



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.19606-2018 (O&M)

Date of decision: 21.05.2025

Nazia Ansari

.....Petitioner

Versus

Life Insurance Corporation of India and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. G.S. Bal, Sr. Advocate with
Ms. Gurneet Kaur, Advocate for the petitioner.

Mr. Piyush Sharma, Advocate for respondent Nos. 1 to 3.

VINOD S. BHARDWAJ, J (ORAL)

Challenge in the present writ petition is to the order dated 29.05.2018 (Annexure P-19) passed by the Appellate Authority, rejecting the statutory appeal of the petitioner and upholding the impugned order dated 31.10.2017 (Annexure P-14) passed by the Disciplinary Authority whereby the petitioner has been dismissed from service. A further prayer has also been made for issuance of directions to the respondents to reinstate the petitioner in service.

It is the petitioner's case that pursuant to the employment News dated 05.11.2008, she was selected and appointed as an Assistant with the respondent LIC vide appointment order dated 30.05.2009. It is stated that the petitioner was thereafter promoted as a Higher Grade Assistant with effect from 01.05.2014. It is stated that the petitioner did not conceal any information while applying for the post of Assistant and that she had duly disclosed her nationality as Indian and religion as Muslim. Being a member of the Julaha community, which is a



recognized Scheduled Caste, she applied for issuance of a Scheduled Caste Certificate to the Tehsildar, Mohali-respondent No.4, which had been issued to her on 25.02.1999. Thus, she was given the benefit of Scheduled Caste category and was selected against the post so reserved. It is further stated that the petitioner was later served with a letter dated 15.12.2014, requiring her to explain whether the Scheduled Caste Certificate was false and had been wrongly procured. A detailed reply dated 28.12.2014 was submitted by the petitioner to the respondent Authority stating that there was no misstatement or false claim made on her part. The Certificate in question was not procured; rather, the same had been issued by the Competent Authority after due verification from the Executive Officer of the Municipal Corporation, Mohali. Nonetheless, a charge sheet dated 31.01.2015 was served upon the petitioner by stating that the Tehsildar, SAS Nagar, had informed vide letter dated 14.11.2014 that the Certificate was obtained by the petitioner by submitting a false affidavit.

A reply to the said charge sheet was submitted on 28.02.2015, refuting the information supplied by the Tehsildar. Learned counsel contends that the documents including letter dated 14.11.2014 had been supplied to the petitioner and it was evident from a conjoint reading of said documents that the Department of Welfare, Punjab Government had issued letters dated 17.11.2008 and 16.03.2009 mentioning that Scheduled Caste Certificates can be issued only to Hindu, Sikh and Buddhists and not to the Muslim candidates. It is further stated in the said letter that where any such Scheduled Caste Certificate had been issued, the same should be identified and cancelled and in an event of failure to do the needful, criminal proceedings may also be launched against the Authorities that had issued such certificates along with the beneficiaries of the same. It is argued that invariably the Issuing Authority, i.e the Tehsildar himself, was not aware of the said instructions and had issued Scheduled Caste Certificate not only to the



petitioner but also to numerous other persons, who purportedly might not have been eligible for issuance of such Scheduled Caste Certificates.

Learned senior counsel appearing for the petitioner further contends that since the public at large including the Tehsildar was not aware of the letters issued in the year 2008 and 2009, no inference should be drawn against the petitioner for having allegedly submitting a false certificate and some concession of ignorance of law ought to have been extended to the petitioner as well. Submission of the affidavit by the petitioner about her caste and religion at the time of issuance of the Scheduled Caste Certificate cannot be said to be an act of fraud or as an act of securing the Scheduled Caste certificate from the Competent Authority by concealment of vital information. It is submitted that the procedure as prescribed by the State Government for issuance of Scheduled Caste Certificate was followed and proper verification was done by the respective Authorities for which no fault can be attributed to the petitioner. However, without considering the reply as well as documents appended by the petitioner, the respondent Disciplinary Authority passed the impugned order dated 31.10.2017, dismissing the petitioner from service.

Being aggrieved, the petitioner preferred a statutory appeal under the provisions of the LIC of India (Staff) Regulations, 1960. Besides, she also sought information under the Right to Information Act vide letter dated 09.10.2017 to establish whether at any time, the Scheduled Caste Certificate produced by her was false or forged. In response to the information sought under the RTI Act, a communication dated 08.11.2017 was received, informing that no such information is available. Besides, the petitioner also sought information from the respondent- Life Insurance Corporation, as to whether she stood in the merit list when she was selected and appointed as an Assistant. The said information was supplied to her vide communication dated 21.12.2017, showing that the last



selected candidate who applied under the general category obtained 63 marks, whereas the petitioner under the Scheduled Caste category obtained 54 marks. On a specific query, it is informed that “it was only 54 marks and not 54% marks”.

Learned counsel representing the respondent-LIC has informed that the last selected candidate in the General Category, other than the candidates in the horizontal quota, had secured 63 marks.

Learned senior counsel representing the petitioner has vehemently argued that the action on the part of the respondent Authority was inequitable as there had been no false procurement of any Certificate by the petitioner. The petitioner belongs to the Muslim community and even in the affidavit furnished by her to the Executive Officer, Municipal Corporation, Mohali, as well as to the Tehsildar, she had specifically mentioned her name as well as her religion, yet notwithstanding the same, the Scheduled Caste Certificate was issued by the Competent Authority. He contends that the respondents have now applied ignorance of law for them as a valid excuse and have termed the procurement of Scheduled Caste certificate by the petitioner as an act of fraud by her. The respondent Authority, who had issued the Scheduled Caste Certificate to the petitioner, cannot be said to be on a different footing and once the Authorities themselves were not aware of existence of different Instructions regarding Scheduled Caste Certificate under the Constitution of India, there is no occasion for drawing any adverse inference against her. He contends that the petitioner has an unblemished service record with the LIC and was even promoted to the next higher grade post of Assistant establishing that her work and conduct had been completely satisfactory. Ouster of the petitioner from service would be exceptionally harsh.

He places reliance on the judgment of the Hon’ble Supreme Court reported as **Dattu s/o Namdev Thakur vs. State of Maharashtra and others**



(2012) 1 Supreme Court Cases 549. In the said case, the Scheduled Caste Certificate issued in favour of the claimant therein was cancelled after 09 years without any explanation for the delay but the admission of petitioner was protected. The operative part of the said judgment reads as under:

“5. Having heard learned counsel for the petitioner(s), as well as the State of Maharashtra, we are of the view that even if we are to accept the findings of the Caste Scrutiny Committee, as also that of the High Court, we cannot ignore the various circumstances that have intervened between the issuance of the caste certificates and the cancellation thereof. In fact, reference was made to the Caste Scrutiny Committee in 2009, i.e. nine years after the certificates had been issued, and there is no proper explanation for such delay. On the other hand, the petitioner in the first writ petition has been allowed by the respondents to continue in service and also by virtue of orders passed by the High Court. Similarly, the petitioners in the other two writ petitions have continued their studies after having obtained certain benefits from their caste certificates.

6. We are now informed by Mr. Kanade, learned Senior Advocate, appearing for the petitioner(s), that the petitioner in the second Special Leave Petition, Amol, who is the son of Dattu Thakur, who is the petitioner in the main Special Leave Petition, has in the meantime, appeared for the B.Pharmacy examination but his results have not been declared. Similarly, Pratibha, daughter of Dattu Thakur, who is the petitioner in the other Special Leave Petition, has appeared for the B.Ed.examination and her result is also to be declared.

7. In support of the case of the petitioner(s), an order passed by another Bench of this Court in C.A.No.7411 of 2010 (Swati Vs. State of Maharashtra & Ors.), on 6th September, 2010, was brought to our notice, wherein in similar circumstances, the Court while dismissing the civil appeal, directed that the benefits that had already been enjoyed by the candidate, and the degree obtained by her in the BDS course, which she had completed, would continue. The Court further directed that she would not be entitled to any further benefits under the caste certificates issued to her and that whatever



advantage she may have obtained by way of payment of fees at a reduced rate, were to be made up by her by paying the difference.

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9. *Accordingly, while dismissing all the three Special Leave Petitions, we direct that whatever advantage the three petitioners in the three Special Leave Petitions, may have derived on the basis of their caste certificates, shall not be disturbed and the cancellation of their respective caste certificates will not deprive them of the benefits which they have already enjoyed. However, we also make it clear that none of the three petitioners in the three respective Special Leave Petitions, will be entitled to take any further advantage of reservation in future, either for studies or for employment.*

10. *Following the judgment in Swati's case, we also direct that if the petitioners in the 2nd and 3rd Special Leave Petition, have obtained any concession by way of reduction in fees, as a reserved candidate, they will have to make good the same by paying the difference in fees that is being paid by general candidates. Such payment has to be made within a period of six months and in default of such payment, this order will cease to have any effect."*

Reliance is also placed by him upon a judgment of Hon'ble Supreme Court reported as **Gulzar Singh vs. Sub-Divisional Magistrate and another (1999) 3 Supreme Court Cases 107**. The relevant extract of the judgment is being reproduced hereinafter:

"3. It is clear from the facts on record that prior to the cancellation of the Scheduled Caste certificate by the impugned Order dated 3rd June, 1997, no show cause notice was issued to the appellant. It cannot be denied that with the issuance of Scheduled Caste certificate, certain rights accrued to the appellant. If this certificate was to be cancelled on the basis of some enquiry which had been conducted by the department, it was incumbent on the department, keeping in view the principles of natural justice, to issue a show-cause notice to the



appellant requiring him to explain as to why the Scheduled Caste certificate which had been issued should not be cancelled. If there were statements of other persons which were recorded, as seem to have been done in the present case, on the basis of which the department came to the conclusion that the appellant was not Majhbi Singh by caste but was Christian, then fairness would require that the said statements should be put to the appellant before a final decision is taken.”

Reference is also made to the judgment of Hon’ble Supreme Court reported as **Rampal vs. State of Haryana and others (2009) 9 Supreme Court Cases 187** to contend that before cancelling the Scheduled Caste Certificate that has been given in favour of a candidate, an opportunity of hearing has to be granted and thus, the order of cancellation of Certificate deserves to be set aside. Relevant extract of the said judgment reads as under:

“5. We have heard the learned counsel for the parties and examined the impugned order and other materials on record. In our view, the appeal is liable to be allowed and the impugned order should also be set aside on a very short point. It is an admitted position that before cancellation of the caste certificate of the appellant, the authorities ought to have given an opportunity of hearing to the appellant and also to contend that the Certificate issued to him was a "Scheduled Caste Certificate" and, therefore, it cannot be quashed.”

Learned senior counsel representing the petitioner has also placed reliance on the judgment of this Court reported as **Rita K Singh vs. New India Assurance Company Limited, 2012(3) PLR 265**, where the claimant who was even though not born as a Scheduled Caste but married to a Scheduled Caste spouse and had secured Scheduled Caste Certificate on the basis of her marriage. In this matter, continuation in the employment was allowed and denial of Caste status was attached only to future prospects for promotion and avenues which are otherwise available to the reserved category candidates. The operative para of this judgment reads thus:



“4. The Hon’ble Supreme Court was, therefore, allowing for continuation in employment of the person whose certificate had been withdrawn and had only denied such a candidate the benefit of taking any future advantage of reservation in future. In the present context, I would hold that the denial of the caste status could be attached only to any further career prospects for promotion which are reserved for Schedule Caste candidates or any other benefit that she could take on such a status.”

In response thereto, learned counsel representing the respondent-LIC contends that the factual position in this regard remains undisputed to the extent that the petitioner had been appointed with the respondent-LIC on the basis of a Scheduled Caste Certificate. It is also not in dispute that clause (3) of the Constitution (Scheduled Castes) Order, 1950 prescribes that no person who professes a religion different from Hinduism, Sikhism and Buddhism shall be deemed to be a member of the Scheduled Castes. It is thus contended that as the petitioner was undisputedly professing Islam, hence as per the Constitution (Scheduled Castes) Order, 1950, the petitioner was not entitled to the issuance of Scheduled Caste Certificate. He contends that notwithstanding the same, the officials in the Government of Punjab had issued various such and similar Certificates to the persons who were not entitled to the same. It is further not disputed that the Government of Punjab sent communication to all the concerned Authorities in the years 2008 and 2009 highlighting that Certificates had been wrongly issued and the Authorities were directed to identify the beneficiaries of such Certificates and to cancel the same, failing which action would be taken against them as well as the beneficiaries of such Certificates as well. In consonance with the said directives, the Scheduled Castes Certificate issued in favour of the petitioner was set aside by the Authority.

He further submits that the contention of the petitioner that no opportunity of hearing was granted to her before the cancellation of her Certificate



is misconceived and is a mere formality. Once the petitioner has not disputed the factum that the persons professing Islam are not covered under the Constitution (Scheduled Castes) Order, 1950, no purpose would have even otherwise been served by granting any opportunity of hearing. Invariably, the act of issuance of Certificates at the first instance was in violation of the Constitution (Scheduled Castes) Order, 1950. The said illegality was continuously perpetuated by the Executing Officials and even when such an error is committed under a mistaken understanding, yet the mistake cannot have the effect of validating a Certificate which is *per se* illegal and contrary to law. He contends that once the foundation of appointment stands defeated, the petitioner cannot be entitled to retain the fruits of the forbidden tree. It is submitted that even if the petitioner is presumed to have acted under a bona fide impression, the same cannot be a reason good enough for a Constitutional Court to protect an illegality and provide validation/sanctity to the same by protecting such appointments procured through such means. He contends that the object of the Constitutional reservation for the members belonging to the Scheduled Caste community shall stand defeated in case such clandestine appointments are protected. He places reliance on the judgment of Hon'ble Supreme Court reported as **Chairman and Managing Director FCI and Ors vs. Jagdish Balaram Bahira and Ors** passed in bunch of Civil Appeals including Civil Appeal No.8928 of 2015 decided on 06.07.2017 wherein the judgment of Hon'ble Supreme Court in **Dattu s/o Namdev Thakur's case (supra)**, relied upon by learned counsel for the petitioner, was also taken into consideration. He submits that in the said case, Hon'ble Supreme Court specifically observed that as a matter of principle, in the exercise of its constitutional jurisdiction, the courts must weigh against an interpretation which will protect unjust claims over the just, fraud over legality and expediency over principle. It was held that the role of the Court must be as an institution which



abides by constitutional principles, 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 is 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 the legal gambits and the creativity of the disingenuous. Relevant extracts of the said judgment read thus:

“4. 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.

5. 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.

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18. Several decisions of this Court have considered whether a person who has secured the benefit of public employment or admission to an educational institution on a reserved quota is entitled to retain the benefits obtained despite the invalidation of the claim to belong to the tribe or caste. In all such cases, equities are pressed in aid, chief among them being the lapse of time since the acquisition of benefits on the basis of a claim to belong to a designated caste or tribe. As decided cases indicate, the claim for equity is coupled with a “voluntary” undertaking that the person would not secure or claim any future benefits on the basis that he or she belongs to the Scheduled Caste, Schedule Tribe or socially and educationally backward class on the basis of which the original appointment or admission was obtained. In the case of admissions to educational institutions, particularly institutions of higher learning, the additional ground which is often urged is that the withdrawal of benefits obtained in the past would amount to a societal loss since scarce productive resources of the nation are invested in providing for training and education to professionals in a discipline such as medicine.

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45. Section 10, it must be noted, provides for the withdrawal of civil benefits which have accrued to an individual on the strength of a claim to belong to a reserved category, when the claim upon due enquiry and verification is invalidated. Section 10, as its marginal note indicates, provides for the withdrawal of benefits secured on the basis of a false caste certificate. Section 11 provides for offences and penalties. The invalidation of a caste certificate may result in two consequences: (i) immediate cancellation or withdrawal of the benefits received by the candidate on the basis of a false caste certificate; (ii) prosecution of a claimant who procures a certificate which



is found to be false by the Scrutiny Committee. The intent of a candidate may be of relevance only if there is a prosecution for a criminal offence. However, where a civil consequence of withdrawing the benefits which have accrued on the basis of a false caste claim is in issue, it would be contrary to the legislative intent to import the requirement of a dishonest intent. In importing such a requirement, the bench of two Judges in Shalini (supra) has, with great respect, fallen into error. The judgment in Shalini (supra) must, therefore, be held not to lay down the correct principle. In the very nature of things it would be casting an impossible burden to delve into the mental processes of an applicant for a caste certificate. As the provisions of the Act indicate, a person, who claims to belong to a reserved category and who seeks the benefit of an appointment to a reserved post or of admission to an educational institution against a reserved seat or any other benefit provided by the provisions of Article 15(4), has to apply for the grant of a caste certificate. The burden of proof that he or she belongs to such a caste, tribe or class lies with the claimant. The legislature has legitimately assumed that a person who seeks a caste certificate must surely be aware of the caste, tribe or class to which he or she belongs and must establish the claim. If the claim to belong to the reserved category is found to be untrue, the caste certificate has to be cancelled on the ground that it has been obtained falsely. The grant of the benefit to the candidate is fraudulent because the candidate has obtained a benefit reserved exclusively for a specified caste, tribe or class to which he or she is not entitled. The decision in Shalini (supra) would result in serious consequences and would eviscerate the statutory provision. The interpretation which has been placed on the provisions of Section 10 by the judgment in Shalini (supra) is evidently incorrect.

46. Service under the Union and the States, or for that matter under the instrumentalities of the State subserves 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 make a choice amongst competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, 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, an 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. Once the legislature has stepped in, by enacting Maharashtra Act XXIII of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in Milind



spoke on 28 November 2000. The state law has been enforced from 18 October 2001. Judicial directions must be consistent with law. Several decisions of two judge benches noticed earlier, failed to take note of Maharashtra Act XXIII of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the area was unregulated by statute. Shalini noted the statute but misconstrued it.

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49. We do not find any merit in the submission which has been urged on behalf of the persons whose castes/ tribes claims have been invalidated that Maharashtra Act XXIII of 2001 cannot apply to admissions or appointments which were made prior to the date on which the Act came into force.

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51. The regime which obtained since 2 September 1994 under the directions in Madhuri Patil was granted a statutory status by the enactment of Maharashtra Act XXIII of 2001. Section 7 provides for the cancellation and confiscation of a false caste certificate whether it was issued before or after the commencement of the Act. The expression “before or after the commencement of this Act” indicates that the Scrutiny Committee constituted under Section 6 is empowered to cancel a caste certificate whether it was issued prior to 18 October 2001 or thereafter. Section 10 which provides for the withdrawal of benefits secured on the basis of a false caste certificate which is withdrawn is essentially a consequence of the cancellation of the caste certificate. Where a candidate has secured admission to an educational institution on the basis that he or she belongs to a designated reserved category and it is found upon investigation that the claim to belong to that category is false, admission to the institution necessarily falls with the invalidation of the caste certificate. Admission being founded on a claim to belong to a specified caste, tribe or class, it is rendered void upon the claim being found to be untrue. The same



must hold in the case of an appointment to a post. Therefore, the absence of the words “before or after the commencement of this Act” in Section 10 makes no substantive difference because a withdrawal of benefit is an event which flows naturally and as a plain consequence of the invalidation of the claim. Moreover, as we have seen even prior to the enactment of the state legislation, the benefit which was secured on the basis of a caste claim was liable to be withdrawn upon its invalidation. The Act has hence neither affected vested rights nor has it imposed new burdens. The Act does not impair existing obligations in Sections 7 and 10.

However, an analysis of the provisions of Section 11 demonstrates that the provision creates offences and provides for penalties. Under Section 11 (1) (a) the offence consists of obtaining a false caste certificate (by furnishing false information), filing a false statement or document or by any fraudulent means. Under Section 11 (1)(b) the offence consists in securing a benefit exclusively reserved for designated castes, tribes or classes by a person who does not belong to that category in terms of

(i) Appointment;

(ii) Admission in an educational institution against a reserved seat; or

(iii) Election to a local authority or cooperative society against an office which is reserved for that category.

52. The provisions of Section 11 (1) must be read and construed in a prospective sense having regard to the guarantee contained in Article 20 (1) of the Constitution. The offence having been created by Maharashtra Act XXIII of 2001, the Act which constitutes the offence must relate to a period after the date of the enforcement of the Act. In terms of the penal provisions of Section 11, the statute in so far as it creates offences and provides for penalties must hence be construed prospectively.

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.

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57. *For these reasons, we hold and declare that*

- (i) The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in Milind were in pursuance of the powers vested in this Court under Article 142 of the Constitution;*
- (ii) Since the decision of this Court in Madhuri Patil which was rendered on 2 September 1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for (a) the issuance of caste certificates; (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government; (c) the procedure for the conduct of investigation into the authenticity of the claim; (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine; (e)*



Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and (f) Prosecution for a criminal offence;

(iii) The decisions of this Court in R. Vishwanatha Pillai and in Dattatray which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual – such as an appointment to a post or admission to an educational institution – on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

(iv) The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

(v) By Maharashtra Act XXIII of 2001 there is a legislative codification of the broad principles enunciated in Madhuri Patil. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates (Section 6(2) and 6(3); cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

(vi) The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18 October 2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a



reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

(vii) Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

(viii) The decisions in Kavita Solunke and Shalini of two learned Judges are overruled. Shalini in so far as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

(ix) Mens rea is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

(x) The judgment of the Full Bench of the Bombay High Court in Arun Sonone is manifestly erroneous and is overruled; and

(xi) Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act XXIII of 2001 holds the field.”

While referring to the above, he argues that it was specifically held by the Hon’ble Supreme Court that no government resolution or circular can override constitutional or statutory norms. Protecting the services of a candidate, who is not found to belong to the community or tribe for whom the reservation is intended by government circulars/resolution, cannot operate against legal rights of genuine members of the reserved communities for whose entitlements, reservation has been prescribed and by virtue of their conduct, such rights are negated. He



submits that many judgments arising from different High Courts were considered and in all those cases, the orders of the High Court granting protection on equitable considerations were set aside. He contends that so much so, where people had served the entire duration and superannuated, further pensionary benefits were also ordered not to be disbursed. It is, thus, contended that a person cannot claim equity only based on length of service, as such act(s) have been deprecated by the Hon'ble Supreme Court.

Reference is also made to a judgment passed by a Single Bench of this Court passed in **CWP No.18033 of 2017 (O&M), decided on 17.05.2023**, the relevant part of which reads as under:

“9. Even if it is assumed for the sake of argument that there is no misrepresentation or fraud on behalf of the petitioner as it is apparent from the name of petitioner and his father's name that the petitioner belonged to Muslim community and despite that fact, Scheduled Caste certificate was issued in his favour, but the settled position of law is that a person to have the status of Scheduled Caste must profess Hinduism or any other religion as specified in para 3 of the Constitution (Scheduled Castes) Order, 1950 (hereinafter referred to as Presidential Order), as issued by the President in exercise of the power conferred upon him under Article 341 of the Constitution of India. Para 3 of the Presidential Order is reproduced as under:-

“3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste.”

In the absence of any material available before this Court that petitioner herein is professing Hinduism or any other religion as specified in para 3 of the Presidential Order, this Court is of the opinion that petitioner was not entitled to be issued an SC certificate, being a person belonged to Muslim Community. The Hon'ble Supreme Court in Punjabrao's case (supra) has held that for treating a person



as belonging to Scheduled Caste, he must be one who presses either Hindu or Sikh Religion. In the said case, a person belonging to Scheduled Caste had converted to Bhuddism and therefore, was held ineligible to be a candidate for election from a constituency reserved for members of Scheduled Caste.

10. The argument of learned Senior Advocate appearing for the petitioner that there were other candidates as well, serial numbers of whose certificates were different than the number of dispatch register and therefore, there is a probability of clerical mistake on the part of official maintaining the register also pales into significance on account of the fact that the petitioner, being a Muslim, at the very first instance is not entitled to get a Scheduled Caste Certificate.

11. Another argument raised by learned Senior Advocate appearing for the petitioner is that out of 5 posts of Lecturer under SFS, 4 posts were earmarked for General Category and 1 post was reserved for SC category and since only four posts were filled up by the respondent-University, therefore, the petitioner was appointed on 4th post of General Category and not on the post meant for reserved category. The said argument has also no merit, as against the four posts of General Category persons namely (i) Roma; (ii) Madhu; (iii) Ashok Kumar and (iv) Nancy Devinder Kaur were appointed. In fact, Nancy Devinder Kaur did not join the post offered to her and therefore, the said post remained vacant. It was never the case as projected by the petitioner that petitioner was appointed on the 4 th post of General category. The petitioner herein had a case if he could prove that he had obtained more marks than the last selected candidate of General Category and therefore, applying the principle of horizontal reservation, he was to be given appointment against the post of General Category to grant benefit of reservation to next Scheduled Caste candidate. This Court is unable to give the benefit of horizontal reservation in terms of the judgement rendered in Rajesh Kumar Daria case (supra) as the



recommendations made by the interview committee did not provide marks of persons so selected to determine whether or not the petitioner ought to have been offered appointment against General category post. As per the recommendation of the interview committee, the petitioner was recommended for appointment under SC category and therefore, argument of the petitioner that he was given appointment against 4th post of General category is devoid of merit.

*12. No doubt, complaint against the petitioner was made by another unsuccessful candidate competing under SC category after a period of five years, complaining that the petitioner being a Muslim cannot be issued Scheduled Caste certificate, on the basis of which departmental proceedings continued, which culminated into order of removal of the petitioner from his services as a Lecturer. The petitioner was appointed in the year 2007 and till today, he has rendered 16 years of service as he was granted stay on operation of impugned order dated 28.07.2017 vide order dated 16.08.2017 passed by a Coordinate Bench. Learned Senior Advocate appearing for the petitioner had also argued that length of service of the petitioner ought to have been taken into consideration while passing the impugned order. This Court is of the opinion that since the appointment of the petitioner based on the Scheduled Caste certificate to which he was not entitled to, is void ab initio, he cannot get the benefit of length of service for which he was not eligible at the first instance. The Hon'ble Supreme Court of India in the judgment rendered in Civil Appeal No.4990 of 2021 titled as *The Chief Executive Officer, Bhilai Steel Plant, Bhilai Vs. Mahesh Kumar Gonnade and others* decided on 11.07.2022 has held that when a person secured appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment. In the aforesaid case, respondent No.1 got appointment on the basis of a caste certificate showing him to be 'Halba' Scheduled Tribe. On scrutiny of said certificate, it was*



found that respondent No.1 belonged to Halba/Koshti community, which was recognized as OBC in the State of Chhatisgarh and therefore, his appointment on the post against ST category was discontinued. In Satish Chandra Gupta Vs. Steel Authority of India Limited, Managing Director, Bokaro Steel Plant and Chairman, Steel Authority of India Limited 2010 (7) SCT 776, the Jharkhand High Court had rejected the plea of petitioner therein that his services could not be terminated after a period of 15 years on the ground that as he had obtained his appointment on the basis of misrepresentation of material facts, advantage is obtained by him in violation of constitutional scheme and therefore, appointment granted to petitioner is an illegal appointment and therefore, deemed to be void ab initio.

13. In view of the aforesaid facts and circumstances, this Court is of the opinion that even though the petitioner may not have misrepresented at the time of obtaining an SC certificates or obtained the same fraudulently, but since he claimed and was given benefit under the said certificate to which he was definitely not entitled to, he cannot be allowed to continue in service. Consequence of the same to follow, however, the salary and other emoluments paid to the petitioner shall not be recovered. The government accommodation, if retained by the petitioner as on today, is to be vacated by him within a period of two months from today.”

Further reference is made to a judgment of the Single Bench of this Court reported as **Dilawar Khan vs. Ravinder Kumar and others, 2010 SCC OnLine P&H 1561**. He contends that the judgment of Single Bench of this Court in **Rita K Singh’s case (supra)**, which has been passed on the basis of **Dattu s/o Namdev Thakur’s case (supra)**, would be of no help to the petitioner since the judgment in the matter of **Chairman and Managing Director FCI’s case (supra)** was passed subsequently in the year 2017.



He further mentions that judgment in **Gulzar Singh's case (supra)** was also passed in the year 1999 and is only with respect to the cancellation of the Scheduled Caste Certificate. He contends that the persons had claimed the Certificate of Scheduled Castes claiming to be Majhbi Sikhs, whereas the same was cancelled as it was recorded that the beneficiary, Gulzar, was a practising Christian. He contends that a fact-finding was required to be done to ascertain whether the non-extension of any opportunity to show cause may have caused prejudice. He contends that there is no dispute in the present case that the petitioner is Muslim by religion and it is not a case where there might be any other factual determination to be done, before a Certificate issued in favour of the petitioner is cancelled. Thus, the aforesaid judgment would also be of no aid to the petitioner. Mere absence to issue a show cause before cancellation of a Certificate thus would cause no prejudice.

I have heard learned counsel for the parties and have gone through the documents placed on record with their able assistance.

Even though an emphatic argument seeking to invoke sympathy from this Court has been made on the strength of service rendered by the petitioner consequent upon her selection, this Court cannot be oblivious of the fact that issuance of the Scheduled Caste Certificate was an act contrary to the constitutional mandate. Constitution (Scheduled Castes) Order, 1950 undisputedly prohibits issuance of Scheduled Caste Certificate to the persons professing a religion other than Hinduism, Sikhism and Buddhism and undeniably, the petitioner is a Muslim by faith. Thus, there was no occasion for the issuance of a Scheduled Caste Certificate at the first instance. Even though, there was an undeniable illegality committed by the officials including that of the Municipal Corporation, Mohali as well as the Tehsildar in issuing Scheduled Caste Certificate in favour of the petitioner, however, said illegality committed by the



official respondents cannot be made a basis to hold that merely because an illegal act was committed by the State agency hence the beneficiary would be entitled to claim protection of the benefits that have been availed illegally. Forgiving any such act would amount to incentivizing the holder of such a Scheduled Caste Certificate and giving validity to a certificate which has been obtained by a mode that is not recognized by law. The protection of any such action by the Constitutional Court would give rise to a fractured mandate where the Constitutional Court, which is ordained to ensure protection of the rule of law and ensure compliance of the statutory mandate, itself compounds such violations and upholds a Certificate obtained in a clandestine manner.

A Constitutional Court is not just a guardian of the Constitution but is also a custodian of the rights of every citizen and has to protect them zealously even when the one violated may not be aware of the infringement. The Court does not stand just for those who can cry loud and hoarse but also for those who sob in silence or suffer in suppression or destitution. Awareness is a privilege which few possess while large ignorant sections suffer the deprivation with no sense of loss. Each Constitutional Court owes a responsibility to that voiceless and speechless lost person in the queue as well.

Even though this Court may accept the contention of the petitioner that she did not conceal any information, however, the same would not change the complexion of the case or that she was not entitled to the Certificate which was issued in her favour by the Authority concerned. The findings recorded by the Authorities to the extent, that the Certificate had been obtained by fraud are thus modified, giving a benefit, as fraud necessarily prescribes a pre-requisite malicious intent. Absence of a fraudulent intent may be a good and valid reason to conclude that an act may be a bona fide act, but that by itself would not change the final nature of the Certificate obtained. Said document shall remain an invalid



document from inception, having been issued in violation of constitutional mandate and the Constitution (Scheduled Castes) Order, 1950. The judgment of the Hon'ble Supreme Court in **Chairman and Managing Director FCI's case (supra)** specifically takes into consideration all those circumstances. Hon'ble Supreme Court has gone to the extent of not only denying the protection of the benefits that had been availed on the strength of Scheduled Caste Certificates but has also given clear directives to the Constitutional Courts to not exercise their misplaced sympathy for people, who have obtained false Certificates and availed benefits as any such concession has immense possibility of promoting people to indulge in extra Constitutional means to avail for themselves the benefits not meant for them at the cost of the deserving. Consequently, the beneficiaries for whom such provisions have been made and provided for are deprived of their dues by the imposters who are not entitled to such benefits.

The argument of the petitioner about not being granted an opportunity would not be of much use since nothing substantial has been brought on record on the basis whereof it may be even remotely assumed that the result would have been any different if a hearing would be afforded. Principles of natural justice are not just an empty formality to be performed but is a significant right only when such denial deprives opportunity to establish the right or protect its entitlement.

It is also not in dispute that the petitioner, having secured 54 marks, would even otherwise not have come in her merit for being appointed to the said post.

For the aforesaid reasons, I find that the order passed by the respondent Authorities, terminating the petitioner from service, cannot be said to be illegal or based on incorrect application of law.



CWP No.19606-2018 (O&M)

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The instant writ petition is accordingly dismissed.

May 21, 2025
manoj

(VINOD S BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No