

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 1865 of 2020
(Arising out of SLP(C) No 32595 of 2018)

Vijay Kishanrao Kurundkar & Anr

... Appellant(s)

Versus

State of Maharashtra & Ors

...Respondent(s)

ORDER

1 Leave granted.

2 This appeal arises from a judgment and order of a Division Bench of the High Court of Judicature at Bombay dated 16 April 2018. The fifth and sixth respondents were appointed as Assistant Engineers Grade I against a post reserved for the Scheduled Tribe category on 31 July 1991. Both of them claimed to belong to the *Halba* Scheduled Tribe.

3 The appellants were appointed as Assistant Engineers Grade I on 20 May 2000 on a post reserved for the Special Backward Class category.

4 The claims of the fifth and sixth respondents of belonging to a Scheduled Tribe were invalidated by the Scrutiny Committee on 14 May 2001 and 16 May 2001

respectively.

5 The Government of Maharashtra, by its resolutions dated 10 March 2004 and 12 March 2004, treated the fifth and sixth respondents as belonging to a Special Backward Class category and they were absorbed on 23 August 2004 on that basis. On 4 September 2006, the fifth respondent was promoted as Executive Engineer. The sixth respondent was promoted as Executive Engineer on 1 November 2007.

6 The appellants instituted writ proceedings¹ before the High Court seeking a declaration that the protection of service granted in favour of the fifth and sixth respondents and the order of promotion ought to be quashed and set aside. The first appellant was promoted as an Executive Engineer on 13 July 2017. The second appellant was promoted as an Executive Engineer on 5 December 2015. The fifth respondent was subsequently promoted as Superintending Engineer on 13 July 2017. The fifth respondent has retired from service on 30 June 2018.

7 The High Court, by its impugned judgment and order dated 16 April 2018, held that the decision of this Court in **Punjab National Bank v Vilas Govindrao Bokade**² has not been specifically overruled by the decision of a three-Judge Bench of this Court in **Chairman and Managing Director, Food Corporation of India v Jagdish Balaram Bahira**³. In this view of the matter, it came to the conclusion that the fifth and sixth respondents, who had entered service prior to the appellants, were entitled to be protected notwithstanding the invalidation of their claim to belong to a member of the Scheduled Tribe.

1 Writ Petition No 6589 of 2011

2 (2008) 14 SCC 545

3 (2017) 8 SCC 670

8 During the pendency of these proceedings, the State government has issued a GR dated 21 December 2019, a copy of which has been placed on record. The Court has been apprised of the fact that the effect of the GR is that persons, such as the sixth respondent, who were appointed on the basis of a claim to belong to a Scheduled Tribe which has been invalidated, would be continued in service on a temporary basis for a period of eleven months.

9 Mr Sudhanshu Choudhary, learned counsel appearing on behalf of the appellants, states that with the above GR, the grievance of the appellants has been substantially met, save and except, in regard to the deemed date of seniority.

10 An affidavit has been filed during the course of the proceedings on behalf of the State of Maharashtra in which it has been stated thus:

“Hence, if Mr Parate and Barapatre had not been there, petitioners were not the only officers entitled for ad-hoc promotion. However, in regular promotion from the Special Backward class category, Mr Sant, the only Petitioner would have got the promotion in lieu of Mr Parate as another post was already occupied by Mr Dharane, Senior Executive Engineer, who also belongs to Special Backward Class.”

Hence, it has been stated that if the sixth respondent, Digambar Ganpatrao Barapatre, is not to be considered as a Special Backward Class candidate, one of the two appellants, namely, the second appellant, would be entitled to a deemed date of 30 June 2018 in respect of the post of the Executive Engineer.

11 In view of the above clarification, which has been furnished on behalf of the State government, the present controversy has come to a close. However, we would also briefly add that the High Court was incorrect in observing that the decision in **Punjab National Bank** was not expressly or impliedly overruled by the three-Judge Bench in

Food Corporation of India. In **Punjab National Bank** the Maharashtra state government issued two resolutions dated 15 June 1995 and 30 June 2004 which protected from removal non-tribal candidates who had secured appointment in governmental services against seats reserved for candidates from the Schedule Tribes. The court in **Punjab National Bank** enforced the resolutions and held that the candidates were protected by virtue of the government resolutions. Although the decision in **Punjab National Bank** was not specifically adverted to by the three-Judge Bench of this Court in **Food Corporation of India**, the judgement observes 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 the Government is bound by its own circulars is well settled but it cannot apply in a situation such as the 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.”

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

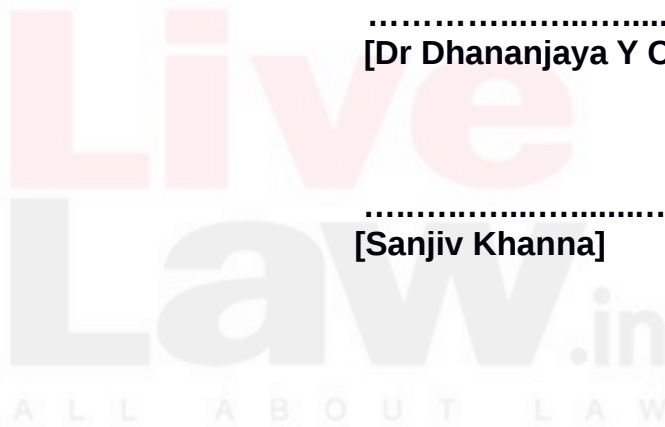
circulars or resolutions.

13 We dispose of the appeal by setting aside the impugned judgment and order of the High Court. The second appellant shall, in terms of the statement which has been made in the affidavit filed on behalf of the State government, be entitled to a deemed date of 30 June 2018 in respect of the post of the Executive Engineer. There shall be no order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Sanjiv Khanna]

New Delhi;
February 28, 2020



ITEM NO.49

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).32595/2018

(Arising out of impugned final judgment and order dated 16-04-2018 in WP No. 6589/2011 passed by the High Court of Judicature at Bombay at Aurangabad)

VIJAY KISHANRAO KURUNDKAR & ANR.

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

Date : 28-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Sudhanshu S. Choudhari, AOR
Mr. Mahesh Shinde, Adv.
Mr. Yogesh Kolke, Adv.
Mr. C. Govind Venugopal, Adv.

For Respondent(s) Mr. Sachin Patil, AOR
Mr. Rahul Chitnis, Adv.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.

Mr. Amol Nirmalkumar Suryawanshi, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed
order. There shall be no order as to costs.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)