

CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD

v.

STATE OF MAHARASHTRA & OTHERS

(Civil Appeal No. 2048 of 2007)

APRIL 22, 2010

[J.M. PANCHAL AND DR. MUKUNDAKAM SHARMA, JJ.]

Service Law – Termination – Respondent no. 2 appointed as temporary Assistant Teacher in Scheduled Tribes category – Tribe Certificate produced by him found invalid by Scheduled Tribe Caste Scrutiny Committee – Consequent termination of respondent no.2 – He applied to Government to reinstate him in service claiming that he belonged to S.B.C.(Special Backward Class) category and seeking protection under a Government Resolution which inter alia, specified the castes considered as SBC – Government directed the appellant to take necessary action in favour of respondent no.2 in view of the said Resolution – Respondent no.2, however, not reinstated in service – Writ petition filed by him allowed by High Court – On appeal, held: Once the Scheduled Tribe certificate produced by respondent no.2 was invalidated by the Caste Scrutiny Committee, his appointment became void from the beginning – The void appointment could not have been validated by the Government –However, on peculiar facts, it would be harsh to direct the termination of respondent no.2 since he is in service till date after the impugned judgment was rendered by High Court – Since no post belonging to SBC category is available with appellant, in interest of justice, Government directed to create supernumerary post to accommodate respondent no.2 with liberty to get the SBC Caste Certificate produced by him verified through the Caste Scrutiny Committee – Consequential directions given.

Respondent no. 2 was appointed as a temporary

- A Assistant Teacher in the Scheduled Tribes category, subject to verification of his tribe claim. The tribe Certificate produced by respondent no. 2 was forwarded for verification to the Scheduled Tribe Caste Scrutiny Committee, which found the said certificate to be invalid.
- B Consequently the services of respondent no.2 were terminated.

- C Subsequently, Respondent No.2 applied to the Government to reinstate him in service claiming that he belongs to S.B.C.(Special Backward Class) category and should be granted protection of Government Resolution dated June 15, 1995, which *inter alia*, specified the Castes considered as SBC. The Government addressed a letter to the appellant stating that even if the certificate indicating that respondent no.2 belongs to Scheduled Tribes was invalidated by the Scrutiny Committee, he would be entitled to get protection in service in view of Government Resolution dated June 15, 1995 because he had submitted a validity certificate indicating that he belongs to Special Backward Class, and accordingly directed the appellant to take necessary action in the matter. In spite of the protection given by the Government, respondent no.2 was not reinstated in service. Therefore, he filed writ petition challenging the order terminating his services, which was allowed by the High Court. Hence the present appeal.
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Partly allowing the appeal, the Court

- G HELD: 1.1. The well settled principle of law is that once the certificate indicating that a person belongs to Scheduled Tribe is invalidated by the Caste Scrutiny Committee, his appointment becomes void from the beginning. The void appointment could not have been validated by the Government by addressing a communication to the appellant. The case of the appellant before the High Court was that from the quota made
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available to Special Backward Class (SBC) candidates, the post was filled up and no vacant post was available. Thereupon, the High Court directed the appellant to place a staffing pattern including the sanctioned posts available and the occupation thereof by different candidates. In view of the above mentioned direction given by the High Court, the appellant furnished necessary particulars by filing reply. In the reply it was pointed out that the Education Officer, Primary, Z.P. had informed the appellant that in the category of Secondary School Teachers, there were four posts reserved for S.B.C. and all of them were filled up. Though these particulars were placed before the High Court by way of reply filed on behalf of the appellant, the High Court did not record any finding as to whether the posts reserved for Special Backward Class were available or not and, directed the appellant to reinstate the respondent No. 2 in service forthwith pursuant to order passed by the Government with back wages from the date of passing of the order by the State Government and to grant the benefit of continuity in service on reinstatement; even though the data produced by the appellant before the High Court by filing reply, which indicated that no S.B.C. post was available, was not controverted by the State Government at all. [Paras 5, 6] [133-G-H; 134-A-E; 135-A-C]

2. The record shows that pursuant to the judgment of the High Court, impugned in this appeal, the respondent No. 2 has already been reinstated in service. The record would also show that the respondent No. 2 was in service for the period when his services were terminated as his Caste Certificate was invalidated by the Caste Scrutiny Committee. Again, he is in service after impugned judgment was rendered, till date and, therefore, it would be harsh to direct termination of services of the respondent No. 2. Further the Government had passed the order on the basis of certificate produced by the

A respondent No. 2, which indicated that he belongs to
Special Backward Class. The record also shows that he
had produced this Certificate indicating that he belongs
to Special Backward Class before the appointment, but
the appellant had not taken any steps to get it verified
B through the Caste Scrutiny Committee. [Para 6] [135-C-
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3. In view of the fact that no post belonging to the
Special Backward Class category is available with the
appellant, interest of justice would be served if the
C Government is directed to create supernumerary post in
the appellant No. 1 institution to accommodate the
respondent No. 2 with liberty to get the said Caste
Certificate verified through the Caste Scrutiny Committee.
Consequently, the respondent No. 1, i.e., State of
D Maharashtra, is directed to create a supernumerary post
in the appellant No. 1 institution to accommodate the
respondent No. 2. It would be open to the State of
Maharashtra and the appellant to get the Caste Certificate
submitted by the respondent No. 2, indicating that he
E belongs to Special Backward Class, verified from the
Caste Scrutiny Committee. If the Caste Scrutiny
Committee comes to the conclusion that the Caste
Certificate submitted by the respondent No. 2 is valid, he
would be continued in service and granted all benefits
F except back wages to the date of his reinstatement in
service pursuant to the impugned judgment. If the claim
made by the respondent No. 2 that he belongs to Special
Backward Class is not upheld by the Caste Scrutiny
Committee, the appellant would be entitled to take
appropriate action against him in accordance with law.
G [Paras 6, 7] [135-F-H; 136-A, C-D]

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2048 of 2007.

H From the Judgment & Order dated 31.8.2004 of the High

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Court of Judicature at Bombay, Bench at Nagpur in Writ Petition No. 1764 of 2003. A

M.S. Nargolkar, Anagha Desai, Venkateswara Rao, Anmolu, D.M. Nargolkar, Sanjay V. Kharde, (for Asha G. Nair) for the appearing parties. B

The Judgment of the Court was delivered by

J.M. PANCHAL, J. 1. The challenge in this appeal is to the judgment dated August 31, 2004, passed by the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench, in Writ Petition No. 1764 of 2003 whereby writ petition filed by respondent No. 2, i.e., Gajanan Sadashiv Ghule, was allowed by setting aside the order of termination of his services dated May 4, 1998. C

2. Briefly stated the facts of the case are as follows: D

Claiming that he belongs to Scheduled Tribe, the respondent No. 2 applied to the appellant to appoint him as an Assistant Teacher. The respondent No. 2 was selected by the Subordinate Selection Board from the Scheduled Tribes category and was appointed as Assistant Teacher temporarily on January 16, 1993. The appointment of the respondent No. 2 was subject to verification of his tribe claim. The tribe Certificate produced by the respondent No. 2 was forwarded for verification to Scheduled Tribe Caste Scrutiny Committee (the 'Scrutiny Committee' for short). Some of the documents submitted by respondent No. 2 indicated that he was a "Hindu Koli". The Scrutiny Committee, after giving the respondent No. 2 an opportunity of hearing, invalidated the tribe Certificate by decision dated November 6, 1997. The respondent No. 2 was holding the post of Assistant Teacher temporarily, which was specifically reserved for Scheduled Tribe. Therefore, the appellant terminated services of the respondent No. 2 by order dated May 4, 1998. Thereupon, the respondent No. 2 filed writ petition No. 1660 of 1998 before the Nagpur Bench of Bombay E
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A High Court. He challenged the order terminating his services as well as order dated November 6, 1997, passed by the Scrutiny Committee. It was pointed out to the Division Bench of the High Court, hearing the said matter, that interview was fixed by the Scrutiny Committee on November 6, 1997, but the respondent No. 2 received notice in that behalf on November 12, 1997. The said submission made on behalf of respondent No. 2 was accepted by the High Court. The High Court set aside the order dated November 6, 1997 invalidating caste claim of the respondent No. 2 and directed the Scrutiny Committee to decide the matter afresh after affording necessary opportunity of hearing to him. The Court further directed respondent No. 2 to appear before the Scrutiny Committee on January 29, 1999 along with all necessary documents. The respondent No. 2 appeared before the Scrutiny Committee on January 29, 1999, but requested for grant of time and, therefore, he was called upon to appear on December 30, 1999. Again, the respondent No. 2 appeared before the said Committee on December 30, 1999 and prayed to grant time. The record shows that thereafter the respondent No. 2 was not interested in prosecuting the inquiry before the Scrutiny Committee. The respondent No. 2 filed Writ Petition No. 879 of 1999 challenging the order dated May 4, 1998 by which his services were terminated by the appellant. The Bombay High Court, Nagpur Bench, by judgment dated April 17, 2000, dismissed the said writ petition with the observation that the respondent No. 2 was not interested in proceeding further with the inquiry before the Scrutiny Committee and was delaying the entire proceedings on some or the other pretext.

3. After dismissal of the writ petition, the respondent No. 2 appeared before the Scrutiny Committee on April 24, 2000, but prayed to grant time. Therefore, the Scrutiny Committee adjourned the hearing to June 26, 2000. On the said date also the respondent No. 2 requested for more time, which was granted by the Scrutiny Committee. Thereafter, the respondent No. 2 did not appear before the said Committee at all and,

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therefore, the Scrutiny Committee decided to close the matter of verification of tribe claim of the respondent No.2, by order dated November 13, 2000. After a lapse of about three years from the date of dismissal of Writ Petition No. 879 of 1999, the respondent No.2 applied to the Government to reinstate him in service claiming that he belongs to S.B.C. category and should be granted protection of Government Resolution dated June 15, 1995. The said Resolution dated June 15, 1995, inter alia, specifies as to which Caste should be considered as Special Backward Class. The Rural Development and Water Conservation Department of the Government of Maharashtra, therefore, addressed a letter dated February 6, 2002 to the appellant stating that the respondent No. 2 was appointed as Assistant Teacher by order dated October 6, 1992 (correct date of the appointment is January 16, 1993) by the appellant on the post reserved for Scheduled Tribe and even if the certificate indicating that he belongs to Scheduled Tribes was invalidated by the Scrutiny Committee, he would be entitled to get protection in service in view of Government Resolution dated June 15, 1995 because he has submitted a validity certificate indicating that he belongs to Special Backward Class. By the said letter the appellant was directed to take necessary action in the matter. In spite of the protection given by the Government, the respondent No. 2 was not reinstated in service. Therefore, he filed Writ Petition No. 1764 of 2003 challenging the order dated May 4, 1998 terminating his services. The Division Bench of the High Court of Judicature at Bombay, Nagpur Bench, has allowed the same by judgment dated August 31, 2004, giving rise to the instant appeal.

4. This Court has heard the learned counsel for the parties and considered the documents forming part of the appeal.

5. From the record, it is evident that the stand of the respondent No. 1, i.e., the State of Maharashtra, is that the respondent No. 2 is entitled to the protection of Government Resolution dated June 15, 1995. The well settled principle of

- A law is that once the certificate indicating that a person belongs to Scheduled Tribe is invalidated by the Caste Scrutiny Committee, his appointment becomes void from the beginning. The void appointment could not have been validated by the Government by addressing a communication to the appellant.
- B The case of the appellant before the High Court was that from the quota made available to Special Backward Class candidates, the post was filled up and no vacant post was available. However, the High Court, by order dated December 16, 2003, directed the appellant to place a staffing pattern including the sanctioned posts available and the occupation thereof by different candidates and clarified that the writ petition filed by the respondent No. 2 would be heard thereafter finally at the stage of admission.

6. In view of the above mentioned direction given by the High Court the appellant furnished necessary particulars by filing reply. In the reply it was pointed out that the Education Officer, Primary, Z.P., Buldhana vide letter dated January 2, 2004 had informed the appellant that in the category of Secondary School Teachers, there were four posts reserved for S.B.C. and all of them were filled up as under: -

LOWER GRADE ASSISTANT TEACHER

S.No.	Caste	Sanctioned Posts	Posts filled in	Vacant Posts
1.	Open	155	146	09
2.	S.B.C.	04	04	—

S.B.C.: -

1. Sunil Meharkar
2. Ku. Jyoti Dnyaneshwar Thakre-Palshi Bu.
3. Ku. Jyoti Prabhakar Bawatkar-Mangrul Nawaghare
4. Vilas Sitaram Wawre

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Though these particulars were placed before the Division Bench of the High Court by way of reply filed on behalf of the appellant, the Division Bench did not record any finding as to whether the posts reserved for Special Backward Class were available or not and has, by the impugned judgment, directed the appellant to reinstate the respondent No. 2 in service forthwith pursuant to order dated February 6, 2002, passed by the Government with back wages from the date of passing of the order by the State Government and to grant the benefit of continuity in service on reinstatement. What is relevant to notice is that the data, which was produced by the appellant before the Division Bench of the High Court by filing reply, which indicated that no S.B.C. post was available, was not controverted by the State of Maharashtra at all. The record shows that pursuant to the judgment of the High Court, impugned in this appeal, the respondent No. 2 has already been reinstated in service. The record would also show that the respondent No. 2 was in service from January 16, 1993 till May 4, 1998 when his services were terminated as his Caste Certificate was invalidated by the Caste Scrutiny Committee. Again, he is in service after impugned judgment was rendered on August 31, 2004 till date and, therefore, it would be harsh to direct termination of services of the respondent No. 2. This Court further finds that Government had passed the order on February 6, 2002 on the basis of certificate produced by the respondent No. 2, which indicated that he belongs to Special Backward Class. The record also shows that he had produced this Certificate dated June 12, 2002 indicating that he belongs to Special Backward Class before the appointment, but the appellant had not taken any steps to get it verified through the Caste Scrutiny Committee. In view of the fact that no post belonging to the Special Backward Class category is available with the appellant, this Court is of the opinion that interest of justice would be served if the Government is directed to create supernumerary post in the appellant No. 1 institution to accommodate the respondent No. 2 with liberty to get the said

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A Caste Certificate verified through the Caste Scrutiny Committee.

7. For the foregoing reasons the appeal partly succeeds. The respondent No. 1, i.e., State of Maharashtra, is directed to create a supernumerary post in the appellant No. 1 institution to accommodate the respondent No. 2 as early as possible and preferably within two months from the date of receipt of the writ from this Court. It would be open to the State of Maharashtra and the appellant to get the Caste Certificate dated June 12, 2002, submitted by the respondent No. 2, indicating that he belongs to Special Backward Class, verified from the Caste Scrutiny Committee. If the Caste Scrutiny Committee comes to the conclusion that the Caste Certificate submitted by the respondent No. 2 is valid, he would be continued in service and granted all benefits except back wages from February 6, 2002 to the date of his reinstatement in service pursuant to the impugned judgment. If the claim made by the respondent No. 2 that he belongs to Special Backward Class is not upheld by the Caste Scrutiny Committee, the appellant would be entitled to take appropriate action against him in accordance with law.

8. Subject to above mentioned observations and clarifications the appeal stands disposed of. There shall be no order as to costs.

B.B.B.

Appeal partly allowed.