

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

WRIT PETITION NO. 11623 OF 2017

Chairman & Managing Director
Bharat Sanchar Nigam Limited & Ors. ...Petitioners
Versus
Digambar Chandrasa Koli ...Respondent

Ms Martina A. Sapkal i/b. Arun Sapkal & Co. for Petitioners.
Mr. Ajeet Manwani with Mr. Faisal Vora i/b. A. & A. Legal for
Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 27 June 2018
Date of Pronouncing the Judgment : 03 July 2018

JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the
learned counsel for the parties, Rule is made returnable
forthwith.

3] The challenge in this petition is to the judgment and
order dated 16th September 2015 made by the Central
Administrative Tribunal (CAT) allowing Original Application

No.210/0053/2015 instituted by the respondent seeking to challenge Memorandum dated 24th March 2014 requiring the petitioner to show cause as to why penalty of removal from service be not imposed upon him; order dated 2nd July 2014 disposing of the respondent's representation dated 16th April 2014 questioning the Memorandum dated 24th March 2014; and order dated 8th December 2014 made by the appellate authority rejecting the respondent's appeal against orders dated 24th March 2014 and 2nd July 2014. By the impugned judgment and order, the CAT, has set aside the show cause notice dated 24th March 2014 and orders dated 2nd July 2014 and 8th December 2014 as prayed for by the respondent.

4] There is no dispute that the respondent was appointed as a Junior Telecom Officer (JTO) under the Goa Division with effect from 18th August 1997 on the basis of the caste certificate issued by the Executive Magistrate, Akalkot on 30th July 1990 certifying that he belongs to Mahadeo Koli – Scheduled Tribe category. This caste certificate dated 30th July 1990 was invalidated / cancelled by the Caste Scrutiny Committee vide order dated 4th June 2003. Admittedly, the

respondent, till date, has not challenged the order dated 4th June 2003, by which, the caste certificate issued in his favour stood invalidated / cancelled.

5] Between the period 20th July 2003 and 1st July 2013, the respondent made representations for his retention in service referring on occasions to certain decisions of this Court which had granted protection even though, the Caste Scrutiny Committee may have invalidated the caste certificates.

6] On 24th March 2014, the BSNL, relying upon Rule 40(D) of the BSNL CDA Rules, 2006, issued a show cause notice to the respondent requiring him to show cause as to why he should not be removed from service on the ground that he had secured employment on the basis of a caste certificate which stood invalidated / cancelled.

7] The respondent, instead of responding to the show cause notice instituted Original Application to question the show cause notice dated 24th March 2014. The CAT, granted interim relief restraining the BSNL from proceeding further

in pursuance of the show cause notice dated 24th March 2014 and granted liberty to the respondent to make a representation to the disciplinary authority on the issue of the respondent's proposed removal from service.

8] The respondent, armed with the interim order from the CAT, made a detailed representation dated 16th April 2014 to the disciplinary authority. This was duly considered and disposed of by the disciplinary authority vide order dated 2nd July 2014. Aggrieved by the same, the respondent instituted an appeal before the appellate authority, which appeal, was dismissed by the appellate authority vide order dated 8th December 2014.

9] The respondent thereupon, instituted Original Application No.210/0053/2015 before the CAT to question the show cause notice dated 24th March 2014 and the orders dated 2nd July 2014 and 8th December 2014. The CAT, by the impugned judgment and order dated 16th September 2015, has allowed the Original Application No. 210/0053/2015. Hence, the present petition by the BSNL.

10] Ms Sapkal, the learned counsel for the petitioner - BSNL submits that there is no dispute that the respondent was appointed as JTO on the basis of caste certificate dated 30th July 1990 produced by him indicating that he was a member of the scheduled tribes. She submits that there is also no dispute that this very caste certificate is invalidated / cancelled by the Caste Scrutiny Committee on 4th June 2003. She submits that there is also no dispute that such invalidation was never challenged or questioned by the respondent. She submits that in such circumstances, the petitioner - BSNL was not only justified but was also duty bound to take action against the respondent. She submits that the CAT, has interfered with the action of the petitioners relying upon the decision of the Full Bench of this Court in ***Arun s/o. Vishwanath Sonone vs. State of Maharashtra & Ors. 2015(1) Mh.L.J. 457***, which decision, has been expressly overruled by the Hon'ble Court in ***Chairman and Managing Director, Food Corporation of India & Ors. vs. Jagdish Balaram Bahira & Ors. (2017)8 SCC 670***. On these basis, Ms Sapkal submits that the impugned judgment and order is liable to be set aside.

11] Mr. Ajeet Manwani, the learned counsel for the respondent submits that the petitioners have already complied with the impugned judgment and order and in terms thereof, reinstated the respondent and thereafter, issued him a suspension order dated 19th April 2018. He submits that since the petitioner BSNL has already complied with the impugned judgment and order dated 16th September 2015, there is no question of entertaining the present petition.

12] Mr. Manwani further submits that in this case the BSNL had in fact made an enquiry with the Tahsildar in the year 2003 itself with regard to the authenticity of the caste certificate dated 30th July 1990 and the Tahsildar, by his response dated 20th July 2003 had furnished a positive reply stating that such caste certificate was valid and not any fraudulent document. He submits that the order dated 4th June 2003 by which the respondent's caste certificate was invalidated was an exparte order and such order, had failed to notice that the respondent's claim was based upon pre constitutional documents. Mr. Manwani submits that even

assuming that the respondent had furnished a certificate which was later on invalidated, the BSNL, has slept over the matter for virtually 10 years and the proposed action of the BSNL was barred by delay and laches as has been correctly held by the CAT in the impugned judgment and order.

13] Mr. Manwani submits that the CAT has rightly granted the petitioner the benefit of the rulings of this Court in the case ***Rakesh Sukanuji Dafade vs. State of Maharashtra & Anr. 2014(3) Mh.L.J. 307, Anil s/o. Tulsiram Sonkusle vs. State of Maharashtra & Ors. 2014(4) Mh.L.J. 614*** and ***A. P. Ramtekkar & Ors. vs. Union of India & Ors. 2013(2) Mh.L.J. 419***, in which, it is held that even where the caste certificate produced by government servant is later on invalidated by the Caste Scrutiny Committee, the services of State Government servant should not be terminated and at the highest such government servant may be denied further benefits on the basis of the invalidated caste certificate.

14] For all the aforesaid reasons, Mr. Manwani submits that there is no jurisdictional error in the view taken by the

CAT and in fact, the view taken by the CAT, is quite equitable in the facts and circumstances of the present case and therefore, the same may not be interfered with.

15] Rival contentions now fall for our determination.

16] In the present case, there is absolutely no dispute as regards the basic facts. The respondent was indeed appointed as JTO against a reserve post and on the basis of caste certificate dated 30th July 1990 produced by him indicating that he belonged to the scheduled tribe category. This caste certificate was invalidated / cancelled by the caste scrutiny committee by order dated 4th June 2013. The order dated 4th June 2003 made by the Caste Scrutiny Committee was never challenged by the respondent and therefore, said order, has attained finality.

17] Since, the order made by the Caste Scrutiny Committee dated 4th June 2003 had attained finality, the correspondence between BSNL and Tahsildar's office with regard to the caste certificate dated 30th July 1990 was totally irrelevant and the same did not warrant any reliance.

The Tahsildar, was not at all authorized to address reply dated 30th July 1990, when in fact, the said caste certificate, had already been invalidated / cancelled by the Caste Scrutiny Committee by its order dated 4th June 2003.

18] Since, the order dated 4th June 2003 invalidating / cancelling the caste certificate on basis of which the respondent had secured employment as JTO with the BSNL had attained finality, there was nothing wrong on the part of the BSNL to propose action against the respondent. The CAT in such circumstances, was not at all justified in making the impugned judgment and order relying upon the ruling of the Full Bench of this Court in *Arun Sonone* (supra). Incidentally, we must note, that it was the petitioner BSNL who had placed reliance upon the decision of the Full Bench and the CAT, upon examination of the same, at paragraph 29 of the impugned judgment and order has observed that this ruling, relied upon by the petitioner BSNL, in fact supports the claim of the respondent. The ruling of the Full Bench as also, the other rulings upon which Mr. Manwani has now placed reliance was delivered in the context of Maharashtra Act of 2001 and the CAT, did not go into the

issue as to whether the protection granted under the said Act was available to the respondent before us.

19] In any case, the Hon'ble Supreme Court, in the case of *Jagdish Balaram Bahira* (supra) has expressly overruled the ruling of the Full Bench in the case of *Arun Sonone* (supra).

20] The relevant observations in this regard, read as follows :

“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 [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117]* 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 [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265]* noted the statute but misconstrued it."

"59. The Full Bench judgment of the Bombay High Court in *Arun (2015) 1 Mah LJ 457]* has essentially construed the judgments in *Kavita Solunke [Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430]* and in *Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526]* as having impliedly overruled the earlier Full Bench judgments in *Ganesh Rambhau Khalale v. State of Maharashtra (2009) 2 Mah LJ 788]* and *Ramesh Suresh Kamble State of Maharashtra (2007) 1 Mah LJ 423]*. 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 and Shalini , we are unable to subscribe to the view expressed by the Full Bench in Arun."

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

21] The rulings in *Rakesh Dafade* (supra) and *A. P. Ramtekkar* (supra), upon which reliance has been placed by Mr. Manwani, were in fact, relied upon in *Arun Sonone* (supra) as well. Now that the Hon'ble Supreme Court has, in no uncertain terms held that the judgment of the Full Bench of the Bombay High Court in *Arun Sonone* (supra) is manifestly erroneous and is overruled, obviously, the CAT was not at all justified in relying upon *Rakesh Dafade* (supra) and *A. P. Ramtekkar* (supra). Since, *Anil Sonkusle* (supra) upon which reliance has been placed by Mr. Manwani also takes the same view as has been taken in *Arun Sonone* (supra), there is no question of placing any reliance upon the said ruling, now that *Arun Sonone* (supra) stands overruled.

22] Mr. Manwani's contention about implementation of the

impugned judgment and order possibly proceeds on the basis of acquiescence. In this case, since there was no interim relief granted pending the admission or final disposal of this petition, it is possible that the respondent was permitted to continue in service. However, this is far cry from acquiescence. Therefore, we see no merit in the primary objection raised to the maintainability of this petition on the ground of the petitioners so-called acquiescence with the impugned judgment and order.

23] Since, Mr. Manwani, handed over a copy of the suspension order dated 19th April 2018 served by the petitioner BSNL upon the respondent, we must note that this is a suspension pending investigation / enquiry / trial in respect of some criminal offence in which the respondent is alleged to have been involved. Again, we fail to appreciate as to how the issuance of such suspension order can have no nexus with the maintainability of the present petition.

24] The CAT, in the present case, has based the impugned judgment and order, almost entirely upon the decisions in *Rakesh Dafade* (supra), *A. P. Ramtekkar* (supra)

and *Arun Sonone* (supra), which stand overruled by the Hon'ble Supreme Court in *Jagdish Balaram Bahira* (supra). Even otherwise, we are satisfied that there was absolutely no error in the show cause notice or the orders with which the CAT has interfered with in the facts and circumstances of the present case. The impugned judgment and order is therefore clearly in excess of the jurisdiction vested in the CAT and in any case, is vitiated by errors apparent on the face of the record.

25] For all the aforesaid reasons, we allow this petition. Quash and set aside the impugned judgment and order dated 16th September 2015. Rule is made absolute in the aforesaid terms. There shall however be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA