

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 322 OF 2022

Dhanraj Yadaorao Parate,
Aged about 64 years,
Occupation: Retired,
R/o Essen Arcade,
Flat No.B-8, 3rd Floor “B
Building behind Govt. High
School, Mangor Hill,
Vasco-Da-Gama Goa 403802.

... Petitioner

Versus

Mormugao Port Trust Authority,
Through its Chairman and
Competent Authority
Administrative Building,
Head Land,
Sada, Goa – 403804.

... Respondent

Mr Shantanu Ghate and Mr Mayur Mahamal, Advocates for the
Petitioner.

Mr Yogesh V. Nadkarni with Ms Simran Khadilkar, Advocates
for the Respondent.

WITH

WRIT PETITION NO. 63 OF 2023

Dhanraj S/o Yadaorao Parate,
Aged about 64 years,
Occupation: Retired,
Resident of Essen Arcade,
Flat No.B-8, 3rd Floor, Behind
Government High School,
Mangor Hill, Vasco-Da-Gama
Goa 403802.

...Petitioner

Versus

1 The Caste Certificate Scrutiny
Committee, through its Member

Secretary, Adivasi Vikas
Bhavan, Giripeth, Nagpur.

2 Mormugao Port Trust,
through its Chairman and
Competent Authority,
Administrative Office,
Headland, Sada Goa 403804.

...Respondents

Mr S. D. Khati and Mr P. K. Dhomne, Advocates for the
Petitioner.

Mr D. Pangam, Advocate General with Ms Maria Correia,
Additional Government Advocate for the Respondent- State.

Mr Yogesh V. Nadkarni with Ms Simran Khadilkar, Advocates
for Respondent No.2.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

**Reserved on: 19th JULY 2023
Pronounced on: 1st AUGUST 2023**

JUDGMENT (Per M. S. Sonak, J)

1. Heard Mr S. Ghate, learned counsel for the Petitioner in Writ
Petition No. 322 of 2022, Mr S. D. Khati, learned counsel for the
Petitioner in Writ Petition No.63 of 2023, Mr Y. V. Nadkarni with
Ms S. Khadilkar for the Mormugao Port Trust Authority
(Respondent No.1 in WP No. 322 of 2022 and Respondent No.2 in
WP No.63 of 2023) and Mr D. Pangam, learned Advocate General
with Ms Maria Correia, learned Additional Government Advocate
for the Respondent-State in both the petitions.

2. Rule in both the petitions. At the request and with the
consent of the learned counsel for the parties rule is made

returnable immediately. Even otherwise, these matters were posted for disposal at the admission stage.

3. The Petitioner, based on the caste certificate dated 17.12.1980, was appointed as a Clerk at the Mormugao Port Trust (now Mormugao Port Authority- MPA) effective from 07.10.1982. On 21.08.2009, the MPA requested the Caste Scrutiny Committee constituted in terms of the Hon'ble Supreme Court's decision in ***Kum. Madhuri Patil and Another Vs Addl. Commissioner, Tribal Development and others,***¹ to verify the Petitioner's caste.

4. The Caste Scrutiny Committee (CSC) requested the concerned police vigilance cell to conduct a detailed investigation and submit a report. The record shows that the CSC gave the Petitioner several opportunities to rectify the errors or attend the hearing before the CSC. However, the Petitioner, on one excuse or the other, refused to attend the proceedings before the CSC or vigilance cell.

5. The vigilance cell submitted its report to the CSC on 16.01.2020. On 18.01.2020 the CSC issued a show cause notice to the Petitioner along with a copy of the police vigilance cell report. Again, the Petitioner was granted a full opportunity to file his reply on the report or otherwise participate in the proceedings before the CSC.

6. The Petitioner, by his communication dated 05.02.2020, wrote to the CSC that it should pass an order in accordance with Section 4(2) of the Maharashtra Schedule Castes, Schedule Tribes,

¹ 1994(6) SCC 241

De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes, Special Backward Category, (Regulation of Issuance and Verification of Caste Certificate) Act 2000 (the said Act).

7. The CSC, based on the material before it, including the statements and police vigilance cell report, made the impugned order dated 15.02.2020 invalidating the Petitioner's caste certificate.

8. Based upon the CSC's order dated 15.02.2020, the MPA issued a charge memorandum dated 17.06.2020 charging the Petitioner with grave misconduct of obtaining an appointment as a Clerk on 26.10.1982 against a post meant for a reserved category belonging to the Scheduled Tribe and subsequently deriving promotional benefits of higher positions.

9. The Petitioner filed his written statement in defence on 25.07.2020, which was found to be unsatisfactory. The inquiry proceedings were held, and the inquiry officer submitted his report on 29.06.2021, holding that the charge against the Petitioner was proved.

10. By order dated 21.09.2021, the MPA proposed the withdrawal of the full pension sanctioned to the Petitioner with effect from 31.07.2018, i.e. the date on which the Petitioner retired on superannuation. However, it was also proposed not to recover any amount, including the pension already paid to the Petitioner. The Petitioner was granted an opportunity to submit his representation/reply within 15 days on the proposed penalty. The Petitioner submitted his representation on 05.10.2021.

11. On due consideration of the Petitioner's representation and the inquiry report, the Chairman and Competent Authority of the MPA ordered the permanent withdrawal of the full pension sanctioned to the Petitioner with effect from 31.07.2018. Still, he directed that there should be no recovery of the amount, including the pension already paid to the Petitioner, till the date of the order dated 29.10.2021.

12. Accordingly, the Petitioner instituted Writ Petition No.63 of 2023 to challenge the CSC's order dated 15.02.2020 and Writ Petition No.322 of 2022 to challenge the MPA's order dated 29.10.2021. In Writ Petition No.322 of 2022, the Petitioner has also challenged the notices initiating disciplinary proceedings etc. However, all this merged with the impugned order dated 29.10.2021, by which the penalty of withdrawal of full pension was imposed upon the Petitioner.

13. Mr Khati, learned counsel for the Petitioner in Writ Petition No.63 of 2023, assailed the CSC's order dated 15.02.2020 by submitting that there were defects in the proposal sent by MPA to CSC. He referred to para 4 of the CSC's order dated 15.02.2020 and submitted that opportunity was granted for rectifying of error. He submitted that such errors were not rectified, and therefore the CSC erred in proceeding further and making the impugned order dated 15.02.2020.

14. Mr Khati submitted that the CSC referred to the documents of alleged relatives of the Petitioner without verifying whether they were indeed relatives of the Petitioner. Mr Khati submitted that the

CSC relied upon the mutation register of Yashvantrao Valad Ganapati Mahadev Bhajikhaye. However, Mr Khati offered that the Petitioner's father's name was Yadaorao, and further, his surname was Parate and not Bhajikhaye. Similarly, he pointed out that the Petitioner's grandfather's name is shown as Ganpat Mahadev Koshti and his uncle's name is shown as Satam Bhau Yadaorao Ganapati Bhajikhaye when the correct surname is Parate. Mr Khati submitted that unless proper scrutiny and verification about whether the certificate pertains to Petitioner's relatives, the CSC could not have relied upon the same and cancelled the Petitioner's caste certificate.

15. Mr Khati submitted that the CSC ignored the relevant evidence but considered the irrelevant material. Mr Khati submitted that the CSC failed to appreciate the legal position in such matters before making the impugned order dated 15.02.2020.

16. Mr Khati submitted that the CSC did not give adequate weightage to the Petitioner's tribe certificate, the secondary and higher secondary certificate, leaving certificate and the excerpt from the first page of the Petitioner's service book indicating that the Petitioner indeed belongs to the Halba caste. Mr Khati submitted that the exclusion of this relevant evidence vitiates the CSC's impugned order dated 15.02.2020.

17. Mr Khati submitted that Halba and Koshti or Halba-Koshti castes were the same, and therefore, the CSC's impugned order dated 15.02.2020 was perverse and without jurisdiction.

18. Mr Khati submitted that even though the Petitioner may not have attended the proceedings before the CSC despite notice, the CSC was obliged to consider all the material on record. He submits that since this was not done, the CSC's impugned order dated 15.02.2020 must be set aside.

19. Mr Ghate, learned counsel for the Petitioner in Writ Petition No.322 of 2022, submitted that the CSC's order dated 15.02.2020 does not allege any fraud against the Petitioner. Without any allegation or proof of fraud, the MPA had no authority to initiate disciplinary proceedings against the Petitioner. He, therefore, submitted that initiating the disciplinary proceedings was without jurisdiction, and the impugned order dated 29.10.2021, imposing a penalty upon the Petitioner, was null and void.

20. Mr Ghate submitted that the caste certificate produced by the Petitioner on 17.12.1980 was never tendered in the inquiry. He, therefore, submits that the inquiry report and the impugned order dated 29.10.2021 is fundamentally defective and must be quashed on this ground.

21. Mr Ghate relied on *Leelamrut s/o Narayan Karoo Vs Mormugao Port Trust, Goa and others*² to submit that in almost similar circumstances, a Division Bench of this Court set aside the penalty of permanent withdrawal of full pension. Mr Ghate submitted that by applying the reasoning in the decision, the impugned order dated 29.10.2021 must be set aside.

² 2022(2) Mh. L.J. 74

22. Mr Ghate finally submitted that the right to pension is a fundamental right, not a bounty. He submitted that the impugned order which withdraws or denies full pension to the Petitioner is violative of Articles 14 and 21 of the Constitution of India. He submitted that the impugned order denies the Petitioner's right to property and therefore violates Article 300A of the Constitution of India. He relied on *D. S. Nakara Vs Union of India*³.

23. Mr Ghate relied on *Punjab National Bank and others Vs Kunj Behari Mishra*⁴, *UCO Bank and Another Vs Rajinder Lal Capoor*⁵, *Noida Entrepreneurs Association Vs Noida and others*⁶, *Anant R. Kulkarni Vs. Y. P. Education Society and others*⁷, *Allahabad Bank and others Vs Krishna Narayan Tewari*⁸, *Umesh Eknath Agalawe Vs Bharat Heavy Electricals Ltd.*⁹, *Food Corporation of India Vs Jagdish Bahira*¹⁰ and *R. Viswanatha Pillai Vs State of Kerala*¹¹ in support of his contentions.

24. The learned AG submitted that the CSC gave full opportunity to the Petitioner but the Petitioner chose not to avail the same. He submitted that the CSC considered the entire material on record including the certificate/documents which the Petitioner claims were not considered by the CSC. He submitted that the burden of

³ (1983) 1 SCC 305.

⁴ (1998) 7 SCC 84

⁵ (2007) 6 SCC 694

⁶ (2011) 6 SCC 508

⁷ (2013) 6 SCC 515

⁸ (2017) SCC 308

⁹ 2021(2) Mh. L. J.

¹⁰ (2017) 8 SCC 670

¹¹ (2004) 2 SCC 105

proving that the Petitioner belonged to Halba category was squarely on the Petitioner. However, the same was not discharged by the Petitioner. The learned AG submitted that there was no merit about confusion of identity of the Petitioner's relatives. He submitted that all these matters were duly verified by the police vigilance cell. He submitted that not even a challenge was thrown by the Petitioner despite the opportunity before the CSC. The learned AG submitted that such a challenge cannot be thrown for the first time in this Court. The learned AG submitted that the judicial review of the CSC orders is quite minimal. He, therefore, submitted that the Writ Petition No.63 of 2023 may be dismissed. The learned AG also relied upon some decisions which shall be considered at the appropriate place.

25. Mr Nadkarni adopted the submissions made by the learned AG. He submitted that full opportunity was given to the Petitioner in disciplinary proceedings. The inquiring authority considered all documents, and the inquiry report's conclusion was based on the documentary and other evidence on record. Mr Nadkarni strongly relied upon *Food Corporation of India Vs Jagdish Bahira* (supra) and *R. Viswanatha Pillai* (supra) to submit that this petition warrants dismissal.

26. The rival contentions now fall for our determination.

27. In *Jagdish Bahira* (supra) the Hon'ble Supreme Court made the following observations at paras 2, 3, and 4 in the context of non-reserve category candidates obtaining the benefit of reservation based upon the caste certificates, which are ultimately found liable

to be cancelled. Paras 2, 3 and 4 are transcribed below for the convenience of reference.

“2. The framers of the Constitution conceived of a policy of affirmative action to redress the social exclusion, economic deprivation and political alienation suffered by historically disadvantaged classes of Indian society. Reservation of posts in public employment and seats for admission in educational institutions and the setting apart of seats in electoral bodies was envisaged by the Constitution for the fulfilment of a constitutional aspiration of social justice to the Scheduled Castes and Tribes and to socially and educationally backward classes of citizens. In pursuit of the constitutional goal of substantive equality, reservations have been envisaged as a means of enabling members of beneficiary groups to realise, in a true sense, dignity, freedom and liberty which the Constitution guarantees as its basic philosophy. But the problem which has confronted legislatures, policy-makers as well as courts (as enforcers of the rule of law) is a capture of the benefits of affirmative action programmes by persons who do not genuinely belong to the beneficiary groups. This kind of capture poses a serious dimension. When a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution. For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. For another this deprives a beneficiary who is genuinely entitled to receive those benefits of a legitimate entitlement. This constitutes an egregious constitutional fraud. It is a fraud on the statutes which implement the provisions of the Constitution. It is a fraud on State policy. Confronted with this problem, the legislatures have intervened with statutory instruments while the executive has, in implementation of law, set down administrative parameters and guidelines to prevent the usurpation of benefits.

3. The batch of cases with which the court is confronted involves individuals who sought the benefit of public employment on the basis of a claim to belong to a

beneficiary group which has, upon investigation, been found to be invalid. Despite the invalidation of the claim to belong to a Scheduled Caste or, as the case may be, a Scheduled Tribe or backward community, the intervention of the Court is invoked in the exercise of the power of judicial review. The basis for the invocation of jurisdiction lies in an assertion that equities arise upon a lapse of time and these equities are capable of being protected either by the High Court (in the exercise of its jurisdiction under Article 226) or by this Court (when it discharges the constitutional function of doing complete justice under Article 142). The present batch of cases then raises the fundamental issue as to whether such equities are sustainable at law and, if so, the limits that define the jurisdiction of the court to protect individuals who have secured access to the benefit of reservation in spite of the fact that they do not belong to the caste, tribe or class for whom reservation is intended.

4. *A large body of precedent has evolved both in the High Courts as well as in this Court in seeking to find answers to pleas raised by individuals that they are entitled to protection by a constitutional court, even after the invalidation of their caste or tribe claims. The decided cases reflect a profound awareness on the part of courts of the human element involved. Assessment of human consequences case by case has resulted in a conflicting line of approach, in the effort of the court to balance the letter of law with a sense of compassion. Since this Bench of three Judges is called upon to seek a median, through the body of judicial precedent, it is, at the outset, necessary to set out the fundamental values and vision which the court must pursue. Those values as well as the vision is charted out to the court by the Constitution and it is the Constitution which the court expounds. The constitutional policy of creating reservations subserves a high constitutional value of providing social redress and a life of dignity to castes, tribes and classes which were in a historical sense oppressed by a systemic pattern of social exclusion and human deprivation. The benefits which the Constitution has conferred on beneficiary groups cannot be dissipated by allowing others who do not belong to the*

designated castes or tribes to secure the benefit. Public employment is a significant source of social mobility. Access to education opens the doors to secure futures. As a matter of principle, in the exercise of its constitutional jurisdiction, the court must weigh against an interpretation which will protect unjust claims over the just, fraud over legality and expediency over principle. As the nation evolves, the role of the court must be as an institution which abides by constitutional principle, enforces the rule of law and reaffirms the belief that claims based upon fraud, expediency and subterfuge will not be recognised. Once these parameters are established with a clear judicial formulation, individual cases should pose no problem. Usurpation of constitutional benefits by persons who are not entitled to them must be answered by the court in the only way permissible for an institution which has to uphold the rule of law. Unless the courts were to do so, it would leave open a path of incentives for claims based on fraud to survive legal gambits and the creativity of the disingenuous.”

28. In *Madhuri Patil* (supra) the Hon'ble Supreme Court observed at para 13 that the admission wrongly gained or appointment wrongly obtained based on a false social status certificate necessarily deprives the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completing the inquiries by the Scrutiny Committee. The Court held that as soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its

cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

29. In the present case, the Petitioner secured employment against a post reserved for Scheduled Tribes based upon a caste certificate dated 17.12.1980, which the CSC now finds to have been improperly procured, i.e. the Petitioner does not belong to the Halba Tribe. After considerable delay, the proposal was made to the CSC for verification in 2009. The proceedings before the CSC also lingered for almost 10-11 years. Ultimately, based upon documentary and other evidence on record, the CSC concluded that the Petitioner did not belong to the Halba Tribe, and the CSC cancelled and confiscated the caste certificate dated 17.12.1980.

30. The CSC considered the five documents produced by the Petitioner, namely his Tribe Certificate dated 17.12.1980, his affidavit dated 07.08.2009, his school leaving certificate dated 27.05.1969, and his higher secondary leaving certificate dated 26.06.1978 and an excerpt from the first page of his service book. Therefore, it would not be correct to say that the CSC did not adequately consider the documents produced by the petitioner.

31. The first document, i.e. the Tribe certificate dated 17.12.1980 was the one verified. Therefore, reliance placed on the same was misplaced. Second was a self-serving affidavit of the Petitioner, having no significant evidentiary value. Third and fourth were the secondary and higher secondary school leaving certificates based on information provided by the Petitioner to the school. Again, these documents cannot be said to have significant evidentiary value. The last document was again based on information supplied by the Petitioner to his employer. Even this document would have no significant evidentiary value.

32. The CSC considered the detailed report of the police vigilance cell and the material collected by the vigilance team. The CSC's order dated 15.02.2020 records that the vigilance team recorded statements of the Petitioner's father Yadaorao Ganpatrao Parate, who only spoke about his native place of residence, custom traditions, succession, surname, festival, kuldevta etc. but did not assert about his belonging to the Halba Tribes. The CSC considered the extract of the mutation register and declaration which shows that the Petitioner's father belongs to the Koshti caste. This was a record of the year 1935. Although this record refers to the Petitioner's father's surname as Bhajikhaye, that, in our opinion, makes no significant difference. Despite the opportunity before the vigilance cell, the Petitioner and the CSC now challenge the identity. Such a challenge cannot be raised for the first time before the High Court.

33. The vigilance team also collected a mutation register in which they found the names of the Petitioner's cousin Susila Parate

and his sister Kamal Yadaorao Parate listed against 1961-1965, respectively. This register indicated that these two sisters belong to the Koshti caste, not the Halba Tribes. The vigilance team and, afterwards, the CSC referred to the extract of the house tax register of 1944-1947 of Ganpat Mahadev Koshti, the Petitioner's grandfather. Again, his caste was shown as “*Koshti*” and not “*Halba*”. The vigilance team and the CSC also considered the extract of the mutation register of Petitioner's uncle, where the entry of 1955 was shown as “*Halba Koshti*”.

34. The CSC offered full opportunity, *inter alia* by issuing the Petitioner a show cause notice with a copy of the police vigilance cell's report. At that stage, the Petitioner did not choose to contest the vigilance cell's report. However, in this Court, the contention now raised for the first time is that the documents collected and referred to in the vigilance cell report do not pertain to the Petitioner's grandfather, father, uncle, cousin and sister. It was argued that these persons have nothing to do with the Petitioner. These documents with respect, is quite misconceived for several reasons.

35. The documents clearly pertain to the Petitioner's grandfather, sister and cousin. The surnames also tally. Regards the father and uncle, there is an additional reference to the surname “*Bhajikhaye*”. However, the police have verified that these documents pertain to the Petitioner's father and uncle. One of the certificates gives the caste name as “*Koshti*” along with the surname. There is no reason

to accept that these documents do not pertain to the Petitioner's close relatives.

36. Secondly, if the Petitioner was serious about this contention, then, the same should have been raised at the earliest instance before the CSC after the Petitioner was furnished a copy of the vigilance cell report and granted an opportunity vide a show cause notice. The Petitioner did not choose to raise such contentions before the CSC. Such a defence cannot be permitted to be raised for the first time before this Court when the Petitioner failed to raise such a defence before the CSC despite the opportunity.

37. The Petitioner relies upon his bald denial without producing any documents concerning his close relatives to establish that his close relatives were indeed belonging to Halba, Scheduled Tribe category. If the Petitioner is serious in his contention then this was the minimum that was expected of the Petitioner. For all these reasons, this belated and misconceived contention, cannot be accepted.

38. The burden of proving that the Petitioner belonged to the Halba Tribe was squarely upon the Petitioner. Apart from producing the five documents referred to above, the Petitioner did nothing to discharge this burden. The material collected by the police vigilance cell and the statements before the CSC establish beyond doubt that the Petitioner did not belong to Halba Tribe.

39. The contention that Koshti, Halba Koshti and Halba are the same is quite misconceived. It is well settled that the Notification

declaring the SC, ST, or OBCs list cannot be tinkered. Besides, the CSC has noted in paragraph 13 that the State Government has already declared the Koshti caste as a Special Backwards class or Halba Koshti caste as a sub caste of Koshti caste. Therefore, Koshti and Halba castes are two different categories. One is a special backward class, and the other is a scheduled tribe category. Similarly, Halba Koshti is only a sub-caste of Koshti i.e. special backward class.

40. The CSC considered the documents of 1935, 1944, 1949, 1955 and 1961, which indicated that close relatives of the Petitioner were listed as belonging to Koshti or, in one case, Halba -Koshti caste. These documents have greater probative value because most of them were at the stage when there was no benefit of reservation provided. The CSC has relied upon several decisions and precedents of the Bombay High Court and applied them to the material before it.

41. The CSC's reasoning in para 15 is also unassailable. The CSC has considered all relevant parameters. The CSC also relied upon the decision of the Hon'ble Supreme Court, holding that a mere affidavit is not evidence within the meaning of Section 3 of the Indian Evidence Act. In any case, based upon some self-serving affidavit, the Petitioner cannot discharge the burden of establishing that he belongs to the Halba Tribe. The CSC's reasoning in para 16 is also unassailable. The CSC has considered every relevant aspect in some detail, and there is no case made out to warrant interference with the CSC's order either on the ground raised or otherwise.

42. The contention about rectifying errors in the proposal form is entirely misconceived. The errors were mainly in the form of a proposal, not substance. Therefore, no case is made out to interfere with the CSC's impugned order dated 15.02.2020 on alleged or otherwise grounds.

43. This Court does not sit in appeal over the CSC's order. Applying the well-settled principles of judicial review, no case is made out to warrant interference. However, since this was a case of caste scrutiny and the impugned order had impacted the Petitioner's pension, we heard the matter as if we were hearing an appeal against the CSC's order. We examined the material on record and the CSC's order in some detail as if we were exercising the appellate jurisdiction. Still, we found no reasonable ground to interfere with the CSC's impugned order dated 15.02.2020. Accordingly, we dismiss the Writ Petition No.63 of 2023.

44. Regarding Writ Petition No.322 of 2022, again, the MPA complied with the principles of natural justice and fair play by granting the Petitioner full opportunity in the disciplinary proceedings. There was no infirmity in initiating the disciplinary proceedings because the Hon'ble Supreme Court has already held that obtaining employment by posing as a scheduled tribe category candidate amounts to constitutional fraud. Besides, Mr Nadkarni invited us to several memoranda and instructions for initiating disciplinary proceedings against the employees who obtained employment against reserved category post where they do not belong to the reserve category.

45. The contention of non-production of caste certificate is again entirely misconceived. Firstly, the caste certificate was cancelled and confiscated. Secondly, the copy of the caste certificate was very much referred to and produced along with the charge memorandum. At one stage, Mr Ghate contended that even the CSC's order dated 15.02.2020 was not produced in the disciplinary proceedings. However, even this contention is incorrect because this order was produced along with the list of documents, and this order is one of the basis for the conclusion in the inquiry report.

46. The inquiry report suffers from no perversity. A copy of the same was duly furnished to the Petitioner. The Petitioner's objections were duly considered. The Petitioner was offered an opportunity to give his say on the proposed penalty. After considering everything the Petitioner said, the disciplinary authority made the impugned order dated 29.10.2021. There is no infirmity in initiating disciplinary proceedings, inquiry proceedings, inquiry report and the impugned order imposing a penalty upon the Petitioner.

47. The facts in the case of *Leelamrut* (supra) were different from the facts of the present case. There, the Petitioner had succeeded before the High Court and his services were protected by the High Court order. The High Court relied upon the Full Bench decision in *Arun Vishwanath Sonone Vs State of Maharashtra and others*¹² and protected the Petitioner. Simply because in *Jagdish Bahira* (supra), *Arun Sonone* (supra) was overruled, this Court held that the benefits granted to the Petitioner by the High Court could not be

¹² 2015(1) Mh. L. J. 457

taken away. This Court distinguished between overruling a judicial precedent and reversing a judicial order. No such facts arise in the present petition. Therefore, based upon *Leelamrut* (supra), no relief can be granted to the Petitioner.

48. Similarly, based upon *D. S. Nakara* (supra), no relief can be granted to the Petitioner. Based on the disciplinary proceedings, a penalty has been imposed upon the Petitioner. No disproportionality is involved because the Petitioner's benefit from 1982 onwards and even pensionary benefits obtained between 2018 and 2020 have been protected.

49. In *Jagdish Bahira* (supra), the Hon'ble Supreme Court reiterated that the cancellation of a certificate would, as a necessary consequence, invalidate the appointment to a post or admission to an educational institution. The Court held that where a candidate had been appointed to a reserved post based on the claim that they were a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group as a necessary consequence rendered the appointment *void ab initio*. The Court held that the claim's falsity lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended. In contrast, in fact the candidate does not so belong. The reason for depriving the candidate of the benefit they have obtained on the strength of such a claim is that a person cannot retain the fruits of a false claim based on which a scarce public resource is obtained.

50. The Hon'ble Supreme Court held that the withdrawal of benefits, in terms of the revocation of employment, was a necessary corollary of the invalidation of the claim on the basis of which the appointment was obtained. The benefit withdrawal was not based on *mens rea* or the intent underlying the assertion of a false claim. The withdrawal of civil benefits flowed as a logical result of invalidating a claim to belong to a group or category for whom the reservation is intended. The Court held that this was the regime's position that prevailed following the Madhuri Patil decision (*supra*). This is a complete answer to the contention about no fraud being committed by the Petitioner.

51. In *Jagdish Bahira* (*supra*), the Hon'ble Supreme Court also explained that service under the Union and the States, or for that matter under the instrumentalities of the State, sub-serves 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 choose competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, the 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, 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.

52. The Petitioner relied upon para 72 of the *Jagdish Bahira* (supra) to submit that the Hon'ble Supreme Court allowed the payment of terminal benefits, including gratuity, arrears of wage revision, medical reimbursement, leave encashment, contributory provident fund and productivity linked incentive even though the Scrutiny Committee did not validate the caste certificate. With respect, that is not a correct reading of the ratio of *Jagdish Bahira* (supra). In the peculiar facts, the benefits already granted were ordered not to be recovered. However, the Court made it clear that no further benefits of any nature would be admissible based on an

invalidated claim. Even in the present case, the MPA has not ordered the recovery of benefits already obtained by the Petitioner. Only future benefits have been denied. Accordingly, the action of the MPA is quite consistent with the law laid down in *Jagdish Bahira* (supra).

53. In *R. Viswanatha Pillai* (supra) the Hon'ble Supreme Court held that the delinquent officer was not entitled to a fresh notice after he was found guilty of procuring an appointment in a reserved post by producing a false caste certificate. The Scrutiny Committee constituted under the directions of the Hon'ble Supreme Court in *Madhuri Patil* (supra) after affording due opportunity to him, found that the caste certificate he produced was not valid.

54. The Hon'ble Supreme Court further held that the pensionary benefit accrues from a valid appointment, not a void one. Hence, where the delinquent officer was dismissed for procuring an appointment in a post reserved for the SC category by producing a false caste certificate, even a plea to substitute the order of dismissal with an order of compulsory retirement or removal from service or to protect the pensionary benefits as he had rendered service for a very long period (27 years) was rejected. The Court held that since such a person had obtained appointment by playing fraud, he was not entitled to invoke equity jurisdiction of the Hon'ble Supreme Court and to claim such a relief.

55. None of the decisions relied upon by the Petitioner in any manner assist the Petitioner's case.

56. For all the above reasons, we see no merit in both petitions. Accordingly, both petitions are liable to be dismissed and are hereby dismissed.

57. The rule is discharged in both petitions without any order for costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J.

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