

RAJESHWAR BABURAO BONE

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v.

THE STATE OF MAHARASHTRA AND ANOTHER

(Civil Appeal No.5778 of 2015)

JULY 29, 2015

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[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

Social status – Tribe certificate – Validity of – Appointment of appellant on the basis of his claim to be member of scheduled tribe – Verification of tribe certificate by Scrutiny Committee after 18 years of his appointment – Issuance of validity certificate by the Scrutiny Committee on consideration of all the documents – Subsequently, Scrutiny Committee invalidated tribe certificate issued in favour of appellant's brother and said order attaining finality upto this Court – Thereafter, on reconsideration by the Scrutiny Committee, tribe certificate issued in favour of the appellant invalidated – Challenge to – High Court upheld the order passed by the Scrutiny Committee holding that the appellant willfully misled the Scrutiny Committee for securing validity certificate wrongfully – Interference with – Held: Not called for – However, on account of inordinate delay in considering the certificate of the appellant, the benefit of the certificate already availed by appellant not to be disturbed – Appellant not entitled to any further benefit of reservation.

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Dattu s/o Namdev Thakur vs. State of Maharashtra & Others 2011 (13) SCR 475: (2012) 1 SCC 549; Shalini vs. New English High School Association & Ors. 2013 (12) SCR 807: (2013) 16 SCC 526 – referred to.

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A Case Law Reference

2011 (13) SCR 475 referred to. Para 12

2013 (12) SCR 807 referred to. Para 12

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5778 of 2015.

From the Judgment and Order dated 17.12.2013 of the High Court of Judicature of Bombay Bench at Aurangabad in Writ Petition No. 5160 of 2012.

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Meenakshi Arora, Shashibhushan P. Adgaonkar, Rana Sandeep Bussa for the Appellant.

Arun R. Pedneker and Nishant R. Katneshwarkar for the

D Respondents.

The Order of the Court was delivered by

M. Y. EQBAL, J. 1. Leave granted.

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2. This appeal by special leave is directed against the order dated 17.12.2013 passed by the High Court of Bombay, Bench at Aurangabad, whereby the High Court has dismissed the writ petition filed by the appellant herein.

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3. The facts of the case lie in a narrow compass.

4. The appellant herein claims to be belonging to 'Koli Mahadev' a scheduled tribe community. According to the appellant he separated from his family as there was dispute in respect of the property with his father and for quite some time, the appellant have no relationship or communication with his father and other family members.

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5. Since the appellant has secured employment with Zilla Parishad, Beed, on the post reserved for Scheduled Tribe

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category, the tribe certificate issued in his favour was referred to the Scrutiny Committee for verification after 18 years from the date of appointment. The appellant submitted several documents in support of his claim including the oldest record of 1348 fasali pertaining to his grandfather namely Gundaji Narsingh Bone wherein his caste is recorded as Mahadev Koli.

6. The claim of the appellant was referred to vigilance cell and vigilance officer has conducted the home and school enquiry. On consideration of all the documents furnished by the appellant including affidavits as well as forms filled in by the appellant, the Scrutiny Committee proceeded to issue validity certificate by reasoned order dated 19.06.2010.

7. It was later on revealed that tribe certificate issued in favour of appellant's brother by name Sharadkumar Baburao Bone has been invalidated by the Committee by order dated 20.10.2004 and said order was communicated to him on 27.10.2004. The writ petition challenging the order passed by the Committee invalidating tribe claim of the brother of the appellant, being Writ Petition No. 6934 of 2004, has been dismissed by the High Court. The SLP filed against that order of the High Court has been dismissed by this Court.

8. The Scrutiny Committee, as such, decided to reconsider the matter concerning issuance of validity certificate in favour of the appellant. The appellant was duly noticed by the Committee and after extending opportunity of hearing to the appellant, the Scrutiny Committee by order dated 24.2.2012 recalled its earlier order and directed invalidation of tribe certificate of the appellant. In paragraph nos. 7,8,9, and 10, the Scrutiny Committee has observed thus:-

"Applicant has submitted in Form 'E' in which column No.17(a) it is specifically asked that whether any family member from your family members previously verified?

A Applicant answered that, 'No'.

Applicant filed affidavit, notarised before notary on 13.1.2009 in format 'F' in which he specially made statement on oath, "No scheduled tribe certificate of any of my relatives from paternal side is ever held invalid by the Scrutiny Committee.

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Applicant also submitted another affidavit dated 16.3.2009 in which he again made fake statement that 'Any of my sister and brother or blood relatives bears surname as Bone whose claim never invalidated by the Committee or no any petition pending before any Court.

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The Police inspector of vigilance cell recorded statement on 9.4.2009 of applicant's father namely Shri Baburao Gundaji Bone. He also again made statement that "in my family, in Bone surnames or in my relatives whose claim never invalidated by the committee or no any petition pending before any Court."

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E 9. The appellant challenged the aforesaid order dated 24.2.2012 passed by the Scrutiny Committee by filing a writ petition being writ petition No.5160 of 2012 in the High Court of Bombay at Aurangabad Bench. The High Court after hearing the appellant dismissed the writ petition and observed as under:-

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"In our opinion, petitioner has willfully misled the Scrutiny Committee for securing validity certificate wrongfully. The petitioner is guilty of making false statements on oath before the Scrutiny Committee. As a result of misrepresentation made by the petitioner earlier, the Scrutiny Committee had issued validity certificate in his favour. However, after realizing fraudulent act of the petitioner, the Committee proceeded to recall its earlier

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order. Since the petitioner has played fraud by filing false affidavits on record before the Committee, the Committee was justified in recalling its earlier order of granting validity certificate in favour of the petitioner. It is well established that in the event of occurrence of fraud, Scrutiny Committee can recall its earlier order even in the absence of specific provision enabling the Committee to exercise powers of review." A B

10. Hence the present Appeal by Special Leave.

11. We have heard Mrs. Meenakshi Arora learned senior counsel appearing for the appellant and Mr. Arun R. Pedneker, learned counsel appearing for the respondent-State. C

12. Mrs. Meenakshi Arora, put heavy reliance on the decision of this Court in the case of **Dattu s/o Namdev Thakur vs. State of Maharashtra & Others** (2012) 1 SCC 549 and **Shalini vs. New English High School Association & Ors.** (2013) 16 SCC 526. We have carefully examined the ratio decided by this Court in the decisions referred to hereinabove. D E

13. In the instant case, the appellant claimed to be a member of scheduled tribe on the basis of false statements and false affidavits submitted by him. At the same time indisputably in the year 1991, the appellant got employment on the basis of his claim to be a member of scheduled tribe. After 18 years of his employment, the matter was referred to a Scrutiny Committee for verification. On consideration of all the documents, the enquiry conducted by vigilance cell, a validity certificate was issued by the Scrutiny Committee on 19.06.2010. However the matter was reconsidered by the Scrutiny Committee for the reason that the tribe certificate issued in favour of his brother was invalidated by the Committee in 2004 and the order attained finality up to this F G H

- A Court. The Scrutiny Committee after giving opportunity recalled its earlier order dated 19.6.2010, whereby validity certificate was issued in favour of the appellant.

14. In the facts and circumstances of this case, we are of the opinion that the impugned order passed by the High Court needs no interference and this appeal deserves to be dismissed. However, we hold that because of inordinate delay in considering the certificate of the appellant, the benefit of the certificate already availed by the appellant shall not be disturbed making it clear that the appellant shall not be entitled to take any further benefit of reservation in future including the benefit of continuing in service.

15. In the result, this appeal is dismissed with the observation made hereinabove.

Nidhi Jain

Appeal dismissed.