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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO.5503 OF 2017

The Union of India and Ors.
Vs.

... Petitioners

Sadashiv Tukaram Koli and Anr.

... Respondents

Mrs. Anjali Neel Helekar a/w Mr. Aniruddha A. Garge for the Petitioners.
Mr. A.S. Rao for the Respondent No.1.
Mr. Y.S. Khochare, AGP for the Respondent No.2 – State.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 27th MARCH 2019.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Rule. Advocates for the respondents waives service. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents. Considering the nature of the impugned order and peculiar facts of the case, we have immediately take up the petition for final disposal.

2 The Respondent No.1 is the applicant in original application filed before the Central Administrative Tribunal. There were two prayers made by the respondent in the original application. The respondent is

working in the Department of Posts as a Postal Assistant. The first prayer is to quash and set aside the charge sheet issued on 30th May 2011. The second prayer is to direct the present petitioners not to proceed with the disciplinary enquiry till the report in regard to the validation of caste certificate issued to the respondent is made by the concerned Caste Scrutiny Committee.

3 Admittedly, the respondent was appointed on a post reserved for Scheduled Tribe category. The appointment was made on 2nd January 2001. Charge sheet was issued on 30th May 2011 on the ground that despite of issue of numerous letters and reminders over a period of about five years, the respondent did not produce caste validity certificate showing that he belongs to Scheduled Tribe.

4 The impugned order is admittedly passed without even issuing notice of the original application to the petitioners. In the impugned order, the Tribunal observed that a specific request be made to the Caste Scrutiny Committee to expedite the matter of caste verification of the respondent and till the matter is decided by the Caste Scrutiny Committee, the petitioners shall not proceed with the pending charge sheet.

5 The effect of the impugned order is that the petitioners who are the employers of the respondent have been prevented from proceeding further on the basis of a charge sheet served to the respondent on 30th May 2011. We may note that the original application was filed by the respondent nearly five years after service of charge sheet. The impugned

order affects the rights of the petitioners as the employers of the respondent. The impugned order is vitiated by the breach of principles of natural justice as the petitioners were not given an opportunity of being heard.

6 Only on the ground of breach of principles of natural justice that we are inclined to set aside the impugned order.

7 It will be open for the respondent to move the Tribunal for hearing the prayer for interim relief.

8 Hence, we pass the following order :-

ORDER

- (i) The impugned order dated 5th August 2016 passed in Original Application No.210/00574/2016 is hereby quashed and set aside and the said Original Application is restored to the file of the Central Administrative Tribunal, Mumbai Bench at Mumbai;
- (ii) We direct the parties to appear before the Tribunal on 23rd April 2019 at 11.00 am for fixing a date of hearing of the prayer for interim relief made in the Original Application;
- (iii) We make it clear that it will not be necessary for the Tribunal to issue notice of the aforesaid date fixed to the parties to the petition;

- (iv) Rule is accordingly made absolute on above terms. We make it clear that we have made no adjudication on merit of the controversy in the Original Application.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)