case of Sampath Kumar Vs. Union of India – (1985) 4 SCC 458, the Hon'ble Apex Court had upheld the provision of Administrative Tribunal Act by which the jurisdiction of this Court under Article 226 or Article 227 of the Constitution was excluded. However, the Constitution Bench of the Hon'ble Apex Court, in the

case of *L. Chandra Kumar* held that the powers vested in the High Court under Articles 226 and 227 of the Constitution are part of the basic structure of the Constitution and by no statutory enactment, same can be taken away. The Apex Court, however, held that all matters pertaining to jurisdiction of the learned Tribunals including challenge to the vires of any of the enactment or rules or regulations, except the one under which such Tribunals are established, will also have to be first raised before the learned Tribunals.

6. However, it could be seen that the matter, which is before us, is not a matter which cannot be said to be purely service matter. It would have been a different matter if the employee was terminated on account of some misconduct or on account of any provision in the service conditions of such an employee which permits such termination. However, the present matter would be on a different pedestal since it pertains to termination on the ground of invalidation of claim of particular candidate belonging to a reserved category.

7. Shri Deo, learned A.S.G.I. further submitted that since the Larger Bench of this Court, in the judgment in the case of *Arun Sonone*, has held that the powers exercised by Their Lordships of the Apex Court were under Article 141 and not under Article 142 of the Constitution, the law laid down by the Apex Court would be

binding on the learned Tribunal also and parties seeking protection will have therefore to seek protection firstly before the learned Tribunal. He relied on paragraphs-52 and 70 of the judgment of Larger Bench of this Court in the case of *Arun Sonone*.

8. After the judgment in the case of *Milind Katware*, wherein Their Lordships of the Apex Court had protected such employment and admissions, which had become final, there was dispute between various Benches of this Court, as to whether the powers exercised by the Hon'ble Apex Court are referable to the power under Article 141 or Article 142 of the Constitution. Another issue was as to whether this Court, while exercising powers under Article 226, was empowered to grant protection of services as was granted by the Apex Court in the case of *Milind Katware* and other cases.

9. Perusal of judgment of the Larger Bench of this Court in the case of *Arun Sonone* itself would reveal that the issues that were referred for consideration before the Larger Bench were as under.:

“(1) Whether the relief of protection of service after invalidation of the caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in *Kavita Solunke vs. State of Maharashtra and others*, 2012(5) Mh.L.J. (S.C.) 921 = 2012(8) SCC 430?

(2) If the answer to question No.1 is in the affirmative, can such relief of protection of service be granted by the

High Court in a case where the same relief has been earlier refused by the High Court?”

10. As already discussed herein above, we have postponed the decision with regard to issue No.2 after hearing the parties on merits. However, it would be clear that the question, which was referred, was as to whether the relief of protection of service after invalidation of the caste claim also can be granted by the High Court on the basis of the judgment of the Hon'ble Apex Court in the case of *Kavita Solunke*.

11. The Larger Bench in paragraph 52 held that the earlier judgment of the Larger Bench in the case of *Ganesh Rambhau Khalale vs. State of Maharashtra and others reported in 2009 (2) Mh.L.J. 788* holding that the clarificatory direction issued by the Apex Court in the case of *Milind Katware* was referable to Article 142 and it was not the direction under Article 141 of the Constitution, was not a good law in view of the subsequent judgment in the case of *Kavita Solunke Vs. State of Maharashtra & others – 2012 (5) Mh.L.J. 921* and *Shalini Vs. New English High School Association & others – 2014 (2) Mh.L.J. SC 913*. In paragraph 53, the Larger Bench clearly held that the relief of protection of service after invalidation of caste claim can be granted by the High Court, on the basis of the decision of Hon'ble Apex Court in the cases of *Kavita Solunke* and *Shalini*.

12. It will be relevant to refer the observation of the Larger Bench in paragraph 54, which reads thus. :

“ We are conscious of the position of law that the High Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India cannot pass the orders, which the Apex Court can pass in exercise of its jurisdiction under Article 142 of the Constitution of India. Hence, the distinction between the two will have to be understood and kept in mind. The glaring instances of exercise by the Apex Court under Article 142 of the Constitution of India are reflected in the decisions of the Apex Court in the cases of Madhuri Patil, R. Vishwanatha Pillai and Yogesh Ramchandra Naikwadi. In spite of recording a finding that the admissions were secured and the degrees were obtained as a result of the fraud practised, the power under Article 142 of the Constitution of India is invoked to grant protection with certain conditions. Many a time, after declaring the law, the Apex Court in the operative part of the judgment gives some directions, which may either relax the application of law or exempt the case on hand from the rigor of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice, as has been held by the Apex Court in the case of Indian Bank vs. ABS Marine Products Pvt. Ltd., reported in 2006(5) ALL MR (SC) 162. The relief granted is restricted only to the persons in whose cases such orders are passed. The Court, therefore, should be careful to ascertain and follow the ratio decidendi and not the relief given under Article 142 of the Constitution of India. It is not the jurisdiction

vested in the High Court under Article 226 or 227 of the Constitution of India to grant protection in employment after recording a specific finding that the employment was secured by practising a fraud or to relax the rigor of law and grant relief. We, therefore, do not subscribe the view taken by the Division Benches in the cases of Vijaya Deorao Nandanwar vs. Chief Officer, Municipal Council, Wardha, reported in 2013(5) Mh.L.J. 153, and Rakesh Sukanuji Dafade vs. State of Maharashtra and another, reported in 2014(3) Mh.L.J. 307, to the extent it is held that the direction issued by the Apex Court in exercise of jurisdiction under Article 142 of the Constitution of India is the law laid down, which is binding, and need to be followed. We, therefore, overrule the said view to that extent. ”

13. It would thus be seen that the Larger Bench clearly held that the High Court does not have power to issue direction under Article 226 or Article 227 of the Constitution, which can only be granted by the Apex Court under Article 142 of the Constitution. The Larger Bench clearly held that the High Court will not have jurisdiction under Article 226 or Article 227 of the Constitution to grant protection in respect of an employment when there is a specific finding that such employment was secured by practising fraud or by producing false or fraudulent caste certificate. To that extent, the view taken by the Division Bench in the case of *Vijaya Deorao Nandanwar (Ku.) Vs. Chief Officer, Municipal Council, Wardha - 2013 (5) Mh.L.J. 153* and *Rakesh Sukanuji*

Dadade vs. State of Maharashtra – 2014 (4) Mh.L.J. 307 has been overruled.

14. It will also be relevant to refer to paragraph 70 of the judgment of the Larger Bench wherein it is held that this Court while exercising its jurisdiction under Article 226 or 227 of the Constitution of India not only acts as a Court of law, but also as a Court of equity. It has been held that, there are no limits, fetters or restrictions placed on this power of superintendence. It has been further held that the purpose of it is to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and the High Courts are armed with weapon that could be wielded for the purpose of seeing that the justice is meted out fairly and properly. It is further held that the Court must take into account the balancing interests and equities for granting or withholding relief, would depend upon the considerations of justice, equity and good conscience.

15. By now, it is settled principle of law that, the statutory Tribunals exercise jurisdiction only with regard to the matters as are specified in the Statute. No doubt, that the Tribunals will have a exclusive jurisdiction to decide the matters which is wholly within its domain and in such a case, a party will be first required to approach the learned Tribunal and cannot approach this Court directly under Article 226.

16. Perusal of Section 14 of the Administrative Tribunal Act, 1985 would reveal that all the matters pertaining to the services of an employee of Union of India would fall within the jurisdiction of the learned Tribunal.

17. As has been already discussed herein above, that had the termination of an employee been taken place in pursuance to the rules and regulations governing the service conditions, he would have been required to approach the Tribunal at the first instance. The question would be, however, as to when the termination is not arising out of service conditions, but purely on the basis of invalidation of the caste claim of the candidate and further that the invalidation is also not set aside by the competent Court, as to whether the learned Tribunal will still have jurisdiction or not. We do not propose to answer the said issue. However, as held by the Larger Bench of this Court, that while exercising such jurisdiction, the Court will have to take into consideration the various factors including justice, equity and good conscience for considering such an issue, may be the Court will have to go beyond the scope of service conditions and the rules and regulations governing the same.

18. We do not propose to answer the question as to whether it will be proper for the learned Tribunal to travel beyond the scope of its powers under Section 14 of the Administrative

Tribunal Act and grant relief only on the ground of equity, justice and good conscience though rules and regulations governing service conditions of the employee, do not permit the same. However, as held by the Larger Bench in the case of *Arun Sonone*, this Court would be empowered to exercise the powers of granting protection even to the employee whose caste claim is invalidated, if factors of justice, equity and good conscience lie in his favour. In that view of the matter, we find that the preliminary objection regarding entertaining of the present petition and granting protection to the petitioner is found to be without substance and, therefore, rejected.

JUDGE

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