

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 50 of 2018**

{Arising out of order dated 02.01.2017 passed in Writ Petition (S) No. 244 of 2015 by the learned Single Judge}

1. Chhattisgarh Hastshilp Vikas Board Through Its Chairman, Chhattisgarh Hat Campus, Opp. Mahalaxmi Cloth Market, P. S. Pandri, Raipur (Chhattisgarh)
2. Managing Director, Chhattisgarh Hastshilp Vikas Board Chhattisgarh Hat Campus, Opp. Mahalaxmi Cloth Market, PS Pandri, Raipur (Chhattisgarh)

---- Appellants**Versus**

1. Dilip Hedau S/o Shri Hatiram Hedau, Aged About 54 Years R/o E-9, Green Park Colony, Vishal Nagar, Raipur (Chhattisgarh)
2. Secretary, Department of Gram Udyog, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, P.S. Mandir Hasaud, New Raipur, District Raipur (Chhattisgarh)
3. Secretary, Department of General Administration, Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S. Mandir Hasaud, District Raipur (Chhattisgarh)
4. High Power Caste Scrutiny Committee, Through Its Chairman, Pandit, Deendayal Upadhyay Nagar, Sector 4, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Appellants : Shri Prafull N Bharat, Advocate.
 For Respondent No. 1 : Shri Abhishek Sinha with Shri Suvigya Awasthy, Advocates
 For Respondent/State : Shri Prasoon Bhaduri, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****06/12/2018**

1. Heard learned counsel for the parties.
2. Vide order dated 02.01.2017, the learned Single Judge, in the writ application filed on behalf of the private Respondent quashed the order dated 19.12.2014 passed by the Managing Director of the Appellant-

Chhattisgarh Hastshilp Vikas Board (for short 'the Board') by virtue of which the private Respondent was dismissed from service.

3. The reason for dismissal of the employee was because he claimed benefit of appointment under the Appellant-Board on the basis of a caste certificate issued to him showing himself to be 'Halba', a Scheduled Tribe.
4. On 07.05.1994, the private Respondent was appointed on the post of Manager, Hast Shilp Vikas Nigam, against a reserved post for Scheduled Tribe. It may be noticed that the said caste certificate came under scrutiny of the Caste Scrutiny Committee even earlier which held the said certificate issued to the private Respondent dated 09.08.1991 to be invalid since the private Respondent was not a 'Halba' but admittedly 'Koshti'.
5. The earlier decision of the Caste Scrutiny Committee was assailed before the High Court in writ petition namely Writ Petition No. 6100 of 2006. The writ application was allowed on whatever technicality noticed therein but a direction was passed to the Caste Scrutiny Committee to proceed in accordance with the guidelines laid down in ***Ku. Madhuri Patil v. Additional Commissioner, Tribal Development & Others***; (1994) 6 SCC 241. The Caste Scrutiny Committee, a second time over, examined the matter after giving an opportunity of hearing to the private Respondent and passed the order dated 24.01.2012, a copy of which is Annexure P/12 to the writ application. The order indicates that the private Respondent was a 'Koshti' and not 'Halba' and therefore, the Caste Scrutiny Committee cancelled or annulled the caste certificate.
6. Since the caste certificate showing the private Respondent as a 'Halba', a Scheduled Tribe was annulled, the Appellant authorities decided to terminate the services and in this background, a second round of litigation started by filing Writ Petition (S) No. 244 of 2015.

7. The learned Single Judge primarily placing reliance on the case of ***State of Maharashtra v. Milind & Others***; (2001) 1 SCC 4 and the case of ***Punjab National Bank & Another v. Vilas S/o Govindrao Bokade & Another***; (2008) 14 SCC 545, ***Kavita Solunke v. State of Maharashtra & Others***; (2012) 8 SCC 430, and ***R. Unnikrishnan & Another v. V.K.Mahanudevan & Others***; (2014) 4 SCC 434, set aside the order of termination and ordered reinstatement, but with half backwages. The reason provided by the learned Single Judge is that since similar protection has been granted in the judgments referred above, the finding that the private Respondent was not a Scheduled Tribe would in no manner rob him of the left over benefit of service but by denuding him of the advantage of reservation, as a Scheduled Tribe.
8. This order of the learned Single Judge was acted upon and the private Respondent was restored in service. However, his ordeal by fire continues for the reason that the Appellant-Board has decided to assail the decision of the learned Single Judge dated 02.01.2017 by filing an appeal under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2007.
9. Since there is a delay of 323 days in preferring the appeal, a condonation application which has been registered as IA No. 1 of 2018 has been filed where they take a plea that after the passing of the order by the learned Single Judge, opinion was taken from the State Government who examined the matter and came to a considered opinion that the judgment of the learned Single Judge would be required to be assailed as the said decision will not only have a bearing upon the said case, but may be other related matters as well as a precedent.
10. We are satisfied with the reasons provided in the condonation application that there is a necessity for condoning delay of 323 days especially when

the question so raised for consideration before this Court is of seminal importance.

11. The law with regard to the benefit extended to a non-tribal claiming himself to be a tribal has not stood still. There have been many litigations and with diverse kind of orders passed from time to time by various High Courts, matters travelled to the Hon'ble Supreme Court and the Hon'ble Supreme Court clubbed a large number of those appeals and heard the same and answered the issues in the case of ***Chairman & Managing Director, Food Corporation of India & Others v. Jagdish Balaram Bahira & Others***; (2017) 8 SCC 670.
12. It is a rather detailed order passed by the Hon'ble Supreme Court virtually taking notice of not only the history of the litigation about the status of a 'Halba' tribe or 'Halba Koshti' but also the protection which was extended to such persons who were held to be not a tribe.
13. Learned counsel representing the Appellant-Board submits that as law stands today with the admitted position that the private Respondent is not a Scheduled Tribe, whether he can be permitted to continue with the benefit of having acquired service under the Board claiming himself to be a Scheduled Tribe and occupying a post which was reserved for a Scheduled Tribe. According to him, the decision of the Hon'ble Supreme Court laying down the position in the ***Food Corporation of India*** (supra), leaves no ambiguity as to the status as well as the kind of benefit or protection which is required to be extended to an employee who is denuded of his false claim of being a Scheduled Tribe and the kind of benefit he can derive by offering to give up the status of Scheduled Tribe or Caste and being treated as a general candidate.

14. Since the Hon'ble Apex Court has laid down the law by analysing the ratio of various decisions with complete clarity, this Court would be tempted to reproduce those findings as well as the opinion expressed on the issue in the words of the Hon'ble Apex Court itself, culled out from the decision rendered in ***Food Corporation of India*** (supra), which reads as under:

"23. In *Madhuri Patil*¹, a Bench of two learned Judges set down a principled rationale as to why a claim for equity by a person who is not found to belong to the designated caste, tribe or class cannot be countenanced. The Court observed: (SCC p. 257, para 16)

"16. Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and wary in considering such cases."

However, on the facts of that case the Bench of two Judges while upholding the cancellation of the status of Mahadeo Koli which was fraudulently obtained, directed that the student who had completed the course of medical studies be allowed to appear for the final year examination of the M.B.B.S. degree course but not as a candidate belonging to a Scheduled Tribe. The circumstance which weighed with the Court was that the student had approached the High Court for the grant of a caste certificate since the Additional Commissioner was not dealing with the matter. The student obtained admission pursuant to a direction of the High Court. It was the parents of the student who had put the career of the student in jeopardy and since she had

completed her course of study except to appear for the examination; she should be permitted to do so. The above directions were issued in the case of one of the two appellants, Suchita Laxman Patil. However, her sister Madhuri (who was the first appellant) was found to have approached an officer without jurisdiction and after showing the order of the High Court in the case of her sister Suchita, secured a caste certificate and got admission. This Court observed that though she was in the midst of her B.D.S. studies in the second year, she could not continue as a student belonging to Mahadeo Koli Scheduled Tribe. She could only obtain admission as a general candidate and continue her studies. These directions are referable to the jurisdiction conferred on this Court under Article 142.

24. The next decision which is of relevance on the issue, is a judgment of three Judges of this Court in *R. Vishwanatha Pillai v. State of Kerala*⁴. In that case the appellant who did not belong to a designated reserved community obtained a caste certificate and was selected as a Deputy Superintendent of Police on a seat reserved for the Scheduled Castes. However, it was found upon a complaint that the appellant did not belong to a Scheduled Caste and the Scrutiny Committee rejected his claim. The order of the Scrutiny Committee was upheld by the High Court and by this Court. Subsequently at the behest of the appellant the Central Administrative Tribunal directed that he should not be terminated from service without following the procedure under Article 311. The High Court reversed that decision and the appellant was dismissed from service. Before this Court the appellant inter alia sought protection since he had rendered nearly 27 years of service. Rejecting the submission this Court held that : (SCC p. 115, para 15)

“15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India, Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the

appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India, As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.”

(emphasis supplied)

The Bench of three Judges also rejected the submission that since the appellant had rendered 27 years of service, the order of dismissal should be substituted with an order of compulsory retirement or removal to protect his pensionary benefits. The Court observed : (SCC pp. 116-17, para 19)

“19.....The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.”

25. In *Bank of India v. Avinash D. Mandivikar*⁵ the first respondent obtained an appointment in the service of the bank in October 1976 on a post reserved for the Scheduled Tribes. The Scrutiny Committee found that he did not belong to a Scheduled Tribe and, therefore, invalidated the caste certificate. Following the termination of his services the first respondent moved the High Court which accepted his plea that the initiation of proceedings

against him by the Scrutiny Committee for verification of the caste certificate in 1987 was beyond a reasonable period. The High Court, while allowing the plea, reinstated⁶ him in service with back-wages. In an appeal by the employer, this Court held that once a claim of the employee to belong to a Scheduled Tribe had been rejected, the employment was “*no appointment in eye of law*” and that he had “*absolutely no justification for his claim*” in respect of the post he usurped. Distinguishing the directions issued in *Milind*³ (under Article 142), this Court held that: (*Avinash D. Mandivikar case*⁵, SCC p. 698 para 10)

“10.The protection under the *Milind's case*³ cannot be extended to the respondent No. 1-employee as the protection was given under the peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. This Court noted that on a doctor public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent No. 1-employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him.”

The above observations of the court are also an indication that para 38 of the decision in *Milind*³ was construed as consisting of directions issued under Article 142. For it was on that basis that the court in *Avinash Mandivikar*⁵ held that no case was made out for protecting the services of a bank employee who had obtained employment on the basis of a false claim. Besides, this Court also held that the first respondent having perpetrated a fraud, a claim for protection will not be legally sustainable and a person who had obtained employment by illegitimate means could not continue to enjoy the fruits of the appointment despite the clear finding by the Scrutiny Committee that “he does not even have a shadow of a right even to be considered for appointment”. This Court relied upon the earlier decision in *Vishwanatha Pillai*⁴ in coming to its conclusion.

26. Another decision of two learned Judges was in *BHEL v. Suresh Ramakrishna Burde*⁷ where a Division Bench of the Bombay High Court had ordered reinstatement subject to the condition that the employee would not stake a claim to belong to the Scheduled Tribe in future. The claim of the employee to belong to the Halba Scheduled Tribe was invalidated by the Scrutiny Committee. The employee had been appointed in May 1982 to a clerical post and in August 1995 the Scrutiny Committee had invalidated the caste claim initially and again in August 2001 following an order of remand. A Writ Petition filed against the order of invalidation was withdrawn but thereafter, relying on the observations in the concluding paragraph in *Milind*³ the employee submitted a representation for the protection of his services. After the representation was rejected, the employee moved the High Court which directed his reinstatement but with the condition that he would not claim the benefit of belonging to a Schedule Caste in future. While construing the decision in *Milind*³ (upon which the High Court had placed reliance), this Court observed as follows : (*Suresh Ramakrishna case*⁷, SCC pp. 340-341, paras 7-8)

“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. Milind³. 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. The questions which required consideration by the Constitution Bench, are noted in the very first paragraph of the judgment and they are being reproduced below: (SCC p. 11, para 1)

'(1) Whether at all, it is permissible to hold enquiry 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 State of Maharashtra, even though it is not specifically mentioned as such?'

8. After thorough discussion of the matter the conclusions of the Bench are recorded in paragraph 36 of the report. It was held that it is not at all permissible to hold any enquiry or let in any 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. It was further held that the notification issued under Clause (1) of [Article 342](#), specifying Scheduled Tribes, can be amended only by law to be made by Parliament and it is not open to the State Governments or courts or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of [Article 342](#) and the Constitution (Scheduled Tribes) Order 1950. *The law declared by the Constitution Bench does not at all lay down that where a person secures an appointment by producing a false caste certificate, his services can be protected on his giving an undertaking that in future he will not take any advantage of being a member of the reserved category.*

(emphasis supplied)

In this view of the matter, the High Court was held to be in error in setting aside the order of termination and in directing reinstatement of the employee.

27. A Bench of two Judges of this Court in *State of Maharashtra v. Sanjay K. Nimje*⁸ considered a case where the respondent had been appointed to the service of the State in June 1995 on a claim

that he belonged to the Halba Scheduled Tribe. The Scrutiny Committee upon verifying the caste certificate found in its order of August 1989 that the employee was a Koshti (a Special Backward Class) and not a Halba. The respondent accepted the findings of the Scrutiny Committee but on the basis of a Government Resolution dated 15.6.1995 sought the protection of his service. This Court noted that on 7.12.1994 Koshtis were declared to be a Special Backward Class. As regards the G.R. dated 15.6.1995, this Court came to the conclusion that since the respondent was appointed on 29.6.1995, which was after the G.R., he was not entitled to protection in terms thereof. Moreover, adverting to Section 10 of the Act enacted by the Maharashtra State legislature, this Court observed that: (SCC p. 487, para 16)

“16. The 2000 Act being a legislative Act would prevail over any government resolution. A government resolution may be beneficent in nature but it is well settled that a benefit under a government resolution cannot be extended to a person who does not satisfy the conditions precedent thereof. In any event, the effect of the judgment of this Court as also the provisions of a statute in the light of the constitutional provisions contained in Articles 341 and 342 of the Constitution of India cannot be diluted by reason of a government resolution or otherwise.”

(emphasis supplied)

In the view of this Court : (SCC p. 487, para 18)

*“18. We may also notice that ordinarily a person, who has obtained appointment on the basis of a false certificate, cannot retain the said benefit. (See *Bank of India v. Avinash D. Mandivikar*⁵, *Ram Saran v. IG of Police, CRPF*⁹ and *Supdt. of Post Offices v. R. Valasina Babu*¹⁰) In a situation of this nature, whether the Court will refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India or not would depend upon the facts and circumstances of each case. This aspect of the matter has been considered recently by this Court in *Sandeep Subhash Parate v. State of Maharashtra*¹¹.*

Finally this Court held that the provisions of Maharashtra Act 23 of 2001 must apply. Though at one point in time indulgence had been shown to students or to persons who were found to have acted bona fide this *“would not mean that this Court would pass an order contrary to or inconsistent with the provisions of a legislative act”*. (SCC p. 488, para 21).

(emphasis supplied)

28. The position in law was reaffirmed in a subsequent decision of a Bench of three Judges in *Union of India v. Dattatray*¹². The respondent was appointed as an Assistant Professor of Psychiatry in a government hospital on the strength of a claim to belong to a Scheduled Tribe. The Scrutiny Committee in an order of March 1999 found that the claim that he belonged to the Halba Tribe was false. The High Court upheld the invalidation of the tribe claim but held that the respondent would not be entitled to any benefit as a member of the Scheduled Tribe from the date of its decision. In consequence, the services of the respondent were directed not to be disturbed. This

Court held that the High Court had misconstrued the decision of the Constitution Bench in *Milind*³ and adverted to the peculiar circumstances in which protection was granted in that case to a student who had been admitted to a medical course over 15 years ago. Distinguishing that decision with the case at hand this Court observed that : (Dattatray case¹², SCC p. 614, para 5)

“5...When a person secures employment by making a false claim regarding caste/tribe, he deprives a legitimate candidate belonging to scheduled caste/tribe, of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of the false certificate so that the post may be filled up by a candidate who is entitled to the benefit of reservation.”

(emphasis supplied)

The judgment of the High Court directing the continuance of the first respondent in service was accordingly set aside."

15. Learned counsel for the Appellant-Board also further places reliance on the decision of Food Corporation of India (supra) to prevail upon the Court to interfere with the decision of the learned Single Judge by drawing the attention of the Court to the submissions which were made before the Apex Court on the issue and the final analysis and opinion given to those submissions by relying on paragraphs 43 to 60, which reads as under:

"G. Submissions

43. In the present batch of cases, the almost uniform facet is that the claim to belong to a reserved category has been rejected upon scrutiny.

44. On behalf of the persons whose caste or tribe claims have been rejected, the following submissions have been urged :

44.1 The issue with regard to caste certificates granted prior to 28.11.2000 is not res integra in view of the dictum laid down in paragraph 38 of the judgment of this Court in *Milind*³. The decision in *Milind* gave a positive direction to the effect that appointments that had become final on or before 28.11.2000 (the date when the judgment was delivered) shall remain unaffected. The Constitution Bench dealt with appointments as well as admissions to educational institutions. Following the decision in *Milind*³ this Court disposed of several cases relating to Halba-Koshti and did not disturb appointments which had been made prior to 28.11.2000. The directions in *Milind*³ are based on the doctrine of prospective overruling;

44.2 No issue was joined before the High Court to the effect that the provisions of Maharashtra Act 23 of 2001 are retrospective and would interdict admissions or appointments made prior to the enforcement of the Act. In any case such a

stand would be contrary to the binding circulars issued by the State Government; and

44.3 Maharashtra Act 23 of 2001 is not retrospective in operation. The statute being of a penal nature, it cannot be construed to be retrospective since that would render it violative of Article 20(1) of the Constitution. The Act was notified on 17.10.2001 with effect from 18.10.2001 which is the relevant date under Section 1 (2).

44.4 While Section 7 empowers the Scrutiny Committee to cancel any certificate which has been obtained before or after the commencement of the Act, the expression “before or after the commencement of this Act” is absent in Sections 10 and 11. Consequently, though Section 7 may be retroactive in operation, Sections 10 and 11 which relate to the withdrawal of benefits are in regard to penal offences are prospective.

45. Besides the above submissions it has also been urged that in so far as Halba-Koshtis are concerned :

45.1 Though in Entry 19 of the Scheduled Tribes Order, 1950 only “ Halba-Halbi” has been recognised as a Scheduled Tribe, until the decision of the Constitution Bench in *Milind*³, Halba - Koshtis were “socially and officially” recognized and accepted as a sub-tribe of Halba-Halbi. This may have been as a result of the judicial pronouncement made by the High Court from 1956 or the circulars issued by the State Government;

45.1 It was on 28.11.2000 that the Constitution Bench in *Milind*³ held that Halba - Koshtis do not fall within the purview of Entry 19 of the Scheduled Tribes Order, 1950. Hence, it cannot be said that a caste certificate issued at any time prior to 28.11.2000 in favour of a citizen who was a Halba Koshti was false or a fraud and it can only be held that such a person ceased to be recognized as Halba-Halbi Scheduled Tribe;

45.3 Section 11 of Maharashtra Act 23 of 2001 which is in the nature of a penal provision will not be applicable to caste certificates which were issued prior to 18.10.2001;

45.4 On 15.1.1995, a government resolution was issued by the Government of Maharashtra that appointments made prior to that date against reserved posts would remain protected even if the caste/tribe claim of the appointee was invalidated or found to be false;

45.5 Where an appointment in service has been acquired by practicing fraud or deceit such an appointment is no appointment in law and in such a situation Article 311 of the Constitution is not attracted. This position will not be applicable to claimants of the Halba - Koshtis caste to whom caste certificates were issued and appointments were made prior to 28.11.2000; and

45.6 On 10.8.2010, the Union Government in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training issued an office memorandum to the

effect that persons belonging to the Halba, Halbi / Koshti castes who got appointment against a vacancy reserved for the Scheduled Tribes on the basis of certificates issued by the competent authority and whose appointments have been rendered final prior to 28.11.2000 shall not be affected.

45.7 On 21.10.2015, the State of Maharashtra issued a circular directing that employees who have been appointed against posts reserved for Scheduled Tribes in government services between 15.1.1995 and 17.10.2001, whose claims have been invalidated, shall not be disbanded/terminated until further orders. In view of this circular, the State Government is estopped from challenging the Full Bench decision of the High Court in *Arun*⁴¹.

H. Part II: Analysis

46. Having put together the body of material on the subject, including the precedents and legislation governing the area, the stage for analysis is now reached. That is what this judgment now seeks to embark upon.

47. The backdrop for the decision in *Madhuri Patil*¹ was provided by the significant scale on which benefits were secured by imposters by passing themselves off as members of castes, tribes and classes for whom reservations have been earmarked pursuant to constitutional provisions. By its directions which this Court issued on 2.9.1994 provision was made for the constitution of committees for verification of claims belonging to a designated caste, tribe or class. This Court explained the modalities to be followed by the Scrutiny Committees and the manner in which action would be taken if a claim was found to be false. The directions which were issued by this Court envisaged that upon a claim being found to be false or spurious :

47.1 the Caste Scrutiny Committee should pass an order cancelling and confiscating the certificate;

47.2 the cancellation of the certificate should be communicated to the educational institution where the candidate has been admitted or to the appointing authority where the candidate is employed;

47.3 upon this, the head of the institution or the appointing authority should cancel the admission or appointment without further notice and debar the candidate from further study or continuance in office; and

47.4 a prosecution should be launched against the candidate or, as the case may be, the parents or guardians responsible for making the false claim.

48. The regime postulated in the judgment of this Court in *Madhuri Patil*¹ took effect from 2.9.1994, which was the date of the judgment. Eventually in the State of Maharashtra these directions received legislative recognition upon the enactment of the Maharashtra Act 23 of 2001 which came into force in the State on 18.10.2001. However, it is important to notice that even before

the State Legislature stepped in to confer a statutory form to the directions which were issued by this Court in *Madhuri Patil*¹ the regime, as it then obtained prior to the enactment of the law, also envisaged consequences upon a caste or tribe claim being found to be false upon a verification by the Scrutiny Committee. The cancellation of a certificate would, as a necessary consequence, involve the invalidation of the appointment to a post or admission to an educational institution. Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained. The same principle would apply where a candidate secures admission to an educational institution on the basis of a false claim to belong to a reserved category. A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter a detriment is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is intended. This was the position under the regime which prevailed following the decision in *Madhuri Patil*¹.

49. The Constitution Bench of this Court which decided *Milind*³ was on a reference whether it is permissible to hold an enquiry and let in evidence to decide or declare that any tribe or tribal community or a part or group within the tribe or community is included in the general name, even though it is not so specifically mentioned in the entry contained in the Constitution (Scheduled Tribes) Order, 1950. The Constitution Bench held that it was not permissible either to hold an enquiry or to allow evidence to decide that though a tribe (or its sub group) is not specifically included in the Scheduled Tribes Order, 1950 it must, nonetheless, be treated or deemed to be included in the general

name. The view of this Court is that an entry in the Order has to be read as it stands. However, the Constitution Bench in paragraph 38 of its decision, having due regard to the circumstances of the individual cases before the Court, protected the degree obtained by the candidate concerned. This Court also provided that having regard to the passage of time including interim orders which were passed, the admissions and appointments that have become final would remain unaffected by the judgment.

50. The observations in paragraph 38 of the decision of the Constitution Bench have been construed in at least the following judgments of this Court as directions referable to Article 142 of the Constitution :

- (i) *Bank of India v. Avinash D. Mandivikar*⁵ (SCC p. 698, para 10);
- (ii) *BHEL v. Suresh Ramkrishna Burde*⁷ (SCC pp. 340-341 & 343, paras 7-9 & 13);
- (iii) *Union of India v. Dattatray*¹² (SCC pp. 613-14, paras 5-7); and
- (iv) *Yogesh Ramchandra Naikwadi v.. State of Maharashtra*¹³ (SCC pp. 653-54, paras 5 & 6)

51. Since the decision of the Bench of three judges in *R. Vishwanatha Pillai v. State of Kerala*⁶ the position of law which has been laid down by this Court is that where an appointment to a post or admission to an educational institution is made against a vacancy which is reserved for a Scheduled Caste or Tribe or a socially and educationally backward class, the invalidation of the claim of the candidate would result in the appointment or, as the case may be, the admission being void and non est. This principle has been followed by another judgment of three Judges in *Dattatray*¹². The same position has been propounded by a two judge bench in *Bank of India v. Avinash Mandivikar*⁵. The formal termination of an employment or the withdrawal of admission is a necessary consequence which flows out of the invalidation of the caste or tribe claim. The only exception to this principle consists of those cases where, in exercise of the power conferred by Article 142, the Court considered it appropriate and proper to protect the admission which was granted or, as the case may be, the appointment to the post.

52. In *Kavita Solunke*²⁵ the appellant had been appointed on the strength of a claim to belong to the Halba Scheduled Tribe in August 1995. After the tribe claim was verified by the Scrutiny Committee it was found that the appellant was in fact a Koshti and not a member of the Halba Scheduled Tribe following which an order of termination was issued. The sole ground on which the termination was challenged and which was accepted by the bench of two judges was that since the appointment of the appellant had attained finality, it could not have been set aside on the ground that the appellant did not belong to a Scheduled Tribe. Maharashtra Act 23 of 2001 was evidently not placed before the court in *Kavita Solunke*²⁵ and has not been noticed. Upon the enactment of the Act, the invalidation of a caste certificate by the Scrutiny Committee would as a statutory mandate result in the

withdrawal of the benefits which had accrued on the strength of the claim and where a candidate had been appointed to a reserved post, termination would follow the finding that the candidate did not belong to the category for whom the post was reserved. If the provisions of Maharashtra Act 23 of 2001 were to be considered by the bench of two judges, it would be apparent that under the provisions of Section 7 the Scrutiny Committee is empowered to verify a caste certificate whether issued before or after the commencement of the Act and if it comes to the conclusion that the caste certificate is false and is obtained fraudulently it is empowered to order its cancellation and confiscation. Section 10 provides for the withdrawal of benefits secured when a caste certificate is concerned for its falsity. Falsity is adjudicated upon when an order of cancellation is passed under Section 7. Once a caste certificate is cancelled by the Scrutiny Committee under Section 7, the individual affected by the order has a remedy to challenge its cancellation before the High Court under Article 226. If the challenge fails or if the challenge is given up, and the only relief sought is of the protection of service, or of the admission to the course, the grant of such protective relief simpliciter would be impermissible. The withdrawal of the benefit under Section 10 follows an order of cancellation under Section 7. Once the conditions for cancellation are fulfilled and an order of cancellation is passed under Section 7 withdrawal of all benefits which have accrued on the basis of the claim (which stands invalidated) cannot be opposed on a theory that there was an absence of dishonest intent.

53. The rationale which weighed with the Bench of two Judges which decided *Kavita Solunke*²⁵ was that if the Halba Koshti had been treated as Halba even before the appellant had joined the service and if the only ground for ouster was the law declared in *Milind*³, there was no reason why protection against ouster to appointees whose applications had become final be not also extended to the appellant. Placing reliance on the decision in *Kavita Solunke*²⁵ another Bench of two Judges of this Court in *Shalini*²⁷ propounded a test of dishonest intent for the grant or denial of protection to persons whose caste claims had been invalidated. The view of the Court emerges from the following extract contained in para 9 of the decision which reads thus :

“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.”

The above observations must be read together with those in paragraph 11 (extracted earlier) where the Court held that a dishonest intent requires legal retribution. In *Shalini*²⁷ the Court noticed the provisions of Section 10 of Maharashtra Act 23 of 2001 (which the earlier decision in *Kavita Solunke*²⁵ had not noticed) but nonetheless held that in order to attract the provisions of Section 10 a dishonest intent for the purpose of claiming a benefit reserved for the Scheduled Castes or Tribes or a designated backward class is necessary. The expression “false” contained in Section 10 of the Maharashtra Act 23 of 2001 is construed to necessarily require the presence of mens rea or a dishonest intent.

54. The object and purpose underlying the enactment of the state legislation is to regulate the issuance of caste certificates and to deal with instances which had come to light where persons who did not belong to the Scheduled Castes or Tribes or reserved categories were seeking appointments or admissions to the detriment of genuine candidates. The basic purpose and rationale for the legislation is to secure the just entitlements of legitimate claimants. The judgment in *Shalini*²⁷ is with respect in error in imputing the requirement of a dishonest intent into the provisions of Section 10. Sections 7 and 10 have to be construed in harmony. Section 7 provides for the cancellation of a caste certificate where before or after commencement of the Act, a person who does not belong to a reserved category has obtained a false caste certificate and the Scrutiny Committee, after enquiry, is of the opinion that the certificate was obtained fraudulently. These requirements have to be fulfilled before the certificate is cancelled. The falsity of the caste certificate and the opinion of the Scrutiny Committee of its being fraudulently obtained form the basis of a cancellation under Section 7. Section 10 prescribes that a person who does not belong to a reserved category and secures admission or obtains appointment against a reserved post by producing a false caste certificate shall upon its cancellation by the Scrutiny Committee be debarred from the institution or as the case may be discharged from employment and the benefits derived shall be withdrawn. Sub-section (2) provided for the recovery of all financial benefits while sub-section (3) provides for the cancellation of a degree, diploma or educational qualification. Sub-section (4) provides for disqualification from electoral office. The falsity of the certificate is the basis of an order under Section 7. Section 10 provides the consequence. The challenge to an order of the Scrutiny Committee (invalidating a caste or tribe certificate) may fail or succeeds. If the challenge before the High Court succeeds, no question of the consequence under Section 10 arises. If the challenge fails, the consequence under Section 10 follows the finding in the order under Section 7 that the certificate is false. Similarly, if the order under Section 7 is not challenged, or if the challenge is given up, there is no occasion to protect the benefits secured on the basis of a certificate which is

invalidated. The expression “false” must be construed in contradistinction to that which is true, genuine or authentic. Falsity in this sense means the setting up of a claim to belong to a reserved category.

55. Section 10, it must be noted, provides for the withdrawal of civil benefits which have accrued to an individual on the strength of a claim to belong to a reserved category, when the claim upon due enquiry and verification is invalidated. "Section 10, as its marginal note indicates, provides for the withdrawal of benefits secured on the basis of a false caste certificate. Section 11 provides for offences and penalties. The invalidation of a caste certificate may result in two consequences: (i) immediate cancellation or withdrawal of the benefits received by the candidate on the basis of a false caste certificate; (ii) prosecution of a claimant who procures a certificate which is found to be false by the Scrutiny Committee. The intent of a candidate may be of relevance only if there is a prosecution for a criminal offence. However, where a civil consequence of withdrawing the benefits which have accrued on the basis of a false caste claim is in issue, it would be contrary to the legislative intent to import the requirement of a dishonest intent. In importing such a requirement, the bench of two Judges in *Shalini*²⁷ has, with great respect, fallen into error. The judgment in *Shalini*²⁷ must, therefore, be held not to lay down the correct principle. In the very nature of things it would be casting an impossible burden to delve into the mental processes of an applicant for a caste certificate. As the provisions of the Act indicate, a person, who claims to belong to a reserved category and who seeks the benefit of an appointment to a reserved post or of admission to an educational institution against a reserved seat or any other benefit provided by the provisions of Article 15(4), has to apply for the grant of a caste certificate. The burden of proof that he or she belongs to such a caste, tribe or class lies with the claimant. The legislature has legitimately assumed that a person who seeks a caste certificate must surely be aware of the caste, tribe or class to which he or she belongs and must establish the claim. If the claim to belong to the reserved category is found to be untrue, the caste certificate has to be cancelled on the ground that it has been obtained falsely. The grant of the benefit to the candidate is fraudulent because the candidate has obtained a benefit reserved exclusively for a specified caste, tribe or class to which he or she is not entitled. The decision in *Shalini*²⁷ would result in serious consequences and would eviscerate the statutory provision. The interpretation which has been placed on the provisions of Section 10 by the judgment in *Shalini*²⁷ is evidently incorrect.

56. Service under the Union and the States, or for that matter under the instrumentalities of the State subserves a public purpose. These services are instruments of governance. Where the State embarks upon public employment, it is under the mandate of Articles 14 and 16 to follow the principle of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality. Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a

choice amongst competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of a person who is not eligible allows someone who is ineligible to gain access to scarce public resources. Secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. These effects upon good governance find a similar echo when a person who does not belong to a reserved category passes off as a member of that category and obtains admission to an educational institution. Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. Once the legislature has stepped in, by enacting Maharashtra Act 23 of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in *Milind*³ spoke on 28.11.2000. The state law has been enforced from 18.10.2001. Judicial directions must be consistent with law. Several decisions of two judge benches noticed earlier, failed to take note of Maharashtra Act 23 of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the area was unregulated by statute. *Shalini*²⁷ noted the statute but misconstrued it.

57. *Cooley's Treatise on Constitutional Limitations* places the matter succinctly in the following terms : (8th Edn. Vol 2, pp. 1355-58)

“An officer de jure is one who, possessing the legal qualifications, has been lawfully chosen to the office in question, and has fulfilled any conditions precedent to the performance of its duties. By being thus chosen and observing the precedent conditions, such a person becomes of right entitled to the possession and enjoyment of the office, and the public, in whose interest the office is created, is entitled of right to have him perform its duties. If he is excluded from it, the exclusion is both a public offence and a private injury.”

58. In a recent judgment of this Court in *Anurag Kumar Singh v. State of Uttarakhand*³⁹, it has been held that judicial discretion can be exercised only when there are two or more possible lawful solutions. Courts cannot give a direction contrary to a statute in the purported exercise of judicial discretion. The power under Article 142 of the Constitution is one which is wielded with circumspection and not in a manner which would defeat statutory intent, purpose and language. Aharon Barak in his book titled “*Judicial Discretion* (1989)” states thus: (SCC p. 430. para 16)

“16.....Discretion assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this situation, the Judge is required to select that option and has no freedom of choice. No discretion is involved in the choice between a lawful act and an unlawful act. The Judge must choose the lawful act, and he is precluded from choosing the unlawful act. Discretion, on the other hand, assumes the lack of an obligation to choose one particular possibility among several.”

59. The Full Bench judgment of the Bombay High Court in *Arun*⁴¹ has essentially construed the judgments in *Kavita Solunke*²⁵ and in *Shalini*²⁷ as having impliedly overruled the earlier Full Bench judgments in *Ganesh Rambhau Khalale*³⁷ and *Ramesh Kamble*³⁵. In view of the conclusion which we have arrived at in regard to the earlier decisions rendered by the two Judge Benches in *Kavita Solunke*²⁵ and *Shalini*²⁷, we are unable to subscribe to the view expressed by the Full Bench in *Arun*⁴¹. The judgment of the Full Bench of the Bombay High Court in *Arun*⁴¹ holds that : (SCC Online Bom para 75)

(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from employment or cancellation of appointments that have become final prior to the decision in *Milind*³ on 28.11.2000;

(ii) the benefit of protection in service upon invalidation of the caste claim is available not only to persons belonging to Koshti and Halba Koshti but is also available to persons belonging to the special backward category on the same terms.

The High Court has even gone to the extent of holding that the decision in *Milind*³ was in the nature of prospective overruling of the law which was laid down by the Bombay High Court. The above view of the Bombay High Court is clearly unsustainable. Neither the judgment in *Milind*³ nor any of *Milind*³ s of this Court which have construed it have held that *Milind*³ was an exercise in prospective overruling. The High Court was in error in holding so. The decision of the Full Bench in *Arun*⁴¹ is unsustainable. The Full Bench had evidently failed to notice that cases where the protection was granted by this Court following the invalidation of a caste claim was in exercise of the power conferred by Article 142 of the Constitution, depending upon the facts and circumstances of each case. The jurisdiction under Article 142 is clearly not available to the High Court in the exercise of its jurisdiction under Article 226. The High Court erred in arrogating that jurisdiction to itself.

60. We do not find any merit in the submission which has been urged on behalf of the persons whose castes/ tribes claims have been invalidated that Maharashtra Act 23 of 2001 cannot apply to admissions or appointments which were made prior to the date on which the Act came into force."

16. We further also reproduce the conclusions which have been reached by the Hon'ble Supreme Court in ***Food Corporation of India*** (supra), which reads as under:

"69. For these reasons, we hold and declare that:

69.1 The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in *Milind*³ were in pursuance of the powers vested in this Court under Article 142 of the Constitution;

69.2 Since the decision of this Court in *Madhuri Patil*¹ which was rendered on 2.9.1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for:

(a) the issuance of caste certificates;

(b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;

(c) the procedure for the conduct of investigation into the authenticity of the claim;

(d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;

(e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and

(f) Prosecution for a criminal offence;

69.3 The decisions of this Court in *R. Vishwanatha Pillai*⁴ and in *Dattatray*¹² which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual – such as an appointment to a post or admission to an educational institution – on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

69.4 The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

69.5 By Maharashtra Act 23 of 2001 there is a legislative codification of the broad principles enunciated in *Madhuri Patil*¹. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates {Section 6(2) and 6 (3)}; cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

69.6 The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18.10.2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

69.7 Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

69.8 The decisions in *Kavita Solunke*²⁵ and *Shalini*²⁷ of two learned Judges are overruled. *Shalini*²⁷ in so far as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

69.9 Mens rea is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

69.10 The judgment of the Full Bench of the Bombay High Court in *Arun*⁴¹ is manifestly erroneous and is overruled; and

69.11 Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act 23 of 2001 holds the field."

(emphasis ours)

17. The argument based on the decision of the Hon'ble Supreme Court in ***Food Corporation of India*** (supra) on behalf of the counsel for the Appellant-Board is that in the given facts that the private Respondent does not belong to Scheduled Tribe and he had obtained the benefit of employment as a Scheduled Tribe, he cannot be allowed to hold on to the post any longer, since it will be directly in the face, if not teeth of law as it stands now.
18. To the contrary, learned counsel representing the private Respondent submits that a settled position cannot be unsettled for two reasons, firstly, that the decision and the judgment of the learned Single Judge was acted upon by reinstating him back in service and that a subsequent decision or judgment rendered by a Court or even the Apex Court cannot relate back

and undo the protection which has been extended to a large number of similarly situated employees as the law stood in the case of ***Milind*** (supra), ***Punjab National Bank*** (supra), ***Kavita Solunke*** (supra) and ***R. Unnikrishnan*** (supra). Yet another submission made on his behalf is that since the private Respondent is virtually on the evening of his life and has many obligations towards the family now, it will be a too harsh a decision to allow him to be dismissed, more so, by taking into consideration the decision rendered by the Hon'ble Supreme Court in ***Food Corporation of India*** (supra) which was delivered after the decision of the learned Single Judge which is under challenge in the present appeal.

19. Submissions so made on behalf of the private Respondent would be required to be negated on all fours. The decision which has been rendered by the Hon'ble Apex Court in the case of ***Food Corporation of India*** (supra) does not lay down a new law but only clarifies the legal position as it prevailed or ought to prevail. The Hon'ble Supreme Court through the judgment rendered in ***Food Corporation of India*** (supra), has brought clarity to the diverse opinions which were there before various Courts and even before the Hon'ble Apex Court. if all those decisions and judgments have been meticulously dealt with and explained, then it cannot be said that the law has undergone a change only now and therefore such decision of the Apex Court cannot be used to denude the relief or remedy which has already been granted to the private Respondent, by the learned Single Judge.
20. Since the appeal is a continuance of the writ proceeding, the Division Bench cannot be blind to the evolution of law or enunciation or interpretation given to the dispute by the highest Court of the land. The view which used to be taken by different Benches or Courts including the Apex Court that some kind of protection is required to be given to such cases have also been

clarified by the Apex Court in the decision rendered in ***Food Corporation of India*** (supra) which has its binding effect.

21. The Hon'ble Supreme Court has very rightly held that if a person has obtained the benefit of employment or admission etc. claiming himself to be a particular Scheduled Caste or Scheduled Tribe and derives benefit of reservation, his continuance even for a day would be doing violence to the constitutional guarantee and protection provided under the Presidential Order of 1950. Any person who has cornered the benefit which has been reserved for a particular Scheduled Caste or Scheduled Tribe has to be treated as an usurper. Any indulgence shown to such person by allowing them to continue for the left over period either in the employment or matter of studies, would be putting a seal of approval to an illegal act committed by such beneficiary and every day of such continuance would be a continued violence to not only the caste and community for whom such benefit of reservation is available but also the constitutional scheme which will be allowed to be flouted by extending benefits or protection for the left over period.
22. The Hon'ble Supreme Court has very succinctly observed in ***Food Corporation of India*** (supra) that the legal system cannot be seen as an avenue of support to those who make untrue claims to belong to a caste or tribe or socially and educationally backward class. These benefits are provided only to designated castes, tribes or classes in accordance with the constitutional scheme and cannot be usurped by those who do not belong to them. The credibility, not merely of a legal system but also of the judicial process would be eroded if such claims are protected in exercise of constitutional powers conferred by Article 142 of the Constitution despite the State law.

- 23.** This Court cannot put the issue confronting the present litigation in any better words, therefore, there is no scape for the private Respondent from the rigors of law. In fact by not interfering with the impugned order of the learned Single Judge dated 02.01.2017, the constitutional Court would be failing in its duty by allowing illegality to be perpetuated and constitution to be violated by the private Respondent.
- 24.** The appeal succeeds. The order dated 02.01.2017 passed by the learned Single Judge is set aside.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE