

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Writ Petition No. 6589 of 2011
With
Civil Application No.3732 of 2017
With
Contempt Petition No.417 of 2017
In
Civil Application No.3732 of 2017
In
Writ Petition No.6589 of 2011**

- 1) Vijay Kishanrao Kurundkar,
Age 41 years,
Occupation : Service as
A.E.-I, Medium Project
Sub Division No.1, Naigaon,
District Nanded,
R/o House No.1-20-207,
Town Market Area,
Sathe Chowk, New Mondha,
Nanded.
- 2) Prashant Purushottam Sant,
Age 37 years,
Occupation : Service as AE-I
in Khadak-Purna Sub Division No.3,
Takarkhed (Bhagile),
Taluka Deulgaonraja,
District Buldhana
R/o Flat No.B-8, Prayag Nagar,
Hari Om Apartments,
Ambad Road, Jalna. **.. Petitioners.**

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Water Resources Department,
Mantralaya, Mumbai 400 032.

- 2) The Secretary,
Social Welfare Department,
Mantralaya, Mumbai 400 032.
 - 3) The Secretary,
General Administration Department
(Services, 16-B), Mantralaya,
Mumbai 400 032.
 - 4) The Secretary,
Tribal Development Department
Mantralaya, Mumbai 400 32.
 - 5) Madhukar Mohanraoji Parate,
Age 51 years,
Occupation Service as
Executive Engineer,
Nagpur Medium Project Division,
Bungalow No.13, Civil Lines,
Nagpur.
 - 6) Digambar Ganpatrao Barapatre,
Age 45 years,
Occupation Service as
Executive Engineer,
Lower Wardha Canal Division,
Near Ring Road, Pimpri,
Wardha.
- .. Respondents.**

Shri. Ajay S. Deshpande, Advocate, for petitioners.

Shri. R.V. Dasalkar, Assistant Government Pleader, for
respondent Nos.1 to 4.

Shri. R.N. Dhorde, Senior Advocate holding for Shri. N.S.
Kadam, Advocate, for respondent Nos.5 and 6.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 16 APRIL 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed for challenging the regularization of services of respondent No.5 and 6 in Irrigation Department of the Government and also to challenge the seniority given to them in the cadre of Assistant Engineer. Further declaration is claimed in respect of Government Resolution dated 15-6-1995 issued by the Government by which protection was given by the Government to the employees like respondent Nos. 5 and 6 who had failed to get Validity Certificate in respect of their claim of Scheduled Tribe but who were from the S.B.C. class (Special Backward Category). Both the sides are heard.

2) The submissions made and the record show that respondent Nos.5 and 6 entered the service of Irrigation Department as Assistant Engineer through M.P.S.C. as Scheduled Tribes category candidates. Their claim was that they were belonging to *Halba Koshti* Tribe. As per the conditions laid down in the letter of appointment, they were expected to submit validity certificate in respect of their claim of Tribe. In May 2001 the tribe claim of the respondent Nos.5 and 6 was

invalidated. Some proceedings were filed like writ petitions to challenge said decision of the authority. Submissions made show that one of these respondents, who had filed petition succeeded to get the order of remand of the matter and his claim will be again considered by the Caste Scrutiny Committee.

3) In the year 1995, the Government had issued a Government Resolution due to which protection could have been given to the candidates who had entered the service as Scheduled Tribes category candidate but who had failed to obtain validity certificate of their claim but who were from Special Backward Category. In view of the aforesaid Government Resolution and after obtaining the validity certificate of Special Backward Category by the respondent Nos.5 and 6, the Government gave protection to respondent Nos.5 and 6 and their services were protected but the order was made that their entry in the service was to be treated of the year 1995 and not of the year 1991 because of the Government Resolution dated 15-6-1995. Only due to this Government Resolution they were getting the protection in service.

4) Present petitioners entered the same cadre in the year 2000 through M.P.S.C. as candidates of Special Backward Category. It is their contention that at the entry point itself they were holding the validity certificates in respect of their caste claim. It is their contention that due to the order issued by the Government in the year 2004, the services of respondent Nos.5 and 6 will be counted from 1995 and they will be treated senior to the petitioners. The respondent Nos.5 and 6 are treated senior to the petitioners and they are promoted also on the basis of such seniority. Thus, the order made by the Government in the year 2004 is also challenged in the petition which came to be filed in the year 2011.

5) It is the contention of the petitioners that prior to Act No. XXIII of 2001 viz. "Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 the law declared by the Apex Court in **Kumari Madhuri Patil v. Commissioner, Tribal Development** reported as **AIR 1995**

SC 94 was holding the field and in view of the said law, after the decision of the authority which was appointed for consideration of the claims of the backward classes, candidates who had got admission in educational institutions against reserved seats and candidates who had obtained employment on the basis of claim of such castes, were liable to loose everything including the posts which they had obtained by making false claim of the caste or tribe. It is the contention that after the Act of 2001, which was in accordance with the directions given in Kumari Madhuri Patil's case by the Apex Court, the services of such persons could not have been protected and even the Government Resolution of 1995 could not have been used by the Government for giving such protection. The petitioners are relying on many reported cases on this contention and the last case on which they are placing reliance is the case reported as **(2017) 8 SCC 670 (Chairman and Managing Director, Food Corporation of India & Others v. Jagdish Balaram Bahira & Others)**.

6) On the other hand, it is the contention of the respondent Nos.5 and 6 that the Government had the

power to give protection to the employees who were from other reserved categories though they had failed in proving that they were belonging to Scheduled Tribe and if the Government had created quota for such other classes, viz. Special Backward Category, it was open to the Government to absorb such persons appointed against Scheduled Tribe category. On this point, learned counsel for the respondent Nos.5 and 6 placed reliance on the case reported as **(2008) 14 SCC 545 (Punjab National Bank v. Vilas Govindrao Bokade)**.

7) It is true that before the aforesaid Act of 2001 of this State, the law laid down by the Apex Court in the case of Kumari Madhuri Patil (cited supra) was holding the field. In the Act of 2001 there is specific provision in section 10 for forfeiture of the benefits already obtained by making false claim of caste or tribe by a candidate and even removal from the post obtained is also possible under section 10 of the Act. In the recent decision of Chairman and Managing Director, Food Corporation of India (cited supra) the Apex Court has made it clear that in view of provision of section 10 of the Act of 2001

benefit secured on the basis of false caste certificate must be withdrawn. The Apex Court has discussed the circumstance like using the power available to the Apex Court under Article 142 of the Constitution of India in many cases and on the basis of those decisions similar benefits given by various High Courts of protection of the degree obtained or protection of the post obtained. The Apex Court has laid down that the power used by the Apex Court under Article 142 of the Constitution of India had not laid down any principle of law and when the claim of a candidate that he belongs to Scheduled Caste or Scheduled Tribe category is found to be false by the authority, claim needs to be treated as invalid and that will render the admission/appointment *void ab initio* and *non est*. It is laid down that thereupon steps like cancellation of admission/appointment need to be taken. The Apex Court has also discussed the effect of administrative circulars and Government Resolutions and it is observed that such circulars and Government Resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. The Apex Court has laid down that in

view of the wording of section 7 it is irrelevant as to whether false certificate was issued before or after the commencement of the Act and so benefit secured even before the enactment of the said legislation on the basis of false caste claim is liable to be withdrawn upon its invalidation. There cannot be dispute over the proposition made by the Apex Court. On this point, reliance is placed on many other previously reported cases by the learned counsel for the petitioners and they are as under :

- (i) **AIR 2004 SC 1469 (R. Vishwanatha Pillai v. State of Kerala)**
- (ii) **2007 (2) Mh.L.J. 440 (Nutan Vidarbha Shikshan Mandal v. Presiding Officer, School Tribunal)**
- (iii) **2005 (4) Mh.L.J. 409 (Bank of India v. Avinash D. Mandivikar)**
- (iv) **2009(2)Mh.L.J.788 (Ganesh v. State of Maharashtra)**
- (v) **2009(5) ALL MR 828 (Vandana Bharat Kauthalikar v. State of Maharashtra)**
- (vi) **(1990) 3 SCC 655 (District Collector v. M. Tripura Sundari Devi)**
- (vii) **2001 (1) Mh.L.J. 1 (State of Maharashtra v. Milind)**
- (viii) **2004(1) Bom.C.R. 559 (Priyanka Khodke v. State)**
- (ix) **2007(3) Bom C.R. 572 (Malati Koli v. State of Maharashtra)**
- (x) **2009 (2) ALL MR 867 (Sunil Ingle v. Zilla Parishad)**

(xi) **2010 (3) ALL MR 269 (Shankarrao Patkar v. State of Maharashtra).**

8) In the case of Punjab National Bank (cited supra) the facts were similar to the present matter. In that matter also there was claim of the candidate that he belonged to Scheduled Tribe, Halba Tribe. His Tribe certificate was invalidated by holding that he was Koshti and did not belong to Halba Koshti which was recognised as a Scheduled Tribe. The Apex Court considered the Government Resolution dated 15-6-1995 which gives protection to Special Backward Category candidates who had failed to prove their claim of Scheduled Tribe category but who were appointed prior to 15-6-1995. One more Government Resolution of 2004 issued by the Government to give effect to the previous Government Resolution was also considered by the Apex Court and the relevant portion of the said Government Resolution is as follows :

"(a) The non-tribals who have received recruitment promotion in the government/semi-government services on the reserved seats for the Scheduled Tribes prior to 15-6-1995, should not be removed from service or should not be demoted. They should be shown in the constituent to which they belong.

Henceforth the reservation benefits entitled to that particular constituent will be due to them and they vacated posts in this manner should be filled from the tribal category."

9) In the case of Punjab National Bank (cited supra) also submission was made that after the Act of 2001, the Government Resolution of 1995 could not have been used. This submission was not accepted by the Apex Court and the Apex Court has laid down that there was no possibility of interference in the policy of the Government to give protection to the candidates appointed prior to Government Resolution dated 15-6-1995 and who were belonging to Special Backward Category though they had secured appointment by claiming that they were from Scheduled Tribes category. In the present matter also, there was the claim that respondent Nos.5 and 6 were of Halba, Scheduled Tribe and on that basis they had secured the appointment. However, till today they could not get validity certificates in respect of that claim but in the year 2003 they obtained validity certificates in respect of other claim like Koshti community which is the Special Backward Category. In view of these circumstances the Government Resolution dated 15-6-1995 is applicable and

protection could have been given by the Government to respondent Nos.5 and 6. Accordingly, protection is given. This case is not directly or indirectly overruled by the Apex Court in the case of *Chairman and MD, FCI* (cited supra). Further, treating a particular class as Special Backward Category, giving them reservation in Government job is a policy of the Government and if reservation is not declared as invalid, it was possible for the Government to give protection to the employees like respondent Nos.5 and 6. Respondent Nos.5 and 6 were already in service prior to the entry of the petitioners in the service though from other category. As the Government has the authority, power to give such protection, this Court holds that it is not possible to interfere in the matter on the basis of the grounds raised above. For the same reasons no further orders can be made in the contempt petition. In the result, the writ petition stands dismissed. Rule stands discharged. Contempt Petition and the civil application stand disposed of.

Sd/-
(SUNIL K. KOTWAL, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)