
(2012) 11 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No's. 5198 of 2009, 2126 of 2010 and 1512 of 2004

A.P. Ramtekkar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 MhLj 419

Hon'ble Judges : S.P. Deshmukh, J;B.R. Gavai, J

Bench : Division Bench

Advocate : R.S. Parsodkar in W.P. Nos. 5198 of 2009 and 2126 of 2010 and Sunil V. Manohar, in W.P. No. 1512 of 2004, for the Appellant; S.K. Mishra, A.S.G.I. Union of India, P.B. Patil, S.M. Puranik, for Scrutiny, in W.P. Nos. 5198 of 2009 and 2126 of 2010, R.M. Bhangde, for Respondent Nos. 1 to 3, A.G.P. for Respondent No. 4 and M.M. Sudame for Respondent Nos. 5 to 7 in W.P. No. 1512 of 2004, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—The petitions are taken up for hearing by consent of the learned Counsel appearing for the respective parties. The petitioners in Writ Petition Nos. 5198/2009 and 2126/2010 are the employees of the Food Corporation of India. Petitioners 4 to 7 in Writ Petition No. 1512/2004 are employees of Reserve Bank of India. They have approached this Court being aggrieved with an action of the respondents in issuing show cause notice to them, as to why their services should not be terminated on the ground that they have failed to produce the documents required for referring their caste /tribe claim to the Scheduled Tribe Caste Certificate Scrutiny Committee.

2. The facts in brief are that, all the petitioners have been appointed on various posts prior to 25 years and above. The petitioners were appointed on the basis of their claim as belonging to Scheduled Tribe. Most of the petitioners in the above said writ petitions, claim to be belonging to Halba Scheduled Tribe; some of them

belong to Thakur, Dhoba and Gowari.

3. That as per the policy prevailing at the relevant time and in view of the office memorandum issued earlier, an employee seeking appointment against a post reserved for some reserved category, was required to submit his/her caste certificate. This caste certificate was thereafter required to be verified by the District Magistrate. It is the case of petitioners, that subsequently, after their appointments, their claims have been found to be valid by the District Magistrate and their services stood confirmed.

4. It appears that after 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 Certificates Act, (Act No. 23 of 2001) came into effect, the petitioners were directed to submit their documents for referring their claims to the Caste Certificate Scrutiny Committee, established under the Act. Since the petitioners failed to supply the said documents, show cause notice came to be served upon them on 25-8-2007, 17-9-2008 and 29-12-2003, calling upon them as to why their services should not be terminated on account of non production of the documents to be submitted to the Verification and Scrutiny Committee.

5. Being aggrieved thereby, the petitioners are before this Court by way of the aforesaid Writ Petitions.

Shri R.S. Parsodkar, learned Counsel appearing on behalf of the petitioners submits that in view of the judgment delivered in the case of Kavita Solunke Vs. State of Maharashtra and Others, as well as the Office Memorandum dated 10-8-2000 issued by the Union of India, the services of petitioners are entitled to be protected. The learned Counsel further submits that the petitioners have filed Pursis, thereby giving up their claim of belonging to the Scheduled Tribe. The learned Counsel therefore, submits that the petitions need to be allowed by quashing and setting aside the show cause notices and protecting the services of petitioners.

6. Shri S.K. Mishra, learned Standing Counsel appearing on behalf of the Union of India, vehemently opposes the petitions. He submits that the petitions challenging the show cause notices itself is not tenable in law. The learned Counsel further submits that the petitions are also liable to be dismissed on the ground that the petitioners have approached this Court even before their claims being considered by the Scrutiny Committee.

7. Shri Mishra, learned A.S.G.I., further submits that it is only in the event the caste claims of petitioners as belonging to Halba Scheduled Tribes are invalidated, they would be entitled to the benefit of the office memorandum dated 10-8-2000. The learned Counsel further submits that, in the event the claims are found to be fraudulent, they would not be entitled to any benefit. It is therefore, submitted that the petitions are not tenable in law.

8. So far as the objection by the learned A.S.G.I. appearing on behalf of the Union of India regarding tenability of the petitions is, concerned, by now it is a settled position in law that all the objections regarding the tenability of the petition are to be taken at the stage of grant of Rule. Once the petition is admitted for final hearing, the petition cannot be thrown on a technical ground of tenability of the petition. Even otherwise, the rule regarding non-exercise of jurisdiction against a show cause notice is a Rule of self-restraint. If this Court comes to the conclusion that the show cause notice, itself is vitiated on one ground or the other, this Court would not be precluded from exercising inherent jurisdiction under Article 226 of the Constitution of India. In that view of the matter, we are not inclined to entertain the preliminary objection raised by the learned A.S.G.I.

9. Undisputedly, out of 25 petitioners in Writ Petition No. 5198/2009, 21 petitioners had claimed their appointment on the basis, as belonging to Halba Scheduled tribe; 4 others had claimed on the basis as belonging to Thakur, Scheduled Tribe. In Writ Petition No. 2126/2010, out of 36 petitioners only 6 belong to non-Halba Tribe and rest claim to the belonging to Halba Scheduled Tribe. Undisputedly 4 petitioners have already retired from service.

10. The Hon''ble Apex Court in case of Kavita Solunke (supra), relying upon the Constitution Bench judgment in case of State of Maharashtra Vs. Milind and Others, , has taken a view that on account of peculiar circumstances, there was a confusion as to whether Halba Koshtis are entitled to be treated as Scheduled Tribe or not. This confusion has been cleared for the first time on 28-11-2000 i.e. on the date on which the Constitution Bench held that Halba Koshtis cannot be treated as Scheduled tribe. Following the law laid down in the case of Kavita Solunke (supra), this Court in Writ Petition No. 900/2012 and others, have held that all Halba Koshti whose appointments had become final on 28-11-2000 are entitled to protection of their services. Not only this, the office memorandum issued by the Union of India on 10-8-2000 is also on the same lines, which protects the services of Halba Koshtis.

11. Insofar as the other Scheduled Tribes are concerned, in case of Dattu Thakur Vs. State of Maharashtra and Others, , the Hon''ble Apex Court has held that disturbing the educational career or employment of a candidate which has become final with passage of time, will not be in the interest of any one. We are also of the view that disturbing the services of candidates who have rendered 25 years, on the ground of non-submission of the documents for verification of their caste/tribe claims, will not be in the interest of justice, particularly when the petitioners themselves have given an undertaking to give up their claim as belonging to Scheduled Tribes. Undisputedly, the petitioners caste claims were verified at the District Magistrate level, at the relevant time. The show cause notice which are issued to them are only on the ground that they have failed to submit their documents for forwarding their caste/tribe claims to the competent Scrutiny Committee. As already held in the case of Kavita Solunke (supra), and

as already followed by us in Writ Petition No. 900/2012, the position prior to 28-11-2000, was a confused position, wherein the Halba Koshtis were to be treated as Scheduled Tribe, in view of the law laid down by the Division Bench in case of Abhay Shrawanji Parate Vs. State of Maharashtra and others, . In that view of the matter, we find that so far as Halbas are concerned, their services are liable to be protected.

12. Insofar as the other Scheduled Tribes are concerned, their services are liable to be protected in view of the law laid down in Dattu Namdeo Thakur (supra).

13. Insofar as the contention of learned A.S.G.I, regarding fraud coming into force is concerned, there is not even a whisper in the show cause notice of any fraudulent act on the part of petitioners. The only ground raised in the show cause notice is that the petitioners have failed to produce the documents for referring it to the Scrutiny committee. We find that in the facts of the present case, permitting the course adopted by the respondents of referring the claim of petitioner to scrutiny committee, particularly when the petitioners are themselves giving up their claim of belonging to Scheduled Tribe, would be an empty formality. In view of the law laid down by the Hon"ble Apex Court in State of Maharashtra vs. Milind (supra), the petitioners who are Halba Koshti can now by no stretch of imagination be held to be belonging to Scheduled Tribe. We therefore, fail to understand the approach of the employer in compelling the petitioners to undergo the scrutiny as to whether they belong to scheduled tribes or not, when as a matter of fact they have given up their claim as belonging to Scheduled Tribe. We find that apart from it being an empty formality, it would unnecessarily increase the work load of the committees which are already overburdened.

14. Insofar as the order passed by the Division Bench of this Court in Letters Patent Appeal No. 34/2012, relied upon by Shri Mishra, learned A.S.G.I. is concerned, it is only an order upholding the view of the learned Single Judge, which in turn dismissed the Writ Petition arising out of an order passed by the School Tribunal. We find that the said order does not consider the office memorandum dated 10-8-2000. It appears that the learned Judges of the said Division Bench have relied on the Full Bench judgment in case of Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, . However, this Bench in judgment delivered in Writ Petition No. 900/2012 and others, after considering the judgment of Full Bench has held that the law laid down in the case of Kavita Solunke (supra), is in consonance with what is held by the Constitution Bench in Milind Katware's case (supra), therefore, the said judgment delivered by this Court would have more binding effect on us, rather the order dismissing the Letters Patent Appeal in limine.

15. Insofar as this Writ Petition is concerned, we are not inclined to entertain the petition on behalf of petitioner Nos. 1 to 3, in as much as, in service jurisprudence, when an employee is in a position to agitate his own claim, it

would not be appropriate to entertain a petition on behalf of a Association. Petition, therefore, insofar as petition Nos. 1 to 3 stands dismissed.

16. Insofar as petitioner Nos. 4 to 8 are concerned, the petitioner Nos. 5, 6 and 8 are Halba and other two are belonging to Halba Scheduled tribe and Konti, Other Backward Classes. Undisputedly all the petitioners are employed between 1977-1981.

17. In that view of the matter, we find that the petitioners are entitled to limited relief, that they are praying for. In the result, the impugned show cause notices are quashed and set aside. It is declared that the petitioners would be entitled to protection of their appointments. It is further declared that if any benefits are granted after 28-11-2000 on the basis that they belong to Scheduled Tribes, the respondent Authorities are at liberty to withdraw the said benefits and restore the position as on 28-11-2000. The respondents to take further necessary steps in accordance therewith. Writ Petitions are allowed. Rule is made absolute in the aforesaid terms, with no order as to costs.