
(2008) 07 SC CK 0118

In the Supreme Court Of India

Case No : Civil Appeal No. 4330 of 2008 (Arising out of S.L.P. (C) No. 7306 of 2007)

State of Maharashtra and Others

APPELLANT

Vs

Reshma Ramesh Meher and Another

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Citation : (2010) 1 ALT 14 : (2008) 5 BomCR 258 : (2009) 121 FLR 348 : (2008) 8 JT 258 : (2009) 1 LLJ 553 : (2008) 10 SCALE 268 : (2008) 8 SCC 664 : (2008) 2 SCC(L&S) 979 : (2009) 1 SLJ 359

Hon'ble Judges : D. K. Jain, J;C. K. Thakker, J

Bench : Division Bench

Advocate : Sanjay V. Kharde and Asha Gopalan Nair, for the Appellant; Sudhanshu S. Choudhari and Naresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—Leave granted.

2. The State of Maharashtra, appellant No. 1 herein and its functionaries, namely, the Secretary to the Government of Maharashtra, Social Welfare Department; Divisional Commissioner, Konkan Division and Executive Magistrate, Teh. Vasai, District Thane, appellants No. 2, 3 and 4 respectively call in question the legality of the judgment dated 22nd June, 2006, rendered by the High Court of Judicature at Bombay in W.P. No. 5867 of 2002. By the impugned order the High Court has set aside order dated 3rd April, 1998 passed by the Maharashtra Administrative Tribunal (for short 'the Tribunal') allowing the review applications preferred by appellant No. 1 herein against its earlier order dated 15th December, 1997 in O.A. Nos. 920 and 921 of 1993, filed by the respondents herein.

3. Pursuant to the applications filed in the year 1980, appellant No. 4 issued caste certificates to the respondents declaring them to be belonging to "Mahadeo

Koli", a Scheduled Tribe. On the strength of the caste certificates, the respondents appeared in the competitive examination held by the Maharashtra Public Service Commission, for recruitment to the post of Clerk under the reserved category of Scheduled Tribes. Being successful in the examination, they were appointed to the said posts with effect from 21st May, 1982.

4. However, vide letter dated 26th August, 1986, the General Administrative Department of appellant No. 1 asked the respondents to get their caste certificates verified. They were required to appear before appellant No. 4 on 9th November, 1987 for the purpose of reverification of their caste certificates. By order dated 12th July, 1992, appellant No. 4 cancelled the caste certificates issued to the respondents. In furtherance of the said order, on 5th January, 1993, memorandums were issued to the respondents, informing them that their services will stand terminated on completion of one month from the date of issue of the memorandums.

5. Being aggrieved by order dated 12th July, 1992, the respondents preferred appeals before the Divisional Commissioner, appellant No. 3 herein, who vide order dated 13th July, 1993, quashed and set aside the order passed by appellant No. 4, cancelling the caste certificates. Thereafter, the respondents made representations to appellant No. 1 for reinstatement but their requests were not acceded to.

6. Left with no other option, the respondents filed original applications (O.A. Nos. 920 and 921 of 1993) before the Tribunal, challenging the termination of their services vide memorandums dated 5th January, 1993 with effect from 5th February, 1993. The Tribunal, by a common order dated 15th December, 1997, held that in the light of order dated 13th July, 1993 passed by the Divisional Commissioner, setting aside order dated 12th July, 1992 passed by appellant No. 4, the memorandums terminating the services of the respondents, did not survive. Consequently, the Tribunal set aside memorandums/orders dated 5th January, 1993 and directed reinstatement of the respondents, treating their absence from the date of 4 termination to the date of reinstatement as extraordinary leave.

7. It appears that in the meanwhile the Caste Scrutiny Committee, constituted in terms of the decision of this Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , with a view to streamline the procedure for issuance of social status certificates and their scrutiny, undertook the exercise of reverification of the caste status of the respondents. On enquiry, it opined that the claim of the respondents as belonging to "Mahadeo Koli" was not verifiable and, in fact, they had changed their caste from "Mangela Koli" to "Mahadeo Koli" to benefit from the concessions available to latter Scheduled Tribe. Accordingly, the Caste Scrutiny Committee vide their orders dated 27th March, 1996 and 23rd March, 1996 cancelled the caste certificates issued to respondents No. 1 and 2 respectively.

8. At this juncture, it would be appropriate to note that by virtue of a Government decision No. C.B.C.- 1494/Ad No. 236/ B.C.C-5 dated 7th December, 1994, a Government Resolution was notified on 15th June, 1995 declaring "Mangela Koli" caste to be a "special backward category", entitled to all special concessions, with effect from 7th December, 1994, which were being enjoyed by other notified castes and tribes. Para 4 of the said Resolution, relevant for our purpose, reads as follows:

The reservation given to the above mentioned '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 got promotion they should not be removed from this promotion or service.

9. The parties herein are ad idem that with effect from 7th December, 1994, "Mangela Koli", the caste the respondents belong to as per the opinion of the Caste Scrutiny Committee, had been treated as "special backward category" and they were entitled to all the privileges and protections enjoyed by other notified castes/tribes. But the appellants dispute the entitlement of the respondents to their reinstatement to the posts held by them.

10. As noted supra, vide order dated 15th December, 1997, though the Tribunal had directed reinstatement of the respondents in service forthwith but the appellants did not comply with the said order. Consequently, on 17th February, 1998, the respondents filed contempt applications (No. 11 and 12 of 1998) against the appellants. Prior to that, on 13th January, 1998, appellant No. 1 and the Principal Secretary, General Administrative Department had filed two review applications (No. 7 and 8 of 1998) for recall of order dated 15th December, 1997, on the ground that the orders passed by the Caste Scrutiny Committee dated 23rd and 27th March, 1996, rejecting respondents' claim was not brought to the notice of the Tribunal when the original applications were taken up for hearing and the said order had been pronounced thereon. It is, however, pertinent to note that in the review applications there was no reference to Government Resolution dated 15th June, 1995, presumably for the reason that the services of the respondents having been terminated prior to 7th December, 1994, i.e. on 5th January, 1993, their cases did not fall within the ambit of the said Government Resolution. However, in their reply affidavits, the respondents pleaded that they were entitled to the benefit of the said Government Resolution. Accepting the stand of the appellants, vide their common order dated 3rd April, 1998, the Tribunal came to the conclusion that in the light of the opinion of the Caste Scrutiny Committee, no relief could be granted to the respondents in the original applications. The Tribunal also held that the services of the respondents having been terminated on 5th January, 1993, the said Government Resolution was of no avail to them. Accordingly, the Tribunal vide order dated 3rd April, 1998, allowed the review applications; set aside its order dated 15th December, 1997

(in O.A. Nos. 920 and 921 of 1993) and dismissed the contempt applications preferred by the respondents.

11. Aggrieved, the respondents challenged Tribunal's order dated 3rd April, 1998 in the High Court by preferring a writ petition some time in the year 2001. The High Court, by the impugned order, has set aside the order dated 3rd April, 1998, passed by the Tribunal in review applications and has confirmed Tribunal's original order dated 15th December, 1997. The High Court has observed that though services of the respondents were terminated on 5th January, 1993, because of cancellation of caste certificates by appellant No. 4 but respondents' appeal against the said action had been accepted by the Divisional Commissioner. Therefore, by virtue of the appellate order, respondents' claim got accepted. Furthermore, even the Tribunal, by its order dated 15th December, 1997 had directed the government to reinstate the respondents in service forthwith and, therefore, on the date of filing of review applications, the respondents were deemed to be in service. Consequently, as a natural corollary even otherwise the Government Resolution, which was issued in 1995, had become applicable and the protection granted under it became available to the respondents. Hence this appeal.

12. Learned Counsel appearing on behalf of the appellants submitted that in the light of the reports of the Caste Scrutiny Committee, dated 23rd and 27th March, 1996, invalidating the caste claim of the respondents, the High Court committed a grave error in setting aside the order passed by the Tribunal in review applications. Learned Counsel contended, though faintly, that the services of the respondents having been terminated on 5th January, 1993, the protection granted under Government Resolution dated 15th June, 1995 applicable with effect from 7th December, 1994 was not available to the respondents. Lastly, it was urged that in any event, having obtained the caste certificates fraudulently, the respondents were not entitled to back-wages for the period they had not worked as clerks.

13. Per contra, learned Counsel for the respondents submitted that in the teeth of order dated 13th July, 1993 passed by the Divisional Commissioner, accepting the claim of the respondents, and the said order being in vogue as on 7th December, 1994, the said Government Resolution was duly applicable in their case. It was asserted that in view of the said resolution, the services of the respondents could not be terminated as admittedly, according to the Caste Scrutiny Committee they belonged to "Mangela Koli" caste which was also notified as a "special backward category". Learned Counsel contended that as there was no allegation or finding against the respondents that they had practised any fraud in obtaining the caste certificates, they are entitled to full back-wages, particularly when despite order dated 17th July, 1993 by the Divisional Commissioner and order dated 15th December, 1997 by the Tribunal, the respondents were not reinstated in service.

14. Thus, the moot question arising for consideration is as to whether the

protection granted under Government Resolution dated 15th June, 1995 would be available to the respondents?

15. In the light of the afore-noted factual matrix, we are of the opinion that the answer to the question posed has to be in the affirmative and, therefore, the decision of the High Court, insofar as the applicability of the said Government Resolution is concerned, cannot be faulted. As noted above, on the passing of order dated 13th July, 1993 by the Divisional Commissioner, 12 quashing order dated 12th July, 1992 by the Tehsildar, cancelling the caste certificate, the very foundation of the memorandum dated 5th January, 1993 disappeared. Indubitably, the order of the Divisional Commissioner was not questioned by the appellants and, therefore, its natural consequence was that memorandums dated 5th January, 1993 ought to have been withdrawn by the authorities concerned and the respondents reinstated in service. Since it did not happen, the respondents had to approach the Tribunal for appropriate relief which was granted on 15th December, 1997 and a direction was issued for their reinstatement. No doubt, it is true that by the time the Tribunal took up the original applications for consideration, the Caste Scrutiny Committee had rendered their opinion on 23/26th March, 1996 but the same was not brought to the notice of the Tribunal by either side when on 15th December, 1997, respondents' original applications were decided in their favour and their reinstatement in service was ordered. But the fact remains that in the absence of any other adverse report/opinion regarding the caste of the respondents prior to 23/26th March, 1996 i.e. the date of Committee's Report, they were deemed to be in service as on 7th December, 1994, by virtue of Commissioner's order, even if Tribunal's order, dated 15th December, 1997, is ignored. We feel that appellant's inaction on respondents' representations for reinstatement pursuant to appellate authority's order dated 13th July, 1993 cannot be held out against the respondents.

16. In our view, therefore, the High Court was justified in holding that as on 7th December, 1994, the respondents were deemed to be in service and, therefore Government Resolution dated 15th June, 1995 was clearly applicable in their cases and they were entitled to the protection thereunder. Accordingly, we affirm the decision of the High Court on the point.

17. The next question for determination is whether the respondents are entitled to the back-wages for the period they were out of service?

18. It is true that once the order of termination of service of an employee is set aside, ordinarily the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back- wages, which is independent of reinstatement. While dealing with the prayer of back-wages, factual scenario, equity and good conscious, a number of other factors, like the manner of selection; nature of appointment; the period for which the employee has worked with the employer etc.; have to be kept in view. All these factors and circumstances are illustrative

and no precise or abstract formula can be laid down as to under what circumstances full or partial back- wages should be awarded. It depends upon the facts and circumstances of the each case.

19. In *General Manager, Haryana Roadways Vs. Rudhan Singh*, a three-Judge Bench of this Court has observed that there cannot be a strait jacket formula for awarding relief of back-wages and an order of back-wages should not be passed in a mechanical manner. It has been held that a host of factors, like the manner and method of selection and appointment; the nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character; and the length of service, which the workman had rendered with the employer are required to be taken into consideration before passing any order for award of back-wages. [See: also *Haryana State Electronics Development Corporation Ltd. Vs. Mamni*, ; *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, and *U.P.S.R.T.C. Vs. Mitthu Singh*,

20. Having considered the matter on the touchstone of the afore-noted broad principles, we are of the opinion that the facts in hand do not warrant payment of back-wages to the respondents. In the instant case, though there is no allegation against the respondents that originally the caste certificates were obtained by them fraudulently and, in fact, none of the authorities have recorded any findings to that effect, yet we feel that non-disclosure of the Caste Scrutiny Committee's Report dated 23/27th March, 1996 by the respondents before the Tribunal is tantamount to suppression of material and vital information from the Court, bordering fraud.

21. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , this Court had observed that a litigant, who approaches the court, is bound to produce all the documents which are relevant to the litigation and if he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

22. Similarly, in *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, , it was observed that fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Referring to *Derry v. Peek (1889) 14 AC 337*, it was said that although negligence is not fraud but it can be evidence on fraud.

23. However, having regard to the peculiar circumstances of the case, namely, the factum of issue of Government Resolution dated 15th June, 1995 in the interregnum, which was in favour of the respondents insofar as their caste claim for reservation was concerned, we do not propose to delve on the issue of their conduct any further. Suffice it to observe that there was no good reason for the respondents to withhold the opinion of Caste Scrutiny Committee from the Tribunal, when their original applications were taken up for hearing in December, 1997. We are convinced that this lapse on their part, coupled with the fact that

there was inordinate delay of almost three years in challenging the order of Tribunal dated 3rd April, 1998 passed in appellants' review applications, disentitles them at least from their claim for back- wages. Accordingly, we set aside the order of the High Court to the extent it directs treatment of respondents' absence from the date of termination to the date of reinstatement as extra-ordinary leave.

24. Consequently, for the reasons afore-stated, the appeal is partly allowed to the extent indicated above.

However, there will be no order as to costs.