

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2776 of 2016**

- Devendra Kumar Kolhe S/o Shri Fattulal Kolhe Aged About 38 Years R/o Q. No. H- 2 Collectorate Colony Kawardha District Kabirdham (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through : Secretary, Department Of Revenue, Mahanadi Bhawan Mantralaya, New Raipur, District Raipur (Chhattisgarh)
2. Collector, Kabirdham District Kabirdham (Chhattisgarh)
3. Chairman, District Level Caste Certificate Verification Committee, District, Rajnandgaon Chhattisgarh.
4. High Power Certification Scrutiny Committee, Schedule Tribe Research And Training Institute, P. Deendayal Upadhyay Nagar, Sector 4, Raipur, Dist. Raipur (Chhattisgarh)

----Respondents

For Petitioner:	Mr. Sourabh Dangi, Advocate
For State :	Mr. Gary Mukhopadhyay, Dy. Government Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16.03.2017**

1. The present Writ Petition has been filed assailing the order dated 11.01.2016 passed by the Secretary, General Administration Department, Government of Chhattisgarh and had ordered for taking appropriate action against the Petitioner and similarly placed persons canceling their appointment on the ground that they have obtained employment on the basis of false caste certificate and therefore the benefit of continuity in employment cannot be extended to the said persons. And by implication the service of the Petitioner and similarly placed persons is to be

terminated.

2. The brief facts of the case is that the Petitioner in the instant case was appointed as Assistant Grade III on 13.10.1998 under the erstwhile State of Madhya Pradesh. As a result of bifurcation of the State of Madhya Pradesh and creation of State of Chhattisgarh the services of the Petitioner stood allocated to the State of Chhattisgarh in the year 2000. The Petitioner had obtained employment claiming himself to be belonging to the scheduled tribe that of caste of Halba Koshtis / Koshti. The caste status of the Petitioner was meanwhile subjected to the verification by the High Level Caste Scrutiny Committee constituted by the State of Chhattisgarh. The report of the said committee was that the Petitioner is a Koshti by caste and that the caste certificate of the Petitioner of being a "Halba" was not proper and correct.
3. The State Government in between issued an instruction dated 01.10.2011 whereby they took a policy decision of not terminating services of the similarly placed persons where the dispute was of Halwa Kosti/ Kosti caste except the fact that they would not be entitled for any benefit of reservation in their services. It is this instruction which have been cancelled by the impugned order 11.01.2016 and there is every likelihood of the services of the Petitioner and similarly placed persons to be terminated. The contention of the Petitioner is that the services of the Petitioner deserves to be protected in the light of the judgment passed by the Supreme Court in the case of *State of Maharashtra vs. Milind & Others* [2001 (1) SCC 4].

4. According to the Counsel for the Petitioner the said ratio laid down in the case of *Milind* (supra) has been further followed and reiterated by the Supreme Court in the case of *Punjab National Bank & Another v. Vilas* [2008 (14) SCC 545], *Kavita Solunke v. State of Maharashtra* [2012 (8) SCC 430] and also in *Shalini v New English High School Association & Others* [2013 (16) SCC 526] etc.
5. According to the Petitioner considering the fact that the Petitioner was appointed around 18 years back, applying the ratio referred to in the aforesaid judgments the services of the Petitioner has to be protected treating him to be an employee in the unreserved category wherein he would not be entitled for any benefits of reserved category.
6. According to the Petitioner it is not the case of any of the Respondents that the Petitioner has obtained the caste certificate by playing fraud and any misrepresentation. Rather the Petitioner was bonafidely granted the caste certificate. According to the Petitioner had the impugned order dated 11.01.2016 not been issued the Petitioner would have got the advantage of protection of the service.
7. At this juncture the Counsel for the Petitioner submits that so far as the challenge to the impugned order dated 11.01.2016 is concerned the same was already subjected to challenge in a bunch of Writ Petitions which were decided by the Coordinate Bench of this Court on 01.07.2016, the lead case being Writ Petition (S) No. 147/2016 and analogues petitions. All these Writ Petitions were allowed and the impugned order was held bad in

law to the extent of issuance of directions in taking action against the persons who were going to get the protection of employment on the basis of the instruction dated 01.10.2011. It was also contended that the said judgment dated 01.07.2016 passed by the single bench of this Court was subjected to challenge in a bunch of Writ Appeal lead among which being the Writ Appeal No. 531/2016. The Division Bench upholding the judgment of the Single Bench, only clarified the entitlement of the instruction dated 01.10.2011 and notification dated 11.01.2016 to the extent that the protection of service under similar circumstances can be extended to only those employees who have obtained employment prior to 28.11.2000 i.e. the date on which the judgment of the Supreme Court in the case of *Milind* was pronounced. In other words the Division Bench has clarified it holding the benefits of protection of service may not be applied to those persons / employees/ Petitioners who have obtained employment subsequent to 28.11.2000. The Petitioner herein also admittedly was given appointment much prior to the judgment of *Milind* being passed.

8. Learned Counsel for the State perusing the record does not dispute the fact that the present case also is squarely covered by the two decision of the Single Bench as well as the Division Bench of this Court. The state Counsel also does not dispute the fact that it is the same impugned notification which were under challenge before the Coordinate Bench as well as the Division Bench of this Court and has no objection if the present Petition also be decided in the similar terms.

9. In view of the submissions made by the Counsel appearing on either side and taking into consideration the judgment dated 01.07.2016 passed by the Coordinate Bench of this Court and which has been further affirmed by the Division Bench vide its judgment dated 14.02.2017, this Court has no hesitation in reaching to the conclusion that since the Petitioner's appointment also was prior to 28.11.2000 the Petitioner is also entitled for the protection of his employment in similar terms.

10. In view of the same the present Writ Petition stands allowed to the extent that the Petitioner shall be entitled for protection of his service as has been given to other similarly placed persons by the Government of Chhattisgarh pursuant to the instruction dated 01.10.2011. However, the Petitioner shall not be entitled for any benefits of reservation.

11. The Present Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE