
(2013) 01 MP CK 0159

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 12980 of 2004

Smt. Urmila Koshti

APPELLANT

Vs

Secretary, M.P.S.E. Board and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2013) ILR (MP) 1022 : (2013) 2 MPHT 331 : (2013) 3 MPLJ 207

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Anshuman Singh, for the Appellant; Anoop Nair, Advocate for the Respondent No. 1 and Mr. D.K. Bohrey, Panel Lawyer for the Respondent Nos. 2 and 3, for the Respondent

Judgement

Alok Aradhe, J.—In this petition, the petitioner who was employed as a Stenographer in the erstwhile M.P. State Electricity Board, has assailed the validity of the order dated 16-4-2004 by which the services of the petitioner have been terminated. In order to appreciate the petitioner's grievance, few facts need mention, which are stated infra. The petitioner obtained a caste certificate in 8-10-1984 on the ground that she is a member of the Scheduled Tribe community being "Halba". On the basis of the aforesaid caste certificate, the petitioner was given the appointment on the post of Stenographer on 12-2-1990 in the erstwhile M.P. State Electricity Board. It appears that several complaints were received by the respondent-Board from time to time with regard to procurement of employment on the basis of false caste certificates. Accordingly, the respondent-Board took a decision on 19-12-1996 to verify the caste certificates, pursuant to which 43 cases were referred for scrutiny. The Joint Director of the Board, thereafter issued a notice to the petitioner by which she was asked to produce evidence with regard to her status as person belonging to Scheduled Tribe category. However, the petitioner failed to adduce any evidence. Thereupon, a charge-sheet was issued to the petitioner and a departmental enquiry was held in which the caste certificate issued in favour of the petitioner

was found to be false. Accordingly, vide order dated 16-11-2004, the services of the petitioner were terminated. The petitioner filed a writ petition namely, W.P. No. 11107/08 (s) in which the petitioner challenged the action of the respondents in cancelling the caste certificate issued to the petitioner. The aforesaid writ petition was disposed of by a Bench of this Court vide order dated 5-9-2007 with a direction to examine the validity of the caste certificate by High Power Scrutiny Committee which was constituted in view of the law laid down by the Supreme Court in Madhuri Patil's case (supra). Thereupon, the matter was referred to the High Power Scrutiny Committee which also vide order dated 6-1-2009 recommended the cancellation of the caste certificate. Thereafter, the petitioner obtained certain additional documents and filed an application for review before the High Power Scrutiny Committee however, the application submitted by the petitioner failed to evoke any response. Thereupon, the petitioner approached this Court by filing another writ petition namely W.P. No. 5059/2009 which was disposed of by a Bench of this Court vide order dated 15-6-2009 with the direction to the respondents therein to take into consideration the documents which were obtained by the petitioner. In compliance of the directions issued by this Court, the High Power Scrutiny Committee once again examined the case of the petitioner and vide order dated 18-7-2011 upheld its previous decision and found that the caste certificate has wrongly been issued to the petitioner. In the aforesaid factual background, the petitioner has approached this Court.

2. Learned Counsel for the petitioner while inviting the attention of this Court to Paragraph 38 of the judgment in the case of State of Maharashtra Vs. Milind and Others, , submitted that all the admissions and appointments which have attained finality were protected by the Supreme Court and the Supreme Court itself had given prospective effect to the law laid down by it in the case of Milind (supra). It is further submitted that the Supreme Court in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, was not dealing with the case of person belonging to "Halba" community, whereas cases of Bank of India and Another Vs. Avinash D. Mandivikar and Others, and Additional General Manager/ Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, were cases where the appointments were obtained by producing forged documents which is not the case here. It was further submitted that a Bench of two Judges of the Supreme Court in the case of Punjab National Bank and Another Vs. Vilas Bokade and Another has extended the benefit of the ratio laid down in Milind's case (supra), to a case of appointment. It is also submitted that in somewhat similar facts, the benefit of law laid down by the Supreme Court has been extended by the Supreme Court in the case of Kavita Solunke Vs. State of Maharashtra and Others, . Learned Counsel for the petitioner while placing reliance on the decisions in the case of Jabalpur Bus Operators Association and Others Vs. State of M.P. and Another, , has urged that the ratio laid down in Milind's case (supra), which is a decision rendered by the Constitution Bench of the Supreme Court, has not been explained by the Co-ordinate Bench and,

therefore, the directions issued in Paragraph 38 of the judgment would apply to the case of the petitioner as well. It is further urged that the direction issued by the Supreme Court that the admissions and appointments which have attained finality will not be affected by the law laid down by the Supreme Court in the case of Milind (supra), has not been issued under Article 142 of the Constitution of India. Alternatively, learned Counsel for the petitioner submits that the petitioner be granted the liberty to challenge the reports submitted by the High Power Scrutiny Committee dated 6-1-2009 and 18-7-2011 by way of separate writ petition.

3. On the other hand, Shri Anoop Nair, learned Counsel for respondent No. 1 submitted that in view of the recommendations of the High Power Scrutiny Committee, the petitioner is not entitled to the benefit of continuance of service. It is further submitted that petitioner does not belong to Scheduled Tribe and, therefore, she is not entitled to benefit of the law laid down by the Supreme Court in the case of Milind (supra). Learned Panel Lawyer for the respondent Nos. 2 and 3 has placed reliance on the recommendations of the High Power Scrutiny Committee and had submitted that petitioner is not a member of Scheduled Tribe community and, therefore, she is not entitled to benefit of law laid down by Supreme Court in Milind's case (supra).

4. I have considered the respective submissions made by learned Counsel for the parties. In the case of Milind (supra), the question which arose for consideration was whether the respondent who belonged to "Koshti" caste could claim the benefit of Scheduled Tribe reservation on the ground that it was a sub-tribe of "Halba". The Supreme Court held that "Koshti" was not a part of Scheduled Tribe of "Halba" and the entries in the Scheduled Tribes Order could not be amended or expanded by any authority. However, while allowing the appeal preferred by the State Government, the Supreme Court moulded the relief by permitting the respondent therein to retain the benefits of his degree. In the case of Yogesh Ramchandra Naikwadi Vs. The State of Maharashtra and Others, the Supreme Court while considering the ratio laid down in Milind's case (supra), inter alia, held as follows:--

The benefit extended in Milind and Vishwanatha Pillai cannot obviously be extended uniformly to all such cases. Each case may have to be considered on its own merits. Further, what has precedential value is the ratio decidendi of the decision and not the direction issued while moulding the relief in exercise of power under Article 142 on the special facts and circumstances of a case. We are, therefore, of the view that Milind and Vishwanatha Pillai cannot be considered as laying down a proposition that in every case where a candidate's caste claim is rejected by a Caste Verification Committee, the candidate should invariably be permitted to retain the benefits of the admission and the consequential degree, irrespective of the facts.

5. Similar view has been taken by the Full Bench of Bombay High Court in the case of Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, and

it has been held that directions issued by the Supreme Court in Paragraph 38 of its judgment is not the law declared by the Supreme Court under Article 141 of the Constitution of India and the directions have been issued in exercise of powers under Article 142 of the Constitution of India. The Supreme Court in the case of Kavita Solunke (supra), has also extended the benefit of the law laid down by Supreme Court in the case of Milind (supra), in exercise of powers under Article 142 of the Constitution of India. The powers under Article 142 of the Constitution of India are not available to this Court, therefore, the benefit of the directions issued by the Supreme Court contained in Paragraph 38 of the judgment in the case of Milind (supra), cannot be extended to the petitioner. However, the petitioner would be at liberty to challenge the validity of the recommendations of the High Power Scrutiny Committee dated 6-1-2009 and 18-7-2011 in accordance with law.

Accordingly, the writ petition is disposed of.