

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 823 of 2003**

Sunil Kumar Parate

---- Petitioner

Versus

The State Of Chhattisgarh & Ors.

---Respondents

For Petitioner	:	Shri Tarun Dadsena, Advocate
For State	:	Shri D.R. Minj, Dy. G.A.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava**Oral order****24/11/2016**

Heard.

1. This petition under Article 226/227 of the Constitution of India is preferred against order dated 30.11.2002 by which the petitioner has been terminated from service.

2. The relevant factual backdrop giving rise to this petition are that a special recruitment scheme to fill up post of typist in State Civil Supplies Corporation was initiated in the year 1997. The petitioner claiming to be a scheduled tribe candidate belonging to Halba Tribe was selected and appointed vide appointment order dated 26.07.1997. However, at the time of making enquiry when he was to be considered for confirmation, it was revealed that the petitioner does not belong to Halba Tribe community but he is Koshti which is not a part of Halba Tribe. The petitioner's case was also referred to the State Tribal Caste Scrutiny Committee. Finally, the Caste Scrutiny Committee held that the petitioner does not belong to Halba Tribe. This led to filing of this petition.

3. Learned counsel for the petitioner argued that the petitioner was granted certificate by a competent authority that he belongs to

Halba Tribe. It is submitted that at the time when certificate was issued in favour of the petitioner, in the State of M.P., members of Koshti Committee were being treated as part and parcel of Halba Tribe and it was only after the judgment of the Supreme Court in the case of **State of Maharashtra v. Milind and others**¹, it was held that the community of Koshti are not part and parcel of Halba Tribe. The certificate was issued to the petitioner on the basis of bonafide assumption of his status, without there being any element of fraud practiced by the petitioner. Therefore, in these circumstances, even if it is held that the Community of 'Koshti' to which petitioner belong is not entitled to be treated as part of Halba Tribe and therefore, not entitled to benefits as a reserved category candidate, in the absence of there being any case of fraud made out against the petitioner, his services were not liable to be terminated, though he could be debarred from claiming further reserved category status.

4. In support of submission, learned counsel for the petitioner has placed reliance upon the decision in the case of **Kavita Solunke vs. State of Maharashtra and Others**², **Shalini vs. New English High School Association and Others**³.

5. On the other hand, learned State counsel submits that the petitioner is not entitled to the relief sought in the petition. He was not confirmed employee but only a probationer. The petitioner wrongly claimed status of Halba Tribe Community, whereas, he is only 'Koshti' which is not Halba Tribe. He submits that the Caste Scrutiny Committee has given a verdict that the petitioner does not belong to Halba Tribe. This finding of the Caste Level Scrutiny Committee has not been challenged by the petitioner. Therefore, in view of the recent decision of the Supreme Court in the case of **B.H. Khawas v. Union of India and others**⁴, the termination of the services of the petitioner is just and proper.

6. From the material on record, particularly, communication dated

1 (2001) 1 SCC 4

2 (2012) 8 SCC 430

3 (2013) 16 SCC 526

4 AIR 2016 SC 4027

09.10.2002 (Annexure R/3), it is clear that an occasion arose to enquire into the caste status of the petitioner while considering his case for confirmation. That means that the petitioner was not confirmed in service and he was only a probationer.

7. The Supreme Court in a recent decision in the case of **B.H. Khawas (supra)** has surveyed earlier decision in the case of **Kavita Solunke (supra)**, **R. Unnikrishnan and another v. V.K. Mahanudevan and others**⁵ as also **Shalini (supra)**. A distinction has been drawn in case where the appointee was only a probationer and not a confirmed employee. It was held that -

“9. The moot question in the present case is: whether the subject appointment of the appellant to the post of “Chemical Examiner” in Customs and Central Excise Department has in fact become final? Unlike the appointment of the appellant to the post of Assistant Chemist, in the Geological Survey of India, was confirmed in terms of Notification No. 1225 B/ A-31013/Asstt. Chemist/95-19C, dated 5.5.1995 with effect from 15th May, 1988, his appointment to the post of “Chemical Examiner” in the Customs and Central Excise Department with which we are concerned was provisional and subject to verification of his caste claim of “Halba”. It was not treated as final by the Department till the impugned termination order was issued. Nothing has been brought to our notice by the appellant to show that his appointment on that post was in fact treated as confirmed by the concerned Department, before issuing the impugned order of termination. Had it been a case of termination from the post of “Assistant Chemist”, on which the appellant was confirmed by the concerned Department, the argument canvassed by the appellant would have assumed some significance and could be tested with reference to the recent decisions of this Court pressed into service by the appellant.

10. Admittedly, the appellant was appointed to the post of Chemical Examiner in the Customs and Central Excise Department, where he joined on 24th November, 1995, pursuant to the appointment letter bearing No. F.No.A-12026/7/91-AD.II-B, dated 16th June, 1995. Condition No. (vii) therein unambiguously mentions that as the appointment of the appellant was against the post reserved for Scheduled Tribes, it was provisional and subject to verification of his caste certificate through a proper channel. The caste certificate of the appellant was already under scrutiny in terms of reference made by the Controller General, of the Indian Bureau of Mines, Nagpur, where the appellant was appointed in similar manner on the post reserved for

5 (2014) 4 SCC 434

Scheduled Tribes. The mere fact that the Scrutiny Committee was not able to complete the enquiry on the question of validity of caste certificate, before the appellant resigned from the services of the Indian Bureau of Mines and joined another Department of Government of India, that would not extricate the appellant from the requirement of verification of his caste claim of "Halba", a notified Scheduled Tribe in Maharashtra. For, the appointment of the appellant as Chemical Examiner Grade-I in Customs and Central Excise Department in terms of Appointment Letter Dated 16th June, 1995 (Annexure P10), was to a temporary post, on provisional basis and subject to verification of his caste certificate through a proper channel. In such a case, the principle expounded in the decisions relied by the appellant will have no application.

11. In the case of Kavita Solunke (*supra*), it was not in dispute that the appellant had satisfactorily completed the period of probation and was confirmed in service as an Assistant Teacher in due course. Enquiry in respect of her caste claim was insisted upon "after a decade" from her initial appointment, obviously after the decision in Milind's case. The Court held that the appointment of the appellant having attained finality could not be disturbed. Indeed, the Court noted that there was nothing to indicate that the caste certificate of the appellant was false, fabricated or manipulated by concealment or otherwise. That observation is in the context of the matter in issue before the Court, for passing an order in equity. Even in the next case, in Shalini (*supra*) which follows the dictum in Kavita's case, it is seen that the appointment of the appellant as an Assistant Teacher had attained finality as she was in service since 6th November, 1981 and confirmed w.e.f. 1st January, 1984, for which the Court held that the same should not be disturbed. Similarly, in the case of Unnikrishnan and Another (*supra*), the Court was dealing with the matter where the caste claim was already made subject matter of challenge before the Court and was upheld. It was a case where a judicial order passed inter partes had become final on that issue. In that case, the caste claim enquiry was insisted because of the subsequent Presidential Order excluding the concerned caste from the entry notified under notification dated 31st August 2007. The Court, inter alia, opined that it was not open to reconsider the settled judicial pronouncement on the caste claim inter partes.

12. In none of the cases pressed into service by the appellant, the appointment, as in this case, was on provisional basis and subject to verification of caste certificate through proper channel. It necessarily follows that the principle expounded in the three decisions referred to above, can have no application to the case on hand. Indubitably, if the argument of the appellant was accepted, it would inevitably mean that all appointments made before 28.11.2000 must be protected even though it had not become final. That would also mean that all caste certificates issued to persons belonging to "Koshti" community, as being "Halba" Scheduled Tribe in Maharashtra, prior to November 28, 2000

(the day on which Milind's case was decided by the Constitution Bench), have been validated irrespective of the opinion of the Scrutiny Committee qua those certificates. That cannot be countenanced. For, caste "Koshti" is neither a synonym nor part of a notified Scheduled Tribe "Halba" in Maharashtra.

13. Considering the above, the appellant is not entitled for any relief on the finding that his appointment as Chemical Examiner in the Customs and Central Excise Department vide appointment letter dated 16th June, 1995 had not attained finality. Notably, the Caste Certificate Scrutiny Committee has finally answered the factum of caste claim of the appellant on the basis of relevant material, which is indicative of the fact that in the relevant official record pertaining to even the close relatives of the appellant (grandfather and uncle), the caste recorded is "Koshti" and occupation shown as weaving separately. The appellant has allowed that decision of the Caste Certificate Scrutiny Committee dated 10th February, 2003/22nd April, 2004 to attain finality. The Scrutiny Committee has unambiguously held that the appellant does not belong to "Halba" Community, a notified Scheduled Tribe in Maharashtra. The High Court was, therefore, right in allowing the writ petition filed by the Department and to restore the termination order dated 8th June, 2004."

8. Applying the aforesaid decision of the Supreme Court, present being a case of the probationer and not a confirmed employee, no departmental enquiry was required to be held before terminating the services of the petitioner on the ground that he was wrongly appointed against reserved category though the petitioner did not belong to reserved category.

9. In view of the above, the petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge