

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

WRIT PETITION NO. 10231 OF 2014

Union of India and ors. ...Petitioners
Versus
Laxman H. Jadhav ...Respondent

Mrs. Neeta V. Masurkar a/w. Mr. S.G. Thakur for the
Petitioners/UOI.
Mr.R.P. Saxena for the Respondent.

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

DATE OF RESERVING THE JUDGMENT : 18th APRIL 2018.
DATE OF PRONOUNCING THE JUDGMENT : 26th APRIL 2018.

JUDGMENT:

- 1] Heard learned counsel for the parties.
- 2] The challenge in this petition is to the judgment and order dated 30th June 2014 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No.508 of 2010 instituted by the respondent.
- 3] By the impugned judgment and order, the CAT has issued the following directions:

*"14. We accordingly pass the following orders:
(i) The Original Application is partly allowed to the extent that the order of punishment*

dated 23.6.2009 and the Appellate Order dated 5.3.2010 are quashed and set aside.

(ii) The Respondents are directed to reinstate the Applicant in service with effect from 23.6.2009 when he was removed from service.

(iii) The intervening period from the date of removal and reinstatement will be treated as duty for all purposes and he is entitled for all consequential notional benefits except that no back-wages will be payable during the said period.

(iv) Having established that the applicant does not belong to the category of "Scheduled Tribe" he will not be entitled to claim reservation in any service matter such as promotion etc. in future.

(v) The above direction shall be complied with in a period of four weeks from the date of receipt of a copy of this order.

(vi) Respondents are directed to initiate an inquiry against the officers responsible for verification of documents in the case of the applicant and impose exemplary punishment on such officials for gross negligence and dereliction of duty. Such punishment should be a lesson for others to guard against negligence in future.

(vii) Respondent No.2 will file an Action Taken Report (ATR) before this Tribunal within one year explaining the action taken against the erring officials.

(viii) There will be no order as to costs."

4] Ms Masurkar, learned counsel for the petitioners, submits that in passing the impugned judgment and order, the CAT has almost entirely, relied upon the decisions of the Hon'ble Supreme Court in cases of **Shalini G. Dalal vs. New English High School Assn. & ors. - (2013) 16**

SCC 526 and Kavita Solunkhe vs. State of Maharashtra - (2012) 8 SCC 430. She submits that recently, the Hon'ble Supreme Court in the case of **Chairman and Managing Director, Food Corporation of India and ors vs. Jagdish B. Bahira and ors - (2017) 2 SCC (L&S) 708** has specifically overruled its earlier decisions in *Shalini (supra)* and *Kavita (supra)*. On this short ground alone, Ms Masurkar submits that the impugned judgment and order made by the CAT is liable to be set aside.

5] Ms Masurkar points out that the respondent secured appointment as a postal assistant against a post specifically reserved for Scheduled Tribe (ST). She submits that this was despite the fact that the respondent knowing very well that he did not belong to ST category, at the highest belongs to category of Vimukta Jati or Other Backward Class (OBC). On this ground, disciplinary proceedings were initiated against the respondent and after afford of opportunity for defence and hearing, penalty of removal from service came to be imposed upon the respondent. She submits that the CAT, perhaps more out of

sympathy and by relying upon *Shalini (supra)* and *Kavita (supra)* has set aside the penalty. She submits that the CAT in doing this has clearly exceeded the jurisdiction vested in it and therefore, the impugned judgment and order warrants interference.

6] Mr. Saxena, learned counsel for the respondent, submits that the ruling of the Hon'ble Supreme Court in *Jagdish Bahira (supra)* is inapplicable to the facts of the present case. He submits that the ruling in *Jagdish Bahira (supra)* can apply only to a situation where a false caste certificate has been submitted by an employee and upon verification by the Caste Scrutiny Committee, such falsity is evident. He submits that in the present case, the respondent alongwith his application for appointment had produced a true and authentic caste certificate, in which, it was clearly stated that the respondent belongs to Lamani caste, which is a Vimukta Jati. In such circumstances, Mr.Saxena submits that ruling in *Jagdish Bahira (supra)* is clearly not attracted.

7] Mr. Saxena submits that on 10th September 1993, the

Central Government issued a Notification specifically recognizing Lamani Caste as an OBC. He submits that such Notification was very much available with the petitioners. He submits that the respondent's caste certificate was also very much available with the petitioners. Merely because the petitioners did not bother to properly verify the same, there was no cause for instituting any disciplinary proceedings against the respondent and imposing upon him penalty of removal from service. He points out that communication dated 24th May 2006, the respondent was informed that the respondent proposes to make corrections in his service record so as to indicate that he is belonging to OBC category and not the ST category. For this exercise, the respondent had no objection. However, instead of merely making such changes, the petitioners held disciplinary proceedings against the respondent and removed him from service. Mr. Saxena submits that this was grossly an unfair manner to treat and postal employee, who hails from backward class.

8] Mr. Saxena finally submits that there was no misconduct as such on the part of the respondent. The

respondent had disclosed, true and correct particulars about himself. The certificate submitted by the respondent was also true and authentic. At no stage, as such certificate being questioned or found to be false. The respondent was a bit confused because, the Lamani Caste is treated as ST in the neighbouring States. For all these reasons, Mr. Saxena submits that there is no case made out to interfere with the impugned judgment and order made by the CAT.

9] The rival contentions now fall for our determination.

10] From the record, it is clear that the petitioners had invited applications for filling-up the posts of postal assistant/sorting assistant some time in the year 1993-1994. Some of the posts were specifically reserved for the Scheduled Tribes. Pursuant to the same, the respondent vide application dated 14th September 1994 applied for appointment to the post of postal assistant/sorting assistant. There were no posts reserved for either Vimukta Jatis or OBCs. In the application form, there was a column, in which, the respondent had to indicate as to whether he

belongs to SC/ST/OBC category. In this column, the respondent specifically ticked against the “ST” so as to indicate that he belongs to the “ST” category and therefore, was eligible to be appointed against the posts reserved for the ST category. No doubt along with the application, the respondent did submit a certificate indicating that he belongs to Laxman Caste, which is a Vimukta Jati in the State of Maharashtra.

11] After some years, when it was realised that the respondent, admittedly, does not belong to the ST category, but secured appointment against a post reserved for ST category by not only applying to be considered for appointment to the post of reserved for the ST category, but further, in the application form, specifically stating that he belongs to the ST category, disciplinary proceedings were initiated against the respondent. There is no complaint as regards compliance with the principles of natural justice in the course of such disciplinary proceedings. In any case, the matter was based on documentary evidence. On the basis of enquiry report, penalty of removal from service was imposed upon the

respondent. Such penalty does not disqualify the respondent to seek appointment in Government service in future.

12] The CAT has set aside the removal order and directed reinstatement of the respondent mainly relying upon the decisions of the Hon'ble Supreme Court in *Shalini (supra)* and *Kavita (supra)*. This is evident from the discussion in paragraph 12 of the impugned judgment and order, in which, the CAT has held that the observations of the Hon'ble Supreme Court in *Shalini's case (supra)* are squarely applicable to the present case. The CAT has quoted the observations of the Hon'ble Supreme Court in *Shalini (supra)*, which read as follows:

“12.An innocent statement which later transpires to be incorrect may be seen as false in general sense would normally not attract punitive or detrimental consequences on the person making it, as it is one made by error. An untruth coupled with a dishonest intent however requires legal retribution.....”

13] Now, a three Judges Bench of the Hon'ble Supreme Court in *Jagdish Bahira (supra)* has very specifically held that *Shalini (supra)* insofar as it stipulates a requirement of dishonest intent for application of provisions of section 10

of 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 (said Act) is, with respect, erroneous and does not reflect the correct position in law. Similarly, in *Jagdish Bahira (supra)* the Hon'ble Supreme Court has also overruled *Kavita (supra)*. On this ground itself, the impugned judgment and order made by the CAT is liable to be set aside.

14] Mr. Saxena submitted that the respondent was entitled to protection of the said Act, since, the respondent had submitted a valid caste certificate and further, the validity of such caste certificate was never doubted by the petitioners. In particular, Mr. Saxena submits that the respondent was entitled to benefits of section 10 of the said Act.

15] There is a seeming contradiction in the submission of Mr. Saxena. On one hand, he submits that since the respondent has not submitted a false caste certificate, the

decision in *Jagdish Bahira (supra)* is inapplicable to the respondent's case. However, on the other hand, the respondent seeks benefit under section 10 of the said Act.

16] The contention based upon section 10 of the said Act stand answered against the respondent in the case of *Jagdish Bahira (supra)*. In this regard, the reference is required to be made to paragraphs 55 and 56 and finally the conclusions recorded in paragraphs 69.8 of *Jagdish Bahira (supra)*. The same read as under:

"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

(supra) has, with great respect, fallen into error. The judgment in *Shalini* (supra) 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* (supra) 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* (supra) 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 XXIII of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in Milind 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 XXIII of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the area was unregulated by statute. Shalini noted the statute but misconstrued it.

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69.8. The decisions in Kavita Solunke and Shalini of two learned Judges are overruled. Shalini insofar 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."

17] In a matter of this nature, the petitioners ought to have verified the Caste Certificate at the earliest instance, if not, before considering the candidatures of the respondent against the post reserved for ST category. However, the CAT, was not right in awarding relief mainly based upon sympathetic consideration. No doubt, the CAT also relied upon the rulings in *Shalini (supra)* and *Kavita (supra)*. However, as noted earlier, in *Jagdish Bahira (supra)*, the Hon'ble Supreme Court has itself held that the two decisions, did not reflect the correct position in law.

18] Perhaps, taking cognizance of the lapse on its own part, the petitioners have not imposed penalty of dismissal upon the respondent. Such penalty, would have operated as a bar for appointment in Government service in future. Instead, the petitioners have chosen to remove the respondent, so that such removal is not a bar for appointment in Government service.

19] For all the aforesaid reasons, we set aside the impugned judgment and order made by the CAT. Rule is made absolute in terms of prayer clause (a).

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)