

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12486 OF 2015

1. Pratibha Niketan Education Society,
Nanded,
Through its General Secretary,
Sakharam S/o Digambarrao Mahajan,
Age-73 years, Occu-Retd.Principal,
R/o.53, Bhagyanagar, Nanded (M.S.)
2. Pratibha Niketan High School, Nanded,
Through its Head Master,
Shri Anand s/o Kondiba Gaikwad,
Age-55 years, R/o Nanded

PETITIONERS

VERSUS

1. Ashok S/o Sambhaji Dalpe,
Age-53 years, Occu-Teacher,
R/o "Saket" Ulhasnagar, Taroda Kd.
Nanded, Tq. And Dist. Nanded,
2. The Education Officer (Sec)
Zilla Parishad, Nanded

RESPONDENTS

Mr.S.M.Kulkarni, Advocate for the petitioners.
Mr.S.M.Vibhute h/f Mr.U.R.Awate, Advocate for respondent No.1.
Mrs.S.S.Raut, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 02/04/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The question/issue that has been raised in this petition is with regard to the distinction between a “fraud”/“nebulous” act and innocuous act. The said issue has been canvassed by the petitioners and the respondents in the light of the following judgments of the Hon'ble Supreme Court and of this Court, which substantially deal with this issue :-

- [i] Shalini Vs. New English High School Association and others.
2013(2) Mh.L.J. 913 = 2014(1) All M R 904
- [ii] Arun Vishwanath Sonone Vs. The State of Maharashtra and others, Bombay High Court - Full Bench, 2015 (1) Mh.L.J. 457.

3. The petitioners are aggrieved by the judgment and order dated 21/08/2015 delivered by the School Tribunal, Latur by which Appeal No.42/2014 filed by respondent No.1 / employee has been partly allowed and his termination dated 12/10/2013 has been quashed and set aside in the light of the ratio laid down in the various judgments which have been considered in the Shalini case (supra) and Arun Vishwanath Sonone (supra).

4. The submissions of Mr.Kulkarni, learned Advocate for the petitioners / Management can be summarized as follows :-

- [a] The post of an “Assistant Teacher” was available with the petitioners and the same was reserved for the Scheduled Tribe category (ST).
- [b] The employee moved an application dated 29/07/1982 wherein he has specifically stated that he belongs to the ST category.
- [c] A caste certificate dated 06/03/1979 was produced by the employee indicating that he belongs to the 'DHANGAD' community which falls under the ST category.
- [d] The proofs by way of documents submitted by the employee to the Tahsildar and Taluka Magistrate were his own affidavits, certificate issued by the Gram Sevak and Talathi Saza.
- [e] Based on the above representation, the petitioners appointed the employee in service and his appointment was approved on 03/11/1982 by the Education Officer on the ground that he belonged to the DHANGAD Tribe which fell under ST category.
- [f] The employee did not submit any validity with regard to his Tribe Certificate.
- [g] After the introduction of The Maharashtra Scheduled Caste, Scheduled Tribe, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.Act 23 of 2001), the Management called upon the employee by letter dated 25/01/2005 to submit his Tribe validity. Similar such reminders were issued to the employee.
- [h] By an ultimatum dated 02/12/2010, the employee was given 7 days time to submit 12 documents so that the Management

could forward his claim for validation to the appropriate Tribe Committee.

- [i] Yet another notice was issued to the employee on 29/06/2013 by the Management.
- [j] The petitioners/Management then preferred Writ Petition No.10684/2012 wherein the employee was impleaded as respondent No.4. This Court issued notice before admission to the respondent/employee .
- [k] The petitioners had raised an issue as regards directions to the appropriate Tribe Claim Validation Committee for deciding the tribe claim of the employee.
- [l] After the above petition was filed on 16/09/2012, the State of Maharashtra issued a Government Resolution dated 18/05/2013, by which those employees whose caste / tribe claims were invalidated or who desired to surrender their caste certificates and who had been appointed prior to 15/06/1995, were assured that their services would be protected.
- [m] After the above GR was brought into effect, the employee acquired a caste certificate on 17/06/2013 declaring him to be belonging to the 'HATKAR-29' caste and which was covered by the Nomadic Tribe-C category (NT-C).
- [n] The employee was terminated from service on 10/12/2013 on the ground that he had played a fraud on the employer and had acquired an appointment on the claim that he belonged to the ST category.
- [o] The respondent moved Appeal No.42/2014 before the School Tribunal, which has been partly allowed by the impugned judgment dated 21/08/2015.
- [p] The School Admission Extract of the employee indicates that

he belonged to the HATKAR caste and the same was recorded in the School Admission Extract on 12/07/1968.

- [q] The birth-death register of the employee indicates that he belonged to the HATKAR caste.
- [r] At the time of leaving school on completion of S.S.C., the employee was aware that his caste was written in his School Leaving Certificate as HATKAR and not as DHANGAD.
- [s] On 11/06/2013, the employee affirmed on oath in an affidavit before the Special Executive Magistrate that he belonged to the HATKAR community.
- [t] The School Leaving Certificate dated 03/07/1991 indicates the caste of the employee as HATKAR.
- [u] The caste validity certificate of the daughter of the respondent / employee namely Ms.Neha indicates that her claim belonging to HATKAR caste is validated.
- [v] The caste certificate dated 29/11/2005 issued to the second daughter of the employee namely Ms.Mrinal also mentions her caste to be HATKAR-29 falling in the NT-C category.
- [x] The respondent/employee lodged a complaint dated 21/01/2012 to the Police Station claiming that he belongs to the DHANGAD caste and the same falls under ST category. It is also stated that he had rightly and legally acquired the caste certificate from the Tahsildar of Taluka Kinwat.
- [y] In the said complaint, the employee had averred before the Bhagyanagar Police Station claiming that the Management representatives are threatening him and are trying to extort money from him by alleging that he does not belong to the DHANGAD tribe.
- [z] The Management replied to the Bhagyanagar Police Station,

Nanded on 10/02/2012 alleging that the respondent/employee had filed a false certificate and by his fraudulent act, had secured his appointment by claiming to be belonging to the DHANGAD tribe under the ST category.

- [aa] By an order dated 31/07/2013 delivered by the Deputy Director-cum-Secretary of the Nomadic Tribe Certificate Inspection Committee, Aurangabad, the tribe certificate of DHANGAD has been confiscated.
- [bb] By the conduct of the respondent/employee, it is apparent that he had the knowledge that he does not belong to the DHANGAD ST category and belongs to the HATKAR NT-C category.
- [cc] Despite knowledge of these facts, he has played a fraud on the Management and acquired employment on a post reserved for the ST category.
- [dd] The School Tribunal has merely considered the ratio laid down by the Hon'ble Supreme Court and this Court in various matters and has got carried away by the conclusion that such an employee deserves to be protected and since a regular departmental enquiry was not conducted under Rule 36 and 37 of the M.E.P.S.Rules, the termination of the employee would amount to a major punishment without a departmental enquiry.
- [ee] The Tribunal has lost sight of the fact that the burden lay on the employee to indicate as to how he has not played any fraud and was under a bonafide belief that he belonged to the DHANGAD tribe.
- [ff] Merely because an enquiry has not been conducted, would not render the termination bad in law.

- [gg] The respondent claims to be 55 years of age as on date and has about 3 years left for retirement (date of birth being 20/10/1961).
- [hh] The view taken by the Hon'ble Supreme Court and by this Court in the Shalini case supra and Arun Sonone case (supra) does not lay down the law that an employee who had committed a fraud deserves protection.
- [ii] The GR dated 18/05/2013 also does not provide for any protection to an employee who has acquired service fraudulently.
- [jj] The impugned judgment of the Tribunal may be quashed and set aside and the termination of the employee be upheld.

5. Mr.Vibhute, learned Advocate for the respondent / employee has strenuously supported the impugned judgment and by placing reliance on the judgments in the case of Shalini and Arun Sonone (supra) he contends that the School Tribunal has rightly protected him. He further adds that the protection granted by the School Tribunal is not a blanket protection, but it directs the petitioners / employer to conduct a departmental enquiry as per the rules and then resort to any action as it may deem fit and proper. Since the termination is held to be invalid, the respondent / employee has been granted reinstatement in service and reliefs of continuity, full back wages and other benefits are made subject to the result of the departmental enquiry.

6. Mr.Vibhute has strenuously contended that the employee has not committed any fraud and the contentions of the employer are totally misconceived. His submissions to that effect can be summarized as under :-

- [a] The caste certificate indicating that he belongs to DHANGAD community under ST category was acquired by him on 06/03/1979.
- [b] At the age of 21 years, he was appointed by the petitioners on 13/09/1982.
- [c] On instructions from the employee present in the Court, it is stated that he cannot mention the date on which he got the knowledge that he belonged to the HATKAR tribe.
- [d] He acquired the caste certificate dated 17/06/2013 on the basis of the school records.
- [e] He had the knowledge of the school records right from the day he had completed S.S.C.
- [f] Clause 5 of the GR dated 18/05/2013 protects his services and pursuant to the GR he has surrendered his DHANGAD tribe certificate and a specific order to that effect has been passed by the competent authority on 31/07/2013.
- [g] The deadline prescribed in clause 6 of the GR was upto 30/06/2013 and which was extended by another two months.
- [h] He has submitted his second caste certificate within the deadline and hence is entitled for the protection under the GR.
- [i] Heavy reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of Shalini (supra) and especially on

paragraph Nos.5 and 6.

- [j] Reliance is placed upon the judgment of the learned Full Bench of this Court in the matter of Arun Sonone (surpa) and especially on paragraph Nos. 66, 67 and 70.
- [k] In catena of judgments delivered by the Hon'ble Supreme Court and by this Court, services of employees who have worked for more than 10 years and who have been appointed prior to 1995, have been protected. All these judgments were cited before the Tribunal and on the basis of which the impugned judgment has been delivered.

7. I have, after considering the seriousness of the issue involved in this matter and in the light of the statement that the respondent / employee present in the Court, put specific questions to the learned Advocate Mr.Vibhute for eliciting further information. The statements made by the learned Advocate on instructions are as follows :-

- [a] The employee cannot state when he got the knowledge that he belonged to the HATKAR tribe.
- [b] He acquired the certificate of HATKAR tribe on the basis of the school records.
- [c] He had the knowledge of the school records from the time he completed his S.S.C.
- [d] When his daughter Ms.Mrinal got the validity certificate on 29/11/2005, he knew that he belonged to the HATKAR tribe and not the DHANGAD tribe.
- [e] Even when his other daughter Ms.Neha obtained the caste

certificate of HATKAR on 17/10/2008, he had the knowledge that he belonged to the HATKAR tribe.

- [f] Despite the above, he did not disclose this fact to the employer.
- [g] He did not make any statement in the Appeal Memo that he had informed the petitioners/Management that he belonged to the HATKAR tribe and not the DHANGAD tribe.
- [h] Had he disclosed to the Management in 1982 that he belonged to the HATKAR tribe, he would not have got employment since the post was reserved for the S.T. category under which the DHANGAD tribe falls.

8. Mr.Vibhute has, however, strenuously submitted that even if it is presumed that the employee acquired an incorrect certificate belonging to the DHANGAD tribe, his case is covered by the GR dated 18/05/2013. He would also be covered by the ratio laid down in the Shalini case (supra) and Arun Sonone case (supra). He supports this contention by stating that in catena of judgments, it has been held that even if the caste/tribe claim is invalidated and the caste certificate is cancelled or confiscated, the Courts have protected such employees.

9. He further submits that he bonafide believed that he belonged to the DHANGAD tribe and therefore acquired a certificate in 1979 after furnishing an affidavit and the statement of a Gram Sevak.

10. He further submits on instructions that after the introduction of the GR dated 18/05/2013, he realized that he could return his certificate of DHANGAD tribe and put forth his claim for HATKAR tribe. Since he submitted his HATKAR tribe certificate within the period prescribed under clause 'C' of the GR, he was entitled for the protection as is provided under the GR.

11. He claims that he has honestly returned his DHANGAD tribe certificate to the competent Committee and which, by order dated 31/07/2013, has confiscated the said certificate dated 06/09/1979. This bonafide act would indicate that the employee has neither acted fraudulently nor has he defrauded the Management. It is, therefore, submitted that this petition be dismissed.

12. I have considered the submissions of the learned Advocates as recorded above.

13. Considering the conspectus of this matter, the dates on the various documents recorded above assume significance.

14. The first caste certificate of the employee is dated 06/03/1979.

He was said to be belonging to the DHANGAD tribe which fell under ST category. There is no dispute that the post on which the employee was eventually appointed on 13/09/1982 was reserved for the ST category. There is also no dispute that DHANGAD and DHANGAR fall under different tribes and therefore under different categories. There is also no dispute that the employee applied for the post on 29/07/1982 claiming to be belonging to the ST category and in support of which he produced the caste certificate dated 06/03/1979. Based on the same, the original service book mentions his caste as 'DHANGAD' in Sr.No.2

15. As noted above, the gamut of the submissions of the petitioners and on the basis of which the said issue assumes great importance in this matter, is that the employee has committed a fraud and has perpetuated the fraud for his personal gains and for acquiring undue advantage. I have, therefore, scrutinized the records and have considered them in the light of the submissions of the learned Advocates and the observations of the Hon'ble Supreme Court in the case of Shalini (supra) and of the learned Full Bench of this Court in Arun Sonone case (supra).

16. I have tested the submissions of the litigating sides on the

basis of specific events and instances as follows :-

- [a] The employee has stated that he was conscious of the school records at the time of completing his S.S.C. There is, therefore, no dispute that he was aware from the day he passed out from the 10th standard that he belonged to the HATKAR caste.
- [b] When the employee obtained his first caste certificate for the DHANGAD ST category on 06/03/1979, he was 18 years old. When he made an application on 29/07/1982 and was appointed on 13/09/1982, he was 21 years of age.
- [c] He, then, filed his first caste certificate to the Management declaring that he belonged to the DHANGAD tribe which fell under the ST category and was therefore squarely entitled for being appointed to the post since it was reserved for the ST category. Based on the same, the entry was made in his original service book, which has been shown to the Court.
- [d] It is, therefore, apparent that the employee knew that he belonged to HATKAR category and yet obtained the caste certificate of DHANGAD tribe and was appointed to the post reserved for the ST category only because he projected himself to be belonging to the DHANGAD tribe.
- [e] Admittedly, there has been no validity of his claim to be belonging to the DHANGAD tribe.
- [f] It is stated by the employee that he knew that he belonged to the HATKAR tribe when he applied for the caste certificate of his daughter Ms.Mrinal on 29/11/2005 and his daughter Ms.Neha on 17/10/2008.
- [g] Therefore, on the one hand, the employee knew that he

belonged to the HATKAR tribe and on the other hand continued to suppress this fact from the Management and did not disclose that he did not belong to the DHANGAD tribe.

17. Having the knowledge of belonging to the HATKAR tribe, the above acts of the respondent employee need to be scrutinised as to whether it would amount to a fraud or a fraudulent act. The word “fraud” as is described by the Oxford Advanced dictionary is “*a person who pretends to have something which he does not really have in order to cheat other people.*” The word “fraudulent” has been defined to mean “*intention to cheat, intended to cheat*”. The Webster Dictionary describes the word “*fraud*” as “*cheating, deceit or trickery deliberately practiced in order to gain some advantage dishonestly, anything contrived or intended to deceive.*”

18. The petitioner / Management has approached the Police Station. The respondent/employee stated before the Police Station on 24/01/2012 in paragraph No.2 that he belonged to the DHANGAD tribe which falls under the ST category, that he has legally obtained the caste certificate of DHANGAD tribe and the Management is deliberately harassing him and trying to extort money from him. He claimed to have recorded the discussion with the Management on his

cellular phone on 23/01/2012 and 24/01/2012 and submitted a audio CD of the said discussion to the Police Station. This, in my view, was the strongest attempt made by the employee to reiterate with vehemence that he belonged to the DHANGAD tribe and not to the HATKAR tribe. This, therefore, clearly indicates that the respondent/employee not only had committed a fraud earlier, but was insisting that what he had done earlier was not a fraud but a fact that he belonged to a DHANGAD tribe.

19. A very interesting twist has taken place after the State of Maharashtra introduced the GR dated 18/05/2013. In the backdrop of the fact that the respondent employee insisted that he belonged to the DHANGAD tribe since 1979 till 2013 over a period of 34 years, he suddenly underwent a transformation which can be easily viewed to be a result only on account of the introduction of the GR dated 18/05/2013. He promptly acquired a second caste certificate on 17/06/2013 of belonging to the HATKAR tribe and promptly disowned his DHANGAD tribe and therefore he surrendered his first caste certificate to the competent authority. Clause 5 and 6 of the GR dated 18/05/2013 probably were the inspiration behind the respondent/employee taking a somersault and suddenly claiming that he realized that he belonged to the HATKAR tribe. He presented

his second caste certificate within the deadline prescribed under the GR and claimed protection for his services. The act of the respondent/employee speaks for itself.

20. The above fact situation needs to be considered in the light of the ratio laid down by the Hon'ble Supreme Court in the case of Shalini (supra) and the view taken by the learned Full Bench of this Court in the case of Arun Sonone (supra). It, therefore, has to be assessed whether a fraudulent employee could be protected by the view taken in the cases referred above.

21. Paragraph Nos. 5 and 6 of the Shalini judgment (supra) read as under :-

“5. It is evident that there is a plethora of precedents on this aspect of the law, and perhaps for this reason Counsel for the parties were remiss in drawing our attention in the present proceedings to the detailed judgment in Kavita Solunke v. State of Maharashtra (2012) 8 SCC 430, in which one of us, Thakur J, had analysed as many as eleven precedents including those discussed above. After reviewing all the judgments it was held, in the facts and circumstances of that case, that since that party had not intentionally or with dishonest intent fabricated particulars of a scheduled tribe with a view to obtain an undeserved benefit in the matter of appointment, she was

entitled to protection against ouster from service, but no other benefit. In view of the comprehensive yet concise consideration of case law in *Solunke*, any further analysis would make the present determination avoidably prolix, and therefore our endeavour will be to cull out the principles which would be relevant for deciding suchlike conundrums. These are - (a) If any person has fraudulently claimed to belong to a Scheduled Caste or Scheduled Tribe and has thereby obtained employment, he would be disentitled from continuing in employment. The rigour of this conclusion has been diluted only in instances where the Court is confronted with the case of students who have already completed their studies or are on the verge of doing so, towards whom sympathy is understandably extended; (b) Where there is some confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status, such as issuance of relevant certificates to persons claiming to be 'Koshtis' or 'Halba Koshtis' under the broadband of 'Halbas', protection of employment will be available with the rider that these persons will thereafter be adjusted in the general category thereby rendering them ineligible to further benefits in the category of Scheduled Caste or Scheduled Tribe as the case may be; (c) this benefit accrues from the decision of this Court *inter alia* in [Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar](#) (2008) 9 SCC 54 which was rendered under [Article 142](#) of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions/Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it

was in Milind that the Constitution Bench clarified that 'Koshtis' or 'Halba-Koshtis' were not entitled to claim benefits as Scheduled Tribes and it was the 'Halbas' alone who were so entitled. A perusal of the judgment in Vilas by Sirpurkar J, as well as Solunke makes it clear that this protection is available by virtue of the decisions of this Court; it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature; (d) Where a Resolution or Legislation exists, its raison d'être is that protection is justified in presenti (embargo on removal from service or from reversion) but not in futuro (embargo on promotions in the category of Scheduled Caste or Scheduled Tribe).

6. A reading of the impugned Judgment requires us to clarify an important aspect of the doctrine of precedence. Dattatray is the only Three-Judge Bench decision, and therefore indisputably holds pre-eminence. However, by that time several decisions had already been rendered by Two-Judge Benches some of which have already been discussed above. It was within the competence of Dattatray Bench to overrule the other Two-Judge Benches. Despite the fact that it has not done so the per incuriam principle would not apply to the decision because it was a larger Bench. However, no presumption can be drawn that the Dattatray Three-Judge Bench decision was of the opinion that the earlier Two-Judge Bench decisions had articulated an incorrect interpretation of the law. That being so, the Two-Judge Bench views may still be relied upon so long as the ratio of Dattatray is not directly in conflict with their ratios. It is therefore imperative to distill the ratio of Dattatray, which we

have already discussed in some detail. We need only reiterate therefore that the Three-Judge Bench was perceptibly incensed with the falsity of the claim of the employee to Scheduled Caste/Scheduled Tribe status. That was not a case where a legitimate claim of consanguinity to a 'Halba Koshti', 'Koshti' or 'Gadwal Koshti' etc. had been made, which was at the inception point considered to be eligible to beneficial treatment admissible to Scheduled Tribes, later to be reversed by the Constitution Bench decision in Milind and declared to be the entitlement of Halbas only. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with Scheduled Castes or Scheduled Tribes etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant Authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said

Scheduled Caste/Scheduled Tribe.”

22. The Hon'ble Supreme Court concluded in paragraph No.5 that its endeavour was to cull out the principles that would be relevant for deciding such conundrums. Clause A mentioned under paragraph 5 pertains to a person who has fraudulently claimed to belong to a particular caste or tribe or has obtained employment. It was, therefore, concluded that he would be disentitled from continuing in employment. The rigours of the said conclusion has been diluted only in instances where the Courts are confronted with the cases of students who have already completed their studies. I can see that the Hon'ble Apex Court has considered the case of the students separately since their parents are mostly instrumental in obtaining their caste certificates and the students eventually may not be guilty or responsible.

23. In the instant case, it can be easily seen that the respondent / employee was fully conscious that firstly, he belonged to the HATKAR tribe and secondly and more importantly that he did not belong to the DHANGAD tribe.

24. So also the confusion regarding eligibility to the benefits

available to Scheduled caste or Scheduled Tribe in relation to the Koshtis, Halbas and Halba Koshtis were considered by the Court. In the instant case, there was no confusion about this aspect since the post occupied by the employee was reserved for the ST category and on the basis of the school leaving certificate, the employee was aware that he belongs to the HATKAR tribe and the same was not under the Scheduled Tribes for which the post was reserved.

25. The learned Full Bench in Arun Sonone case (supra) has observed in paragraph Nos. 65, 66, 67, 70, 72 and 73 as under :-

“65. The factual position to which the law laid down is to be applied, is stated as under :

(a) Before coming into force of the said Act on 18-10-2001, the appointments and promotions were made against the post reserved for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Classes category (consolidatedly called as "the backward class category") merely on the basis of the production of the Caste Certificates issued by the Competent Authorities with or without the condition of producing a caste validity certificate.

(b) The decision in Madhuri Patil's case was delivered by the Apex Court on 2-9-1994, and by issuing the Government Resolutions dated 15-6-1995 and 30-6-2004, all the appointments and promotions made

up to 15-6-1995 against a post reserved for backward class category are protected and such appointments and promotions cannot be cancelled.

(c) After coming to force of the said Act on 18-10-2001, no appointments and/or promotions could be made without production of a caste validity certificate under sub-section (2) of Section 6 of the said Act, but it is a fact that some such appointments have been made.

(d) In terms of the decision in Milind's case, all the appointments that have become final up to 28-11-2000 stand protected subject to the conditions as under :

(i) that upon verification by the Scrutiny Committee, the Caste Certificate produced to secure an appointment, is not found to be false or fraudulent,

(ii) that the appointee shall not take any advantage in terms of promotion or otherwise after 28-11-2000 solely on the basis of his claim as a candidate belonging to any of the backward class categories in respect of which his claim is invalidated by the Scrutiny Committee, and

(iii) that it shall be permissible for the Competent Authority to withdraw the benefits or promotions obtained after 28-11-2000 as a candidate belonging to backward class category for which the claim has been rejected.

66. In view of the law, which we have laid down, the relief of protection of service after invalidation of caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in the cases of *Kavita Solunke v. State of Maharashtra and others*, reported in 2012(8) SCC 430, and *Shalini v. New English High School Association and others*, reported in (2013)16 SCC 526. The manner and the extent to which such protection is to be made available, is laid down as under :

(a) The appointments or promotions made up to 15-6-1995 in public employment on the basis of the Caste Certificates against a post reserved for any of the backward class categories, stand protected in terms of the Government Resolutions dated 15-6-1995 and 30-6-2004 and shall not be disturbed, and the appointments that have become final between 15-6-1995 and 28-11-2000 shall remain unaffected in view of the decision of the Apex Court in *Milind's case*.

(b) The grant of protection in terms of the Government Resolutions dated 15-6-1995 and 30-6-2004 and the decision in *Milind's case*, shall be subject to the following conditions :

(i) that upon verification by the Scrutiny Committee, the Caste Certificate produced to secure an appointment, is not found to be false or fraudulent,

(ii) that the appointee shall not take any advantage in terms of the promotion or otherwise after 28-11-2000 solely on the basis of his

claim as a candidate belonging to any of the backward class categories, in respect of which his claim is invalidated by the Scrutiny Committee, and

(iii) that it shall be permissible for the Competent Authority to withdraw the benefits or promotions obtained after 28-11-2000 as a candidate belonging to backward class category for which the claim has been rejected.

(c) Any appointments that have become final against a post reserved for any of the categories of backward class on the basis of the production of Caste Certificate without incorporating a specific condition in the order of appointment that it is it is subject to production of caste validity certificate after 28-11-2000 and before coming into force of the said Act on 18-10-2001 shall also remain protected subject to the conditions mentioned in clause (b) of para 64.

(d) After coming into force of the said Act on 18-10-2001, no benefit or appointment can be obtained or secured in any public employment against a post reserved for any of the backward class categories merely on the basis of the production of a caste certificate and without producing a caste validity certificate from the Scrutiny Committee. Such appointments are not protected and shall be liable to be cancelled immediately upon rejection of the caste claim by the Scrutiny Committee.

67. There cannot be a dispute that the High Court in exercise of its jurisdiction under Article 226 or 227 of the Constitution of India cannot

grant protection in employment after recording a finding that such employment was secured by practising fraud or by producing false or fraudulent caste certificate. It is urged that the High Court in exercise of its jurisdiction under Article 226 or 227 of the Constitution of India cannot grant protection in service, even if there is no fraud practised to secure an appointment, as has been held in earlier paras. In the decision in the case of Ramesh Chandra Sankla and others v. Vikram Cement and others, reported in (2008) 14 SCC 58, the equity jurisdiction of the High Court under Articles 226 and 227 of the Constitution is elaborated in paras 90, 91 and 98, which are reproduced below :

"90. Now, it is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a century, the High Court of Allahabad in the leading case of Jodhey v. State (AIR 1952 All 788) observed : (AIR p. 792, para 10)

"10. ... There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein." (emphasis supplied)"

"91. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide

and discretionary in nature. It can be exercised ex debito justitiae i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must "advance the ends of justice and uproot injustice".

"98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in Shiv Shankar Dal Mills v. State of Haryana [(1980) 2 SCC 437] courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience."

70. It is thus well settled that the High Court 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. There are no limits, fetters or restrictions placed on this power of superintendence. The purpose of it is to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that the justice is meted out fairly and properly. The power is to be exercised to advance the ends of justice. While granting relief, the Court must take into account the

balancing interests and equities and granting or withholding of relief, would depend upon the considerations of justice, equity and good conscience.

72. There cannot be any strait-jacket formula laid down either to refuse or grant protection in the employment either at the initial stage or at the promotional stage. The approach has to be practical and pragmatic rather than technical and pedantic keeping in view the object and purpose of the Constitution in providing the benefits and concessions to a particular category of backward class. The Court has to strike the balance between the conflicting claims of genuine candidates, who are denied the benefits meant for them and all other persons, who honestly and genuinely believe and claim themselves to be belonging to a particular category for whom the concessions and benefits were meant. The Court will have to consider the facts and circumstances of each case to decide whether the protection is to be granted or refused, and if it is to be granted, up to what stage and extent.

73. Apart from bona fides of the candidate claiming protection in service, the two tests laid down by the Apex Court in Shalini's case - one was the fraudulent claim and the other was concerning eligibility to the benefits on the basis of the Caste Certificate. There are several ways and means of securing the benefits by practising fraud, misrepresentation, etc., which cannot be catalogued. Similarly, there are several angles to test the bona fides and consider the equity, which also cannot be catalogued. In cases of candidates belonging to castes other than Special Backward Category, the Court will have to look into the history of the controversy to find out whether the benefits were

secured as a result of confusion or uncertainty prevailing in the area of eligibility to claim such benefits, as has been held by the Apex Court in the case of R. Unnikrishnan.”

26. It is thus evident from the view expressed in the Arun Sonone Case (supra) that protection has been granted to all appointments with regard to whom the caste certificate produced was not false or fraudulent. In the instant case, the submissions of Mr. Vibhute, could have been appreciated if his belonging to the DHANGAD caste or the HATKAR tribe was under the ST category. In short, if it would not have made any difference as to whether the employee belonged to the DHANGAD or HATKAR tribe and if both these tribes fell under the Scheduled Tribes category, the employee would have stood entitled for the benefits of the reservations as he would have continued to be under the ST category notwithstanding whether he belonged to DHANGAR or HATKAR tribe.

27. That is not the case before this Court. For 31 years, the employee insisted that he belonged to the DHANGAD tribe despite fully knowing from 1979, after he received the school leaving certificate, that he belonged to the HATKAR tribe. From the facts recorded above, it is clear that he has consciously reiterated that he

belongs to a DHANGAD tribe and the moment the GR dated 18/05/2013 introduced, he took a diagonally opposite stand and claimed that he belonged to the HATKAR tribe. The case of the present employee, therefore, falls within the ambit of paragraph 67, 72 and 73 of the Arun Sonone case (supra), which are reproduced above.

28. This takes me to the directions given by the School Tribunal in the impugned judgment. The appeal has been allowed by the Tribunal on the ground that the Hon'ble Supreme Court and this Court has concluded that protection should be granted. The Tribunal has not taken the efforts to consider the above backdrop as has been recorded in this judgment with regard to the employee having full knowledge about he belonging to the HATKAR caste and yet having projected that he belonged to the DHANGAD tribe. The Tribunal has, therefore, directed reinstatement subject to an enquiry to be conducted as per rules.

29. For the sake of clarity, the operative part of the impugned order is reproduced as under :

“1. The appeal is partly allowed with proportionate cost as follows.

2. The written termination order dated 12/10/2013 is quashed and set aside.

3. The respondent Management is directed to make enquiry as per Rules and take appropriate decision accordingly. Meantime they are directed to reinstate the appellant on original post of Assistant Teacher in respondent No.2 school. The other reliefs claimed by the appellant i.e. continuity of service, full back wages and all the other consequential benefits are made dependent on the outcome of decision that has to be taken by respondent management on the basis of enquiry made as per Rules.”

30. Learned Advocate Mr.Kulkarni has assailed the direction to conduct an enquiry. Contention is that the moment it is revealed that the employee has submitted a false tribe certificate, his employment deserves to be taken away as it was a fraudulent act. It cannot be ignored that the employee is permanent in service and had put in about 31 years in service till his termination on 12/10/2013. He has another 3 years to go prior to his retirement. The Management, contending that the employee has played a fraud, normally ought to have conducted a departmental enquiry.

31. Since this Court has been called upon to consider the material aspects canvassed by the litigating sides, I have come to a conclusion

based on the record and submissions of the parties that such protection cannot be granted in this case. However, the procedure laid down in law cannot be by-passed or ignored. There is a possibility that the employee may bring forth such evidence in oral and documentary form which may convince the Enquiry Committee.

32. It is trite law that a case of defective enquiry or a case of no enquiry are at par. If an enquiry is vitiated and set aside, the case stands on the same footing as like a case of no enquiry (*Read Bharat Forge Company Ltd., Vs. A.B.Zodge and another, AIR 1996 SC 1556*). The matter, therefore, needs to be relegated to the Management for conducting a proper enquiry.

33. The Hon'ble Supreme Court in the case of Vidya Vikas Mandal and another Vs. Education Officer, 2007(3) Mh.L.J. 801 has held in paragraph Nos. 8 and 9 as under :-

“8. As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent

member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

9. In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one

member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent no.2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution.”

34. As such, the employee herein would be deemed to be under suspension from the date of his termination and would be entitled for subsistence allowance as per rules. The direction to reinstate him therefore, cannot be sustained. The petitioner/Management, therefore, would have to conduct a full fledged departmental enquiry as per Rule 36 and 37.

35. In the light of the above, this petition is partly allowed with the following directions :-

- [a] The direction set out by the Tribunal in clause 2 of the impugned order shall therefore stand modified by keeping the order of termination dated 12/10/2013 in abeyance.

- [b] Direction No.3 is also modified to the extent of permitting the petitioners to treat the employee as being under suspension from 12/10/2013 and pay him suspension allowance from the said date till the conclusion of the departmental proceedings under Rule 36 and 37 of the MEPS Rules, 1981.
- [c] The petitioners shall move the Education Officer for seeking approval to the suspension of the employee under orders of this Court from 12/10/2013 and such permission shall be accorded by the Education Officer so as to ensure payment of suspension allowance to the respondent/employee.
- [d] The petitioners shall conduct an enquiry as prescribed under Rule 36 and 37 and any decision arrived at finally by the Management shall be related to the order of termination dated 12/10/2013 in view of the doctrine of "relation back".

36. At this juncture, learned Advocate Mr.Vibhute submits on instructions from the respondent/employee present in the Court, that despite the dictation of this judgment in open Court, the matter may be adjourned to 07/04/2016 at 2.30 p.m. only for the respondent employee to ponder over an option of submitting his application for voluntary retirement with a resignation letter effective from 12/10/2013 so as to protect his retiral benefits and ensure a clean and non stigmatic exit. Learned Advocate Mr.Kulkarni does not oppose the request for an adjournment.

37. In the light of the above, stand over 07/04/2016 at 2.30 p.m. for considering the statements of the learned Advocates and for further dictation in this judgment.

.....

DATE : 11/04/2016

38. On 7.4.2013, the litigating sides sought one more opportunity and the matter was posted to 11.4.2016.

39. Mr.Vibhute, learned Advocate for the respondents / employees submits on instructions that the concerned employee is not willing to opt for a voluntary retirement, subject to which he was assured of protection of his retiral benefits and a clean exit. He states that the concerned employee desires to face the departmental proceedings.

40. Considering the above, in the light of the directions set out in paragraph No.35 of this judgment, Rule is made partly absolute in the said terms.

41. Needless to state, the document obtained by the petitioners / management under the Right to Information Act, which is at page 48, Exhibit "G" of the petition paper book and all other documents can

be used by the petitioners in the departmental enquiry to be commenced against the respondent / employee.

42. Pending Civil Application, if any, stands disposed off.

(RAVINDRA V. GHUGE, J.)