

REGIONAL MANAGER, CENTRAL BANK OF INDIA

v.

MADHULIKA GURUPRASAD DAHIR AND ORS.

(Civil Appeal No.4636 of 2008)

JULY 25, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

Service Law – Termination – For usurping post reserved for Scheduled Tribe candidate by producing false caste certificate – Justification of – On facts, held: Justified – The terminated employee cannot plead equity nor the Court would be justified to exercise equity jurisdiction in favour of such terminated employee merely because she had worked on the post for over twenty years – The fact that caste certificate of the terminated employee was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same was inconsequential inasmuch as delay on both the counts did not validate the caste certificate and the consequent illegal appointment – Equity jurisdiction – Non-exercise of.

Fraud – Held: Is anathema to all equitable principles – Any affair tainted with fraud cannot be perpetuated or saved by application of any equitable doctrine.

The First Respondent claimed to be belonging to “Thakur Scheduled Tribe” and got employment in Appellant-public sector bank, in 1981 against a post reserved for “Scheduled Tribes”, on the basis of a caste certificate issued to her in 1979. Pursuant to instructions issued by the Government of India, Ministry of Finance, Department of Economic Affairs in 1990, directing all the public sector banks/financial institutions to get the caste certificates of the existing employees, belonging to various scheduled tribes, verified, the caste certificate filed by First Re-

A spondent was referred to Committee for Scrutiny and Veri-
fication of Tribe Claims (Respondent No.2). The Scrutiny
Committee rejected the caste claim of First Respondent
and cancelled the caste certificate issued to her in 1979
Consequently, the services of First Respondent were ter-
minated by Appellant on the ground that her caste claim
B had been invalidated. First Respondent did not challenge
the correctness of the order of the Scrutiny Committee,
and the same attained finality. She however challenged
C the order of termination on the ground of inordinate de-
lay of more than 10 years in making a reference to the
Scrutiny Committee for verification of the caste certificate.
While upholding the order of the Scrutiny Committee in-
validating the caste certificate, the High Court observed
that since the service of the First Respondent was termi-
D nated after a period of twenty two years on the basis that
she did not belong to the Scheduled Tribe and she hav-
ing herself given up the claim of belonging to the Sched-
uled Tribe, the interest of justice demanded that she be
continued in service. Accordingly, the High Court
quashed the order of termination and directed reinstatement
E of First Respondent with continuity in service but
without back-wages.

In appeal to this Court, the questions, which arose
for consideration were: (i) whether delay in making refer-
F ence to the Scrutiny Committee for verification of the
caste certificate as also the delay on the part of the Scrutiny
Committee in such verification *per se* vitiates the order
of termination of services of an employee, even when
the certificate is ultimately found to be false and (ii)
G whether because of the employee having rendered ser-
vices to the employer for over twenty years, would it be
equitable to cancel her appointment, when admittedly in
the first instance the employee was not eligible for such
appointment.

H Allowing the appeal, the Court

HELD:1.1. Except in a few decisions, where the admission / appointment was not cancelled because of peculiar factual matrix obtaining therein, the consensus of judicial opinion is that equity, sympathy or generosity has no place where the original appointment rests on a false caste certificate. A person who enters the service by producing a false caste certificate and obtains appointment for the post meant for a Scheduled Caste or Scheduled Tribe or OBC, as the case may be, deprives a genuine candidate falling in either of the said categories, of appointment to that post, does not deserve any sympathy or indulgence of this Court. He who comes to the Court with a claim based on falsity and deception cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. [Para 13] [328-B,C,D,E]

1.2. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. 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 the former either by words or letter. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine. [Paras 13, 14] [328-E,F,G, H]

1.3. In the present case, First Respondent having accepted the finding of the Scrutiny Committee, holding that the caste certificate furnished by her was false, the very foundation of her appointment vanished and her appointment was rendered illegal. Her conduct renders her unfit to be continued in service and must necessarily entail termination of her service. Under these circumstances, there is absolutely no justification for her claim in respect of the post merely on the ground that she had worked on the post for over twenty years. The post was meant for a reserved candidate but she usurped the same by misrepresentation and deception. The fact that caste certificate

- A was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment. The selection of the employee was conceived in deceit and, therefore, could not be saved by equitable considerations. [Paras 16, 17] [329-D,E,F,G, 330-A,B]

- C 1.4. The impugned judgment of the High Court quashing the order of termination of service of the employee and directing her reinstatement cannot be sustained. The order of termination based on the report of the Scrutiny Committee does not suffer from any infirmity and the High Court should not have interfered with the same. [Para 18] [330-B,C]

- D *R. Vishwanatha Pillai Vs. State of Kerala & Ors*, (2004) 2 SC 105; *Bank of India & Anr. vs. Avinash D. Mandivikar & Ors*, (2005) 7 SCC 690; *Addl. General Manager, Human Resource, Bharat Heavy Electricals Ltd. vs. Suresh Ramkrishna Burde*, (2007) 5 SCC 336; *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education & Ors.*, (2003) 8 SCC 311; *Bhaurao Dagdu Paralkar Vs. State of Maharashtra & Ors.*, (2005) 7 SCC 605; *Ram Chandra Singh Vs. Savitri Devi & Ors.*, (2003) 8 SCC 319 and *Prakash Babulalsing Parmar & Anr.*, (2007) 1 SCC 80 – relied on.

- F *Kumari Madhuri Patil & Anr. vs. Addl. Commissioner, Tribal Development & Ors.*, (1994) 6 SCC 241; *Manjula Sircar & Ors. Vs. Harendra Bahadur Singh & Ors.*, AIR 2007 SC 3211 and *Punjab National Bank & Anr. vs. Vilas, S/o Govindrao Bokade & Anr.*, 2007 (8) SCALE 108 – referred to.

- G *Derry Vs. Peek*, (1889) 14 AC 337- referred to.

Case Law Reference

- | | | | |
|---|------------------|-----------|--------|
| | (2007) 5 SCC 336 | relied on | Para 8 |
| H | (2005) 7 SCC 690 | relied on | Para 8 |

REGIONAL MANAGER, CENTRAL BANK OF INDIA v. 323
MADHULIKA GURUPRASAD DAHIR & ORS. [D.K. JAIN, J.]

AIR 2007 SC 3211	referred to	Para 9	A
2007 (8) SCALE 108	referred to	Para 9	
(1994) 6 SCC 241	referred to	Para 12	
(2004) 2 SC 105	relied on	Para 13	
(1889) 14 AC 337	referred to	Para 13	B
(2003) 8 SCC 311	relied on	Para 13	
(2005) 7 SCC 605	relied on	Para 13	
(2003) 8 SCC 319	relied on	Para 14	C
(2007) 1 SCC 80	relied on	Para 15	

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4636
of 2008

From the final Judgment and Order dated 6.4.2005 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 2558 of 2003

Dinesh Mathur, Sunil Murarka, Saurav Jain and Rameshwar Prasad Goyal for the Appellant.

Ashok Srivastava, V.N. Raghupathy, Satyajit A. Desai, Anagha S. Desai and Venkateswara Rao Anumolu for the Respondent.

The Judgment of the Court was delivered by

D.K. JAIN, J.: 1. Leave granted.

2. This appeal, by special leave, has been preferred by the Central Bank of India, a public sector undertaking, against the judgment and order dated 6th April, 2005, passed by the High Court of Judicature at Bombay, Nagpur Bench, in Writ Petition No.2558 of 2003. By the impugned judgment, the writ petition filed by the first respondent, hereinafter referred to as 'the employee', challenging the order of termination of her services has been allowed with a direction to reinstate her with continuity in service but without back-wages.

A 3. The employee was appointed to the post of Clerk in the
 B appellant-Bank with effect from 18th March, 1981, against a post
 reserved for "Scheduled Tribes", as she had claimed to be be-
 C longing to "Thakur Scheduled Tribe", on the basis of a caste
 certificate issued on 4th December, 1979. In March, 1991, she
 was promoted as Junior Officer. It appears that pursuant to the
 instructions issued by the Government of India, Ministry of Fi-
 nance, Department of Economic Affairs on 23rd March, 1990,
 directing all the public sector banks/financial institutions to get
 the caste certificates of the existing employees, belonging to
 various scheduled tribes, verified, the caste certificate filed by
 the employee was referred to the Committee for Scrutiny and
 Verification of Tribe Claims, Nagpur (for short the Scrutiny Com-
 mittee), respondent No.2 herein.

D 4. The Scrutiny Committee granted an opportunity of hear-
 ing to the employee on 11th October, 1999; made its own in-
 quiries and found that the employee was not originally belong-
 ing to "Thakur Scheduled Tribe" but had obtained the Sched-
 uled Tribe certificate from the issuing authority to take advan-
 tage of various concessions given to the tribal communities.
 E The Scrutiny Committee discovered that the employee had stud-
 ied in Jeevan Shikshan Vidyalaya, Nagpur and by blotting out
 the original caste "Rajput Dahayat" as mentioned in the school
 leaving certificate, noted down the caste as "Thakur", and thus,
 took admission in college on the basis of caste certificate
 F "Thakur", which caste also got mentioned in the college leaving
 certificate of the employee. In the absence of any documentary
 evidence adduced by the employee to prove her claim, the Scr-
 utiny Committee relied on the affinity test and found that the em-
 ployee did not show any affinity towards "Thakur Scheduled
 G Tribe". Accordingly, vide its order dated 2nd May, 2000, the Scr-
 utiny Committee cancelled the caste certificate dated 4th De-
 cember, 1979, issued to the employee.

H 5. The aforesaid order of the Scrutiny Committee was
 challenged by the employee by way of a writ petition. The High
 Court allowed the writ petition on the ground that there was non

application of mind on the part of the Scrutiny Committee; set aside its order dated 2nd May, 2000 and remanded the matter to the Scrutiny Committee for reconsideration of the caste claim of the employee. A

6. Pursuant thereto, the Scrutiny Committee, reconsidered the caste claim of the employee. Concurring with its earlier findings, vide order dated 29th May, 2003, the Committee again rejected the claim of the employee and cancelled the caste certificate dated 4th December, 1979. Consequently, by order dated 28th June, 2003, the services of the employee were terminated by the appellant on the ground that her tribe claim had been invalidated. Aggrieved, the employee preferred a writ petition challenging both the said orders. B C

7. It is pertinent, however, to note that at the hearing of the writ petition before the High Court, the employee did not challenge the correctness of the order of the Scrutiny Committee, dated 29th May, 2003 and the same attained finality, which manifestly shows that the employee accepted the finding of the Scrutiny Committee that she did not belong to "Thakur Scheduled Tribe", as recorded on the caste certificate filed for obtaining employment. The order of termination of service was challenged only on the ground of inordinately delay of more than 10 years in making a reference to the Scrutiny Committee for verification of the caste certificate. Accepting the said plea of the employee, while upholding the order of the Scrutiny Committee dated 29th May, 2003, invalidating the caste certificate, the High Court has quashed the order of termination dated 28th June, 2003. The High Court has observed that since the services of the employee have been terminated after a period of twenty two years on the basis that she does not belong to the Scheduled Tribe and the employee having herself given up the claim of belonging to the Scheduled Tribe, the interest of justice demands that the employee be continued in service. Aggrieved thereby, the appellant has come up before us in this appeal. D E F G

8. Learned counsel appearing on behalf of the appellant H

- A submitted that having found that the findings of the Scrutiny Committee were correct, the High Court should not have quashed the order of termination of service, as admittedly the employee had obtained appointment by fraudulent means by producing a false caste certificate. It was asserted that neither
- B the delay in reference to the Scrutiny Committee nor the time taken by the Committee in scrutinizing the certificate can be used as a ground to validate a fraudulent action. It was also urged that having entered the service by deceitful means, rendering of long period of services does not entitle the appellant to any relief in equity. In support of the proposition, reliance was placed on the decisions of this Court in *Addl. General Manager—Human Resource, Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde¹* and *Bank of India & Anr. Vs. Avinash D. Mandivikar & Ors.²*
- C
- D 9. *Per contra*, learned senior counsel appearing on behalf of the employee, while supporting the decision of the High Court, submitted that in the absence of any finding by the Scrutiny Committee that the caste certificate had been obtained fraudulently, the High Court was justified in directing her reinstatement. Learned counsel contended that it has not been evolved as a general principle that in every case where the caste claim is rejected, the equitable jurisdiction of the Court is ousted. In support of the submission that the parameters for consideration of claim for employment are different in a case of fraud as compared to a mere rejection of such a claim, learned counsel
- E referred us to the decisions of this Court in *Suresh Ramkrishna Burde (supra)*, *Manjula Sircar & Ors. Vs. Harendra Bahadur Singh & Ors.³* and *Punjab National Bank & Anr. Vs. Vilas, S/O Govindrao Bokade & Anr.⁴*
- F
- G 10. The sequence and the narration of facts above leaves little doubt in our mind that the caste certificate, on the basis whereof the employee got employment, was false to her knowledge. Based on that the Scrutiny Committee, on reconsideration after remand by the High Court, vide order dated 29th May,
- H 2003, again invalidated employee's caste certificate, resulting

in termination of the services by order dated 28th June, 2003 (supra). As noted above, the said order of the Scrutiny Committee having not been challenged, has attained finality and remains in operation. It is, thus, not a case of mere rejection of a claim and the cited authorities are inapplicable.

11. In the above background, the questions for our consideration would be: (i) whether delay in making reference to the Scrutiny Committee for verification of the caste certificate as also the delay on the part of the Scrutiny Committee in such verification *per se* vitiates the order of termination of services of an employee, even when the certificate is ultimately found to be false and (ii) whether because of the employee having rendered services to the employer for over twenty years, would it be equitable to cancel her appointment, when admittedly in the first instance the employee was not eligible for such appointment?

12. Both the issues are no longer *res integra*. The implications of misuse of the benefits conferred by the Constitution on a particular section or sections of the citizenry were highlighted by this Court in *Kumari Madhuri Patil & Anr. Vs. Addl. Commissioner, Tribal Development & Ors.*⁵. It was said that the admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. Therefore, with a view to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, the Court issued as many as fifteen directions. One of the directions so issued, was that as soon as the finding is recorded by the Scrutiny Committee, holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned, or the appointing authority

- A: with a request to cancel the admission or the appointment. Thereupon, the admission or the appointment shall be cancelled without any further notice to the candidate and the candidate shall be debarred from further study or continue in office in a post.
- B: 13. Similarly, the plea regarding rendering of services for a long period has been considered and rejected in a series of decisions of this Court and we deem it unnecessary to launch on exhaustive dissertation on principles in this context. It would suffice to state that except in a few decisions, where the admission/appointment was not cancelled because of peculiar factual matrix obtaining therein, the consensus of judicial opinion is that equity, sympathy or generosity has no place where the original appointment rests on a false caste certificate. A person who enters the service by producing a false caste certificate and obtains appointment for the post meant for a Scheduled Caste or Scheduled Tribe or OBC, as the case may be, deprives a genuine candidate falling in either of the said categories, of appointment to that post, does not deserve any sympathy or indulgence of this Court. He who comes to the Court
- E: with a claim based on falsity and deception cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. 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 the former either by words or letter. [See: *R. Vishwanatha Pillai Vs. State of Kerala & Ors.*⁶, *Bank of India (supra)*, *Addl. General Manager (supra)*, *Derry Vs. Peek*⁷, *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education & Ors.*⁸ and *Bhaurao Dagdu Paralkar Vs. State of Maharashtra & Ors.*⁹]
- G: 14. In *Ram Chandra Singh Vs. Savitri Devi & Ors.*¹⁰, this Court had observed that fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated
- H: or saved by the application of any equitable doctrine.

15. Recently, in *State of Maharashtra & Ors. Vs. Ravi Prakash Babulalsing Parmar & Anr.*¹¹, dealing with a similar situation, this Court has observed thus: A

“The makers of the Constitution laid emphasis on equality amongst citizens. The Constitution of India provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter.” B C D

16. Having considered the matter in the light of the afore-stated legal position, in our judgment, the decision of the High Court is untenable. As noted supra, the employee having accepted the finding of the Scrutiny Committee, holding that the caste certificate furnished by the employee was false, the very foundation of her appointment vanished and her appointment was rendered illegal. Her conduct renders her unfit to be continued in service and must necessarily entail termination of her service. Under these circumstances, there is absolutely no justification for her claim in respect of the post merely on the ground that she had worked on the post for over twenty years. The post was meant for a reserved candidate but she usurped the same by misrepresentation and deception. In our opinion, the fact that caste certificate was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment. E F G H

A 17. We are also unable to persuade ourselves to agree with learned counsel for the employee that in the absence of any finding of fraud having been played by the employee, the order of the High Court is equitable and should not be interfered with. As noted above, the selection of the employee was
B conceived in deceit and, therefore, could not be saved by equitable considerations.

18. In view of the foregoing discussion, the impugned judgment and order quashing the order of termination of service of the employee and directing her reinstatement cannot be
C sustained. The order of termination based on the report of the Scrutiny Committee does not suffer from any infirmity and the High Court should not have interfered with the same.

19. Accordingly, the appeal is allowed, the judgment and
D order of the High Court dated 6th April, 2005 is set aside but with no order as to costs.

B.B.B.

Appeal allowed.