



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.631 OF 2020

Ku.Sangita d/o Ramdas Bahirseth
(Sau.Sangita w/o Tarachand
Barwad)
aged about 44 years, occupation service,
r/o c/o Dilip Shamraoji Bahirseth,
ward No.3, near Kolbaswami
Deosthan Math, Ghorad Road
Seloo, tahsil Seloo, district Wardha-442 104. **Petitioner.**

:: VERSUS ::

1. The State of Maharashtra,
through its Chief Secretary,
General Administration Department,
Mantralaya, Mumbai-32.

2. The Chief Executive Officer,
Raigad Zilla Parishad, Alibag,
district Raigad.

3. The Joint Commissioner & Vice-
Chairman,
Scheduled Tribe Certificate
Scrutiny Committee,
Adiwasi Vikas Bhavan, Giripeth,
Nagpur. **Respondents.**

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Shri S.R.Narnaware, Counsel for the Petitioner.
Ms T.H.Khan, Assistant Government Pleader for Respondents.

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CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 29/08/2023

PRONOUNCED ON : 29/09/2023

JUDGMENT (Per : URMILA JOSHI-PHALKE, J.)

1. Heard. **Rule.** Heard finally by consent of
learned counsel for parties.

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2. The petitioner was appointed as 'Assistant Teacher' on 22.11.1995 against post reserved for Scheduled Tribe Category (S.T.Category) on the basis of caste certificate issued to her on 30.4.1991 by the Executive Magistrate Wardha showing that she belongs to caste "Halba - Scheduled Tribe". There were no terms and conditions in the appointment order regarding submission of Caste Validity Certificate. The caste claim of the petitioner was forwarded to the Scrutiny Committee at Nagpur (the Committee) and the Committee by order dated 22.2.2017 invalidated the caste claim of the petitioner. She challenged the said order before this court in Writ Petition No.1389/2017 and this court on 17.4.2017 protected the services of the petitioner in view of the judgment of the Full Bench of this court in the case of **Arun Vishwanath Sonone vs. State of Maharashtra and ors**¹. The petitioner had given an undertaking stating in it that hereinafter she/her progeny would not claim any benefits on the basis of the caste belonging to "Halba - Scheduled Tribe". After completion of 3 years of services, after protection granted to her and after completion of 25

¹ 2015(1)Mh.L.J.457

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years of services in a clear permanent vacancy, respondent No.2 issued order dated 31.12.2019 to the petitioner applying Government Resolution dated 21.12.2019 and judgment of the Honourable Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and ors vs. Jagdish Balaram Bahira and ors²** and included the petitioner on temporary appointment for 11 months ignoring the protection granted to her by order dated 17.4.2017. As per contention of the petitioner, impugned order dated 31.12.2019 issued to her is violative of principles of judicial propriety and liable to be quashed and set aside. By this petition, the petitioner has challenged order dated 31.12.2019 and Government Resolution dated 21.12.2019 and sought declaration that Government Resolution dated 21.12.2019 is not applicable to the petitioner as her services are already protected.

3. Learned Assistant Government Pleader Ms T.H.Khan for the respondents/State opposed the petition on the ground that in view of the judgment of the

² 2017(4) Mh.L.J. 898

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Honourable Apex Court in the case of **Chairman and Managing Director, FCI and ors vs. Jagdish Balaram Bahira and ors** cited *supra*, the action was taken by the respondents. The Honourable Apex Court in the said case specifically held that, "for protection of service on reserved posts, candidates whose castes' claims are invalidated have no legal right to occupy posts of genuine candidates belonging to the Scheduled Tribe and, therefore, learned Assistant Government Pleader prayed for dismissal of the petition.

4. Heard learned counsel Shri S.R.Narnaware for the petitioner and learned Additional Public Prosecutor Ms T.H.Khan for the respondents/State.

5. Learned counsel for the petitioner submitted that there is no dispute that the petitioner was appointed as "Assistant Teacher" against the reserved post for S.T.Category and the Committee, by order dated 22.2.2017, invalidated the caste claim of the petitioner. The petitioner challenged the said order before this court in Writ Petition No.1389/2017 and this court on 17.4.2017

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protected the services of the petitioner in view of the judgment of the Full Bench of this Court in the case of **Arun Vishwanath Sonone vs. State of Maharashtra and ors** cited *supra* on condition that the petitioner shall file an undertaking stating that neither she nor her progeny shall claim any benefit belonging to "Halba - Scheduled Tribe". The said order was not challenged by the respondents and it attains finality. The respondents ignored the fact that the Honourable Apex Court has clearly held in its decision in the case of **Chairman and Managing Director, FCI and ors vs. Jagdish Balaram Bahira and ors** cited *supra* as well as in the case of **Gajanan Marotrao Nimje and ors vs. Reserve Bank of India and ors**³ and **S.G.Barapatre and ors vs. Ananta Gajanan Gaiki**⁴ that previous litigations will not be affected by this decision. The impugned official order is violative of principles of judicial discipline and liable to be set aside. Government Resolution dated 21.12.2019 is clearly violative of the Honourable Apex Court's judgment and, therefore, the same is liable to be set aside. The impugned order dated 31.12.2019, on the basis of the

³ (2019)12 SCC 639

⁴ AIR OnLine 2018 SC 715

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said Government Resolution, is also arbitrary and liable to be set aside.

6. In support of his contentions, learned counsel for the petitioner placed reliance on following decisions:

Gajanan Marotrao Nimje and ors vs. Reserve Bank of India and ors (*supra*);

S.G.Barapatre and ors vs. Ananta Gajanan Gaiki (*supra*);

The Chief Regional Officer, Oriental Insurance Co.Ltd. vs. Pradip and anr⁵, and

Raja Tukaram Shinde vs. The State of Mah., Tribal Development Department, Mantralaya, Mumbai and anr (Writ Petition No.903/2020 and other connected matters decided by this court at Aurangabad on 4.5.2021;

7. Learned Assistant Government Pleader for the respondents supported the order impugned and submitted that it is specifically observed by the Honourable Apex Court that service protection on the reserved posts of candidates whose castes claims are invalidated would not be permissible as they have no legal right to occupy posts of genuine Scheduled Tribes.

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8. Having heard both the sides and perused the record, it is not disputed that the petitioner was appointed as 'Assistant Teacher' against post reserved for S.T.Category. The appointment order dated 22.11.1995 clearly shows that the appointment was against the reserved post. It is also not disputed that the caste claim of the petitioner was invalidated by the committee by order dated 22.2.2017 which was subject matter of challenge in Writ Petition No.1389/2017. In view of the judgment of the Full Bench of this Court in the case of **Arun Vishwanath Sonone vs. State of Maharashtra and ors** cited *supra*, the services of the petitioner are protected considering she has been appointed prior to the cut-off date on conditions that the petitioner or her progeny shall not claim any benefit belonging to Halba S.T.Category. Thereafter, the petitioner rendered her services till 31.12.2019. Thus, she completed 25 years of service and respondent No.2, in view of Government Resolution dated 21.12.2019, on the basis of the judgment of the Honourable Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and ors vs.**

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Jagdish Balaram Bahira and ors cited *supra*, placed the petitioner on temporary post for 11 months. The said Government Resolution is challenged by the petitioner.

9. It is submitted by the respondents that rights of eligible persons, who are employed from reserved category in place of the petitioner, are violated. The petitioner availed the benefits of reservation which she is not entitled for. Whereas, it is contention of the petitioner that the decision of the Honourable Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and ors vs. Jagdish Balaram Bahira and ors** cited *supra* is not applicable in the present case. It is further submitted that it is specifically observed by the Honourable Apex Court in the case of **S.G.Barapatre and ors vs. Ananta Gajanan Gaiki** cited *supra* that the benefits which have been granted, as per the judgment specifically referred to in paragraph No.18 of the above judgment, which is extracted above, (**Chairman and Managing Director, Food Corporation of India and ors vs. Jagdish Balaram Bahira and ors**), cannot be taken away in collateral proceedings and, therefore, the Government

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Resolution which was made applicable to the petitioner and subsequent order dated 31.12.2019 placing the petitioner on the temporary post are arbitrary.

10. The entire issue revolves around protection granted to the petitioner by the High Court in service and the effect of protection granted by this court after the judgment of the Honourable Apex Court in case of **Chairman and Managing Director, Food Corporation of India and ors vs. Jagdish Balaram Bahira and ors** cited *surpa*. The petitioner was appointed from the S.T.Category. Her tribe claim was invalidated by the committee. Being aggrieved with the same, she approached this court and this court protected her services on conditions that she or her progeny would not claim any benefits being of Halba Community. Admittedly, the said judgment protecting her services in Writ Petition No.1389/2017 was not challenged and the same attained the finality. Subsequent to the judgment protecting her services, in the judgment in the case of **Chairman and Managing Director, Food Corporation of India and ors vs. Jagdish Balaram Bahira and ors** cited *supra* it was held

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that a person whose tribe claim is invalidated has no right to remain in employment and all the benefits received by such employee are to be withdrawn. On the basis of the said judgment, the State of Maharashtra issued Government Resolution dated 21.12.2019 and the impugned order dated 31.12.2019 was passed placing the petitioner on temporary post. Clause 1 of the said Government Resolution is reproduced for the reference:

१. अनुसूचित जमातीसाठी राखीव असलेली पदे रिक्त करणे —
सर्व प्रशासकीय विभागांनी खुद्द व त्यांच्या अधिपत्याखालील शासकीय/निमशासकीय कार्यालयातील अनुसूचित जमातीच्या खालील अधिकारी व कर्मचा—यांची संवर्गनिहाय संख्या निश्चित करून त्यांच्या सेवा दि. ३१.१२.२०१९ पर्यंत अधिसंख्य पदांवर वर्ग कराव्यात :—

(अ) अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरलेले अधिकारी/कर्मचारी.

(ब) अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरल्यानंतर विशेष मागासप्रवर्गाचे अथवा अन्य कोणत्याही मागासवर्गाचे जात वैधता प्रमाणपत्र सादर केलेले अधिकारी/कर्मचारी.

(क) अनुसूचित जमातीचा दावा सोडून दिलेले अधिकारी/कर्मचारी.

(ड) नियुक्तीनंतर जातप्रमाणपत्राच्या पडताळणीसाठी विहित मुदतीत जात पडताळणी समितीकडे प्रस्ताव सादर न केलेले अनुसूचित जमातीचे अधिकारी व कर्मचारी.

(इ) ज्या अधिकारी व कर्मचा—यांनी त्यांचे अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरविण्याच्या जात पडताळणी समितीच्या निर्णयाच्या विरोधात माननीय न्यायालयात याचिका दाखल केल्या असतील मात्र त्यांच्या प्रकरणी माननीय उच्च न्यायालयाने किंवा माननीय सर्वोच्च

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न्यायालयाने जात प्रमाणपत्र अवैध ठरविण्याच्या समितीच्या निर्णयास कोणतीही स्थिगिती दिली नसेल असे अधिकारी व कर्मचारी.

11. In the present case, the services of the petitioner was protected by this court. Clause 1 and sub clauses (A) to (E) of the Government Resolution show that the petitioner is not directly covered under the said Government Resolution as it is limited only in respect of those candidates to whom the High Court under its order granted protection to the petitioners in their employment. Such a category does not appear to be covered in the Government Resolution referred above. Moreover, the judgment in the case of **Chairman and Managing Director, Food Corporation of India and ors vs. Jagdish Balaram Bahira and ors** cited *supra* nowhere speaks that the said judgment would apply retrospectively. For applying the judgment retrospectively, the judgment shall expressly state that the judgment would operate retrospectively. In the present case, the issue of applying the principle retrospectively does not emerge.

12. The coordinate bench at Aurangabad in the case of **Raja Tukaram Shinde vs. The State of Mah., Tribal**

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Development Department, Mantralaya, Mumbai and anr cited *supra* referred the judgment in the case of **Pradip Kumar Maskara and ors vs. State of West Bengal and ors**⁶ wherein it is held that even if the decision on a question of law has been reversed or modified by subsequent decision of a superior court in any other case, it shall not be a ground for review of a judgment which has attained finality inter parties merely because a subsequent has taken contrary view. It is held that Government Resolution dated 21.12.2019 is not applicable to the employees whose tribes claims are invalidated but are granted protection in employment prior to the judgment delivered by the Honourable Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and orss vs. Jagdish Balaram Bahira and ors** cited *surpa*.

13. It is nowhere submitted by the respondents that the order of protection for the services is obtained by the petitioner by fraud.

6 (2015)2 SCC 653

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14. The Honourable Apex Court in the case of **S.G.Barapatre and ors vs. Ananta Gajanan Gaiki** cited *supra* protected the services of petitioners therein. In the said decision, before the judgment was delivered by the Honourable Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and orss vs. Jagdish Balaram Bahira and ors** cited *supra*, services of the petitioners were protected under the orders of the High Court in Writ Petition No.6631/2007. The Honourable Apex Court observed that the judgment between the parties has become final. The Honourable Apex Court in the case of **S.G.Barapatre and ors vs. Ananta Gajanan Gaiki** cited *supra* observed as under:

“15. The above observations make it abundantly clear that the challenge by the Food Corporation of India to the order of the Bombay High Court had been rejected on 12 April 2013 and as a result of the decision inter parties, the order of the High Court had attained finality. Consequently, this Court clarified in paragraph 9 of the above order that only the employees covered by the earlier judgment shall be entitled to the benefits which have been granted specifically by the High Court in paragraph 18 of its judgment, which has been extracted above.”

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15. In the present case, the respondents at no stage after the order was passed by this court challenged the judgment of this court granting protection to the services and accepted the said judgment. The employer after a long period, by applying the decision retrospectively, when the judgment nowhere says about applicability of the judgment retrospectively, issued a communication placing the petitioner on a temporary post, which is arbitrary. The judgment passed by this court protecting the services is binding on the employer and the respondents cannot travel beyond the said judgment. As the respondents have not challenged the judgment protecting the services of the petitioner and it attained the finality, the impugned order is liable to be set aside. The aforesaid discussion would lead us to conclude that once the judgment attains the finality and when there is no element of fraud at the time of delivering the judgment, subsequent judgment of the Honourable Apex Court laying down proposition of law taking different view and not specifically expressing the applicability retrospectively, the protection granted to the employment of the petitioner in

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the writ petition filed by her at earlier point of time binds the parties.

16. In the light of the above, Government Resolution dated 21.12.2019 is not applicable to the case of the petitioner and, therefore, the impugned order dated 31.12.2019 placing the petitioner on temporary post is arbitrary and liable to be quashed and set aside.

17. Rule is made absolute accordingly. No costs.

(URMILA JOSHI-PHALKE, J.) (AVINASH G.GHAROTE, J.)

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