

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 474 of 2018**

Smt. Pushpalata Dekate W/o Shri Rajendra Dekate Aged About 48 Years
Occupation Assistant Fisheries Officer, Department Of Fisheries Training Institute,
Raipur, Raipur, Chhattisgarh, R/o G-2/23, E. A. C. Colony Collectorate, Raipur
Chhattisgarh.

---- Petitioner**Versus**

1. Union Of India Through Secretary, Department Of Personnel And Training Ministry Of Home New Delhi.
2. State Of Chhattisgarh, Through The Secretary Scheduled Castes And Scheduled Tribes Development Department Mahanadi Bhawan Mantralaya Naya Raipur Chhattisgarh District Raipur Chhattisgarh.
3. The Secretary, Government Of Chhattisgarh, General Administration Department Mahanadi Bhawan Mantralaya Naya Raipur, Chhattisgarh District Raipur Chhattisgarh.
4. Caste Certificate High Level Scrutiny Committee, Through Its Member Secretary Cum Commissioner, Tribal And Scheduled Caste Development Pandit Ravishankar Shukla University Campus, Raipur Chhattisgarh District Raipur Chhattisgarh.
5. Secretary, Government Of Chhattisgarh Department Of Agriculture Fisheries Mahanadi Bhawan Mantralaya Naya Raipur Chhattisgarh District Raipur Chhattisgarh.,
6. Collector, Raipur District Raipur, Chhattisgarh.
7. Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- Respondents

For Appellant	: Shri Manoj Paranjpe, Advocate.
For Respondent/UOI	: Shri Krishna Gopal Yadaw, Standing Counsel on behalf of Shri B. Gopa Kumar, Assistant Solicitor General.
For Respondent/State	: Shri Prasun Bhaduri, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****07/12/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Appeal arises out of an order dated 08.03.2018 passed by a learned Single Judge in Writ Petition (S) No.6006 of 2007 who dismissed the writ application of the Appellant refusing to extend any protection for continuance in service after the State Level Caste Scrutiny Committee held the Appellant not to be a Scheduled Tribe i.e. Halba.

3. The finding or the cancellation of the caste certificate of the Appellant by the State Level Caste Scrutiny Committee is not the matter of dispute here. The Appellant confines her argument and relief in the present writ appeal on the issue of protection and continuance in service that since the Appellant was born, brought up, educated and to extent claims herself to be a domicile of the undivided State of Chhattisgarh. It is urged that her case should be considered in the above light and she be allowed to continue in service, may be minus the advantages, protections or benefits which she had as a Scheduled Tribe candidate.

4. The learned Single Judge besides tracing history of status of such caste, the litigation on such issue, took note of the law as is stood clarified by a recent decision rendered by the Hon'ble Supreme Court in the case of **Chairman and Managing Director, Food Corporation of India and others v. Jagdish Balaram Bahira and others** reported in **(2017) 8 SCC 670**.

5. The learned Single Judge extracted the conclusion arrived at by the Hon'ble Supreme Court in **Chairman and Managing Director, Food Corporation of India** (supra) in paragraph-15 of his order, which reads as under:-

“15. Sympathy apart, this Court is unable to provide any protection under the law to the petitioner, in view of what has been declared by the Supreme Court in the case of **Jagdish Balaram Bahira** (supra). Conclusion drawn by the Supreme Court in para 57 of the aforesaid judgment, are as below:

I. Conclusion

57. For these reasons, we hold and declare that

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

(ii) Since the decision of this Court in *Madhuri Patil* which was rendered on 2 September 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;

(iii) The decisions of this Court in *R. Vishwanatha Pillai* and in *Dattatray* 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.

(iv) 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;

(v) By Maharashtra Act XXIII of 2001 there is a legislative codification of the broad principles enunciated in *Madhuri Patil*. 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;

(vi) 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 October 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;

(vii) 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;

(viii) The decisions in *Kavita Solunke* and *Shalini* of two learned Judges are overruled. *Shalini* 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;

(ix) *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;

(x) The judgment of the Full Bench of the Bombay High Court in Arun Sonone is manifestly erroneous and is overruled; and

(xi) 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 XXIII of 2001 holds the field."

In view of the aforesaid declaration, which is binding on this Court, no protection order can be issued in favour of the petitioner, once caste status of the petitioner is invalidated by the order of the State Level Caste Scrutiny Committee.

In so far as challenge to the order dated 12-09-2006 passed by the Sub Divisional Officer, assailed in WP No.5671 of 2006 is concerned, I have to hold that the Sub Divisional Officer did not have any jurisdiction to decide the caste status of the petitioner and the said order is void *ab initio* yet no relief can be granted in view of the fact that later on, State Level Caste Scrutiny Committee has held that the caste certificate of the petitioner is not valid."

6. In view of the authoritative pronouncement of the Hon'ble Supreme Court on this issue, there was no option for the learned Single Judge to cull out any kind of distinction and extend benefit to a person, who otherwise admittedly is not a Scheduled Tribe.

7. The argument made on behalf of the counsel for the Appellant that the Appellant had a better case because of her birth and domicile does not, in any manner, create a special right in her favour for protecting her service, for the left over period.

8. The appeal therefore must fail, as no infirmity emerges from the order of the learned Single Judge. The appeal is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE