

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 168 of 2018

1. State Of Chhattisgarh, through The Secretary Government of Chhattisgarh, General Administration Department Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Secretary , Government Of Chhattisgarh, Law & Legislative Affairs Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar, Sector 4, District Raipur, Chhattisgarh.

---- Appellants

Versus

- D.S. Kolhatkar, S/o Shri Shrawan Kolhatkar, aged about 62 years, R/o LIG 2/16, Near Paani Tanki , Bardiya Vihar, Amlidih, Raipur, Presently Posted as Office Superintendent, Chief Electrical Inspector, H.O.D Building, B-Block Second Floor, Indrawati Bhawan, Naya Raipur, District Raipur Chhattisgarh.

---- Respondent

For Appellants	:	Shri Prasun K Bhaduri, Government Advocate
For Respondent	:	Shri Saurabh Dangi, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ

Hon'ble Shri Parth Prateem Sahu,J

Order on Board

Per Ajay Kumar Tripathi, CJ

06/12/2018

1. This appeal is by the State against the order of the learned Single Judge dated 16.3.2017.
2. There is delay of 306 days in preferring this appeal for which condonation application (IA No.1/18) has been filed. We are satisfied as to the reasons provided therein that a case for condonation is made out. Accordingly, application (IA No.1/18) is allowed and delay is condoned.

3. In the impugned order despite the learned Single Judge not interfering with the decision of the High Level Caste Scrutiny Committee holding private respondent not to be a member of scheduled tribe i.e. 'Halba', but a 'Koshti', he still based on the law laid down in certain decisions of the Hon'ble Apex Court wants the benefit of continuance in service to be extended to him treating him to be a member of unreserved category.
4. It was urged and accepted by learned Single Judge that it is the State Government itself which had issued instructions on 1.10.2011 not to terminate the service of persons where a dispute on the caste 'Halba Koshtis / Koshti arose and where certain persons had obtained benefit of reservation in service claiming themselves to be Halba Koshtis/Koshti. Subsequently, the said instructions stood withdrawn on 11.1.2016 which was assailed by private respondent before the learned Single Judge on apprehension that withdrawal of policy decision of the State dated 1.10.2011 having vanished, his service would be jeopardized.
5. There is not much scope for arguments now keeping in mind the law as stands settled and laid down by the Hon'ble Supreme Court in the matter of **Chairman-cum-Managing Director, Food Corporation of India & ors vs. Jagdish Balaram Bahira & ors** reported in **(2017) 8 SCC 670**.
6. The status of administrative circulars or government resolutions giving such protection and the fallout thereof has also been considered by the Hon'ble Apex Court in Food Corporation of India's case (supra) in following words:-

“65. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of

such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that government is bound by its own circulars is well-settled but it cannot apply in a situation such as present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.

(Emphasis ours)

66. One of the considerations which is placed in store before the court particularly when an admission to an educational institution is sought to be cancelled upon the invalidation of a caste or tribe claim is that the student has substantially progressed in the course of studies and a cancellation of admission would result in prejudice not only to the student but to the system as well. When the student has completed the degree or diploma, a submission against its withdrawal is urged a fortiori. In our view, the state legislature has made a statutory decision amongst competing claims, based on a public policy perspective which the court must respect. The argument that there is a loss of productive societal resources when an educational qualification is withdrawn or a student is compelled to leave the course of studies (when he or she is found not to belong to the caste or tribe on the basis of which admission to a reserved seat was obtained) cannot possibly outweigh or nullify the legislative mandate contained in Section 10 of the state legislation. When a candidate is found to have put forth a false claim of belonging to a designated caste, tribe or class for whom a benefit is reserved, it would be a negation of the rule of law to exercise the jurisdiction under Article 142 to protect that individual. Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an avenue to support 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 the legal system but also of the judicial process will be eroded if such claims are protected in exercise of the constitutional power conferred by Article 142 despite the State law.

(Emphasis ours)

7. This Court is left without any option after the legal position has been settled by the Hon'ble Apex Court in Food Corporation of India's case (supra) on the right or claim of an employee who had been appointed on a post reserved for a scheduled tribe claiming himself to be a Halba Koshtis/ Koshti as well as the position when they are stripped off their status as a scheduled tribe especially by the Caste Scrutiny Committee, whose finding is not a subject-matter of challenge.
8. The binding precedent of Food Corporation of India's case (supra), therefore, makes the impugned order of the learned Single Judge dated 16.3.2017 vulnerable. The impugned order is in the teeth of the pronouncement of the Hon'ble Apex Court in Food Corporation of India's case (supra).
9. Appeal is allowed. Order dated 16.3.2017 passed in WPS No.930/2016 is set aside.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-