

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.244 of 2015

Order reserved on: 2-12-2016

Order delivered on: 2-1-2017

Dilip Hedau, S/o Shri Hatiram Hedau, aged about 54 years,
residing at E-9, Green Park Colony, Vishal Nagar, Raipur (C.G.)
- 492001

---- Petitioner

Versus

1. Chhattisgarh Hastashilp Vikas Board, through its Chairman,
Chhattisgarh Haat Campus, Opposite Mahalakshmi Cloth
Market, Thana Pandri, Raipur (C.G.) - 492001
2. Managing Director, Chhattisgarh Hastashilp Vikas Board,
Chhattisgarh Haat Campus, Opposite Mahalakshmi Cloth
Market, Thana Pandri, Raipur (C.G.) - 492001
3. Secretary, Department of Gramudyog, Government of
Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur,
Thana Mandir Hasod, District Raipur (C.G.)
4. Secretary, Department of General Administration, Government of
Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur,
Thana Mandir Hasod, District Raipur (C.G.)
5. High Power Caste Scrutiny Committee, Through its Chairman,
Pt. Deen Dayal Upadhyay Nagar, Sector-4, Raipur, Distt. Raipur
(C.G.)

---- Respondents

For Petitioner: Mr. Kishore Shrivastava, Senior Advocate with
Mr. Abhishek Sinha, Mr. Sanjay Tamrakar and
Mr. Ghanshyam Patel, Advocates.

For Respondents No.1 and 2: -

Mr. Jitendra Pali, Advocate.

For State/Respondents No.3 to 5: -

Mr. Prafull Bharat, Additional Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein seeks to challenge legality, validity and correctness of the impugned order dated 19-12-2014 passed by respondent No.2 Managing Director, Chhattisgarh Hastshilp Vikas Board, by which the petitioner's services have been dismissed / terminated.

2. Essential facts requisite to judge the correctness of the plea raised at the Bar are as under: -

2.1) The petitioner was appointed on the substantive post of Manager, Hastshilp Vikas Nigam by order dated 7-5-1994 against the reserved category of Scheduled Tribe Halba. His caste certificate was scrutinized by the Caste Scrutiny Committee constituted by the State Government pursuant to the order of the Supreme Court in the matter of **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others**¹ and an order cancelling the caste certificate granted to the petitioner on 9-8-1991 and 20-5-2000 was passed on 25-9-2006.

2.2) The petitioner preferred W.P. No.6100/2006 before this Court questioning the order passed by the Caste Scrutiny Committee, that writ petition was allowed and the order passed by the Caste Scrutiny Committee was set aside by this Court on 21-10-2010 and the Committee was directed to proceed with the

¹ (1994) 6 SCC 241

matter in accordance with the decision of the Supreme Court rendered in **Madhuri Patil** (supra) and **Director of Tribal Welfare, Government of A.P. v. Laveti Giri and another**² and further explained by this Court in the matter of **Dinesh Kumar Bhagoria v. State of Chhattisgarh and others**³. Again the matter was examined by the Caste Scrutiny Committee and the said Committee on 24-1-2012, passed an order maintaining the earlier order and held that the petitioner had obtained incorrect caste certificate of Halba (Hedau) from the Naib Tahsildar, Chhuikhadan, Distt. Rajnandgaon on 9-8-1991 and of Halba (Scheduled Tribe) from the Sub-Divisional Officer, Jagdalpur on 20-5-2000 and therefore his caste certificate is cancelled with immediate effect and the employer can proceed in accordance with law. Therefore, the petitioner made representations on 2-2-2012 and 16-3-2012 to the State Government claiming promotion after opening sealed envelope for the said post. Meanwhile, respondents No.1 and 2 sought instructions from the Government by memo dated 6-9-2012 with reference to the order dated 24-1-2012 passed by the Caste Scrutiny Committee and the State Government by its memo dated 19-10-2012 held that in accordance with the circular of the State Government dated 1-10-2011, the petitioner's appointment on the post would not be affected and further he will not be entitled for the benefit of reservation with effect from 28-11-2000. Thereafter, the State

² (1995) 4 SCC 32

³ W.P.(S)No.3338/2007 decided on 19-8-2010

Government on 8-5-2013 with reference to the memo dated 22-4-2013 issued by respondents No.1 and 2, clarified that the Managing Director of Chhattisgarh Hastshilp Vikas Board himself is the competent authority and he can initiate disciplinary proceeding against the petitioner which was reiterated by memo dated 25-4-2013. Thereafter, the petitioner filed W.P.(S) No.1180/2013 seeking direction to respondents No.1 and 2 herein to open the closed envelope kept pursuant to the proceedings of the Departmental Promotion Committee dated 21-10-2011 for promotion to the post of General Manager pertaining to the petitioner and W.P.(S)No.2492/2013 questioning the order dated 8-5-2013 issued by the Government of Chhattisgarh. W.P.(S)No.1180/2013 was disposed of by order dated 24-11-2014 by this Court holding that the petitioner can move fresh representation depending upon the outcome of the disciplinary enquiry initiated against him pursuant to order dated 8-5-2013 and also holding that the State Government has only directed for initiation of disciplinary proceedings against the petitioner and the authorities of the Board have not passed any final order against the petitioner, pursuant to the order dated 8-5-2013. However, W.P.(S)No.2492/2013 was dismissed. Against the common order dated 24-11-2014 passed in W.P.(S) Nos.1180/2013 & 2492/2013, the petitioner filed W.A. No.479/2014 and that was also dismissed.

2.3) Thereafter, straightway, respondents No.1 and 2 Board

have passed the order of dismissal.

2.4) Feeling aggrieved against that order of dismissal from service, this writ petition has been filed by the petitioner stating inter alia that the petitioner was working on the regular post of Manager in respondents No.1 and 2 Board, he has been given the benefit of circular dated 1-10-2011 after decision of the Caste Scrutiny Committee, by the State Government and it has been only held that his services will not be affected and further he will not be entitled for promotion on the basis of his caste and as such that order has not been challenged and thus it has attained finality. It was further pleaded that the State Government by order dated 8-5-2013 only held that the respondent Board is competent to take disciplinary action against the petitioner and is at liberty to initiate disciplinary proceeding against him, but no disciplinary action was taken and straightway, the order of dismissal has been passed though liberty was granted to the petitioner while dismissing the writ petition filed by him against the order dated 8-5-2013 to move fresh representation depending upon the outcome of the disciplinary enquiry. It was also pleaded that at least minimal opportunity of hearing has not been afforded to the petitioner before passing of the order of dismissal, therefore, the impugned order of dismissal be set aside with consequential service benefits.

3. Return has been filed by respondents No.1 and 2 opposing the writ petition stating inter alia that on the basis of circular dated

24-7-2008 issued by the State Government, since the petitioner's caste certificate was found false, on the instruction of the State Government, no departmental enquiry is necessary and his services have been terminated without holding departmental enquiry.

4. The State / respondents No.3 to 5 have also filed return stating inter alia that the petitioner was employee of respondents No.1 and 2 Board, the said Board is competent to defend itself, it is a separate entity and it has separate rules and regulations, therefore, the State / respondents No.3 to 5 have no role to play in the instant matter.
5. No rejoinder has been filed, however, during the pendency of the petition, an application dated 11-2-2016 was filed by the petitioner for amending the writ petition to bring on record certain benefits given to the Caste Scrutiny Committee by way of circular dated 1-10-2011 and they were brought on record by granting the amendment.
6. Mr. Kishore Shrivastava, learned Senior Advocate appearing on behalf of the petitioner, would submit as under:-
 - 6.1) That, the petitioner was appointed on the substantive post of Manager of respondents No.1 and 2 Board and was duly confirmed on the said post and without holding any departmental enquiry, his services could not have been terminated in violation of Article 311(2) of the Constitution of India.

6.2) That, after the order of the Caste Scrutiny Committee, the State Government, on the instructions sought by respondents No.1 and 2, extended the benefit of circular dated 1-10-2011 holding that the petitioner's services will be protected, but he will not be entitled for the benefit of reservation on the basis of his caste and that order has attained finality and is binding between the parties inter se, as it has not been challenged by the respondents and it has become final. Therefore, in the later point of time, respondents No.1 and 2 cannot resile from their earlier decision taken with regard to the petitioner and say that the petitioner is not entitled to protect his services. He would rely upon a decision of the Supreme Court in the matter of **State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others**⁴ to buttress his submission.

6.3) That, the petitioner's service conditions are governed by the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules of 1966') and those are the Rules enacted by the proviso to Article 309 of the Constitution of India and those Rules are applicable to the respondent Board and will prevail over the circular dated 24-7-2008. To buttress his submission he would rely upon the decisions rendered by the Supreme Court in the matters of **Union of India and others v. Somasundaram Viswanath and others**⁵ (paragraph 6) and **Paluru Ramkrishnaiah and others**

4 (1996) 1 SCC 435

5 (1989) 1 SCC 175

v. Union of India and another⁶ (paragraph 11).

6.4) That, the order dated 8-5-2013 passed by the State Government directing/instructing respondents No.1 and 2 to initiate departmental enquiry was challenged by the petitioner in W.P.(S)No.2492/2013 in which this Court has clearly opined that only initiation of departmental enquiry against the petitioner has been passed and therefore the course open to the Board is to initiate departmental enquiry against the petitioner and give opportunity to the petitioner to establish that his caste certificate was not issued fraudulently and also in that departmental enquiry he could have established that he is entitled for the benefit of the decision rendered by the Supreme Court in the matter of **State of Maharashtra v. Milind and others**⁷, as such, the petitioner was deprived of the opportunity to establish such plea for want of departmental proceeding.

6.5) That, the benefit of circular dated 1-10-2011 has been extended to the similarly situated persons and the same has been denied to the petitioner.

7. Mr. Jitendra Pali, learned counsel appearing for respondents No.1 and 2, would submit that after the order of the Caste Scrutiny Committee, respondents No.1 and 2 sought instructions from the Government and the Government has clearly informed by memo dated 8-5-2013 that the Board is competent to initiate

⁶ (1989) 2 SCC 541

⁷ (2001) 1 SCC 4

departmental enquiry against the petitioner and therefore based upon the instructions of the Government and based upon the circular of the State Government dated 24-7-2008, the petitioner's services were dispensed with as it was not necessary to hold departmental enquiry against him because the order of termination is based on the circular dated 24-7-2008 and therefore no fault can be found with the order of respondents No.1 and 2 terminating the services of the petitioner as such, the writ petition deserves to be dismissed.

8. Mr. Prafull Bharat, learned Additional Advocate General appearing for the State/respondents No.3 to 5, would submit that the petitioner has obtained forged caste certificate from the Naib Tahsildar as well as from the Sub-Divisional Officer and therefore no departmental enquiry would be necessary to terminate his services. In support of his plea he would rely upon a decision of the Supreme Court in the matter of **Supdt. of Post Offices & Ors. v. R. Valasina Babu**⁸ (paragraphs 15 and 16) in which it has been held that in case of fraud, it is not necessary to initiate departmental enquiry while terminating the services. He would further submit that the Supreme Court in the matter of **Union of India v. Dattatray S/o Namdeo Mendhekar and others**⁹ has clearly held that in case of Government servant obtaining caste certificate based on fraud, he is not entitled to be retained in service and no departmental enquiry is necessary

8 AIR 2007 SC 1126

9 (2008) 4 SCC 612

and in that situation, **Milind's** case (supra) would not be applicable. He would also submit that there is distinction between termination on the basis of misconduct and termination on the basis of fraud and in case of termination based on fraud, no departmental enquiry is necessary.

9. Mr. Kishore Shrivastava, learned Senior Advocate in rejoinder submission while replying the submission of Mr. Jitendra Pali, would submit that the Rules of 1966 for taking departmental action against the petitioner are the Rules enacted under Article 309 of the Constitution of India and those Rules would prevail over the circular dated 24-7-2008 issued by the State Government in exercise of executive power conferred under Article 162 of the Constitution of India, rather the Rules enacted under the proviso to Article 309 of the Constitution of India would be legislative in character and therefore the said circular would not be applicable meaning thereby, departmental proceeding has to be instituted and initiated for terminating the services of the petitioner. He would also submit that if departmental enquiry could have been initiated against the petitioner, the petitioner could have an opportunity to establish the alleged allegation of fraud which the respondents are alleging, as fraud in fact has to be proved and unless a duly constituted charge-sheet is served relying upon the allegations of fraud, the petitioner is deprived of establishing that no such fraud has been committed and as such he is entitled for the benefit of judgment rendered by the

Supreme Court in **Milind's** case (supra) which has also been held entitled by the State Government on 19-10-2012. He would also rely upon the order dated 28-12-2015 passed by the Caste Scrutiny Committee to contend that by this order, the allegations of fraud are washed away.

10. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also gone through the record extensively and thoroughly.

11. The Chhattisgarh Hastshilp Vikas Board is an undertaking of the State of Chhattisgarh. Services of its employees are governed by the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 which are the rules enacted under the proviso to Article 309 of the Constitution of India. The petitioner is a member of Koshti community and he was granted the certificate of Scheduled Tribe Hedau (Halba) on 9-8-1991 by the Naib Tahsildar, Chhuikhadan, Distt. Rajnandgaon. He was appointed on the substantive post of Assistant Manager by the M.P. Hastshilp Vikas Nigam on 8-6-1992 and thereafter, again appointed on the post of Manager by that Board on 7-5-1994 against the Scheduled Tribe category on the basis of caste certificate granted by the Naib Tahsildar - competent authority on 9-8-1991. On 20-5-2000, he was again issued Scheduled Tribe certificate by the Sub Divisional Officer, Jagdalpur. Thereafter, he was allocated to the State of Chhattisgarh and on 25-9-2006, the High Power Caste Scrutiny Committee, Chhattisgarh,

revoked the caste certificate of the petitioner holding that he does not belong to Scheduled Tribe (Halba), rather he is Halba Koshti which is not a declared Scheduled Tribe. The petitioner questioned the order dated 25-9-2006 passed by the Caste Scrutiny Committee by way of W.P.No.6100/2006 and the writ petition was allowed by order dated 21-10-2010 and the order passed by the Caste Scrutiny Committee dated 25-9-2006 was quashed directing the Committee to proceed with the matter in accordance with the decision of the Supreme Court rendered in **Kumari Madhuri Patil** (supra), **Laveti Giri's** case (supra) and the decision of this Court in **Dinesh Kumar Bhagoria** (supra). The Caste Scrutiny Committee thereafter, again by its order dated 24-1-2012 revoked the caste certificates issued in favour of the petitioner on 9-8-1991 and 20-5-2000 holding that the petitioner has wrongly obtained the certificate of Scheduled Tribe contrary to the rules of the Central Government and directed the employer to proceed in accordance with law. Thereafter, the respondent Board by its memo dated 6-9-2012 sought instructions from the State Government informing that the petitioner's caste certificate (Scheduled Tribe) has been revoked on which it has been instructed by the State Government that by revocation of the petitioner's caste certificate by the High Powered Caste Scrutiny Committee, the petitioner's services will not be affected, but he will not be entitled for further promotion in the reserved category after 28-11-2000. For the sake of

convenience, the memo dated 19-10-2012 is reproduced herein-
below: -

प्रति,

प्रबंध संचालक,
छत्तीसगढ़ हस्तशिल्प विकास बोर्ड,
रायपुर

विषय — श्री दिलीप हेडाऊ, प्रबंधक के पदोन्नति संबंधी बंद
लिफाफा खोलने के संबंध में मार्गदर्शन।

संदर्भ — आपका पत्र क्रमांक-2056/स्थापना/2012-13,
दिनांक 06-09-2012

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उपर्युक्त विषयान्तर्गत संदर्भित पत्र के संबंध में लेख है कि उच्च स्तरीय छानबीन समिति के निर्णय अनुसार श्री दिलीप हेडाऊ, प्रबंधक की वास्तविक जाति कोष्टी पाए जाने से उनके द्वारा प्राप्त "हल्बा अनुसूचित जनजाति" के प्रमाण-पत्र को निरस्त किया गया है।

सामान्य प्रशासन विभाग के परिपत्र दिनांक 01-10-2011 के अनुसार हल्बा कोष्टी/कोष्टी जाति के व्यक्ति जिन्हें सक्षम प्राधिकारी द्वारा अनुसूचित जनजाति प्रमाण-पत्र जारी किया गया है और उन्हें आरक्षित पद पर नियुक्ति दी गई है उनकी नियुक्तियाँ प्रभावित नहीं होगी किंतु उन्हें दिनांक 28-11-2000 के बाद आरक्षण का लाभ नहीं दिया जाएगा।

अतः सामान्य प्रशासन विभाग के उक्त परिपत्र के आलोक में यह सुझाव दिया जाता है कि श्री हेडाऊ, प्रबंधक की नियुक्ति प्रभावित नहीं होगी तथा दिनांक 28-11-2000 के पश्चात् एवं भविष्य में इन्हें सामान्य श्रेणी (अनारक्षित वर्ग) का मानते हुए पदोन्नति के प्रकरण के नियमानुसार कार्यवाही सुनिश्चित किया जाए।

सही/—
(के०एस० गुर्जर)
अवर सचिव

छत्तीसगढ़ शासन, ग्रामोद्योग विभाग

12. The aforesaid instructions of the State Government were accepted by the respondent Board and it was not questioned by the Board. Thereafter, the respondent Board again sought instructions by letter dated 22-4-2013 which was replied by the State Government on 8-5-2013 holding that the petitioner is employee of the Board and the Managing Director is the competent authority to take action against its officer/employee.
13. The petitioner questioned the order dated 8-5-2013 in W.P.(S) No.2492/2013 seeking quashment and also filed W.P.(S) No.1180/2013 seeking direction to open the sealed envelope pertaining to the petitioner pursuant to the proceedings of the Departmental Promotion Committee dated 21-10-2011. A coordinate Bench of this Court by its order dated 24-11-2014 held that the State Government has only directed for taking disciplinary action by order dated 8-5-2013 and the authorities of the Board have not taken any final order against the petitioner and also disposed of the writ petition filed by the petitioner seeking opening of sealed envelope of the DPC reserving liberty in favour of the petitioner to move fresh representation depending upon the outcome of the disciplinary enquiry initiated by the petitioner. The order dated 24-11-2014 passed in W.P.(S) Nos.1180/2013 and 2942/2013 was affirmed in W.A. No.479/2014 filed at the instance of the petitioner. It is the case of the petitioner that thereafter, no departmental enquiry was initiated against him, no opportunity was afforded to him and

straightway the impugned order dated 19-12-2014 has been passed dismissing the petitioner from the post of Manager of the respondent Board.

14. The principal contention made by Mr. Kishore Shrivastava, learned Senior Advocate appearing for the petitioner, is that the petitioner was working on the substantive post of Manager of the Board duly appointed on the said post though against the Scheduled Tribe category and further his caste certificate has been revoked yet the Government on 19-10-2012 has clearly held that in view of the circular dated 1-10-2011, the petitioner's appointment shall not be affected, but he will not be entitled for the benefit of promotion on the basis of his reserved category status and therefore unless a regular departmental enquiry is held in accordance with the Rules of 1966, which are the rules enacted under the proviso to Article 309 of the Constitution, his dismissal is violative of the binding rules regulating the service conditions of the petitioner.

15. Whereas, according to Mr. Jitendra Pali and Mr. Prafull Bharat, learned counsel appearing for the respondents, since the petitioner's caste certificate has been found false and the circular of the State Government dated 24-7-2008 provides that in case of employment having been obtained on the basis of forged caste certificate, departmental enquiry is not necessary and therefore in case of the petitioner, holding of regular departmental enquiry for terminating the services was not

required and he has rightly been terminated from the post of Manager and he has rightly been dismissed.

16. It is not in dispute that the petitioner's services in the Board are governed by the Rules of 1966. The Rules of 1966 which is the service rule has been enacted in exercise of the powers conferred by the proviso to Article 309 of the Constitution which has been enacted on 30-12-1966 published in the M.P. Gazette on 7-1-1967 and came into force from 7-1-1967. In the said Rules, penalty of removal from service is the major penalty under Rules 10(viii) and 10(ix) of the Rules of 1966. For imposing major penalty, regular departmental enquiry is imperative. Whereas, the State Government and the Board relied upon the circular dated 24-7-2008 to maintain that in case of false and forged caste certificate, regular departmental enquiry is not imperative. Therefore, the question would be in case of conflict between the rules made under the proviso to Article 309 of the Constitution and the executive instructions issued under Article 162 of the Constitution; which will prevail.

17. The question so raised is no longer *res integra* and stands authoritatively decided by Their Lordships of the Supreme Court in the matter of **Union of India and others v. Somasundaram Viswanath and others**¹⁰ in which Their Lordships have held that in case of conflict between the Rules made made under proviso to Article 309 of the Constitution and the executive instructions,

10 (1989) 1 SCC 175

the Rules framed under proviso to Article 309 would prevail.

Paragraph 6 of the report reads as follows: -

"6. It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate legislature the law made by the appropriate legislature prevails. ..."

18. The aforesaid proposition of law has been followed subsequently by the Supreme Court in the matter of **Paluru Ramkrishnaiah and others v. Union of India and another**¹¹ by holding that an executive instruction can make a provision only with regard to a matter which is not covered by the Rules but such executive instruction cannot override any provision of an existing Rule.
19. Therefore, in this case, there is not an iota of doubt that the Rules of 1966 providing holding of departmental enquiry for imposition of major penalty against the servant to whom the rule is applicable and no major penalty of dismissal can be imposed upon a Board servant without holding regular departmental enquiry.

¹¹ (1989) 2 SCC 541

20. The Supreme Court in the matter of **Union of India and others v. M. Bhaskaran**¹² has held that employment snatched by workman on basis of bogus and forged casual labourer service cards is liable to be recalled and was voidable at option of employer, particularly when order of removal was passed after holding departmental proceedings and hearing workmen. However, in a very recent pronouncement in the matter of **Avtar Singh v. Union of India and others**¹³, where the Supreme Court was considering the question of suppression of information or submitting false information in the verification form submitted at the time of appointment as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case, a three-Judge Bench of the Supreme Court while referring **M. Bhaskaran's** case (supra) has observed that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. It was observed in paragraph 25 as under: -

"25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (*AIR 1996 SC 686*) (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of

12 AIR 1996 SC 686

13 AIR 2016 SC 3598

incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information."

21. At this stage, it would be appropriate to notice the two judgments cited by Mr. Prafull Bharat. In **R. Valasina Babu's** case (supra), it has been held that if the employee concerned had played fraud in obtaining employment, he should not be allowed to get the benefits thereof, as the foundation of employment collapses and it is not necessary to initiate departmental proceeding against the respondent. This case is clearly not applicable to the facts of the present case though it is a case of the respondent Board. It is appropriate to notice that the petitioner's caste certificate has been revoked by the Caste Scrutiny Committee holding that he has obtained caste certificate wrongly. Thereafter, the State Government has also on instructions being sought by the Board, has clearly held that the petitioner's employment will not be affected by the revocation of his caste certificate but he will not be entitled for promotion on the basis of his ST status in future by memo dated 19-10-2012 which has become final. On the basis of some complaint, the respondent Board has terminated the services of the petitioner. Fraud in obtaining certificate, if any, is a pure question of fact. It has to be established in some proceeding by recording oral as well as documentary evidence

and particularly if departmental inquiry could have been instituted and in that proceeding fraud is established, then it can be said that the petitioner is guilty of fraud in obtaining employment.

22. True meaning and purport of "fraud" has recently been considered by the Supreme Court in the matter of **A. Ayyasamy v. A. Paramasivam and others**¹⁴ as under: -

"10. 'Fraud' is a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his detriment. Fraud can be of different forms and hues. Its ingredients are an intention to deceive, use of unfair means, deliberate concealment of material facts, or abuse of position of confidence. The Black's Law Dictionary defines 'fraud' as a concealment or false representation through a statement or conduct that injures another who relies on it". ..."

23. Fraud is thus, a pure question of fact and it has to be established by leading evidence by the parties. Here, in the present case, neither any specific charge-sheet has been issued to the petitioner alleging fraud in obtaining certificate nor it has been established after holding inquiry that he has obtained the caste certificates by playing fraud. Therefore, there is not an iota of evidence placed on record to establish fraud against the petitioner. In the circumstances, the decisions cited by respondents No.3 to 5 / State are clearly distinguishable and do not apply to the facts of the present case and the decision rendered by the Supreme Court in **Avtar Singh** (supra) would apply with full force in which Their Lordships not only in

14 AIR 2016 SC 4675

paragraph 25 have clearly held that in case of confirmed employee holding a civil post and protection of Article 311(2) of the Constitution of India, due inquiry has to be held before terminating the services and further held that in case of employee confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form. Therefore, the petitioner's termination without holding departmental inquiry as contemplated under the Rules of 1966 is in complete breach of the Rules and deserves to be quashed, as the petitioner's services being holder of civil post cannot be terminated *dehors* the applicable service rules i.e. the Rules of 1966.

24. There is one more additional reason for not upholding the impugned order. The petitioner was granted the benefit of reserved category status Scheduled Tribe holding him belonging to Scheduled Tribe under Entry No.17 (Halba) under the Constitution (Scheduled Tribe) Order, 1950, though he was Halba Koshti and thereafter, on 8-6-1992, he was appointed on the post of Assistant Manager and thereafter, on the post of Manager on 7-5-1994. The petitioner obtained such employment much before and according to him, he is entitled for the benefit of the decision rendered in **Milind's** case (supra) whereas, according to the State/respondents No.3 to 5, the decision rendered by the Supreme Court in **Dattatray's** case (supra)

would be applicable and he is not entitled for the benefit.

25. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice the judgment of the Supreme Court in **Milind's** case (supra) which provided for service protection. In **Milind's** case (supra), Their Lordships of the Supreme Court have formulated two questions for consideration in the judgment which state as under: -

“(1) Whether at all, it is permissible to hold inquiry and let in evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950?

(2) Whether “Halba-Koshti” caste is a sub-tribe within the meaning of Entry 19 (Halba/ Halbi) of the said Scheduled Tribes Order relating to the State of Maharashtra, even though it is not specifically mentioned as such?”

26. Their Lordships of the Supreme Court while answering the above-stated questions in negative were pleased to hold that it is not at all permissible to hold any inquiry to decide that any community or group is included as the synonym to a tribal community mentioned in the Constitution (Scheduled Tribes) Order, 1950 and secondly, the Koshti caste has no identity with Halba which is a Scheduled Tribe and thus, the Koshti is not included in Halba. However, the Supreme Court while considering the fact of completion of MBBS course by Milind, respondent No.1 therein, about 15 years back, in that case, granted protection to his degree, however, denying any further

benefit held as under: -

“..... 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.”

27. Thereafter, the Supreme Court in the matter of **Punjab National Bank and another v. Vilas S/o Govindrao Bokade and another**¹⁵ decided on 22-3-2007 while considering the controversy about implication and application of **Milind's** case (supra) has upheld the decision of the High Court granting service protection to the concerned employee in light of **Milind's** case (supra) holding that the judgment of **Milind's** case would be applicable to the persons affected with the subject matter Halba-Koshti. Paragraph 20 of the report states as under: -

“20. The situation is no different in case of the present respondent. He also came to be appointed and/or promoted way back in the year 1989 on the basis of his caste certificate which declared him to be Scheduled Tribe. Ultimately, it was found that since a "Koshti" does not get the status of a Scheduled Tribe, the Caste Scrutiny Committee invalidated the said certificate holding that respondent was a Koshti and not a Halba. I must hasten to add that there is no finding in the order of the Caste Scrutiny Committee that the petitioner lacked in bona fides in getting the certificate. I say this to overcome the observations in para 21 in Sanjay K. Nimje case¹⁶.

15 (2008) 14 SCC 545

16 State of Maharashtra v. Sanjay K. Nimje, (2007) 14 SCC 481 : (2007) 2 Scale 214

But it is not a case where the respondent pleaded and proved bona fides. Under such circumstances the High Court was fully justified in relying on the observations made in Milind case. The High Court has not referred to the judgment and order in Civil Appeal No.3375 of 2000 decided on 12-12-2000 to which a reference has been made above. However, it is clear that the High Court was right in holding that the observations in Milind case apply to the case of the present respondent and he stands protected thereby.”

28. Similarly, in the matter of **Kavita Solunke v. State of Maharashtra and others**¹⁷ Their Lordships of the Supreme Court have held that when there is no accusation of fabrication, manipulation or concealment, the refusal of benefit flowing from the judgment of the Supreme Court in **Milind's** case (supra) would be unjustified and distinguished the earlier two decisions of the Supreme Court on the point in line with **Dattatray's** case (supra) namely **Sanjay K. Nimje's** case (supra) and **Addl. General Manager—Human Resource, Bharat Heavy Electricals Ltd. v. Suresh Ramkrishna Burde**¹⁸, and held as under in paragraphs 19 and 20 of **Kavita Solunke's** case (supra): -

“19. Our attention was drawn by the counsel for the respondents to the decision of this Court in **BHEL v. Suresh Ramkrishna Burde**, (2007) 5 SCC 336, in which the protection against ouster granted by the decision in Milind case was not extended to the respondent therein. A bare reading of the said decision, however, shows that there is a significant difference in the factual matrix in which the said case arose for consideration. In Burde case, the Scrutiny Committee had found that the caste certificate was false and, therefore, invalid. That was not the

17 (2012) 8 SCC 430

18 (2007) 5 SCC 336

position either in Milind case nor is that the position in the case at hand. In Milind case, the Scrutiny Committee had never alleged any fraud or any fabrication or any misrepresentation that could possibly disentitle the candidate to get relief from the Court. In the case at hand also there is no such accusation against the appellant that the certificate was false, fabricated or manipulated by concealment or otherwise. Refusal of a benefit flowing from the decision of this Court in Milind case may, therefore, have been justified in Burde case but may not be justified in the case at hand where the appellant has not been accused of any act or omission or commission of the act like the one mentioned above to disentitle her to the relief prayed for. The reliance upon Burde case, therefore, is of no assistance to the respondent.

20. The decision of this Court in [State of Maharashtra v. Sanjay K. Nimje](#), (2007) 14 SCC 481, relied upon by the learned counsel for the respondents was distinguished even by V.S. Sirpurkar, J. in Vilas case. The distinction is primarily in terms whether the candidate seeking appointment or admission is found guilty of a conduct that would disentitle him/her from claiming any relief under the extraordinary powers of the Court. This Court found that if a person secures appointment or admission on the basis of false certificate, he cannot retain the said benefit obtained by him/her. The courts will refuse to exercise their discretionary jurisdiction depending upon the facts and circumstances of each case.”

29. Recently, the point in dispute was again considered by the Supreme Court and precisely answered in the matter of **Shalini v. New English High School Association and others**¹⁹ which has considered the implications of **Dattatray's** case (supra) and held as under: -

“8. A reading of the impugned judgment²⁰ 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-

19 (2013) 16 SCC 526

20 Shalini v. New English High School Assn., LPA No.527 of 2009, order dated 25-11-2009 (Bom)

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.

9. 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 the 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.”

30. Finally, Their Lordships of the Supreme Court in an extremely recent judgment in the matter of **R. Unnikrishnan and another v. V.K. Mahanudevan and others**²¹ while dealing with almost similar issue held as under: -

“41. In the instant case there is no evidence of lack of bona fides by the respondent. The protection available under the decision of Milind case could, therefore, be admissible even to the respondent. It follows that even if on a true and correct construction of the expression “Thandan” appearing in the Constitution (Scheduled Castes) Order, 2007 did not include “Ezhuvas” and “Thiyyas” known as “Thandan” and assuming that the two were different at all relevant points of time, the fact that the position was not clear till the Amendment Act of 2007 made a clear distinction between the two, would entitle all those appointed to serve the State up to the date the amending Act came into force, to continue in service.”

31. At this stage, it would be apparent to note the decision rendered by the Supreme Court in **Dattatray's** case (supra), decided on 15-2-2008, in which three-Judge Bench of the Supreme Court has held that no protection is available in light of **Milind** case to a person who had falsely claimed that he belongs to Scheduled Tribe as in that case, the respondent therein was claiming to be Scheduled Tribe Halba and was appointed as Assistant Professor of Psychiatry in G.B. Pant Hospital, New Delhi against a post reserved for Scheduled Tribes and on verification of the certificate of Scheduled Tribe it was disclosed that he did not belong to the Halba tribe and there was an allegation that he has

21 (2014) 4 SCC 434

falsely claimed that he belonged to the said Scheduled Tribe. It has been held in paragraphs 6 and 7 as under: -

"6. In this context, we may also refer to the decisions in [Bank of India v. Avinash D. Mandivikar](#)²² and [Addl. GM-Human Resource, Bharat Heavy Electricals Ltd. v. Suresh Ramkrishna Burde](#), 2007(5) SCC 336, wherein this Court held that when a person secures appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. In the latter case, this Court explained Milind thus: (Suresh Ramkrishna Burde case, SCC p. 340, para 7)

"7. The High Court has granted relief to the respondent and has directed his reinstatement only on the basis of the Constitution Bench decision of this Court in [State of Maharashtra v. Milind](#). In our opinion the said judgment does not lay down any such principle of law that where a person secures an appointment by producing a false caste certificate, his services can be protected and an order of reinstatement can be passed if he gives an undertaking that in future he and his family members shall not take any advantage of being member of a caste which is in reserved category."

This Court further held that even in cases of admission to educational institutions, the protection extended by Milind will be applicable only where the candidate had successfully completed the course and secured the degree, and not to cases where the falsehood of the caste certificate is detected within a short period from the date of admission.

7. We are of the view that the High Court failed to appreciate the ratio of Milind. Having held that the first respondent had falsely claimed that he belonged to a Schedule Tribe, it wrongly extended him the benefit of continuing in employment."

32. Now, if the facts of the case in hand are examined in light of judgments rendered by the Supreme Court in above-stated cases, it would appear that the petitioner was granted certificate

22 (2005) 7 SCC 690 : 2005 SCC (L&S) 1011

of Scheduled Tribe on the basis that he belongs to Halba Koshti which is also included in Entry No.17 of the Constitution (Scheduled Tribe) Order, 1950 pursuant to which he was given appointment on the reserved post much prior to 28-11-2000, the date on which the decision was rendered by the Supreme Court in **Milind** (supra). The circular dated 10-8-2010 issued by the Central Government is based upon the judgment of the Supreme Court in **Milind** (supra) and that has also been considered in the subsequent decision of the Supreme Court in **Vilas's** case (supra).

33. Thus, the Supreme Court in **Milind** (supra) as well as in **Vilas's** case (supra) has clearly held that the candidates belonging to Halba Koshti or Koshti caste, whose appointment had become final on or before 28-11-2000, the date of judgment of the Supreme Court in **Milind** (supra), shall not be affected, but they will not be entitled for their further service benefits and in **Dattatray's** case (supra) it has been held that the person who has been granted social status certificate on the basis of fraud or misrepresentation will not be entitled for service benefits.

34. From the aforesaid analysis, it is quite vivid that the petitioner was granted the status of ST category by the competent authority way back and the date of issuance of caste certificate is 9-8-1991. The petitioner was granted the certificate of Scheduled Tribe (Halba) bona fide which was found to be Halba Koshti. The legal position has been made clear by the

Constitution Bench decision in this regard by the Supreme Court in the judgment of **Milind** (supra) delivered on 28-11-2000 protecting the service benefit of those appointments that have become final. In view of that, the State Government also in its memo dated 19-10-2012 had already held that the petitioner's appointment will not be affected by revocation of caste certificate but he will not be entitled for further promotion on the reserved category.

35. Therefore, I am of the considered opinion that since the petitioner was bona fide granted ST status by the competent authority long back in the year 1991 prior to the entry of the petitioner in service and his appointment has become final on or before 28-11-2000, he is entitled for service protection as per the decision rendered by the Supreme Court in **Milind's** case (supra) followed by **Vilas's** case (supra), **Kavita Solunke** (supra) and **R. Unnikrishnan** (supra), and that is the reason why the State Government also on instructions sought by the Board has clearly informed by memo dated 19-10-2012 that the petitioner's appointment will not be affected by revocation of caste certificate but he will not be entitled for the benefit of promotion on the basis of his reserved category status. Therefore, termination of the petitioner's services only on the basis of revocation of his caste certificate is bad on two counts firstly, without holding departmental enquiry as per the Rules of 1966 his services could not have been terminated and secondly,

he is entitled for service protection on the basis of decision in **Milind's** case (supra) followed by **Vilas's** case (supra), **Kavita Solunke** (supra) and **R. Unnikrishnan** (supra), and as held by the High Powered Caste Scrutiny Committee vide Annexure P-21 dated 28-12-2015.

36.As a fall out and consequence of aforesaid discussion, the order Annexure P-1 dated 19-12-2014 is hereby quashed. Respondents No.1 and 2 are directed to reinstate the petitioner forthwith.

37.The petitioner has also prayed for consequential benefits. The impugned order was passed on 19-12-2014. The petitioner has neither averred in the writ petition nor brought any material on record to hold that during this period i.e. from 19-12-2014 to 2-1-2017, he was not gainfully employed anywhere. The normal rule is a workman whose service has been illegally terminated would be entitled to full back-wages except to the extent during the enforced idleness. (See **M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and others**²³.) Thereafter, in the matter of **M/s. Reetu Marbles v. Prabhakant Shukla**²⁴, Their Lordships of the Supreme Court have emphasized the need for enquiry/material with regard to gainful employment before directing full back-wages particularly when the order is being modified and Their Lordships awarded

23 (1979) 2 SCC 80

24 (2010) 2 SCC 70

only 50% of back-wages from the date of termination of service till reinstatement. Following the law laid down in this regard and considering the facts and circumstances of the case, I deem it appropriate to award only 50% back-wages to the petitioner from the date of termination till the petitioner is reinstated in service, however, he will be entitled for other service benefits as per law.

38.The writ petition is allowed to the extent indicated herein-above.

No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.244 of 2015

Dilip Hedau

Versus

Chhattisgarh Hastashilp Vikas Board and others

HEAD NOTE

In case of conflict between Rules framed under proviso to Article 309 of the Constitution of India and executive instruction, Rules will prevail.

भारतीय संविधान के अनुच्छेद 309 के परन्तुक के अंतर्गत निर्मित नियमों एवं कार्यपालिक निर्देश के मध्य विरोध की स्थिति में, नियम अभिभावी होंगे।