

Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7089 OF 2014

Shri Mahendra Sheshanna Sattellu

..Petitioner.

Vs.

- 1) Union of India
- 2) The Chairman,
Ordinance Factory Board,
- 3) The General Manager
Ammunition Factory, Pune.

..Respondents.

Mr. Chintamani K. Bhangoji i/b Ramchandra K. Mendadkar for Petitioner.
Mr. Vinod Joshi a/w Mr. A.R. Verma for Union of India.

**CORAM: R.M. BORDE AND
A.S. GADKARI, JJ.**

DATE: 24 JANUARY 2017.

JUDGMENT (PER A.S. GADKARI, J.):-

1] Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for respective parties, heard finally.

2] By the present petition under Article 226 of the Constitution of India, the petitioner has challenged the Order dated 5th September 2013 in Original Application No.46 of 2012 passed by the Central Administrative Tribunal, Bombay Bench, Mumbai, dismissing the said Original Application and confirming the penalty of removal from service of the petitioner by the Disciplinary Authority by its Order dated 17th January 2011.

3] The facts which give rise and necessary to decide the present petition, can briefly be stated as under:-

(i) The petitioner's father Shri Sheshanna Laxman Sattellu was an employee of the Ammunition Factory, Kirkee, Pune. He was recruited in the said establishment on 27.9.1949 and superannuated from service w.e.f. 31.8.1991. While entering into the service, the father of the petitioner namely Sheshanna Sattellu had given his caste as S.T. (Manewar). The said caste was recorded in the service record of the father of the petitioner and while issuing the service discharge certificate dated 6.9.1991, the said caste is mentioned therein. That the petitioner's brother and sisters were also issued caste certificate of "S.T. (Mannewar) community on the basis of the statement made by their father.

(ii) The petitioner was appointed on 14.7.1997 as a Mill Write (semi-skilled) with the respondent No.3 against the vacancy reserved for Scheduled Tribe category after following due procedure. The petitioner produced his caste certificate at the time of his appointment. The services of the petitioner were appreciated and he was treated as a highly skilled employee. The petitioner was promoted on 20.5.2003 to the post of Mill Wright (highly skilled). On 13.9.2005, the caste certificate of the petitioner along with other necessary documents were referred by the respondent No.3 to the Scheduled Tribe Certificate Scrutiny Committee, Pune Division, Pune for verification.

(iii) The Scheduled Tribe Certificate Scrutiny Committee invalidated the caste certificate of the petitioner by its Order dated 26th March 2009 on the ground that the petitioner failed to establish his Tribe claim as Mannewar, Scheduled Tribe on documentary evidences and affinity test. The said committee held that, it came to the conclusion that the petitioner does not belong to Mannewar, Scheduled Tribe and therefore his claim towards the same is held to be invalidated. As a consequence of invalidation of the said caste claim, the caste certificate issued by the Tahasildar and the Executive Magistrate, Pune dated 30.10.1991 was cancelled and confiscated.

(iv) After invalidation of the caste certificate of the petitioner, the respondent No.3 issued a chargesheet to the petitioner on 6.7.2009 under the Central Civil Services (Conduct) Rules, 1964 for violation of sub-rule 1(i) and (iii) of Rule 3 of CCS (Conduct) Rules, 1964. The said chargesheet is issued on the ground that the petitioner had submitted false caste certificate at the time of his initial appointment in support of his claim that he belongs to Mannewar Scheduled Tribe and that amounts to gross misconduct as per the CCS (Conduct) Rules, 1964. On 29.7.2010 the petitioner filed reply to the said chargesheet and denied the charges levelled against him. The petitioner also submitted that his father was working in High Explosive Factory, Kirkee, Grade-I Scale and his caste certificate in the service record was registered as "Mannewar Scheduled Tribe".

(v) The Writ Petition No.5878 of 2009 preferred by the petitioner against the Order dated 26.3.2009 passed by the Caste Scrutiny Committee came to be rejected by this Court by its Order dated 5.1.2010

(vi) After conducting disciplinary proceedings against the petitioner on a charge that he submitted false caste certificate in support of his claim that he belongs to Scheduled Tribe community and furnishing false information about his caste certificate for joining the employment to

the post which was reserved for Scheduled Tribe, the Disciplinary Authority i.e. the respondent No.3 passed an Order dated 17th January 2011, thereby imposing the penalty of removal from service w.e.f. 17.1.2011 on the petitioner.

(vii) The appeal preferred by the petitioner against the said Order 17th January 2011 passed by the Disciplinary Authority came to be rejected by the Appellate Authority by its Order dated 30th August 2011. The Appellate Authority endorsed findings recorded by the Disciplinary Authority that the petitioner has submitted false caste certificate for securing the employment with the respondent No.3.

(viii) Being aggrieved by Orders dated 17th January 2011 passed by the Disciplinary Authority i.e. respondent No.3 and dated 30th August 2011 passed by the Appellate Authority i.e. the respondent No.2, the petitioner preferred Original Application No.46 of 2012 before the Central Administrative Tribunal, Bombay Bench, Mumbai. The Tribunal by its Order dated 5th September 2013 dismissed the said Original Application filed by the petitioner. The said Order dated 5th September 2013 passed by the Central Administrative Tribunal in Original Application No.46 of 2012, Order dated 30th August 2011 passed by the Appellate Authority i.e. respondent No.2 and Order dated 17th January 2011 passed by the

Disciplinary Authority i.e. respondent No.3 are impugned in the present petition.

4] The Hon'ble Supreme Court in the case of Shalini Vs. New English High School & Ors, reported in 2014 (2) Mh.L.J. 913, has held that since there was no falsity in the claim of the appellant and as such it cannot be viewed as having filed a 'false' caste certificate, the rigors of section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance of Verification of) Caste Certificate Act, 2000 (23 of 2001) would not apply to the appellant to be debarred from any further advantage.

The Full Bench of this Court in the case of Arun Vishwanath Sonone Vs. State of Maharashtra & Ors., reported in 2015(1) Mh L.J. 457, relying on the decision in the case of Shalini Vs. New English School & Ors (Supra) and after taking into consideration various decisions of the Supreme Court and this Court, in para-65 (d) (i) and (ii) held as under:

65 (d)-

- (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.”

5] The record of the present case reveals that, admittedly there is no finding of fraud and/or production of fabricated or fraudulent caste certificate by the petitioner is recorded by the Scrutiny Committee. It has been held by the Full Bench of this Court in the case of Arun Vishwanath Sonone (supra) that such of the candidates who are appointed against the post reserved for reserved category candidates and who are put in substantial number of years in the service in whose case there is no finding of fraud, are entitled to the protection of service. As stated earlier, the Caste Scrutiny Committee has invalidated the caste certificate of the petitioner on the ground that the petitioner has failed to establish his Tribe claim on documentary evidence and affinity test, however, there was no allegation against the petitioner that he produced fraudulent and/or fabricated caste certificate before the employer at the time of entering into the service. In our considered opinion the Disciplinary Authority at the inception and subsequently the Appellate Authority have proceeded on a totally wrong footing that the petitioner had produced false caste certificate at the time of his initial appointment in support of his claim that he belongs to

“Mannewar” Scheduled Tribe. There is no evidence at all on record to support this contention and therefore we are of the view that the Disciplinary Authority as well as the Appellate Authority have proceeded on total wrong assumption in the matter. The Tribunal has also erred in not taking into consideration this vital factor while deciding the Original Application No.46 of 2012.

6] We, therefore, quash and set aside the Orders, dated 17th January 2011 passed by the Disciplinary Authority, dated 30th August 2011 passed by the Appellate Authority and Order dated 5th September 2013 passed by the Central Administrative Tribunal in Original Application No.46 of 2012 and hold that the petitioner's services are liable to be protected.

7] The respondents are directed to reinstate the petitioner within a period of four weeks from today. The petitioner will be entitled for continuity in the service w.e.f. 3rd June 1997 for all purposes including salary etc. We further hold that the petitioner will not be entitled for back-wages for the period during which he was out of employment i.e. from 17th January 2011 till today i.e. 24.1.2017. It is, however, made clear that the petitioner would be considered as a candidate belonging to Open Category and would not be entitled for any of the benefits including promotion etc

on the basis of his claim of belonging to Mannewar Scheduled Tribe.

8] Rule is made absolute in the aforesaid terms.

9] No costs.

(A.S. GADKARI,J.)

(R.M. BORDE, J.)