

(2018) 03 BOM CK 0119

In the Bombay High Court

Case No : WRIT PETITION NO.6180 OF 2017

JAYDEO S/O DAYARAM BOKADE

APPELLANT

Vs

ADARSHA BAHU UDDESHIYA MANDAL, BHANDARA, THR.
PRESIDENT AND OTHERS

RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 142

Citation : (2018) 03 BOM CK 0119

Hon'ble Judges : Z.A. HAQ, J

Bench : Single Bench

Advocate : R. S. Parsodkar, A. C. Dharmadhikari

Final Decision : Disposed Of

Judgement

S.C.GUPTE, J.

1.Rule. Rule made returnable forthwith and heard by consent.

2.This petition, filed by a school teacher, concerns cancellation of his appointment as an assistant teacher. The appointment was cancelled on the

ground that the Petitioner, who originally claimed it as a member of Halba Scheduled Tribe, does not possess a Caste Validity Certificate of that tribe.

The Petitioner's appeal challenging the order of the school management in this behalf is pending before the Presiding Officer of School Tribunal,

Nagpur. The petition seeks directions for expeditious hearing of his appeal and in the meantime, stay of the impugned order of the school management.

3.The petition raises an important question as to the doctrine of precedent, particularly concerning the effect of a precedent on the judgments rendered

before the law was declared by the higher court. By an order dated 31 January 2005, the Petitioner's service was originally terminated by the management. That order was confirmed by the School Tribunal. The Petitioner's writ petition challenging that confirmation was allowed by this Court and the order was quashed. It is submitted that by reason of a judgment rendered by the Supreme Court later, the earlier judgment of this Court by which the Petitioner's termination from the service was set aside, has been impliedly overruled and the respondent management is not bound by the same. The correctness and propriety of this submission is the subject matter of the present petition.

4. A few salient facts of the case may be noted as follows:

Since 11 July 1994, the Petitioner was in the service of Respondent Nos.1 and 2, who are respectively the school management and the Headmaster, as an Assistant Teacher. Relying on a caste certificate, he claimed to be a member of Halba Scheduled Tribes. His caste certificate was invalidated by the Caste Scrutiny Committee. That order was challenged by him by filing a writ petition (Writ Petition No.6078 of 2004). By its order dated 20.12.2004 passed on that Petition, this Court gave liberty to the Petitioner to make a representation to Respondent Nos.1 and 2 for protection of his service. The representation was rejected by the Respondents, who, by an order dated 31 January 2005, terminated the Petitioner's service. This order was challenged by the Petitioner before the School Tribunal. The Tribunal allowed his appeal. The Respondents thereupon filed a review application before the Tribunal. That review was allowed and the order of termination was confirmed by the Tribunal. The Petitioner challenged the review order by filing another writ petition (Writ Petition No.2264 of 2007). The review order was stayed by this Court, who, by its order dated 17 March 2007, directed the Presiding Officer of the School Tribunal to hear and expeditiously decide the Petitioner's appeal. By his judgment dated 12 August 2008, the Presiding Officer dismissed the appeal. That order was challenged by the Petitioner by filing yet another writ petition before this Court (Writ Petition No.3666 of 2008). By its judgment dated 1 September 2016, this Court allowed the petition and quashed and set aside the order of termination dated 31 January 2005 and ordered that the Petitioner would be entitled to continue in service upon furnishing of an undertaking. That undertaking has

since been submitted and the petitioner has continued in service. (Through interim orders passed in the petitions referred to above from time to time,

the Petitioner continued to serve Respondent Nos.1 and 2 throughout the period from 31 January 2005 and till date.) Despite this order of the Court in

Writ Petition No.3666 of 2008, the school management, by its impugned order dated 21 August 2017, cancelled the Petitioner's appointment with

effect from 21 September 2017 on the selfsame ground that he did not possess caste validity certificate of Halba Scheduled Tribes. This order is

challenged by the Petitioner before the School Tribunal, but since the Presiding Officer's post is currently vacant and his appeal cannot be heard, the

Petitioner has approached this Court by filing the present petition.

5.The Petitioner's case is based on the judgment of this Court in his petition, namely, Writ Petition No.3666 of 2008, quashing his termination of 31

January 2005, which was on the ground that he did not possess a caste validity certificate. It is submitted that this judgment has become final and

fresh orders of termination or cancellation of his appointment cannot be passed by the management on the same ground. On the other hand, it is

submitted by the Respondent management that the original decision of this Court in Writ Petition No.3666 of 2008 has been impliedly overruled by a

later decision of the Supreme Court. It is submitted that the decision of our Court was essentially based on a Full Bench decision of our Court in Arun

s/o Vishwanath Sonone vs. State of Maharashtra 1, where the Full Bench held that the appointments or promotions against posts reserved for any

backward class categories made upto 15 June 1995 and which have become final upto 28 November 2000, i.e. date when the Supreme Court decided

the case of State of Maharashtra vs. Milind and others², stand protected and shall not be disturbed in view of the decision in Milind's case; this

decision of Full Bench has since been overruled by the Supreme Court in the case of Chairman and Managing Director Food Corporation of India vs.

Jagdish Balaram Bahira ³; and, as held by a Division Bench of our Court in the case of Dattakishor Jagannath Kumbhare vs. State of Maharashtra⁴,

the decision of our Court in Writ Petition No.3666 of 2008 stands impliedly overruled. It is submitted that the management is, thus, within its rights to

cancel the appointment of the Petitioner under the law declared by the Supreme Court in the case of Jagdish Balaram Bahira.

6.The Petitioner belongs to the caste of Halba-Koshti. He claimed appointment originally as a member of Halba Tribes. His caste certificate 1 2015(1)

Mh.L.J. 457 2 (2001) 1 SCC 4 was later invalidated by the Caste Scrutiny Committee. The question in the Petitioner's case is whether, by virtue of his

caste certificate being held to be invalid, his employment made on the basis of the caste certificate is to be cancelled. This question has been a much

vexed question. In the list of Scheduled Tribes for the State of Maharashtra, there is an entry (Entry No.19) of ""Halba/Halbi"". This entry became a

serious bone of contention particularly with persons belonging to the Halba-Koshti Community. Their case was that Halba-Koshti was a sub-tribe of

'Halba'. In Milind Shardrao Katware vs. State of Maharashtra⁵, a Division Bench of our Court upheld this contention. Upon a challenge by the State

of Maharashtra before the Supreme Court, the issue was referred to a Constitution Bench, which eventually resulted in the decision in Milind's case

referred to above. The Constitution Bench in Milind's case held that the Scheduled Tribes Order had to be read as it is; and no evidence could be let in

to urge that a tribe or tribal community or its part constituted a part of a tribe which was specifically designated in the Order. The Constitution Bench,

accordingly, reversed the Bombay view that Halba-Koshti community formed part of the designated Scheduled Tribe of 'Halba/Halbi'. Then came the

Full Bench decision of our Court in Arun s/o Vishwanth Sonone (supra). In Arun Sonone's case, the Full Bench observed that the decision of the

Supreme Court in Milind's case was based on the doctrine of prospective overruling; and that on the basis of this doctrine, it was held in Milind's case

that all appointments which had become final on the date of that judgment were protected. Based on this decision of Full Bench, the Court in the

Petitioner's case, i.e. Writ Petition No.3666 of 2008, granted him protection. It was held that the Petitioner's appointment was prior to the 5 1986 (1)

BCR 402 G.R. of 15 June 1995; that it had become final before 28 November 2000, i.e. before the rendering of the decision in Milind's case; and that

accordingly, under the law stated in Arun Sonone's case, the appointment was entitled to be protected. Accordingly, it was held that mere invalidation

of the Petitioner's caste claim did not result in the consequences of withdrawal of his benefits or his discharge from the employment. The subsequent

judgment of the Supreme Court in Jagdish Balaram Bahira (supra), which overruled Arun Sonone, held that Milind's case was not a case of

prospective overruling; that the directions passed by the Constitution Bench protecting the petitioner's position in Milind's case despite the ruling on law

given against him were in pursuance of the powers of the Supreme Court under Article 142 of the Constitution. The Supreme Court in Jagdish Balram

Bahira further held that it was always the law that invalidation of the caste claim (upon verification by Caste Scrutiny Committee) would result in the

appointment being rendered void or non-est. According to the Court, the exception made to this law in Milind's case was in exercise of its

constitutional power by the Supreme Court under Article 142 to do complete justice and not on the ground of prospective overruling principle

generally. The Court, accordingly, held the decision in Arun Sonone's case to be erroneous and overruled the same.

7.From the above discussion, it is quite clear that the basis of the decision of this Court in Writ Petition No.3666 of 2008 is without doubt undermined

by the subsequent ruling of the Supreme Court in Jagdish Balaram Bahira (supra). The judgment of our Court in Writ Petition No.3666 of 2008 can

even be said to have been impliedly overruled by the Supreme Court. But the question is, whether, for that reason, it can be disregarded by the school

management, who was the respondent to Writ Petition No.3666 of 2008. The answer is obviously in the negative. And that is on an altogether

different principle. Overruling of a case implies judicial rejection of the principle of that case, but the principle of the case is different from the inter

partes decision in the case. As far as the decision of the case is concerned, that decision, if the same has become final, is not disturbed by such

overruling, that is to say, by the very force of such overruling. It may be permissible in a given case to approach the same court which rendered that

decision and get the same varied by reason of the subsequent binding decision of a higher court. But till that is done, the decision continues to hold the

field as between the parties to it. No party can take upon itself the burden of holding the decision to be erroneous or act contrary to it by disregarding

the decision.

8.As held by the Supreme Court in the case of State of West Bengal vs. Hemant Kumar⁶, a wrong decision of a Court having jurisdiction is as much

binding between the parties as a right one and may be superseded only by appeal to a higher tribunal or other procedure like review which the law

provides. Such decision would operate as 'res judicata' between the parties to it. As held by the Supreme Court in *Mohanlal Goenka vs. Benoy Kishna*

*Mukherjee and others*⁷, the correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'.

These principles were reaffirmed by the Supreme Court in the case of *Kalinga Mining Corporation vs. Union of India and others*⁸ 6 AIR 1966

Supreme Court 1061 (V 53 C 207) 7 A.I.R. 1953 SUP. COURT 65 (Vol. 40, C. N. 18) 8 (2013) 5 Supreme Court Cases 252.

9. Learned Counsel for Respondent Nos. 1 and 2 relies on the decision of the Division Bench of our Court in *Dattakishor Jagannath Kumbhare* (supra)

and submits that as observed by the Division Bench in that case, Arun Sonone's case being overruled by the Supreme Court on each and every count,

there was no scope for protecting any degree, diploma, appointment, promotion, election, etc. after invalidation of the caste claim or for preventing

withdrawal of benefits or concessions meant for genuine backward class candidates. It is submitted that the Division Bench referred to several

judgments rendered by our Court following the law laid down in Arun Sonone's case at the Principal Seat as well as the Benches and held that all

these judgments had stood impliedly overruled. No doubt the Division Bench says so and that is the law. These judgments are all impliedly overruled,

but, again, that does not imply that the inter partes decisions in these judgments are set aside. All that the Division bench says is that since these

judgments are overruled, "it is not permissible for this Court to grant protection extended by such decisions". It is pertinent to note that in *Dattakishor*

Jagannath Kumbhare's case, protection was claimed from this court inter alia on the basis of the Full Bench decision in Arun Sonone's case and other

cases decided by our Court on the basis of that decision. Such protection was not granted on the ground of overruling.

10. It is true that though the decision in Writ Petition No.3666 of 2008 is binding between the parties thereto, it may not govern their future relationship.

It is a ruling on the particular cause of action, namely, termination of the original appointment of the Petitioner as an assistant teacher on 31 January

2006. In future, if the Respondents were to act on the law declared by the Supreme Court in *Jagdish Balaram Bahira*, in relation to the Petitioner, the

decision in Writ Petition No.3666 of 2008 cannot come in the way except on the ground of 'res judicata'. In that sense, as much as the decision does

not operate as a binding precedent for other cases, it does not have any binding force for any future relationship between the Petitioner and

Respondent Nos.1 and 2. That relationship would be governed by the law declared by the Supreme Court in Jagdish Balaram Bahira impliedly

overruling the decision in Writ Petition No.3666 of 2008.

11. Now the question is whether the decision to cancel the appointment with effect from 21 September 2017 by their order dated 21 August 2017

should be treated as a subsequent independent action of the Respondents or should it be treated as the very part of the original action of 31 January

2006. If it is an altogether independent action, the decision of our Court in Writ Petition No.3666 of 2008 may not operate as 'res judicata'. If it is

nothing but the same action which was struck down by that decision, the principle of 'res judicata' gets invoked. This court, however, need not decide

that question, since that is the very subject matter of the Petitioner's pending appeal before the School Tribunal. Suffice it to say that, on the law stated

in the present order, there is an arguable case on the part of the Petitioner that the order of 21 August 2017 should not be seen as a subsequent and

separate act of the Respondents, but part of the same act which was struck down by this Court in Writ Petition No.3666 of 2008. Though I need not

express any opinion on this subject which may influence the Tribunal, surely, on the facts of his case, the Petitioner deserves an interim protection till

his appeal is decided by the Tribunal.

12. Accordingly, Rule is made absolute and the petition is disposed of in terms of the following order:-

ORDER

(a) The Presiding Officer, School Tribunal, Nagpur shall decide the Petitioner's appeal challenging the impugned order of Respondent Nos.1 and 2

dated 21 August 2017 in accordance with law;

(b) The impugned order of Respondent Nos.1 and 2 dated 21 August 2017 is stayed pending the hearing and final disposal of the Petitioner's appeal;

(c) No order as to costs.