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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1166 OF 2017

1. Union of India through
The Flag Officer Commanding in Chief
Head Quarter Western Naval Command
Mumbai 400023.

2. The Admiral Superintendent
Naval Dockyard, Mumbai
S.B.S. Road, Mumbai- 400 023.

...Petitioners

Vs.

Rakesh Kashinath Zugare
Block No.206, 'B' Wing, Mital Society
Near Chinar Hotel, Badlapur(East)
Dist: Thane – 214 503.

...Respondent

Mr. Suresh Kumar, Advocate for the Petitioners
Mr. Rahul Walia, Advocate for the Respondent

**CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.**

DATED : 17TH APRIL, 2017

ORAL ORDER [PER SHRI M.S. KARNIK, J]

1. The Petitioners Union of India are challenging an order dated 15th April, 2015 passed by the Central Administrative Tribunal Bombay Bench, Mumbai in Original Application No.529 of 2014. The Respondent challenged before the Tribunal an order dated 13th

February, 2012 by which Respondent's candidature for selection to the post of Tradesmen Engine Fitter is cancelled. The Tribunal by the impugned order was pleased to allow the original application and quash and set aside the order dated 13th February, 2012 and issued consequential directions. The Tribunal directed the Petitioners to finalize the selection/ appointment of the Respondent within two weeks from the date of the order passed by the Tribunal. The Petitioners were further directed to make a fresh reference to the Caste Scrutiny and Validity Committee.

2. Learned Counsel for the Petitioners on instructions states that clause (c) of the operative part of the Tribunal's order has been complied with. The Respondent has already been appointed. The Respondent does not dispute this position.

3. The Respondent belongs to the Hindu 'Vaishya Vani' caste which is recognized as Other Backward Class (for short OBC) by G.R. dated 13th October, 1967 issued by the Social Welfare Department, Government of Maharashtra. The caste certificate dated 13th June, 2005 was obtained by him in this regard.

4. Pursuant to the advertisement dated 24/30th April, 2010 issued by the Petitioner No.2 for filling up 30 posts of Tradesmen Engine Fitter for OBC category, the Respondent being duly eligible submitted his application. On 7th/13th January, 2012 the Respondent was declared to have qualified in the test held and thereafter on 24th January, 2012 he was called for completion of pre-recruitment formalities and for verification of his documents including the caste certificate. By letter dated 25th January, 2012 the Petitioner No.2 made a reference to the Caste Scrutiny and Validity Committee for validation of the caste certificate of the Respondent. The Petitioners without waiting for receipt of the caste validity certificate, issued the order dated 13th February 2012 cancelling the selection of the Respondent on the ground that the Government of Maharashtra vide G.R. dated 19th July, 2011 de-listed / de-recognized his caste as OBC and hence according to the Petitioners he was not entitled for appointment against the reserved category for OBC.

5. According to the Respondent by the subsequent G.R. dated 1st

March, 2014 the Respondent's caste was again included in the category of OBC. In view of the subsequent development a representation dated 6th March, 2014, was submitted by the Respondent to the Petitioner No.2 for giving appointment to him. As there was no response from the Petitioners the Respondent approached the Tribunal by filing the O.A.

6. The response of the Petitioners was that before issuance of the appointment order the Respondent's caste was de-listed/de-recognized by the Government and as such there is no violation of any right of the Respondent. According to the Petitioners the final selection of the candidates was subject to the verification of the certificates and since the Respondent's caste was de-listed/de-recognized by the Government of Maharashtra, he lost his claim for appointment, although subsequently the State Government again included the Respondent's caste in OBC category. According to the Petitioners though the Respondent's caste certificate dated 11th January, 2005 was submitted to the Committee for verification of his caste claim, the question of issuance of letter of appointment to the Respondent does not arise as it was found that the Respondent's

caste was de-listed/de-recognized by the Government of Maharashtra. According to the Petitioners subsequent inclusion of the said caste of OBC will not give rise for any cause of action to the Respondent.

7. The learned Counsel for the Petitioners contends that as the Respondent's caste was de-listed/de-recognized by the Government of Maharashtra, the Respondent was not entitled to any appointment against the reserved category and hence his candidature was cancelled by the impugned order. According to the learned Counsel the Original Application was filed beyond limitation prescribed by the Administrative Tribunals Act. The learned Counsel for the Petitioners submits that the order passed by the Tribunal deserves to be interfered with.

8. Learned Counsel for the Respondent on the other hand supported the order passed by the Tribunal.

9. We have given our anxious consideration to the submissions advanced by the learned Counsel for the parties. The

advertisement is issued on 24th / 30th April, 2010 and on the last date for submission of the application, the Respondent's caste was recognized by the State Government as OBC. It is only from 19th July, 2011 that the said caste was de-listed / de-recognized. This was before the declaration of result of the examination on 7th /13th January, 2013. According to the Tribunal the G.R. dated 19th July, 2011 will have prospective application only and it cannot be implemented or made applicable retrospectively, in the absence of specific clause to that effect. The Tribunal has referred to the G.R. dated 19th July, 2011 and has observed that the same was issued on the basis of the order dated 1st October, 2010 passed by this Court in Writ Petition No. 4335 of 2007, in which it was held that proper procedure was not followed by the state Government while including the caste 'Vaishya Vani' and 'Kulwant Vani' under the category of OBC. Subsequently on the basis of the decision of the Apex Court in the case of **Indra Sawhney & ors. Vs. Union of India & ors., AIR 1993 (SC) 477**, the State Government established Backward Class Commission and on the basis of its recommendations which were accepted by the State Government, the above referred two castes were again included in OBC category

by the subsequent G.R. dated 1st March, 2014. It is in the light of these circumstances that the Tribunal was of the view that for claiming the benefit of caste reservation, the crucial date is the last date for submitting the application form as per the advertisement and no other date and therefore, held that the de-listing / de-recognizing of caste subsequently i.e. after 9th May, 2010 will not adversely affect the Respondent's claim. According to us the view taken by the Tribunal cannot be said to be perverse or unreasonable.

10. The Petitioners have also raised the plea that the OA filed before the Tribunal is barred by limitation. The Tribunal has dealt with this aspect in detail and observed that though the impugned order is dated 13th February, 2012 and the OA is filed only on 14th August, 2014 after his caste was once again included in OBC category, before the Tribunal, the Petitioner accepted the contention that cause of action was rendered afresh on 1st March, 2014 when the Government of Maharashtra included the caste of the Respondent in OBC category and therefore, held that the OA is not barred by limitation. We do not see any reason to interfere with the

view so taken by the Tribunal.

11. These being the main contentions raised before us we do not see any reason to interfere with the well considered findings of the Tribunal while allowing the OA filed by the Respondent.

12. In this view of the matter the present Writ Petition is devoid of any merits and is accordingly dismissed with no orders as to costs.

(M.S. KARNIK, J.)

(SMT. V.K. TAHILRAMANI, J.)