

(2007) 03 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal No's. 1547 and 1548 of 2007

Punjab National Bank and Another

APPELLANT

Vs

Vilas Bokade and Another

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

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 Certificate Act, 2000 — Section 10

Citation : (2007) 3 MhLj 805

Hon'ble Judges : V.S. Sirpurkar, J;H.K. Sema, J

Bench : Division Bench

Advocate : Dhruv Mehta, Harshvardhan Jha and Yashraj Singh Deora, for K.L. Mehta and Co., Jaideep Gupta, Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah, Rahul Joshi, Aprajit Ninawe, S. Kshirsagar and P. Dhomne, S.S. Shinde and V.N. Raghupathy, for State of Maharashtra, for the Appellant; Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah, Rahul Joshi, Aprajit Ninawe, S. Kshirsagar and P. Dhomne, S.S. Shinde and V.N. Raghupathy for State of Maharashtra, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—Leave granted.

2. The challenge in this appeal is to the order dated 28-4-2005 passed by the Division Bench of the High Court whereby the writ petition filed by the respondents herein was allowed by setting aside the order of termination dated 4-2-2002.

3. Briefly stated, the facts are as follows.

4. The respondent was appointed in the appellant's bank sometime in the year 1989. The respondent claimed that he belongs to Halba Scheduled Tribe and his appointment was made against a reserved post for Scheduled Tribe. Subsequently, the Scheduled Tribe certificate obtained by the respondent was

invalidated by the Scheduled Tribe Caste Scrutiny Committee. Pursuant to the order of the Scheduled Tribe Caste Scrutiny Committee invalidating the Scheduled Tribe certificate, respondent's service was terminated by an order dated 4-2-2002.

5. The High Court after considering the Government Resolution dated 30-6-2004 set aside the order of termination. I may refer to the Government Resolution dated 15-6-1995 which has been reiterated in the Government Resolution dated 30-6-2004. Paragraph 4 of the Government Resolution dated 15-6-1995 reads as under :

4. The reservation given to the abovementioned 'Special backward Category' will remain as a backlog for direct service recruitment and promotion. The principle of creamy-layer will not apply to this category. The persons in this category who have prior to this on the basis of scheduled tribe certificate obtained admission in the Government, semi Government services on promotion they should not be removed from this promotion or service.

Corresponding paragraph 4 of Government Resolution dated 15-6-1995 was reiterated in paragraph (a) of the Government Resolution dated 30-6-2004 which reads as under:-

a) The non tribal who have received recruitment promotion in the Government/ Semi-Governmental services on the reserved seats for the scheduled tribes prior to 15th June, 1995, should not be removed from service or should be not be demoted. They should be shown in the constituent to which they belong. Henceforth the reservation benefits entitled to that particular constituent will be due to them and the vacated posts in this manner should be filled from the tribal category.

Undisputedly, the appellant has not challenged the aforesaid two resolutions. It is, however, contended that the aforesaid two resolutions would not be applicable in the case of Central Government employees/nationalized bank employees. I do not agree. The order is applicable in the service of Government/Semi-Government and boards, Municipalities, Municipal Corporations, District Councils, Co-operative Banks Government Undertakings etc.

6. Mr. Dhruv Mehta, learned counsel appearing for the appellant, has referred to the decisions rendered by this Court in Bank of India and Another Vs. Avinash D. Mandivikar and Others, L.I.C. of India Vs. Sushil, and State of Maharashtra v. Milind and Ors. 2001(1) Mh.L.J. (S.C.) 1 : (2001)1 SCC 4. In none of the decisions referred to by Mr. Mehta, the resolutions dated 15-6-1995 and 30-6-2004 were considered. However, in the case of State of Maharashtra and Others Vs. Sanjay K. Nimje, this Court made a reference to the Government Resolution dated 15-6-1995 in paragraph 13 of the judgment and held that since the respondent therein was appointed on 29-6-1995 the Government Resolution dated 15-6-1995 would not be applicable in his case. Mr. Mehta, however, drew our attention to the observation made by this Court in paragraph 17 of the said

judgment that the Government Resolution cannot outweigh the Act passed by the Legislature. According to him, the Legislature enacted an Act 2000 and, therefore, the Government Resolution of 15-6-1995 has no application. I may point out that the observation made in paragraph 17 of the judgment is obiter dicta. No law has been laid down. Secondly, the Government Resolution of 15-6-1995 protected the candidates appointed prior to the Resolution of 15-6-1995. In the present case, undisputedly, respondent was appointed on 28-11-1989. The respondent come within the purview of Government Resolution of 15-6-1995 and his service is protected by paragraph 4 of the said Resolution.

7. For the reasons afore-stated, I see no reason to interfere. The appeals, being devoid of merit, are, accordingly, dismissed. No costs.

Per V.S. Sirpurkar, J.

8. I have had the benefit of seeing the order passed by Justice H. K. Sema directing the dismissal of the appeals filed by the Punjab National Bank. I would choose to give my reasons while agreeing with my learned Brother that the appeals deserve to be dismissed. The following are my reasons:

9. The High Court after referring to the Government Resolution dated 30-6-2004 and relying on the reported decision of this Court in *State of Maharashtra v. Milind and Ors.* 2001(1) Mh.LJ. (S.C.) 1 : (2001) 1 SCC 4, allowed the writ petition setting aside the order of termination. The Resolution dated 30-6-2004 emanates from the Government Resolution dated 15-6-1995. The corresponding para 4 of the Resolution dated 15-6-1995 reads as under :

4. The reservation given to the abovementioned 'Special backward Category' will remain as a backlog for direct service recruitment and promotion. The principle of creamy-layer will not apply to this category. The persons in the category who have prior to this on the basis of scheduled tribe certificate obtained admission in the government, semi government services on promotion they should not be removed from this promotion or service.

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10. Shri Mehta, learned counsel for the appellant Bank contended firstly that the High Court was not right in relying upon the decision in *Milind's case* (supra). For this he relied on the judgment in *State of Maharashtra and Others Vs. Sanjay K.*

Nimje, where this Court also made a reference to the Government Resolution dated 15-6-1995 in paragraph 13 of the judgment and held that since the respondent therein was appointed on 29-6-1995, the protection of Government Resolution dated 15-6-1995 was not available in his case. Shri Mehta also pointed out that in the latter part of the judgment this Court made a reference to the enactment called Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and went on to hold that since the petitioner therein was not protected by the Government Resolution dated 15-6-1995, he would be covered under the said enactment and more particularly u/s 10 thereof which provided that the benefits secured on the basis of false caste certificate would be withdrawn and such person cannot continue to reap the benefits on the basis of the caste certificate which was found to be incorrect. Shri Mehta referred to paras 13, 14 and 17 of that judgment and urged that the situation was no different in this case. He further pointed out that the Division Bench had referred to Milind's case (supra) and had observed in para 21:

It may be true that an authoritative pronouncement in this behalf came for the first time in Milind's case (supra) but it is not a case where the respondent pleaded and proved bona fide.

Mr. Mehta, therefore, firstly urged that the High Court could not have applied the law laid down in Milind's case. He also urged that the said Resolution dated 15-6-1995 would not be applicable to the Central Government Employees and the banks. He urged that the respondent herein, being a bank employee, was not entitled to the benefit of the Resolution. Therefore, Shri Mehta contends that firstly the respondent cannot get the benefit of Milind's case and secondly he cannot get the protection of the Government Resolution dated 15-6-1995 particularly because of the subsequent Act passed by the State of Maharashtra which is directly relied upon by the Division Bench.

11. In my opinion firstly, the decision in Sanjay K. Nimje's case (supra) would not apply to the present case. There it was found by the Division Bench that Sanjay Nimje was admittedly appointed on 29-6-1995 while the said Government Resolution provided the protection only to those who were appointed upto 15-6-1995 and hence the respondent stood ousted by Section 10 of the Act. Here the admitted case is that the present respondent has been appointed in the year 1989, much prior to the said date of 15-6-1995. In that view the observations in paras 13 and 14 in Sanjay Nimje's case would not be applicable to the present respondent and, therefore, there will be no question of testing as to whether the protection of the Government Resolution dated 15-6-1995 will be available to the petitioner or not.

12. It is not necessary for us to consider the question as to whether protection provided in the Government Resolution dated 15-6-1995 is applicable to a bank employee like the respondent since the protection is provided in Milind's case in

no uncertain terms. This court has very specifically observed at the end of para 38 as under:

Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

(This was of course after discussing the factual situation in that case and particularly noting the prejudice that could be caused to the respondent Milind in view of the period of 15 years spent in finalizing the issue of his caste status).

13. It will be seen in this judgment that this Court came to the conclusion that Koshtis cannot claim the status of the scheduled tribe. The Supreme Court there was considering the specific question as to whether Halba-Koshti caste is a Scheduled Tribe within the meaning of Entry 19 (Halba/Halbi) of the Scheduled Tribe Order, 1950 related to State of Maharashtra even though it was not specifically mentioned as such.

14. After referring to the 1950 order and after considering number of decisions on the question ultimately court came to the conclusion that such status of Scheduled Tribe could not be conferred on those who were belonging to Halba-Koshti caste. The decision in that behalf rendered by the Division Bench of the Bombay High Court was set aside. However, considering the circumstances that respondent who had become a doctor about 15 years back would be losing his status, the Supreme Court made the aforementioned observation. Therefore, it was tried to be suggested before us that the observations were applicable to that particular case and the facts therein. Ordinarily we would have been persuaded to accept the argument. However, fortunately for respondent this observation was later on relied upon by this Court in another decision in Civil Appeal No. 3375 of 2000 [arising out of SLP (C) No.6524 of 1988] decided on 12-12-2000] wherein this Court observed :

The appellant having belonged to Koshti caste claimed to be included in the Scheduled tribe of Halba and obtained an appointment as Assistant Engineer. When his appointment was sought to be terminated on the basis that he did not belong to scheduled tribe by the Government a writ petition was filed before the High Court challenging that order which was allowed. That order is questioned in this appeal. The questions arising in this case are covered by the decision in State of Maharashtra Vs. Milind and Others, and was got to be allowed, however, the benefits derived till now shall be available to the appellant to the effect that his appointment as Assistant Engineer shall stand protected but no further. The appeal is disposed of accordingly.

15. The situation is no different in case of the present respondent. He also came to be appointed and/or promoted way back in the year 1989 on the basis of his caste certificate which declared him to be Scheduled Tribe. Ultimately it was found that since a "Koshti" does not get the status of a Scheduled Tribe, the

Caste Scrutiny Committee invalidated the said certificate holding that respondent was a Koshti and not a Halba. I must hasten to add that there is no finding in the order of caste scrutiny committee that the petitioner lacked in bona fides in getting the certificate. I say that to overcome the observations in para 21 in Sanjay Nimje's case. "But it is not a case where the respondent pleaded and proved bona fide.

16. Under such circumstances the High Court was fully justified in relying on the observations made in Milind's case. The High Court has not referred to the judgment and order in Civil Appeal No. 3375 of 2000 decided on 12-12-2000 to which a reference has been made above. However, it is clear that the High Court was right in holding that the observations in Milind's case apply to the case of the present respondent and he stands protected thereby.

17. If the respondent even otherwise stands protected by Milind A judgment as also the judgment in Civil Appeal No.3375 of 2000 decided on 12-12-2000, then it would be unnecessary to decide as to whether the Government Resolution dated 15-6-1995 provides protection to the petitioner or not. The respondent therefore, ought to get the limited protection in terms of the judgment in CA 3375 of 2000 and no further.

18. I am in respectful agreement with my Brother in respect of para 17 in Sanjay K. Nimje's case wherein the contention in those paras which were relied upon by Shri Mehta are held to be obiter.

19. In that view I, for the above reasons, agree with my learned Brother Sema, J. that the appeals filed by the Punjab National Bank deserve to be dismissed.