



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.920 OF 2020

Rajendra S/o Ramrao Likhar,
Aged about 46 Years, Occ. Service,
C/o Dipak Thakare, Nandanwan
Colony, Near Vitthal Rukhmini Mandir,
Harraj Stop, VMV Road, Amravati 440044. PETITIONER

// VERSUS //

1. The State of Maharashtra,
Through its Chief Secretary,
General Administration Deptt.,
Mantralaya, Mumbai – 32.

2. Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited
(MSEDCL), O & M Circle,
Yavatmal.

.... RESPONDENTS

Shri. S. R. Narnaware, Advocate for petitioner.
Mrs. T. H. Khan, Assistant Government Pleader for respondent
No.1.
Mr. S. V. Purohit, Advocate respondent No.2.

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

RESERVED ON : 29.08.2023

PRONOUNCED ON : 07.10.2023

JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule is made returnable forthwith. Heard finally by
consent of learned counsel for parties.

2. The petition is for seeking declaration that Government Resolution dated 21.12.2019 issued by respondent No.1 – State of Maharashtra is not applicable as the service of the petitioner was already protected by virtue of judgment dated 27.02.2017 in Writ Petition No. 2416/2005 and to direct the respondent No.2 – Superintending Engineer, MSEDCL O & M Circle, Yavatmal to grant higher grade benefits as per rules to the petitioner.

3. The petitioner was appointed as a 'Junior Operator' by order dated 19.09.1997 against the post reserved for Scheduled Tribe category (S. T. Category) on the basis of caste certificate dated 04.12.1989. He claims to be of caste 'Halba – Scheduled Tribe' under the certificate issued by the competent authority i.e. Executive Magistrate, Warud, District Amravati. The caste claim of the petitioner of belonging to 'Halba – Scheduled Tribe' was invalidated. He had challenged the said invalidation order in Writ Petition No.2416/2005 before this Court for protection of service. This Court had protected the service of the petitioner by passing order in Writ Petition No.2416/2005 on condition that he shall give an undertaking that he would not claim the benefits meant for the 'Halba – Scheduled Tribe' in future. The petitioner made an application to the respondent No.2 to consider the higher grade benefits as per Rules. On 03.02.2010 and 28.03.2019 as he had

completed the six years of service on 03.02.2010 and 23 years of service on 28.03.2019. As per contention of the petitioner, in spite of his service protected by order of this Court, he was not paid higher grade benefits till date, therefore, he preferred representation on 28.03.2019 for higher grade benefits. In prior point of time also he made such type of application but the respondent No.2 has issued a letter dated 03.02.2010 stating that the case of the petitioner will be scrutinized after finalization of the Court case. Now, the Court has already finalized the issue but the respondent No.2 has not finalized the higher grade benefits to him. Thus, the order passed by the respondent No.2 by applying the Government Resolution dated 21.12.2019, in view of the Judgment of the Hon'ble Apex Court in the case of **Chairman and Managing Director FCI and others Vs. Jagdish Balaram Bahira and others**, reported in **2017(8) SCC 670** and refused to grant higher benefits is arbitrary, illegal and liable to be quashed.

4. Learned Assistant Government Pleader Ms. T. H. Khan for the respondent No.1/State opposed the said petition on the ground that in view of the Judgment of the Hon'ble Apex Court in the case of **Chairman and Managing Director FCI and others Vs. Jagdish Balaram Bahira and others** (supra), the petitioner is not entitled for any higher

grade benefits therefore, the order passed by the respondents is legal and not called for any interference.

5. Heard learned Counsel Shri S. R. Narnaware for the petitioner who submitted that the issue arising in this Writ Petition has been decided by the Aurangabad Bench of this Court in **Writ Petition No.903/2020 with connected Writ Petitions (Raja Tukaram Shinde vs. State of Maharashtra, Tribal Development Department Mantralaya, Mumbai and another** and submitted that the Government Resolution dated 21.12.2019 has been directed to be applied in a manner so as not to include employees whose tribe claims are invalidated but are granted protection in employment by the orders of the Court and submitted that similar course be followed and the order dated 31.12.2019 be set aside.

6. Learned AGP Ms. T. H. Khan and Mr. S. B. Purohit for respondent No.2 opposes the aforesaid contention and submitted that in view of the fact that the issue involved of protection of service is challenged by the State Government before the Hon'ble Apex Court, hence the relief prayed deserves to be rejected.

7. Having heard both sides and on perusal of record, it reveals that the tribe claim of the present petitioner is invalidated. The

invalidation of the tribe claim of the petitioner was challenged before this Court in Writ Petition No. 2416/2005. This Court considered that the petitioner was admittedly appointed before the cut off date and from the order of the Scrutiny Committee nothing is on record to show that he had fraudulently claimed the benefits meant for 'Halba - Scheduled Tribe'. The caste claim of the petitioner is mainly rejected as the petitioner could not prove the same on the basis of the affinity test. Though there is some reference in regard to the writing of the word 'Halba' in the School Admission Register, the said correction was said to be have been made by the Government Servant in course of his duties. It is further observed by this Court that there is nothing in order of the Scrutiny Committee that would show that the petitioner had fabricated the document or had interpolated the same so as to secure the benefits meant for the Halba Schedule Tribe and held that the services of the petitioner needs to be protected. At the same time, this Court has held that the respondent No.2 to protect services of the petitioner on the post of Junior Operator only on the condition that the petitioner furnishes an undertaking, that neither the petitioner nor his progeny would claim the benefits meant for the Halba Schedule Tribe, in future.

8. In view of the said order, the petitioner had furnished his undertaking. The petitioner approached to this Court on the ground that

as his service is protected and he has rendered the service, he is entitled for the service benefits i.e. higher grade pay. On the other hand, it is the contention of the respondents that the interpretation of the law and the judgment of the Hon'ble Apex Court in the case of **Chairman and Managing Director FCI and others Vs. Jagdish Balaram Bahira and others** (supra) shows that the petitioner is not entitled for any benefits. Learned Counsel Shri Narnarware for the petitioner submitted that the said judgment would not have the effect of reversing the decision made prior to the view taken by the Hon'ble Apex Court in the said case.

9. Admittedly, the petitioner was appointed in the public employment from the S. T. Category. The tribe claim of the petitioner was referred to the Scrutiny Committee for verification. The Scrutiny Committee upon verification invalidated tribe claim of the petitioner. Being aggrieved with the same, the petitioner approached this Court challenging the judgment of the Scrutiny Committee invalidating his tribe claim by filing writ petition. This Court has not considered the contention of the petitioner as to validating the tribe claim however, protected the service of the petitioner on the term that he or his progeny would not claim benefits which are meant for the 'Halba - Schedule Tribe'. Thus, the judgment of this Court confirming the judgment of the Scrutiny Committee invalidating the tribe claim of the petitioner and

also granting protection in service has become final as it was not challenged. The respondents also have accepted the judgment of this Court granting protection to the service of the petitioner upon invalidation of the tribe claim. Thus, the issue raised regarding the protection of the service of the petitioner has attained the finality. The said judgment was passed by this Court on 27.02.2017.

10. Subsequent to the judgment of this Court granting protection to the petitioner in his employment the judgment in the case of **Chairman and Managing Director FCI and others** (supra) is delivered by the Hon'ble Apex Court. The Apex Court observed that a person whose tribe claim is invalidated has no right to remain in employment and all the benefits received by such employees are to be withdrawn. On the basis of the said judgment of the Hon'ble Apex Court in the case of **Chairman and Managing Director FCI and others** (supra), the State of Maharashtra has issued the Government Resolution dated 21.12.2019 which is under challenged in the present petition. Clause 1 of the said Government Resolution 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 न्यायालयाने जात प्रमाणपत्र अवैध ठरविण्याच्या समितीच्या निर्णयास कोणतीही स्थगिती दिली नसेल असे अधिकारी व कर्मचारी.”

11. In the present case, tribe claim of the petitioner is invalidated and it attained finality by which the protection to the services of the petitioner was granted. In view of the clause 1(a to e) of the impugned Government Resolution, it appears that the petitioner is not covered under the said Government Resolution as it is limited only in respect of those candidates to whom the High Court under which order has granted protection to the petitioners in their employment. Such a category does not appear to cover in the Government Resolution dated 21.12.2019. Moreover, the observations of the Hon'ble Apex Court

nowhere shows that the said judgment would apply retrospectively. For applying the doctrine of retrospectively it shall expressly state that the judgment would operate retrospectively, which is not so.

12. The Apex Court in the case of **Pradeep Kumar Maskara Vs. State of West Bengal and others**, reported in **2015(2) SCC 653** has 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 the finality because subsequent judgment has taken a contrary view.

13. The judgment delivered in the present case granting protection in service even after invalidation of the tribe claims have become final which would be binding on the parties. It is not the case of the respondents that the judgment of this Court granting protection in service of the petitioner was by fraud. The Hon'ble Apex Court in the case of **S.G. Barapatre and others vs. Ananta Gajanan Gaiki**, reported in **AIR OnLine 2018 SC 715** wherein the services of the petitioners were protected, in the said case, before the judgment was delivered by the Hon'ble Apex Court in case of **Chairman and Managing Director FCI and others** (supra) services of the petitioners were protected under the orders of the High Court dated 20th February, 2015 in Writ Petition

No.6631/2007. The Hon'ble Apex Court observed that the judgment between the parties has become final. In the case of **Chief Regional Officer, Oriental Insurance Company Ltd. Vs. Pradip**, reported in **2020 SC 4858**, wherein the Apex Court has considered its judgment in the case of **S.G. Barapatre and others** (supra) and observed as under:

“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.”

14. In the present case, the employer at no stage after the order was passed by this Court granting protection to the service of the petitioner challenged the judgment, on the other hand, the employer i.e. MSEDCL accepted the said judgment. After employer has accepted, the said judgment, he cannot be allowed to turn around and claimed the reversal of the protection granted to the petitioner. As the service of the petitioner is protected which had attained the finality and said judgment is binding on the employer. The judgment of the Apex Court which was subsequent in time cannot take away the rights of the petitioner of

protection of service and the service benefits. The respondents have not challenged the judgment granting the protection and therefore, petitioner is entitled to receive the subsequent service benefits i.e. higher grade pay.

15. The aforesaid discussion would lead us to conclude that as the judgment of this Court has attained the finality and there was no element of fraud alleged, the parties are bound by the said judgment. The subsequent judgment of the Hon'ble Apex Court laying down the proposition of law different than the one on the basis of which the judgments are delivered by this Court and have attained the finality cannot be reopened. The protection granted by this Court to the employment of the petitioner bound the parties and shall continue.

16. It is also worthwhile to note that the benefits which are being claimed are not those arising out of any caste claim of an employee, but are benefits which are available to all employees in general, if they fulfill the relevant criteria and thus cannot be denied to the petitioner, who now has to be treated on par with a general employee, and as such would be entitled to such benefits.

17. In the light of the above, the Government Resolution dated 21.12.2019 shall be read in a manner not to include the employees whose tribe claims are invalidated, but are granted protection in employment under the judgments/orders of this Court and the said judgment/order have attained finality.

18. In view of the aforesaid, impugned communication dated 31.12.2019 deserves to be quashed and set aside.

19. The petition is allowed. Rule is made absolute accordingly in above said terms. No costs.

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