

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

Hon'ble Justice Partha Sarathi Sen

W.P. No. 7737 of 2019

Md. Khairul Mandal

-Versus-

Union of India And Ors.

For the Petitioner : **Mr. Ujjal Ray, Adv.,**
Mr.Arpa Chakraborty, Adv.,
Mr. Sk. Abdur Rahim, Adv.

For the Respondents : **Mr. Pulakesh Bajpayee, Adv.,**

Last Heard on: : **28.07.2023**

Judgment delivered on. : **02.08.2023**

PARTHA SARATHI SEN, J. :-

1. In this writ petition the writ petitioner has prayed for issuance of Writ of Mandamus against the respondents being the Union of India and its officials for quashing the office order vide no. E-III/PF-KM/SSB/63rd BN/18/7329-41 dated 11.08.2018 whereby and whereunder the present petitioner was removed from his service by respondent no.6/authority as well as for quashing office order vide No. II/Estt./Dist/53rd BN/Ftr-Slg/2018/945-47 dated 16.01.2019 as issued by the Appellate Authority being respondent no.5 whereby the said Appellate Authority upheld the removal order of the writ petitioner from service thereby dismissing the said appeal preferred by the writ petitioner.

2. In support of the instant writ petition learned advocate for the writ petitioner at the very outset draws attention of this Court to page nos.31 and 32 of the writ petition being Annexure P1 which is the photocopy of certificate for OBC as issued in the name of the writ petitioner by SDO Sadar, Berhampore as per proforma prescribed by the respondents/authorities prior to his appointment in 'Sashastra Seema Bal' (in short 'SSB') by virtue of their recruitment application vide F no. 3/18/2011-P&P1 as published in the Employment News/ Rozgar Samachar dated 03.12.2011. It is further submitted that the present writ petitioner after crossing all the hurdles in the said recruitment process ultimately was offered with an appointment by a memorandum dated 27.05.2014 which was also being annexed in the instant writ petition at page no.33, being Annexure P2. It is contended further that all of a sudden the present writ petitioner was served with a show-cause notice dated 28.03.2018 by his employer/ superior i.e. respondent no.6 herein on the ground that the writ petitioner has furnished false or incorrect information of belonging to OBC category under Central List at the time of his appointment and thus failed to fulfill the requisite criteria required for selection to the post of Constable (GD) where the writ petitioner has joined as a probationer. It is further argued that pursuant to the direction of his superior the writ petitioner had duly replied to such show-cause notice however, the respondent no.6/authority was not satisfied with the reply as given by the present writ petitioner and thereafter by the impugned

letter dated 11.08.2018 issued an order for removal from service of the writ petitioner.

3. The writ petitioner thereafter carried the matter to the Appellate Forum but the Appellate Authority also failed to consider such appeal in its proper perspective and thus wrongly affirmed the order of dismissal as passed by respondent no.6.

4. It is contended on behalf of the writ petitioner that from Annexure P1 i.e.; the photocopy of the certificate for OBC as issued in the name of the petitioner it would reveal that such certificate has been issued by the appropriate authority as per proforma prescribed by the respondent/Union of India in their recruitment notice and in absence of proof of *any fraud* on the part of the writ petitioner, the respondents/authorities more specifically, respondent no.5 is not justified in removing the writ petitioner from service that too after more than 4 years of his joining on the pretext that the writ petitioner does not belong to OBC (A) category as per Central List for the State of West Bengal.

5. Drawing attention to Rule 15 of SSB Rules, 2009 (hereinafter referred to as the said 'Rules') it is contended that the said Rule provides that normally a person who has been appointed in SSB shall remain on probation for a period of two years; however in an appropriate case the Central Government may extend the period of probation for such further period or periods not exceeding two years or may during the period of probation terminate his service without assigning any reasons. It is thus contended that since the date of entry in service of the writ petitioner was

27.05.2014 it may be presumed, in absence of any adverse report, that he has duly completed his period of probation and he has been confirmed in service and therefore the present writ petitioner cannot be removed in the manner he has been removed from his service on 11.08.2018 without following prescribed rules for termination or removal from service.

6. In course of his argument learned advocate for the writ petitioner refers to two reported decisions namely:- ***Kavita Solunke vs. State of Maharashtra and Ors.*** reported in ***(2012) 8 SCC 430*** and ***Shalini vs. New English High School Association and Ors.*** reported in ***(2013) 16 SCC 526***.

7. Placing his reliance upon the aforesaid two reported decisions it is contended on behalf of the petitioner that in the aforesaid two reported decisions the Hon'ble Apex Court in a similar circumstances passed a judgment against ouster with rider that the appellants of the said cases will not get benefit of reserved categories in future in their respective services. It is further contended that in the aforesaid two reported decisions the Hon'ble Apex Court has granted such relief/reliefs to the writ petitioners/appellants therein considering that there was no fraud on the part of the appellant in obtaining /producing their caste certificate and on the contrary it has been held by the Hon'ble Apex Court that the confusion arose because of exclusions or inclusions of certain castes or classes of people keeping only electoral advantage in mind.

8. It is thus contended on behalf of the petitioner that the benefit awarded by the Hon'ble Apex Court in the case of ***Kavita Solunke***

(supra) and **Shalini (supra)** may also be extended to the instant writ petitioner by allowing the writ petition thereby quashing the order of dismissal of the writ petitioner dated 11.08.2018 as issued by the respondent no.5 and as confirmed in appeal by the respondent no.6.

9. Per contra, learned advocate for the respondent in course of his argument at the very outset has handed over a copy of proforma of certificate to be produced by a candidate belonging to Other Backward Class applying for appointments to posts under the Government of India. Since the correctness of copy of such format has not been disputed rather admitted by the writ petitioner, such formant is taken on record.

10. Learned advocate for the respondents further submits that from Annexure P2 of the instant writ petition it is clear that the appointment as offered to the present writ petitioner was purely temporary in nature but the same is likely to be continued and the present writ petitioner would be on probation for a period of 2 years from the date of his appointment which might be extended for reasons to be recorded for a further period not exceeding two years as per Rules and that Clause 12 of the memorandum dated 27.05.2014 being Annexure P2 clearly says that such appointment is provisional and is subject to verification of Scheduled Caste/Scheduled Tribe/Other Backward Class certificate and in the event at the time of verification, it reveals that the claim belonging to Scheduled Caste/Scheduled Tribe/ Other Backward Class as the case may be is found to be false, service of the petitioner would be terminated forthwith without assigning any further reason. Drawing attention to Annexure P1

being the certificate of OBC as submitted by the writ petitioner it is contended on behalf of the respondents/Union of India that though in such certificate dated 28.03.2011 as submitted by the writ petitioner it is found that the writ petitioner belongs to **MUSLIM MANDAL** community recognized as a backward class under Government of West Bengal's different notifications but when such certificate was sent for verification to the Issuing Authority, the P.O cum-DWO, Backward Classes Welfare & Tribal Welfare, Government of West Bengal, by issuing their memo no. 288/BCW/Wsd.(Misc.)/En Dated 14.02.2017 categorically mentioned that no sub-caste namely "**MUSLAIM MANDAL**" has yet been enlisted in the Central List of OBC for the State of West Bengal.

11. It is contended that since the appointment of the present writ petitioner was done in SSB under the OBC(A) category on the basis of certificate for OBC dated 28.03.2011 and since the same is found to be incorrect in course of verification, the respondents/authorities are not wrong in removing the present writ petitioner from his service. It is further submitted on behalf of the respondents/ Union of India that the removal of the present writ petitioner from his service is in consonance of the condition nos. II,XII and XIII of the memorandum of appointment dated 27.05.2014. Drawing attention to Rule 23 of the said Rules, it is further submitted on behalf of the respondents/Union of India that since the said Rule permits the respondents/authorities to terminate the service on the ground of furnishing false or incorrect information at the time of appointment of that person in service followed by a show-cause notice

and giving one month time, there occurred no infraction of rule in passing the office order of dismissal which is under challenge in this writ petition.

12. For effective disposal of the instant writ petition this court considers that a look to the memorandum of appointment dated 27.05.2014 as issued in the name of the writ petitioner by the respondent no.5/authority is required to be looked into and the relevant portion of the said memorandum is as under:-

“

- i.
- ii. *The appointment is purely temporary but likely to continue. He will be on probation for a period of 02(two) years from the date of appointment. The competent authority , as prescribed under SSB Rules may, for the reason to be record in writing, extend the period of probation for such further period or periods not exceeding two years or may during the period of probation , terminate his service without assigning reason . His permanent appointment to the post, however will depend upon various factors governing terms of permanent appointment to such post in Force at that time.*
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x.

- xi.
- xii. *The appointment is provisional and is subject to verification of Schedule Caste/Schedule Tribe/OBC Certificate. If the verification reveals that the claim belonging to Scheduled Caste/Scheduled Tribe or OBC, as the case may be, is found false, his services are liable to be terminated forthwith, without assigning any further reasons or without prejudice to such further action, as may be taken under the provision of the SSB Act 2007/ Indian Penal Code for production of false certificate.*
- xiii. *For Other Backward Classes candidates the Community Certificate should invariably be issued by the designated authority only. If on verification it is revealed that his claim of belonging to Other Backward Classes and not belonging to Creamy Layer is false, his services will be terminated forthwith without assigning any further reasons or without prejudice to such further actions as may be taken under the provisions of SSB Act 2007/ Indian Penal Code for production of false certificate.”*

13. At this juncture if we look to the copy of the format of certificate to be produced by the candidates belonging to OBC as handed over to this Court by the learned advocate for the respondents/ Union of India this Court finds that the copy of the certificate for OBC candidates as issued in the name of the writ petitioner perfectly matches with the said format and the same has been by SDO Sadar-Berhampore, Murshidabad.

14. Admittedly the certificate of caste being Annexure P1 is not a fraudulent document however, the same is subject to verification as per condition no. II, XII and XIII of the memorandum of appointment dated

27.05.2014 as issued in the name of the writ petitioner. It is also admitted position that in course of verification the respondents/authority got a reply in writing dated 14.12.2017 from Backward Classes Welfare & Tribal Welfare Department, Murshidabad, wherein the P.O. cum-DWO, Backward Classes Welfare & Tribal Welfare, Murshidabad stated the following:-

“ With reference to the above noted subject, this is to inform you that no sub-caste namely “MUSLIM MANDAL” has yet been enlisted in the Central list of OBCs for the State of West Bengal.”

15. In view of such reply there is no doubt in the mind of the Court that the present petitioner belonging to **MUSLIM MANDAL** community has been recognized as a backward class under the of Government of West Bengal's different notifications but neither the said community nor the petitioner comes within the category of OBC as per Central List for the State of West Bengal which is one of the main criteria for applying as an OBC candidate in the post where the present writ petitioner was employed. Such being the position, this court finds that the findings of the respondents/authorities the impugned memorandums are perfectly justified and therefore there is no requirement of interference by this Court on that point.

16. At this juncture question arises, as to whether the writ petitioner being not OBC as per Central List or as per given proforma is at all entitled to get any protection from ouster from his service as given to the

appellants in the reported decisions of **Kavita Solunke** (supra) and **Shalini** (supra).

17. In course of his argument learned advocate for the writ petitioner vividly contended that since no fault was established on the part of the writ petitioner in producing the cast certificate with the respondents/ authorities at the time of his recruitment, the benefit from ouster as given in the aforesaid two reported decisions by the Hon'ble Apex Court may be extended to the present writ petitioner. Learned advocate for the Union of India however contends that in the event such relief is granted to the writ petitioner the same would tantamount to violation of Article 14 of the Constitution of India since in a similar circumstance the other prospective applicants have deprived themselves from applying for the self same post on the ground that they belong to OBC as per State list but not under the Central List.

18. At this juncture if we look to the reported decision of **Kavita Solunke(supra)** it reveals that the Hon'ble Apex Court expressed the following view:-

“3. A decade after her initial appointment, Respondent 5 asked the appellant to get her caste credentials verified from the Scheduled Tribe Certificate Scrutiny Committee. The appellant complied with the said direction and submitted her certificate to the Committee concerned, which in turn forwarded it for a proper vigilance inquiry. In the course of the said inquiry, the school record of the appellant was also looked into which showed that the appellant's father was a “Koshti” by caste which caste was not a Scheduled Tribe in Maharashtra.

4. The Committee, therefore, concluded that the caste certificate of the appellant was invalid and accordingly

cancelled the same. This led to the school passing an order dated 23-2-2008 whereby the services of the appellant were terminated with immediate effect.....

6. The learned counsel appearing for the appellant raised a short point before us. He contended that the appointment of the appellant having attained finality, could not have been set aside on the ground that Koshti-Halbas were not “Halbas” entitled to the benefit of reservation as Scheduled Tribes. Relying upon the decision of the Constitution Bench of this Court in *State of Maharashtra v. Milind* [(2001) 1 SCC 4 : 2001 SCC (L&S) 117], it was urged by the learned counsel that the appellant was entitled to the protection of continuance in service, no matter “Halba-Koshtis” were not recognised as “Halbas” by this Court.....

- a. Our attention was drawn by the counsel for the respondents to the decision of this Court in *BHEL v. Suresh Ramkrishna Burde* [(2007) 5 SCC 336 : (2007) 2 SCC (L&S) 152] in which the protection against ouster granted by the decision in *Milind* case [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] was not extended to the respondent therein. A bare reading of the said decision, however, shows that there is a significant difference in the factual matrix in which the said case arose for consideration. In *Burde* case [(2007) 5 SCC 336 : (2007) 2 SCC (L&S) 152], the Scrutiny Committee had found that the caste certificate was false and, therefore, invalid. That was not the position either in *Milind* case [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] nor is that the position in the case at hand. In *Milind* case [(2001) 1 SCC 4 : 2001 SCC (L&S) 117], the Scrutiny Committee had never alleged any fraud or any fabrication or any misrepresentation that could possibly disentitle the candidate to get relief from the Court. In the case at hand also there is no such accusation against the appellant that the certificate was false, fabricated or manipulated by concealment or otherwise. Refusal of a benefit flowing from the decision of this Court in *Milind* case [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] may, therefore, have been justified in *Burde* case [(2007) 5 SCC 336 : (2007) 2 SCC (L&S) 152] but may not be justified in the case

at hand where the appellant has not been accused of any act or omission or commission of the act like the one mentioned above to disentitle her to the relief prayed for. The reliance upon Burde case [(2007) 5 SCC 336 : (2007) 2 SCC (L&S) 152] , therefore, is of no assistance to the respondent.

22. *Applying the above to the case at hand we do not see any reason to hold that the appellant had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an undeserved benefit in the matter of appointment as a teacher. There is, therefore, no reason why the benefit of protection against ouster should not be extended to her subject to the usual condition that the appellant shall not be ousted from service and shall be reinstated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained and which was 10 years after its issue cancelled by the Scrutiny Committee.”*

19. In the case of **Shalini (supra)** the Hon’ble Apex Court while disposing an identical case almost took an identical decision and thus expressed the following view:-

“7. *In view of the comprehensive yet concise consideration of case law in Solunke, any further analysis would make the present determination avoidably prolix, and therefore our endeavour will be to cull out the principles which would be relevant for deciding such like conundrums. These are:*

7.1. *If any person has fraudulently claimed to belong to a Scheduled Caste or Scheduled Tribe and has thereby obtained employment, he would be disentitled from continuing in employment. The rigour of this conclusion has been diluted only in instances where the court is confronted with the case of students who have already completed their studies or are on the verge of doing so, towards whom sympathy is understandably extended.*

7.2. *Where there is some confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status, such as issuance of relevant certificates to persons claiming to be “Koshtis” or “Halba-Koshtis” under the broadband of “Halbas”, protection of employment will be available with the rider that these*

persons will thereafter be adjusted in the general category thereby rendering them ineligible to further benefits in the category of Scheduled Caste or Scheduled Tribe as the case may be.

7.3. *This benefit accrues from the decision of this Court inter alia in Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar which was rendered under Article 142 of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions/Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it was in Milind that the Constitution Bench clarified that “Koshtis” or “Halba-Koshtis” were not entitled to claim benefits as Scheduled Tribes and it was the “Halbas” alone who were so entitled. A perusal of the judgment in Vilas by Sirpurkar, J., as well as Solunke makes it clear that this protection is available by virtue of the decisions of this Court; it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature.*

9. *It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with the Scheduled Castes or Scheduled Tribes, etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste/Scheduled Tribe.”*

20. On perusal of the aforesaid two reported decisions as cited from the side of the writ petitioners it appears that the Hon’ble Apex Court while

disposing of the said two cases gave a specific finding that where the confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status is not attributed to the writ petitioner and on the contrary it occurs on account of confusion created by the Issuing Authority either for any administrative reason or for giving some electoral advantages and also where appointment has attained its finality, protection of employment will be available with the rider that such person will thereafter be adjusted in the general category thereby rendering him ineligible to further benefits in the reserved category.

21. In considered view of this Court the position is however quite different from the facts and circumstances as involved in the reported decision of **Kavita Solunke (supra)** and **Shalini (Supra)**. Admittedly, the writ petitioner has entered in service on 27.05.2014 as a probationer and though he has completed his two years of probation but no formal order has been passed by the respondents/authority regarding confirmation of his service prior to his date of removal from service on 11.08.2018. On the contrary it reveals that as per condition no. II, XII and XIII of the memorandum of appointment dated 27.05.2014 the appointment of the writ petitioner was provisional and the same was subject to verification of caste/OBC certificate.

22. Sufficient materials have been placed that in course of verification the respondents/authorities received letter dated 14.02.2017 from the office of P.O cum-DWO, Backward Classes Welfare & Tribal Welfare, Murshidabad, Government of West Bengal whereby the said authority

confirmed that the present writ petitioner though belonging to **MUSLIM MANDAL** category but cannot be categorized as OBC (A) as per the Central List. Sufficient materials have also been placed before this Court that immediately after receipt of such letter dated 14.02.2017 the present writ petitioner was served with a show-cause notice with regard to his alleged caste certificate and thereafter an order of removal from service was passed against him following the norms as prescribed in Rule 23 of the said Rules. It thus appears to this Court that in view of pendency of such departmental process at the instance of the respondent/authority, it cannot be said that the service of the present writ petitioner has been confirmed on successful completion of period of probation without verifying his caste certificate.

23. In view of the facts and circumstances as discussed above, the instant case is quite distinguishable from the reported decisions of **Kavita Solunke(supra)** and **Shalini (Supra)** as cited from the Bar.

24. This Court thus holds that the impugned order of removal dated 11.08.2018 as issued by the respondent no.6 and the confirming order of appeal dated 16.01.2019 as passed by the respondent no.6 are absolutely justified and in conformity with Rule 23 of the said Rules and therefore the present writ petitioner is not entitled to get any relief as prayed for.

25. With the aforementioned observations, the instant writ petition is dismissed however considering the facts and circumstances of the instant case without any order as to costs.

26. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)