

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	WP No.32/2011 & WP No.57/2011
2	Parties Name	Nageswar Sonkesri Vs. State of MP & Ors
3	Date of Judgment	22/12/2020
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri A.K/Sethi, learned Sr.Counsel with Shri Rahul Sethi, learned counsel for petitioner. Shri Amol Shrivastava, learned counsel for respondents
8	Law laid down	[i] The Presidential Notification issued under Article 342(1) specifying the Scheduled Tribe/Scheduled Caste can be amended only by the law made by the Parliament and it cannot be varied by way of administrative circular, judicial pronouncements or by the State. The Presidential order must be read as it is. [ii] Since " <i>Halba Koshti</i> " is not mentioned as "Scheduled Tribe" in the Presidential order, therefore, it cannot be held to be scheduled tribe. [iii] The Hon'ble Supreme Court in <i>Milind</i> while protecting the admission of MBBS student had exercised the power under Article 142 of the Constitution, but the position has been clarified in the subsequent judgment in the matter of <i>FCI</i> by holding that if such claims based upon false caste certificate are protected, then credibility of legal system and judicial process will be eroded. [iv] Cases where employment is obtained on the basis of false caste certificate stand on different footing and in such cases the person concerned cannot be allowed to enjoy the benefit of wrong committed by him. [v] If the appointment is obtained on the basis of the false/forged caste certificate, then such an appointment is <i>void ab initio</i> and is liable to be cancelled.
9	Significant paragraph numbers	Paragraphs 15 to 24.

(PRAKASH SHRIVASTAVA)
J u d g e

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

WRIT PETITION No.32/2011

Nageswar Sonkesri Vs State of MP & Ors.

WRIT PETITION No.57/2011

Nageswar Sonkesri Vs State of MP & Ors.

Shri.A.K.Sethi, learned Sr.Counsel with Shri Rahul Sethi,
learned counsel for petitioner.

Shri.Amol Shrivastava, learned counsel for the
respondents.

Heard finally with consent through video conferencing.

Whether approved for reporting :

ORDER

(Passed on 22nd December 2020)

This order will govern the disposal of WP No.32/2011 and WP No.57/2011. In WP No.57/2011 petitioner has challenged the decision of the Caste Scrutiny Committee finding the caste certificate to be false and by WP No.32/2011 the petitioner has challenged the consequential dismissal order. WP No.32/2011 was allowed by this Court by order dated 20/3/2014 and the writ appeal was dismissed on 12/5/2016 and this order was challenged before Supreme Court. The Hon'ble Supreme Court

by order dated 22nd July, 2019 passed in Civil Appeal(S)No.5776/2019 (arising out of SLP(C) No.14510/2017) has set aside the order of this Court and has directed for deciding both these petitions together.

[2] In WP No.57/2011, the case of the petitioner is that he belongs to "Halba/Halba Koshti" caste which is a Scheduled Tribe in the State of Madhya Pradesh as per Presidential Notification. The caste certificate dated 18/8/2005 was issued by the SDO. The petitioner was appointed as District Excise Officer on 15/02/2001 and by order dated 24/1/2004 his past service rendered from 4/9/1991 to 14/2/2001 were counted in his service tenure in continuation. On the basis of certain complaints, proceedings were initiated before the Caste Scrutiny Committee to examine the caste certificate issued to the petitioner and a notice was issued to the petitioner to which he had filed the reply annexing there with the material relating to Halba/Halbi/Koshta/Koshti and the Caste Scrutiny Committee without following the due procedure, by the order dated 21/6/2010 has found the caste certificate to be false and cancelled it. The order of the Caste Scrutiny Committee was communicated to the petitioner vide letter dated 15/7/2010. Hence, the present petition has been filed challenging the

same.

[3] The stand of the respondents in the reply is that the petitioner belongs to Koshti caste which does not fall under the category of either scheduled caste or scheduled tribe in the State of Madhya Pradesh. Hence, the decision of the Caste Scrutiny Committee does not require any interference. The parties had also filed the rejoinder, reply to the rejoinder and additional rejoinder to substantiate their stand.

[4] In WP No.32/2011 the case of the petitioner is that the petitioner was appointed in the Women and Child Development Department on 4/9/1991 and had continued in that department till 14/2/2001. The petitioner was appointed as District Excise Officer after selection by PSC on 15/02/2001 and by order dated 24/1/2004 his earlier services were counted. The petitioner was subsequently promoted as Assistant Commissioner (Excise) on 18/4/2007 and thereafter on certain complaints the proceedings were initiated before Caste Scrutiny Committee which had passed the adverse order dated 21/6/2010 which is subject matter of challenge in the connected writ petition. Further case of the petitioner is that the petitioner was placed under suspension by order dated 27/7/2010. The show cause notice dated 6/8/2010 was issued to the petitioner

which was duly replied by him. The order of suspension was unsuccessfully challenged by the petitioner. The respondents thereafter by order dated 22/11/2010 have dismissed the petitioner from services on the ground of obtaining employment on the basis of false caste certificate, without conducting any departmental enquiry. To substantiate the plea further, petitioner has also filed the rejoinder.

[5] In the reply, the stand of the respondents is that since the petitioner had entered in services on the basis of the forged caste certificate and the caste certificate was cancelled by the Caste Scrutiny Committee, therefore, the services of the petitioner have been terminated. Further stand of the respondents is that the appointment of the petitioner as District Excise Officer and subsequent promotion on the next higher post is on the basis of forged documents, therefore, the regular departmental enquiry was not required and in this regard reference to Circular dated 21/7/2003 issued by the GAD Annexure R/2 has been made and a plea has been taken that in such cases regular departmental enquiry is not required and prior consent of the PSC was taken on 16/11/2010 and after granting him salary for three months, the order of termination has been passed.

[6] The submission of learned counsel for petitioner in WP No.57/2011 is that the Caste Scrutiny Committee has not followed the due procedure inasmuch as a copy of the report was not supplied and independent enquiry was not conducted and the documents enclosed along with the reply to the notice have not been taken into consideration. Further submission of counsel for petitioner is that the conclusion of the Caste Scrutiny Committee that the caste certificate issued to the petitioner is forged, is unfounded, therefore, the order of the Caste Scrutiny Committee cannot be sustained.

[7] In WP No.32/2011 the submission of learned counsel for petitioner is that in terms of the judgment of the Supreme Court in the case of **State of Maharashtra Vs. Milind (2001) 1 SCC 4** the petitioner is protected because his appointment on the basis of caste certificate is prior to 28/11/2000 i.e. the date of judgment in the case of **Milind** (supra). Further submission of learned counsel for petitioner is that the petitioner is protected by the circulars dated 7/3/2011 Annexure P/12 and 27/2/2013 Annexure P/15 which have been issued by the State government to give effect of the judgment of the Supreme Court in the case of **Milind** (supra). Counsel for petitioner has also submitted that in the earlier round of litigation the dismissal

order was set aside by this Court and the matter has been remanded back by the Hon'ble Supreme Court, but in the meanwhile the petitioner has been reinstated in services and has been protected by the remand order of the Supreme Court. He has also submitted that the petitioner is a permanent employee and he cannot be dismissed from services without regular departmental enquiry.

[8] The submission of learned counsel for State is that since the petitioner had obtained appointment on the basis of the forged caste certificate, therefore, his appointment was void and illegal *ab initio*, hence no regular departmental enquiry is required to be conducted and that the petitioner's services have been terminated after issuing show cause notice and after obtaining the approval of the PSC, therefore, the order of dismissal does not suffer from any error.

[9] I have heard the learned counsel for parties and perused the record.

[10] The clear stand of the petitioner in WP No.57/2011 is that the petitioner belongs to "Halba Koshti" caste. In para 6.1 of the petition, the petitioner has pleaded that:-

"6.1. Because the petitioner belongs to "Halba-Koshti" caste and the predecessors of the petitioner used to live in forests and earn their livelihood by cultivating land by the use of "Hal" and on account of

their occupation, they were classified as “Halba-Halbi”. In Ratanpur State in the township of “Sinhawa” the forefathers of the petitioner used to live on account of outspread of certain disputes, the forefathers of the petitioner had to disperse and were ousted from living at the same place. After the forefathers of the petitioner, were displaced, they used to collect the fruit of “Kosa” and by use of manual spindles used to undertake weaving of clothes by making threads and for this reason they were called as “Koshta/Koshti”.

[11] Before the Caste Scrutiny Committee also similar reply dated 12/6/2010 was filed and in para 1 the petitioner had clearly stated that the petitioner belongs to “Halba Koshti” caste. Hence, the admitted position before this court is that the petitioner belongs to “*Halba Koshti*” caste.

[12] The Hon’ble Supreme Court in the matter of **Ku. Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (1994) 6 SCC 241** had directed for verification of the caste certificate by the Caste Scrutiny Committee constituted at State level. The procedure which is to be followed by the Caste Scrutiny Committee, has been provided therein and it has been held that the order passed by the Committee is final and conclusive only subject to the proceedings under Article 226 of the Constitution.

[13] In the present case, the record reflects that on receiving the complaint in respect of the forged caste certificate of the

petitioner, the five member Caste Scrutiny Committee at the State level had initiated the proceeding. As per the complaint, the petitioner belongs to *Koshta/Koshti* caste which is OBC and he had obtained employment on the basis of the caste certificate showing him to be *Halba/Halbi* Scheduled Tribe. The Committee had obtained the report from Superintendent of Police and it was found that the address disclosed by the petitioner was incorrect. The Committee had also issued notice to the petitioner and given opportunity of personal hearing. The petitioner had appeared before the Committee and had filed the reply as also produced the documents in support of his claim. The Committee had examined the police report as also the documents submitted by the petitioner and had noted the petitioner's plea in the reply that he belongs to "Halba Koshti" caste. The Committee had duly considered the judgment of the Hon'ble Supreme Court in the case of **Milind** (supra). It had also taken into account the communication sent by the SDO, Tehsil Hujur Bhopal that the caste certificate dated 18/8/2005 was not issued as per record. Considering the entire material, the Committee has reached to the conclusion that the temporary caste certificate dated 22/7/1998 had lost its validity after six months and the permanent caste certificate dated

18/8/2005 was forged. The petitioner had obtained the forged certificate by disclosing incorrect address. It was also found that as per the report petitioner belongs to "*Koshta*" caste which is OBC and he does not belong to "*Halba*" Scheduled Tribe. In this view of the matter, the Caste Scrutiny Committee has concluded that the petitioner does not belong to "*Halba*" Scheduled Tribe and decided to cancel the so called caste certificate.

[14] The conclusion drawn by the Caste Scrutiny Committee is also based upon the petitioner's own admission that he belongs to the "*Koshta*" caste. The Committee has duly considered the entire material and this Court is not exercising the appellate power against the decision of the Committee.

[15] The issue if "*Halba Koshti*" caste is a Scheduled Tribe had come up before the Hon'ble Supreme Court in the matter of **Milind** (supra) wherein the Hon'ble Supreme Court has considered the issue if "*Halba Koshti*" can be treated to be a sub tribe of "*Halba/Halbi*". The Supreme Court reiterating the legal position earlier settled has held that the notification issued under Article 342(1) specifying Scheduled Tribe, can be amended only by the law made by Parliament and by none else including State government, Courts and Tribunal and that the

entries made in the Presidential Order are required to be read as it is. A Tribe, sub tribe, part or group of any tribe or tribal community, if not specifically mentioned in the Presidential order, cannot be said to be synonymous to one mentioned therein. In clear terms it has been held that the Presidential Order must be read as it is. It is not even permissible to say that a tribe, sub tribe, part or group of any tribe or tribal community is synonymous to one mentioned in the scheduled tribe order if they are not so specifically mentioned in it. In the case of **Milind** (supra) the Hon'ble Supreme Court has found the decision of the High Court erroneous wherein the High Court had held that "*Halba Koshti*" was included in "*Halba*" or "*Halbi*". The Supreme Court in the case of **Milind** (supra) has held that:-

"36.- In the light of what is stated above, the following positions emerge:-

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.
2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one

mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of [Article 342](#), specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of [Article 342](#) only by Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of [Article 342](#).

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda vs. Anirudh Patar & others* (1971 (1) SCR 804) and *Dina vs. Narayan Singh* (38 ELR 212), did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter.”

[16] Learned counsel for petitioner has placed reliance upon para 38 of the judgment in the case of **Milind** (supra) and has submitted that since the appointment of the petitioner is prior to the date of judgment in the case of **Milind** (supra), therefore, the petitioner is required to be protected. The Hon'ble Supreme Court in the case of **Milind** (supra) in para 38 has held that:-

“38.- Respondent no. 1 joined the medical course for the year 1985-86. Almost 15 years have passed by

now. We are told he has already completed the course and may be he is practicing as doctor. In this view and at this length of time it is for nobody's benefit to annul his Admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to respondent no. 1. If any action is taken against respondent no. 1, it may lead depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372/1985 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.”

[17] In the case of **Milind** (supra) the Hon'ble Supreme Court has protected the candidate therein exercising the power under Article 142 of the Constitution because in the mean while he had completed the MBBS course and was practicing as a Doctor. The Supreme Court had also held that admissions and appointments which had become final will remain unaffected by the judgment.

[18] The judgment in the case of **Milind** (supra) was pronounced by the Hon'ble Supreme Court on 28/11/2000 whereas the petitioner was selected by PSC for appointment on

the post of District Excise Officer on the basis of the forged caste certificate and he had joined on that post on 15/2/2001 i.e. after the judgment in the case of **Milind** (supra), therefore, he is not entitled to the protection. The services earlier rendered by the petitioner prior to 15/2/2001 in the Women and Child Welfare Department have been counted only for limited purpose of giving continuity in service. Even otherwise in the case of **Milind** (supra) protection was extended exercising the power under Article 142.

[19] It is worth noting that the view of the Hon'ble Supreme Court in the case of **Milind** (supra) protecting the appointments/admissions in a given fact situation has been explained in the subsequent judgment. In the matter of **Additional General Manager-Human Resource, Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde (2007) 5 SCC 336** in a case where services were terminated after a long time when it was found that the appointment on the post reserved for Scheduled Tribe category was obtained by producing a false certificate, the Hon'ble Supreme Court has held that the protection extended by the High Court based upon the judgment in the case of **Milind** (supra) was misplaced. In this case, a distinction has been drawn between a student who

completes professional course on the basis of forged certificate and a person who obtains public employment on the basis of false caste certificate. The Hon'ble Supreme Court in the case of **Additional General Manager** (supra) has held that:-

"7- 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 vs. Milind](#) (2001) 1 SCC 4. 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. The questions which required for consideration by the Constitution Bench, are noted in the very first paragraph of the judgment and they are being reproduced below: -

"(1) Whether at all, it is permissible to hold enquiry and let in evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950?

(2) Whether 'Halba Koshti' caste is a sub-tribe within the meaning of Entry 19 (Halba/Halbi) of the said Scheduled Tribes Order relating to State of Maharashtra, even though it is not specifically mentioned as such?"

8. After thorough discussion of the matter the conclusions of the Bench are recorded in paragraph 36 of the report. It was held that it is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community

or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950. It was further held that the notification issued under clause (1) of [Article 342](#), specifying Scheduled Tribes, can be amended only by law to be made by Parliament and it is not open to the State Governments or courts or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of [Article 342](#) and the Constitution (Scheduled Tribes) Order 1950. The law declared by the Constitution Bench does not at all lay down that where a person secures an appointment by producing a false caste certificate, his services can be protected on his giving an undertaking that in future he will not take any advantage of being a member of the reserved category.

9. After interpreting the relevant constitutional or statutory provisions and laying down the law, it is always open to a court to mould the relief which may appear to be just and proper in the facts and circumstances of the case. Some times equitable considerations also come into play while granting a relief. Milind had got admission in a medical course in the year 1985-86 by producing a caste certificate that he belonged to Halba Caste, which was later on invalidated by the Scrutiny Committee. That order was challenged by him by filing a writ petition which was allowed by the High Court. The appeal filed by the State of Maharashtra was allowed by the Constitution Bench of this Court on 28.11.2000, i.e., almost 15 years after he had got admission in the course. By that time Milind had already completed his MBBS course and was practising as a doctor. This Court took notice of the fact that a huge amount of public money is spent on every student studying in the medical course and a qualified doctor on whom public money had been spent does service to the society. The Court, therefore, observed "in these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a

doctor". However, it was made clear that he cannot take any advantage as being a member of Scheduled Tribe for any other purpose.

10. An identical controversy was again examined in *R. Vishwanatha Pillai vs. State of Kerala* (2004) 2 SCC 105, which is a decision rendered by a Bench of three learned Judges. The employee in the aforesaid case had got an appointment in the year 1973 against a post reserved for Scheduled Caste. On complaint, the matter was enquired into and the Scrutiny Committee vide its order dated 18.11.1995 held that he did not belong to Scheduled Caste and the challenge raised to the said order was rejected by the High Court and the special leave petition filed against the said order was also dismissed by this Court. He then filed a petition before the Administrative Tribunal praying for a direction not to terminate his services which was allowed, but the order was reversed by the High Court in a writ petition. The employee then filed an appeal in this Court. After a detailed consideration of the matter this Court dismissed the appeal and para 15 of the report, which is relevant for the decision of the present case, is reproduced below:- (SCC p.115)

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the [Article 311](#) of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of

[Article 311](#) of the Constitution of India, Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception."

11. [In Bank of India vs. Avinash D. Mandivikar](#) (2005) 7 SCC 690, the employee had got an appointment on 15.10.1976 on a post which was reserved for a member of Scheduled Tribe. The Scrutiny Committee invalidated the caste certificate on 18.7.1987 which was challenged by the employee. After several rounds of litigation his services were terminated on 28.2.2002. After referring to the decision in the case of *Milind* and some other decisions, this Court allowed the appeal of the employer affirming the order of termination of service of the employee. Paragraph 6 of the report where the principle was laid down reads as under: -

"6. Respondent No. 1-employee obtained appointment in the service on the basis that he belonged to Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eyes of law. There is absolutely no justification for his claim in respect of post he usurped, as the same was meant for reserved candidate."

12. [In R. Vishwanatha Pillai vs. State of Kerala](#) (2004) 2 SCC 105, which we have referred to earlier, the case of the employee's son, who got admission in an engineering college against a seat reserved for Scheduled Caste, was also considered. The admission in the engineering college was obtained in 1992 and he completed the course in

1996 though under the interim order of the High Court. The appeal was decided by this Court on 7.1.2004. Placing reliance upon paragraph 38 of the judgment in the case of *Milind* (supra), this Court observed that no purpose would be served in withholding the declaration of the result on the basis of examination already taken by the student or depriving him of the degree in case he passes the examination. It was accordingly directed that the student's result be declared and he be allowed to take his degree with the condition that he will not be treated as Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him and he shall be treated to be a person belonging to general category.

13. The principle, which seems to have been followed by this Court is, that, where a person secures an 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. However, where a person has got admission in a professional course like engineering or MBBS and has successfully completed the course after studying for the prescribed period and has passed the examination, his case may, on special facts, be considered on a different footing. Normally, huge amount of public money is spent in imparting education in a professional college and the student also acquires the necessary skill in the subjects which he has studied. The skill acquired by him can be gainfully utilized by the society. In such cases the professional degree obtained by the student may be protected though he may have got admission by producing a false caste certificate. Here again no hard and fast rule can be laid down. If the falsehood of the caste certificate submitted by the student is detected within a short period of his getting admission in the professional course, his admission would be liable to be cancelled. However, where he has completed the course and has passed all the examinations and acquired the degree, his case may be treated on a different

footing. In such cases only a limited relief of protection of his professional degree may be granted.”

[20] The similar issue again came up before the Hon’ble supreme Court in the matter of **Union of India Vs. Dattatrey & Ors. (2008) 4 SCC 612** wherein the Hon’ble Supreme Court has held that a false certificate deprives a genuine candidate’s opportunity of appointment, therefore, proper course in such case is to cancel/terminate appointment so that post can be refilled by genuine scheduled caste/scheduled tribe candidate. The issue before the Hon’ble Supreme Court in that case was also in respect of furnishing a false caste certificate of “Halba Tribe”. The Hon’ble Supreme Court has held that the judgment in the case of **Milind** (supra) does not lay down proposition of law that wrongful appointment can be continued. The Hon’ble Supreme Court held that once the caste certificate is declared invalid, no further action is required except payment of terminal benefit if due, but no pensionary benefits is to be paid. The Hon’ble Supreme Court in this regard has held that:-

“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* (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:

"7. 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."

[21] In a recent judgment in the matter of **Chairman and Managing Director, FCI & Ors. Vs. Jagdish Balaram Bahira & Ors. (2017) 8 SCC 670** the Hon'ble Supreme Court has considered the entire scheme and the earlier judgments on the point and has held that even the jurisdiction under Article 142 of the Constitution should be exercised with circumspection in such cases so that unjust and false claims of imposters are not

protected. It has been held that once it is found that the caste certificate was false, then *mens rea* or dishonest intention of claimant is not required to be established for cancellation of admission/appointment/withdrawal of benefit. It has also been held that the person who claims the benefit of the caste certificate has the burden to prove that he belongs to that particular category. The Hon'ble Supreme Court in the case of **FCI** (supra) has held that:-

“65. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that government is bound by its own circulars is well-settled but it cannot apply in a situation such as present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government

circulars or resolutions cannot operate to their detriment.

66. One of the considerations which is placed in store before the court particularly when an admission to an educational institution is sought to be cancelled upon the invalidation of a caste or tribe claim is that the student has substantially progressed in the course of studies and a cancellation of admission would result in prejudice not only to the student but to the system as well. When the student has completed the degree or diploma, a submission against its withdrawal is urged a fortiori. In our view, the state legislature has made a statutory decision amongst competing claims, based on a public policy perspective which the court must respect. The argument that there is a loss of productive societal resources when an educational qualification is withdrawn or a student is compelled to leave the course of studies (when he or she is found not to belong to the caste or tribe on the basis of which admission to a reserved seat was obtained) cannot possibly outweigh or nullify the legislative mandate contained in [Section 10](#) of the state legislation. When a candidate is found to have put forth a false claim of belonging to a designated caste, tribe or class for whom a benefit is reserved, it would be a negation of the rule of law to exercise the jurisdiction under [Article 142](#) to protect that individual. Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an avenue to support those who make untrue claims to belong to a caste or tribe or socially and educationally backward class. These benefits are provided only to designated castes, tribes or classes in accordance with the constitutional scheme and cannot be usurped by those who do not belong to them. The credibility not merely of the legal system but also of the judicial process will be eroded if such claims are protected in exercise of the constitutional power conferred by [Article 142](#) despite the State law.”

[22] The position has been summarised by the Hon’ble

Supreme Court in para 69 as under:-

“69. For these reasons, we hold and declare that:

69.1. The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in *Milind* were in pursuance of the powers vested in this Court under [Article 142](#) of the Constitution;

69.2. Since the decision of this Court in *Madhuri Patil* which was rendered on 2 September 1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for:

(a) the issuance of caste certificates;

(b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;

(c) the procedure for the conduct of investigation into the authenticity of the claim;

(d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;

(e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and

(f) Prosecution for a criminal offence;

69.3. The decisions of this Court in *R. Vishwanatha Pillai and in Dattatray* which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual – such as an appointment to a post or admission to an educational institution – on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

69.4. The exception to the above doctrine was in those cases where this Court exercised its power under [Article 142](#) of the Constitution to render complete justice;

69.5. By Maharashtra Act XXIII of 2001 there is a legislative codification of the broad principles enunciated in *Madhuri Patil*. The legislation provides a statutory framework for regulating the issuance of caste certificates ([Section 4](#)); constitution of Scrutiny Committees for verification of claims ([Section 6](#)); submission of applications for verification of caste certificates ([Section 6\(2\)](#) and [6\(3\)](#)); cancellation of caste certificates ([Section 7](#)); burden of proof ([Section 8](#)); withdrawal of benefits obtained upon the invalidation of the claim ([Section 10](#)); and initiation of prosecution ([Section 11](#)), amongst other things;

69.6 The power conferred by [Section 7](#) upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18 October 2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

69.8. The decisions in *Kavita Solunke* and *Shalini* of two learned Judges are overruled. *Shalini* in so far as it stipulates a requirement of a dishonest intent for the application of the provision of [Section 10](#) is, with respect, erroneous and does not reflect the correct position in law;

69.9. Mens rea is an ingredient of the penal provisions contained in [Section 11](#). [Section 11](#) is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

69.10. The judgment of the Full Bench of the Bombay High Court in Arun Sonone is manifestly erroneous and is overruled; and

69.11. Though the power of the Supreme Court under [Article 142](#) of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act XXIII of 2001 holds the field.”

[23] The Supreme Court in a recent judgment in the case of **Vijay Krishnarao Kurundkar & another Vs. State of Maharashtra and others** dated 28th February 2020 in Civil Appeal No.1865/2020 considering the similar issue has reiterated that an appointment made on the basis of forged certificate is *void ab initio* by holding that:-

“12. The decision in ***Punjab National Bank*** must be read in light of these observations by the three-Judge Bench of this Court in Food Corporation of India. It is trite law that an appointment secured on the basis of a fraudulent certificate is void ab initio. It is not open to the government to circumvent the existing statutory mandate by indefinitely protecting the deceitful activities of such candidates through the use of circulars or resolutions.”

[24] The position of law emerging from the above judicial pronouncements can be summarised as under:-

[i] The Presidential Notification issued under Article 342(1) specifying the Scheduled Tribe/Scheduled Caste can be amended only by the law made by the Parliament and it cannot

be varied by way of administrative circular, judicial pronouncements or by the State. The Presidential order must be read as it is.

[ii] Since "*Halba Koshti*" is not mentioned as "Scheduled Tribe" in the Presidential order, therefore, it cannot be held to be scheduled tribe.

[iii] The Hon'ble Supreme Court in **Milind** (supra) while protecting the admission of MBBS student had exercised the power under Article 142 of the Constitution, but the position has been clarified in the subsequent judgment in the matter of **FCI (supra)** by holding that if such claims based upon false caste certificate are protected, then credibility of legal system and judicial process will be eroded.

[iv] Cases where employment is obtained on the basis of false caste certificate stand on different footing and in such cases the person concerned cannot be allowed to enjoy the benefit of wrong committed by him.

[v] If the appointment is obtained on the basis of the false/forged caste certificate, then such an appointment is *void ab initio* and is liable to be cancelled.

[25] In the present case, on the basis of the admitted facts itself as also report of Caste Scrutiny Committee, it is clear that the petitioner does not belong to scheduled tribe category. The admitted position in para 6.1 in the writ petition and in para 1 and 2 of the reply of the petitioner dated 12/6/2010 filed before the Caste Scrutiny Committee is that the petitioner belongs to "*Halba Koshti*" caste which in view of the settled legal position is

not a scheduled tribe. "*Halba Koshti*" caste is OBC in the State of Madhya Pradesh. The petitioner does not belong to "*Halba*" or "*Halbi*" which is a scheduled tribe. It is also undisputed that the petitioner has obtained employment under the reserved category seat of scheduled tribe.

[26] In view of the admitted position on record and finding of Caste Scrutiny Committee that the petitioner belongs to "*Halba Koshti*" caste and in view of the judgment of the Supreme Court in the case of **Milind** (supra), it is clear that the petitioner does not belong to "*Halba*" Scheduled Tribe. The decision of the Caste Scrutiny Committee does not suffer from any error and warrants no interference. Hence, no merit is found in WP No.57/2011.

[27] So far as WP No.32/2011 is concerned, by this petition the petitioner has challenged the order dated 22/11/2010 whereby on the basis of the report of the Caste Scrutiny Committee and its decision dated 21/6/2010 the petitioner's services have been terminated. The order dated 22/11/2010 reveals that before terminating the petitioner's services the show cause notice dated 6/8/2010 was issued to the petitioner and consent of the PSC vide communication dated 16/11/2010 was obtained and the petitioner was also paid three months salary.

[28] The main contention of the counsel for petitioner is that the

petitioner was a permanent employee and services of the petitioner could not be terminated without conducting regular departmental enquiry. His further contention is that major penalty of dismissal from services has been imposed under Rule 10(8) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966.

[29] Since the petitioner had obtained employment against the post reserved for Scheduled Tribe on the basis of the forged caste certificate though he does not belong to scheduled tribe, therefore, the appointment of the petitioner as District Excise Officer was *void ab initio*. In the earlier round of litigation this Court by the order dated 20/3/2014 had allowed this writ petition directing the respondents to initiate fresh proceedings in accordance with the rules. This order of the single bench was affirmed by the division bench by order dated 12/5/2016 and aggrieved with the same, the respondent State of Madhya Pradesh had filed Civil Appeal(s)No.5776/2019 (arising out of SLP(C) No.14510/2017. The Hon'ble Supreme Court had expressed that both the writ petitions being WP No.32/2011 and WP No.57/2011 had to be heard together. Accordingly, the order of the division bench of this Court dated 12/5/2016 in WA No.581/2014 was set aside requiring this Court to decide the petitions expeditiously. The Hon'ble Supreme Court had

directed that in the mean while the petitioner will continue in service subject to the decision in the writ petition. Counsel for petitioner has pointed out that the petitioner has continued in service. Hence, the order of dismissal has lost its efficacy for all practical purposes.

[30] In this case once the Caste Scrutiny Committee has found that the employment was obtained on the basis of the forged caste certificate and decision of Committee is upheld, then nothing further is required and only consequential order of termination of service/cancellation of appointment is to be passed.

[31] Having regard to the above analysis, **WP No.57/2011 is dismissed** having been found to be devoid of any merit and **WP No.32/2011 is disposed of** by permitting the respondents to pass an appropriate order cancelling the appointment of the petitioner and terminating his service.

[32] The signed order be placed in the record of WP No.32/2011 & a copy whereof be placed in the record of connected WP No.57/2011.

(Prakash Shrivastava)
Judge

vm