

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 675 of 2016**

- Mahesh Kumar Gonnade S/o Shri A.G. Gonnade, Aged About 44 Years R/o R/5 Near Truck Body Works, Vaishali Nagar, Bhilai, District Durg Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. The Chief Executive Officer, Bhilai Steel Plant, Bhilai District Durg Chhattisgarh
3. High Power Caste Scrutiny Committee, Through Its President Cum Secretary, Schedule Caste And Schedule Tribe Development Department, Tribal Research Training Institute, Pt. Dindyal Upadhyay Nagar, Sector 4, Raipur Chhattisgarh

---- Respondent

For Petitioner	Mr. Mateen Siddique, Advocate
For Respondent No.1	Mr. A.S. Kachhwaha, Addl. AG
For Respondent No.2	Dr. Sourabh Kumar Pandey, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Order On Board by**Prashant Kumar Mishra, J.****9/1/2017**

1. Heard.
2. The short question, falling for determination in this petition, is whether, the petitioner, who obtained the service with the

Bhilai Steel Plant as Management Trainee (Technical) on 18.09.1995 in the reserve category on the basis that he belongs to "*Halba*" Scheduled Tribe Community, is entitled to defend his service in view of the Circular issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training on 10th August 2010 (Annexure P/6), based on the judgment rendered by the Supreme Court in the matter of **State of Maharashtra vs. Milind and others, (2001) 1 SCC 4?**

3. Mr. Mateen Siddique, learned counsel for the petitioner, would strenuously urge that even if the petitioner is found to be belonging to "*Halbi*" Community and not "*Halba*" Scheduled Tribe community, since he was inducted into the service as reserve category candidate on 11.08.1995 i.e. prior to 28.11.2000, which is the cut off date fixed by the Supreme Court, he is entitled to protect his services although he may not be entitled to claim any further benefit of the caste status in future. He would refer to the judgment rendered by the Supreme Court in the matter of **Milind** (supra) and Government of India Notification dated 10.08.2010 (Annexure P/6).
4. Per contra, Dr. Saurabh Kumar Pandey, learned counsel for the respondent-Bhilai Steel Plant and Mr. A.S. Kachhwaha, Additional Advocate General for the State, would submit that the petitioner having fraudulently obtained the caste status certificate from incompetent authority at Durg, even though, his forefathers belonged to the State of Maharashtra, is not

entitled to the benefit as granted in the case of **Milind** (supra).

5. Indisputably, the petitioner obtained a caste status certificate from the competent authority at Durg on 11.09.1987 and thereafter, participated in the selection process for appointment on the post of Management Trainee (Technical) in Alloy Steel Plant, Durgapur and having been selected, was later on, transferred to Bhilai Steel Plant, Durg.
6. On some complaint about the petitioner's caste status, the matter was referred to the High Level Caste Scrutiny Committee to verify as to whether the petitioner belongs to "*Halba*" Scheduled Tribe Community or "*Halbi/Koshti*" community. The Joint Collector, Durg was requested by the Bhilai Steel Plant to conduct a verification, on which, the said Joint Collector submitted a report to the effect that the petitioner belongs to "*Halbi/Koshti*" community, which is included in the list of Other Backward Class in the State of Chhattisgarh and thus, he does not belong to "*Halba*" Scheduled Tribe community. Based on the said report, the High Power Caste Scrutiny Committee issued a notice to the petitioner for verification of his certificate, wherein, the petitioner did not contest the matter and straightway prayed for protection of his services under the **Milind's** judgment (supra).
7. It is in this factual background, learned counsel for the Bhilai Steel Plant, would submit that the petitioner having chosen not to defend his caste status certificate, he is not at all entitled to protection under the **Milind's** judgment (supra).

8. Having heard learned counsel for the parties at length, it would be apt to refer to the judgment rendered by the Supreme Court in the matter of **Milind (supra)**, wherein, the following has been held in para 38 :

"38. Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP(C) No.16372 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

9. In **Milind (supra)**, it was directed that the petitioner's result be declared and he be allowed to take his degree with the condition that he will not be treated as Scheduled Caste candidate further either in obtaining service or for any other benefits flowing from the caste certificate obtained by him.

10. The aforesaid decision came up for consideration before the Supreme Court in **Dattu, S/o Namdeo Thakur Vs. State of Maharashtra and others, (2012) 1SCC 549**, wherein, it was held that the benefits, which have already been availed would continue, but the candidate would not be entitled to any further benefits under the caste certificate issued, on the basis of which the petitioner has obtained employment following the judgment of the Supreme Court in **Swati Vs. State of Maharashtra, [Civil Appeal No.7411/2010, order dated 6.9.2010 (SC)]**.

11. In **Kavita Solunke Vs. State of Maharashtra and others, (2012) 8 SCC 430**, relying on the decision of the Constitution Bench in **Milind** (supra), it was held that the employee should not be ousted from service and shall be reinstated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained before a long period of 10 years.

12. Be it noted further that based on the **Milind's** judgment, the Central Government has issued Office Memorandum dated 10.08.2010, to the following effect :

"2. The matter regarding the effect of the judgment of the Supreme Court in Milind's case has been considered by the Supreme Court in Civil Appeal No.1547 of 2007 (Punjab National Bank and another Vs. Vilas S/o Govindrao Bokade) and some other cases. The Supreme Court in these cases has observed that it had held in Milind's case that though the status of Scheduled Tribe could not be conferred

on candidates belonging to Halba Koshti/Koshti caste, protection had been provided in no uncertain terms to admissions and appointments that had become final. Thus the Supreme Court has held that such candidates belonging to Halba Koshti/Koshti caste whose appointment had become final on or before 28.11.2000, the date on which the Supreme Court had decided the Civil Appeal No.2294/1986 (State of Maharashtra V/s Milind and ors.), shall not be affected.

3.The matter has been examined in consultation with the Department of Legal Affairs and it has been decided that the persons belonging to the 'Halba Koshti/Koshti' caste who got appointment against vacancies reserved for the Scheduled Tribes on the basis of Scheduled Tribe certificates, issued to them by the competent authority, under the Constitution (Scheduled Tribes) Order, 1950 (as amended from time to time) relating to the State of Maharashtra and whose appointments had become final on or before 28.11.2000, shall not be affected. However, they shall not get any benefit of reservations after 28.11.2000."

13. It is, therefore, apparent that the observations made by the Supreme Court in **Milind's** judgment (supra) has been directed to be implemented by the Central Government in its above referred Office Memorandum. The petitioner is, therefore, entitled to protect his services as his appointment had become final before 28.11.2000 i.e. the cut off date fixed by the Supreme Court.

14. The submission made by learned counsel for the Bhilai Steel Plant that the petitioner having chosen not to contest the notice issued by the High Level Caste Scrutiny Committee, is not

entitled to protection under **Milind's** judgment (supra), may not hold good, for the reason that earlier there was confusion as to whether "*Halbi/Koshti*" was sub-caste of "*Halba*", therefore, on that premises, the petitioner obtained scheduled tribe status as a sub-caste of "*Halba*", however, after **Milind's** judgment, the petitioner could not have offered any explanation because the issue was settled by the Supreme Court that "*Halbi /Koshti*" is not a sub-caste of "*Halba*", therefore, a person belonging to "*Halbi/ Koshti*" sub-caste will not be a part of "*Halba*" Scheduled Tribe Community.

15. For the aforesaid, we are of the considered view that the impugned judgment rendered by the Central Administrative Tribunal, refusing to extend benefit of **Milind's** judgment to the petitioner deserves to be and is hereby set-aside. Consequently, the petitioner's termination vide order dated 24.10.2015 is also set-aside. The petitioner would be entitled to all the consequential benefits on or after 24.10.2015 including seniority and back wages. However, the petitioner shall not be entitled to any interest on the arrears of salary nor any further benefit on the basis of certificate which has been cancelled by the High Power Caste Scrutiny Committee.

16. The writ petition is accordingly allowed.

Sd/-

Judge

(**Prashant Kumar Mishra**)

Sd/-

Judge

(**Anil Kumar Shukla**)