

CASE NO.:
Appeal (civil) 1639 of 2008

PETITIONER:
Union of India

RESPONDENT:
Dattatray S/O Namdeo Mendhekar & Ors

DATE OF JUDGMENT: 15/02/2008

BENCH:
CJI K. G. Balakrishnan & C. K. Thakker & R. V. Raveendran

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 1639 OF 2008
(Arising out of SLP (Civil) No.289 of 2006)

K.G.BALAKRISHNAN, CJI

Leave granted. Heard learned counsel for both sides.

2. The first respondent, who claimed that he belonged to a Scheduled Tribe \026 Halba, was appointed as an Assistant Professor of Psychiatry in G. B. Pant Hospital, New Delhi, in a post reserved for Schedule Tribes, vide O.M dated 21.6.1990 of the Ministry of Health & Family Welfare, subject to caste status verification. He joined duty on 20.9.1990. One of the conditions subject to which he was offered appointment was that if any declaration given or information furnished by him was proved to be false, he will be liable for removal from service and other action which the government may deem appropriate. His claim that he belonged to a Scheduled Tribe was referred for verification. The Tehsildar Mohadi, on verification, sent a communication on 9.5.1991 that first respondent did not belong to Halba community. As first respondent questioned the report of the Tehsildar and asserted that he belonged to Halba tribe, his claim was referred to the Tribal Research & Training Institute, Pune for verification on 16.10.1992. On 6.3.1999, the Scrutiny Committee for verification of certificates of Schedule Tribes, informed the Ministry that the respondent did not belong to the Halba Tribe (ST). The Ministry, therefore, issued an OM dated 15.3.1999 calling upon the first respondent to show cause why his services should not be terminated for falsely claiming to belong to Halba Tribe. The first respondent challenged the decision of the Screening Committee in W.P. No.1176/1999. The High Court by judgment dated 6.4.2005 upheld the order dated 6.3.1999 of the Scrutiny Committee invalidating the first respondent's claim that he belonged to 'Halba' tribe, and directed that the first respondent will not be entitled to any of the benefits as a member of the Scheduled Tribe, from the date of its decision. The High Court however directed that the first respondent's services shall not be disturbed on the ground that he did not belong to a Scheduled Tribe. The said benefit of continuation in service, despite invalidation of claim regarding tribe, was extended by the High Court, purporting to follow the decision of this Court in State of Maharashtra vs. Milind - 2001 (1) SCC 4.

3. In the meanwhile on 27.8.2004, first respondent is stated to have tendered his resignation with effect from 25.9.2004. It is also stated that the first respondent has not attended to duty from 13.10.2004. The resignation was not accepted by the Ministry, as the matter was then sub-judice. The first Respondent made an application dated 25.3.2005 before the High Court stating that as he had resigned from the post, his writ petition may be disposed of without considering the matter on merits. The said application was not taken note of, by the High Court, while disposing the writ petition.

4. Feeling aggrieved by the direction of the High Court to continue the first respondent in service, the appellant has filed this appeal by special leave. The appellant contended that the High Court has erred in assuming that Milind (supra) protected the appointments made on the basis of wrong claim of caste/tribe, if the employee gave up his claim to scheduled tribe status and accepted the order of the Scrutiny Committee.

5. Milind (supra) related to a Medical College admission. The question that arose for consideration in that case was whether it was open to the State Government or Courts or other authorities to modify, amend or alter the list of Scheduled Tribes and in particular whether the "Halba-Koshti" was a sub-division of 'Halba' Tribe. This Court held that it was not permissible to amend or alter the list of Schedule Tribes by including any sub-divisions or otherwise. On facts, this court found that the respondent therein had been admitted in medical course in ST category, more than 15 years back; that though his admission deprived a scheduled tribe student of a medical seat, the benefit of that seat could not be offered to scheduled tribe student at that distance of time even if respondent's admission was to be annulled; and that if his admission was annulled, it will lead to depriving the services of a doctor to the society on whom the public money had already been spent. In these peculiar circumstances, this Court held that the decision will not affect the degree secured by respondent or his practice as a doctor but made it clear that he could not claim to belong to a Scheduled Tribe. But the said decision has no application to a case which does not relate to an admission to an educational institution, but relates to securing employment by wrongly claiming the benefit of reservation meant for Schedule Tribes. 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.

6. In this context, we may also refer to the decisions in Bank of India v. Avinash D.Mandivikar \026 (2005) 7 SCC 690 and Additional General Manager Human Resources, Bharat Heavy Electricals Ltd. V. Suresh Ramkrishna Burde, 2007 (5) SCC 336, wherein this Court held that when a person secures appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. In the latter case, this Court explained Milind thus :

"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 State of Maharashtra v. Milind. 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."

This Court further held that even in cases of admission to educational institutions, the protection extended by Milind (supra) will be applicable only where the candidate had successfully completed the course and secured the degree, and not to cases where the falsehood of the caste certificate is detected within a short period from the date of admission.

7. We are of the view that the High Court failed to appreciate the ratio of Milind. Having held that the first respondent had falsely claimed that he belonged to a Schedule Tribe, it wrongly extended him the benefit of continuing in employment.

8. We, therefore, allow this appeal and set aside the judgment of the High Court in so far as it directs the appellant to continue the first respondent in service. However, as the first respondent has submitted his resignation even before the writ petition was decided, and has not attended to duty from 13.10.2004, his terminal benefits, if any due to him, may be

settled. It is however made clear that he will not be entitled to any pensionary benefit.

JUDIS