

(2022) 11 CHH CK 0053
In the Chhattisgarh High Court
Case No : Writ Petition (S) No.4070 Of 2018

Bhilai Steel Plant

APPELLANT

Vs

Ganpati

RESPONDENT

Date of Decision : 18-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 142, 311
Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes
(Regulation of Social Status Certification) Rules, 2013 — Rule 23(2), 23(5)
Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes
(Regulation of Social Status Certification) Act, 2013 — Section 6, 7, 7(1), 8, 8(1),
9(1), 9(4)
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis),
Nomadic Tribes, Other Backward Classes and Special Backward Classes and Special
Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act,
2000 — Section 10

Citation : (2022) 11 CHH CK 0053

Hon'ble Judges : Arup Kumar Goswami, CJ; Sanjay Agrawal, J

Bench : Division Bench

Advocate : Ashish Surana, Govind Ram Miri, K.R. Nair

Final Decision : Allowed

Judgement

1. Heard Mr. Ashish Surana, learned counsel for the petitioners. Also heard Mr. Govind Ram Miri, learned senior counsel assisted by Mr. K.R. Nair, learned counsel, appearing for the respondent.

2. The writ petition is filed by the petitioners, who shall hereinafter, be referred as the employer, challenging the order dated 11.04.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short, 'CAT') in Original Application No.200/00056/2016, whereby the learned CAT directed reinstatement of the respondent herein, who shall, hereinafter be referred as the employee, in service forthwith, without any salary / back wages for the period he had not served the Department. However, the intervening period (from the date of dismissal till the date of reinstatement) was directed to be regularized for the

purpose of pension, etc. The respondents therein was directed to do the needful within a period of two months from the date of receipt of certified copy of the order.

3. The employee was appointed to the post of Plant Attendant on 23. 01.1995 and he came to be confirmed on 09.02.1998. He was appointed on the basis of a caste certificate dated 15.10.1993 issued by the Naib Tehsildar, Rajnandgaon. Subsequently, the caste certificate submitted by the employee was found to be forged, and accordingly, he was removed from service by an order dated 9.05.2007 passed by the Deputy General Manager, P. (Coke Ovens) Coke Ovens and C.C.D. Steel Authority of India, Bhilai Steel Plant, Durg.

4. Being aggrieved, the employee filed a writ petition being Writ Petition (S) No.3117 of 2007. The learned Single Judge of this Court disposed of the writ petition by an order dated 07.04.2008, setting aside the order dated 09.05.2007 holding that question of determination of the caste cannot be examined by any authority except the State Level Caste Scrutiny Committee, (for short, 'SLCSC') and accordingly, the employee was held entitled to receive all the benefits flowing from the order. However, liberty was reserved to respondents No.5 & 6 to the said writ petition to refer the matter to the SLCSC for decision in accordance with law laid down by the Hon'ble Supreme Court in the case of Kumari Madhuri Patil and Another v. Additional Commissioner, Tribal Development and Others, reported in (1994) 6 SCC 241 and State of Maharashtra and Others v. Ravi Prakash Babulalsing Parmar and Another, reported in 2006 AIR SCW 6093.

5. The employer preferred an appeal against the said order dated 7.04.2008, being Writ Appeal No.115 of 2008. It appears that while the employee was reinstated in service, an interim order was passed in the writ appeal to the effect that the employee was not entitled to all the benefits. The said writ appeal was disposed of on 25.08.2009 providing that the interim order passed on 19.06.2008 shall remain in force till the SLCSC, to which the matter was already referred to, gives its finding with respect to social status of the employee.

6. The SLCSC, vide an order dated 17.08.2015, held that the employee did not belong to Pardhi caste in the State of Chhattisgarh, and accordingly, caste certificate issued by the Naib Tehsildar, Rajnandgaon was cancelled.

7. The employee had challenged the said order dated 17.08.2015 by filing a writ petition, numbered as Writ Petition (S) No.3815 of 2015 before this Court. In the meantime, based on the order dated 17.08.2015, the employer had cancelled the appointment order of the employee by an order dated 18.12.2015. It is relevant to note that by an order dated 06.01.2016, Writ Petition (S) No.3815 of 2015 was allowed to be withdrawn with a liberty to challenge the order of removal dated 18.12.2015.

8. The employee had challenged the said order dated 18.12.2015 before the CAT and by the impugned order dated 11.04.2018, as discussed earlier, Original Application of the employee was disposed of as noticed above.

9. The CAT observed that the appointment of the employee was cancelled as the caste certificate was not in terms of the provisions of sub-rule (2) & (5) of Rule 23 of the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013, (for short, 'Rules of 2013'). The CAT, without there being assailment to the order dated 17.08.2015 of the SLCSC and despite the employee having earlier abandoned the challenge made to the decision of the SLCSC, recorded an uncalled for finding that present was not a case of fraudulent caste certificate being obtained by the employee for procuring appointment.

10. The CAT, in coming to the eventual conclusion, relied on the decisions of the Hon'ble Supreme Court in *Dattu Thakur v. State of Maharashtra and Others*, reported in (2012) 1 SCC 549 and *Kavita Solunke v. State of Maharashtra and Others*, reported in (2012) 8 SCC 430.

11. Mr. Ashish Surana, learned counsel for the petitioners submits that the SLCSC having held that the caste certificate of the employee is not valid and this finding having not been set aside in a duly constituted proceeding, the CAT committed manifest illegality in setting aside the order of removal dated 18.12.2015. It is submitted by him that when the employee secured appointment on the basis that he belongs to a reserved category, invalidation of the claim of the employee would result in the appointment being void and non-est. In support of his submission, Mr. Surana places reliance on the decision of the Hon'ble Supreme Court in *Chairman and Managing Director, Food Corporation of India and Others v. Jagdish Balaram Bahira and Others*, reported in (2017) 8 SCC 670. He submits that *Kavita Solunke (supra)* was overruled in *Jagdish Balaram Bahira (supra)*. He also places reliance on the judgment of Hon'ble Supreme Court in *Chief Executive Officer, Bhilai Steel Plant, Bhilai v. Mahesh Kumar Gonnade and Others*, reported in 2022 SCC Online SC 866.

12. Mr. Govind Ram Miri, learned senior counsel, appearing for the respondent employee supports the impugned order of the CAT. He places reliance on the judgment of Hon'ble Supreme Court in *Dattu Thakur (supra)* and the decision dated 06.09.2010, rendered in the case of *Swati v. State of Maharashtra (Civil Appeal No.7411 of 2010)*. He has also made a reference to the judgment in *Jagdish Balaram Bahira (supra)* and in *State of Maharashtra v. Milind and Others*, reported in (2001) 1 SCC 4.

13. We have considered the submissions of learned counsel for the parties and have perused the materials on record.

14. In order to protect the interest of persons belonging to the Scheduled Castes, the Scheduled Tribes and the Other Socially and Educationally Backward Classes of citizens in the State from those who fraudulently obtain false Social Status Certification, certifying that the person belongs to these sections of populations, and to provide for punishment for issuing and obtaining false Social Status Certification; and for matters connected therewith or incidental thereto,

the Legislature enacted the The Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013, (for short, 'Act of 2013') and the State Government appointed 29.04.2013 as the date on which the said Act comes into force.

15. Chapter III of the Act of 2013 is under the heading "Verification of Social Status Certificate". Section 7(1) provides that the State Government shall constitute, by notification in the Official Gazette, one or more High Power Certification Scrutiny Committee or Committees, for conducting enquiry into Social Status Certificate(s) referred to it by District Level Certificates Verification Committee under Section 6 or by the State Government, and it shall be the duty of the High Power Certification Scrutiny Committee to examine the report of the District Level Certificates Verification Committee and to proceed in this matter as prescribed under Chapter IV of the Act of 2013.

16. Chapter IV of the Act of 2013 is under the heading "Cancellation and Confiscation of False Social Status Certificate". Sections 8(1) provides that if after enquiry under Section 7 of the Act of 2013, High Power Certification Scrutiny Committee is of the opinion that, the Social Status Certificate was obtained wrongfully or fraudulently, it shall, by an order in writing, cancel and confiscate the certificate by following such procedure as may be prescribed.

17. Section 9(1) of the Act of 2013 provides that whoever secures admission against a reserved seat or secures public appointment against a reserved post meant for such Castes, Tribes or Classes by producing a Social Status Certificate obtained wrongfully or fraudulently, shall on cancellation of such certificate be liable to be rusticated from the educational institution or dismissed from the public employment, as the case may be, forthwith or be denied any other benefit or advantage enjoyed by virtue of such admission or appointment.

18. Section 9(4) of the Act of 2013 provides that notwithstanding anything contained in any Act of State Legislature for the time being in force, Degree, Diploma, Certificate or any other educational qualification acquired by a person by obtaining admission against a reserved seat in any educational institution, on the basis of Social Status Certificate, which is cancelled under Section 8, shall be deemed to have been cancelled and never been awarded.

19. In Milind (supra), respondent No.1 had joined MBBS course for the year 1985-86 based on a caste certificate issued. As per procedure, his caste certificate was sent for verification, whereupon a finding was recorded that respondent No.1 did not belong to Halba Scheduled Tribe community, and consequently, caste certificate issued to him was rejected. Respondent No.1 therein had filed a writ petition challenging invalidation of his caste certificate issued to him as belonging to the Scheduled Tribe, i.e., 'Halba' caste. Decision of the High court allowing the writ petition was put to challenge before the Hon'ble Supreme Court. Noticing that 15 years had gone by in the meantime and respondent No.1 had already completed the medical course, it was observed by

the Hon'ble Supreme Court at paragraph 38 that if any action was taken against respondent no. 1 at that juncture might lead to depriving the service of a doctor, on whom public money had already been spent, to the society, and accordingly, it was held that the decision pronounced shall not affect the degree obtained by him and his practicing as a doctor. However, it was made clear that he cannot claim to belong to the Scheduled Tribe and cannot take advantage under the provisions of the Constitution (Scheduled Tribes) Order, 1950 any further or for any other constitutional purpose.

20. In *Swati (supra)*, the appellant had obtained admission to BDS course claiming herself to be belonging to Bairagi Caste. However, the Caste Scrutiny Committee of the State, by an order dated 03.01.2007, invalidated the said claim. The Hon'ble Supreme Court, while dismissing the appeal preferred by the appellant against the order of the High Court, relied on the judgment of *Milind (supra)*, and observed that admission of the appellant to the BDS course and completion of the said course shall not be affected. It was also made clear that the protection was given only in regard to the educational qualification secured by the appellant and she shall not claim or receive any other benefit as a person belonging to a Scheduled Tribe and none of her relatives would be entitled to take any benefit extended to Scheduled Tribe on the ground that the appellant had been permitted to retain the benefit of her educational qualification.

21. In *Dattu Thakur (supra)*, along with the Special Leave Petition filed by Dattu Thakur, Special Leave Petitions filed by his son and daughter were also taken up together. Their caste certificates were invalidated by the Caste Scrutiny Committee. The same were challenged by them by filing writ petitions, in which, High Court upheld the finding of the Caste Scrutiny Committee. The Hon'ble Supreme Court had noted that cancellation of the caste certificate had taken place after 9 years of issuance and that Dattu Thakur was allowed to continue in service by the respondents and that the other two petitioners were allowed to continue their studies and in that circumstance, placing reliance on *Swati (supra)*, while dismissing the three Special Leave Petitions, it was observed 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 would not deprive them of the benefits which they had already enjoyed. It was, however, made clear that none of the three petitioners in the three respective Special Leave Petitions would be entitled to take any further advantage of reservation in future.

22. In *R. Vishwanatha Pillai v. State of Kerala*, reported in (2004) 2 SCC 105, the appellant, who did not belong to a designated reserved community, obtained a caste certificate and was selected as a Deputy Superintendent of Police on a vacancy reserved for the Scheduled Caste. However, on a complaint, it was found that the appellant did not belong to Scheduled Caste and ultimately, the Caste Scrutiny Committee rejected his claim. The order of the Caste Scrutiny Committee was upheld by the High Court and by the Hon'ble Supreme Court.

Subsequently, on an application filed by the appellant, the CAT directed that he should not be terminated from service without following the procedure under Article 311. The High Court reversed that decision and the appellant was dismissed from service. Before the Hon'ble Supreme Court, the appellant sought protection since he had rendered nearly 27 years of service. Rejecting the submission, the Hon'ble Supreme Court, at paragraph 15, held as follows :

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India, Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

(emphasis supplied by us)

23. The Hon'ble Supreme Court also rejected the submission that the order of dismissal should be substituted with an order of compulsory retirement or removal to protect his pensionary benefits. It was held that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. The right to salary or pension after retirement flow from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate.

24. In *Bank of India v. Avinash D. Mandivikar*, reported in (2005) 7 SCC 690, the

first respondent obtained an appointment in the service of the bank in October 1976 on a post reserved for the Scheduled Tribe. The Scrutiny Committee found that he did not belong to a Scheduled Tribe and, therefore, invalidated his caste certificate. Following the termination of his services, the first respondent moved the High Court which accepted his plea that the initiation of proceedings against him by the Scrutiny Committee for verification of the caste certificate in 1987 was beyond a reasonable period. The High Court, while allowing the plea, reinstated him in service with back-wages. In an appeal by the employer, the Hon'ble Supreme Court held that once a claim of the employee to belong to a Scheduled Tribe had been rejected, the employment was no appointment in eye of law and that he had no justification for his claim in respect of the post he usurped. Distinguishing the directions issued in *Milind (supra)*, at paragraph 10, it was held as follows :

"10. The protection under the *Milind's* case (*supra*) cannot be extended to the respondent No. 1-employee as the protection was given under the peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. This Court noted that on a doctor public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent No. 1-employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him."

25. In *Additional General Manager/Human Resources, Bharat Heavy Electricals Ltd. v. Suresh Ramakrishna Burde*, reported in (2007) 5 SCC 336, the decision of a Division Bench of the Bombay High Court which had ordered reinstatement subject to the condition that the employee would not stake a claim to belong to the Scheduled Tribe in future was put to challenge before the Hon'ble Supreme Court. The claim of the employee that he belongs to the Halba Scheduled Tribe was rejected by the Scrutiny Committee. The employee was appointed in May 1982 to a clerical post. On 06.08.1995 the Scrutiny Committee had invalidated the caste claim initially and again in August 2001 following an order of remand. A Writ Petition filed against the order of invalidation was withdrawn but thereafter, relying on the observations at paragraph 38 in *Milind (supra)*, the employee submitted a representation for the protection of his services. After the representation was rejected, the employee had moved the High Court. While construing the decision in *Milind (supra)*, upon which the High Court had placed reliance in coming to the eventual conclusion as noticed above, the Hon'ble Supreme Court, while setting aside the order of the High Court, observed as follows :

"7. The High Court has granted relief to the respondent and has directed his reinstatement only on the basis of the Constitution Bench decision of this Court in *Milind (supra)*. In our opinion the said judgment does not lay down any such principle of law that where a person secures an appointment by producing a false caste certificate, his services can be protected and an order of reinstatement can be passed if he gives an undertaking that in future he and his family members

shall not take any advantage of being member of a caste which is in reserved category.

....."

26. The Hon'ble Supreme Court in *State of Maharashtra v. Sanjay K. Nimje*, reported in (2007) 14 SCC 481, considered a case where the respondent was appointed to the service of the state in June 1995 on a claim that he belonged to the Halba Scheduled Tribe. The Scrutiny Committee upon verifying the caste certificate, recorded in its order of August 1989 that the employee was a Koshti (a Special Backward Class) and not a Halba. On 07.12.1994, Koshtis were declared to be a Special Backward Class. The respondent accepted the findings of the Scrutiny Committee but on the basis of a Government Resolution dated 15.06.1995, sought protection of his service. Before the High Court, an undertaking was given by the petitioner that he or his legal heirs / progeny would not claim any benefit as a Scheduled Tribe candidate either in education or in employment. The High Court allowed the petition protecting his service. As regards the G.R. dated 15.06.1995, the Hon'ble Supreme Court held that since the respondent was appointed on 29.06.1995, which was after issuance of the G.R., he was not entitled to protection in terms thereof. Moreover, advertent to Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "the Maharashtra Act of 2001"), which, amongst others, provides that whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes of Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Co-operative Society against a post reserved for such Castes, Tribes or Classes by producing a false caste certificate shall, on cancellation of the caste certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith, the Hon'ble Supreme Court observed that the Maharashtra Act of 2001 being a legislative Act would prevail over any government resolution. A government resolution may be beneficent in nature but a benefit under a government resolution cannot be extended to a person who does not satisfy the conditions precedent thereof. It was further held that ordinarily a person, who has obtained appointment on the basis of a false certificate, cannot retain the said benefit.

27. In the case of *Union of India v. Dattatray*, reported in (2008) 4 SCC 612, the respondent was appointed as an Assistant Professor of Psychiatry in a

government hospital on the strength of a claim that he belongs to a Scheduled Tribe. The Scrutiny Committee found that the claim that he belonged to the Halba Tribe was false. The High Court upheld the invalidation of the tribe claim but held that the respondent would not be entitled to any benefit as a member of the Scheduled Tribe from the date of its decision. In consequence, the service of the respondent was directed not to be disturbed. The Hon'ble Supreme Court held that the High Court had misconstrued the decision of the Constitution Bench in *Milind* (supra). Distinguishing *Milind* (supra) and while setting aside the judgment of the High Court directing the continuance of the first respondent in service, the Hon'ble Supreme Court observed as follows :

"5...When a person secures employment by making a false claim regarding caste/tribe, he deprives a legitimate candidate belonging to scheduled caste/tribe, of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of the false certificate so that the post may be filled up by a candidate who is entitled to the benefit of reservation." (emphasis supplied by us)

28. In *Yogesh Ramchandra Naikwadi v. The State of Maharashtra*, reported in (2008) 5 SCC 652, the direction contained in paragraph 38 of the decision of the Constitution Bench in *Milind* (supra) was held to be referable to the power conferred upon by the Hon'ble Supreme Court by Article 142 of the Constitution of India.

29. The decision in the case of *Kavita Solunke* (supra) involved a situation where the appellant applied for the post of a teacher in a high school which was reserved for a Scheduled Tribe claiming to be a Halba. She was appointed on probation in August 1995 and was confirmed in service. The proceeding before the Scrutiny Committee revealed that the appellant was a Koshti by caste and not a Halba as a result of which the caste certificate was cancelled. This led to the termination of the services of the appellant on 23.11.2008. The School Tribunal dismissed the appeal filed by the appellant on 28.09.2008 and the writ petition before the High Court resulted in an order of rejection. The Hon'ble Supreme Court observed that the Scrutiny Committee had not found that the caste certificate was false, fabricated or manipulated and in the circumstances, it was directed that the services of the appellant be protected but that she would not be entitled to any further benefits on the basis of the caste certificate cancelled by the Scrutiny Committee. It was observed as follows :

"22. Applying the above to the case at hand we do not see any reason to hold that the appellant had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an undeserved benefit in the matter of appointment as a teacher. There is, therefore, no reason why the benefit of protection against ouster should not be extended to her subject to the usual condition that the appellant shall not be ousted from service and shall be reinstated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained and which was 10 years

after its issue cancelled by the Scrutiny Committee.”

30. In Jagdish Balaram Bahira (supra), the Hon’ble Supreme Court observed that observations in Avinash Mandivikar (supra) at paragraph 10 is an indication that paragraph 38 of the decision in Milind (supra) was construed as consisting of directions issued under Article 142. It was on that basis held that no case was made out for protecting the services of a bank employee who had obtained employment on the basis of a false claim. With regard to Kavita Solunke (supra), it was observed that the said decision did not indicate that the provisions of the Maharashtra Act of 2001 was brought to the notice of the Court. Accordingly, the decisions in Kavita Solunke (supra) as well as Shalini v. New English High School Association, reported in (2013) 16 SCC 526, were overruled. It will be appropriate to extract hereinbelow the conclusions, which are relevant for the purpose of this case, as follows:

“69.1 The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in Milind (supra) were in pursuance of the powers vested in this Court under Article 142 of the Constitution;

x x x x

69.3 The decisions of this Court in R. Vishwanatha Pillai (supra) and in Dattatray (supra) 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.

69.4 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.”

31. In Mahesh Kumar Gonnade (supra), at paragraphs 17 and 19, it was observed as follows :

“17. As we notice, the High Court disregarded the Government’s circular dated 11.01.2016 whereby the previous circular (01.10.2011) was cancelled with the specific observation that Milind’s judgment was clarified subsequently in Dattatray (supra), by declaring that when a person secures appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment. In fact, necessary actions were expected to be taken against those who secured unmerited appointment on the basis of false caste certificate. Pertinently, the respondent no.1 could have (but never did) challenge, the circular dated 11.01.2016 which required the Government to cancel such unmerited appointment.

x x x

19. The above would show that the High Court clearly fell into an error by granting relief to the respondent no.1 who is disentitled to claim any right to continue in a post earmarked for the ST category. The ratio in Milind (supra) was incorrectly applied in the impugned judgment since it is not the case of the respondent no.1 that he belongs to the ST category. According to our understanding of the circumstances, the High Court instead of granting equitable relief to the Respondent no. 1, should have held that he cannot continue to usurp the benefits meant for a ST category person. Indeed the Division Bench should have said "the game is up" as was pronounced by Shakespeare in the play Cymbeline when the character stood exposed for what he actually was. Consequently we are of the opinion that the Respondent no. 1 being an OBC cannot be retained in a ST category post. However the emoluments paid to him should not be recovered. It is further held that the respondent no.1 is disentitled to any pensionary benefit by virtue of his wrongful appointment. It is ordered accordingly. The appeal therefore stands allowed, leaving the parties to bear their own costs."

32. In view of the above discussions, the order of the CAT dated 11.04.2018 cannot be sustained in law. Accordingly, the order dated 11.04.2018 is set aside and order of removal dated 09.05.2007 of the employee is upheld. Resultantly, the writ petition is allowed. No cost.