



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 842 Of 2018

Madhav s/o Yadavrao Shankhpale,
Age : 54 years, Occupation-Service,
R/o. Matoshri, Rajendra Nagar,
Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
2. The Scheduled Tribe Certificate,
Scrutiny Committee at Aurangabad.
3. The Scheduled Tribe Certificate
Scrutiny Committee at Pune.

.. Respondents

With

Civil Application No.186 Of 2019
in
Writ Petition No. 842 Of 2018

Anant s/o Dagadu Garde,
Age : 62 years, Occupation-Business & Social-work,
R/o. 407576, Chitra Talkies Road,
Laxmi Niwas, Tq. & Dist. Ahmednagar.

.. Applicant

Versus

1. Madhav s/o Yadavrao Shankhpale,
Age : 54 years, Occupation-Service,
R/o. Matoshri, Rajendra Nagar,
Nanded.
2. The State of Maharashtra
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.

3. The Scheduled Tribe Certificate,
Scrutiny Committee at Aurangabad.
4. The Scheduled Tribe Certificate
Scrutiny Committee at Pune.

.. Respondents

- * Mr. Sujeet G. Karlekar, Advocate for the Petitioner.
- * Mr. Ameya N. Sabnish, Advocate for Applicant in CA.
- * Mr. A.S. Shinde, Addl.GP for Respondents/State.

**CORAM : S.G. MEHARE AND
SHAILESH P. BRAHME, JJ..**

RESERVED ON : 24th FEBRUARY 2025

PRONOUNCED ON : 28th FEBRUARY 2025

J U D G M E N T (Per Shailesh P. Brahme, J.) :

- . Rule. Rule is made returnable forthwith. Heard both sides finally.
2. The Petitioner is challenging order of termination passed by the Respondent No.1 vide Government Resolution dated 11.01.2018. He was terminated due to order of invalidation issued by the Scrutiny Committee and securing the appointment against Scheduled Tribe Category illegally.
3. Petitioner's tribe certificate Thakur Scheduled Tribe was invalidated by the Scrutiny Committee vide order dated 19.09.1992. Being aggrieved, he had filed Writ Petition No.2641/1992. It was dismissed by the High Court on 05.04.2007. Against that, he had approached Supreme Court. He was permitted to withdraw the petition with liberty to file for review before High Court vide order dated

05.09.2008. In pursuance of that order, Application for review was filed but no orders have been secured.

4. In the meantime, Petitioner was given adhoc promotion to the post of Executive Engineer vide Government Resolution dated 11.07.2002. He was reverted to the post of Assistant Engineer by Government Order dated 11.07.2008. Thereafter by order dated 30.01.2009, he was issued adhoc promotion on certain conditions. Thereafter he was terminated by Government Resolution dated 11.01.2018. He attained age of superannuation in the year 2022.

5. Mr. S.G. Karlekar, learned Counsel for the Petitioner submits that as impugned order is in blatant violation of principles of natural justice, petition is maintainable, despite having alternate remedy before Maharashtra Administrative Tribunal. Without extending any opportunity of hearing, he was terminated by impugned order which is perverse. He would further submit that the Respondent No.1 even did not bother to refer to Government Order dated 11.07.2008 by which he was reverted in rank as a punishment due to invalidation of his tribe certificate. Having suffered punishment of reverting the in rank. It is illegal to again impose punishment of dismissal for the selfsame reason. Hence the action is against principles of double jeopardy.

6. Petitioner further submits that his services were protected by executive instructions dated 11.07.2008 and thereafter 30.01.2009. Overlooking the same, impugned order was issued which amounts to arbitrariness. It is submitted that judgment of High Court in the matter of **Chairman and Managing Director FCI and Ors. Vs. Jagdish Balaram Bahira and Ors.**, cannot be made applicable. He is relying on the

judgment of **Radha Krishan Industries Vs. State of Himachal Pradesh and Others**, (2021) 6 SCC 771 and **M/s. Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer – Cum – Assessing Authority**, AIR 2023 SC 781.

7. Per contra, learned AGP submits that impugned action was taken in pursuance of Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification Of) Caste Certificate Act, 2000. Once there was invalidation of tribe certificate and Petitioner is found to have usurped the post in question, his discharge from service is automatic and no question of extending any opportunity to him arises. It is submitted that Government Orders dated 11.07.2008 and 30.01.2009 would not create any right or protect the services of the Petitioner. It is further contended that the impugned action taken against the Petitioner, is perfectly in consonance with the law laid down in the Supreme Court in the matter of Chairman and Managing Director FCI and Ors. (supra).

8. Petitioner was employee of Public Work Department. He had remedy to approach Maharashtra Administrative Tribunal against order of termination. But learned Counsel for the Petitioner has persuaded us by relying on the judgment of the Supreme Court in the matter of Radha Krishan Industries (supra), by referring to Paragraph No.27.3 that in case of violation of principles of natural justice, it is permissible for the High Court to entertain Writ Petition directly. He would further place reliance on the judgment of M/s. Godrej Sara Lee Ltd. (supra). We find that there is substance in the contention of the Petitioner. Considering his grounds of objection to impugned order of termination, we propose to examine the matter on merits.

9. Petitioner's tribe certificate was invalidated by the Scrutiny Committee and it was confirmed by High Court. Against those judgments, he had approached the Supreme Court. By order dated 05.09.2008, the Supreme Court permitted him to withdraw SLP with liberty to approach High Court by filing review petition. Accordingly, Review Application Stamp No.16565/2009 was preferred. Learned AGP has informed that no orders are passed and it is still pending. Due to orders of invalidation, Petitioner was found to be ineligible for the post of Assistant Engineer which was reserved for Scheduled Tribe Category. His entry in the service was on the basis of reservation. He was terminated from the services by invoking powers under Section 10 of the Act. Respondent was empowered to discharge the Petitioner forthwith from the employment. For that, no opportunity of hearing is required to be extended. Neither any inquiry is contemplated for discharging the services.

10. Respondent No.1 has relied on the judgment of Managing Director FCI (supra). We have gone through paragraph Nos. 44 to 46 as well as concluding part of paragraph no.57. Respondent no.1 is justified in dismissing the Petitioner. He is guilty of fraud on the constitution and he has deprived one legitimate deserving candidate belonging to Scheduled Tribe Category.

11. When there is specific statutory provision of Section 10, no question of extending any further opportunity to the Petitioner arises. Law does not provide the extending of opportunity or conducting inquiry once there is order of invalidation of tribe certificate. The Petitioner was reduced in rank vide order dated 11.07.2008. By further order dated 30.01.2009, he was again promoted temporarily. These orders are

inconsequential. They would not protect the service of the Petitioner. After invalidation of the tribe certificate, he is liable to be discharged from service. Any other penalty by executive orders like reduction in rank or deprivation of few service benefits is against statutory scheme and spirit of law laid down by the Supreme Court. Petitioner is taking shelter of these Government orders but the submission would run contrary to the observations of the Supreme Court in the matter of Chairman and Managing Director FCI and Ors. (supra) which is as follows :

“53. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that government is bound by its own circulars is well-settled but it cannot apply in a situation such as present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.”

12. Petitioner was found to have been promoted vide order dated 11.07.2002 on adhoc basis. By Government Order dated 11.07.2008. adhoc promotion was revoked and he was reverted to his original post. This is not by way of any punishment for invalidation of the tribe certificate. Only punishment contemplated by Section 10 of the Act, is the dismissal from the service. No leverage can be read into the statutory provision. The reduction of the Petitioner is not void and therefore no benefit can be given to him to escape dismissal. We, therefore, disapprove the submission of the Petitioner that order of

termination would violate the principles of double jeopardy. We are fortified in our finding by referring to above observations of the Supreme Court in paragraph no.53.

13. It transpires from record that interim orders were passed on 23.01.2018. But that was not protection against order of termination. It was only prohibition issued to the Respondent from filling in the post of the Petitioner and recovering anything from him. We do not accept the submission of the Petitioner that there was protection of his services after order of invalidation either by High Court or by Government Order dated 11.07.2018.

14. There is no legal sanctity to the Government Order dated 11.07.2008. Thereafter there was no need to mention that order in the Government Resolution dated 11.07.2018 which is under challenge. Respondent is justified in dismissing the Petitioner from the services. Impugned action is perfectly in accordance with law. We do not find merit in the petition.

15. Writ Petition is dismissed. Rule is discharged.

16. Civil Application stands disposed of.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

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