

Bhubaneswar Development Authority Vs. Madhumita Das & Ors.

Civil Appeal No. 3320 of 2023 arising out of SLP (C) No. 9090 of 2020
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Full judgment text

Bhubaneswar Development Authority Vs. Madhumita Das & Ors.

[Civil Appeal No. 3320 of 2023 arising out of SLP (C) No. 9090 of 2020]

Dr. Dhananjaya Y. Chandrachud, CJI

1. Leave granted.

2. This appeal arises from a judgment dated 30 October 2019 of a Division Bench of the High Court of Orissa.

3. On 17 October 1998, the first respondent joined the service of the appellant as a Junior Assistant against a post reserved for women belonging to the Scheduled Castes. In support of her plea of belonging to a Scheduled Caste, the first respondent submitted a caste certificate which was issued by the Tehsildar, Bhubaneswar. The caste certificate was issued on 5 January 1996 in Miscellaneous Case No. 7/1996, mentioning that the first respondent belonged to a Scheduled Caste, "Dewar".

4. On 2 August 2011, the appellant requested the Sub-Collector, Khurda (the fourth respondent) to enquire into the veracity of the caste certificate on the ground that the high school certificate and provisional marks sheet of the first respondent at the 12th standard examination revealed that she was a Brahmin. On 3 August 2011, the Sub-Collector directed an enquiry to verify the authenticity of the caste certificate issued to the first respondent.

5. On 5 August 2011, the Tehsildar (the second respondent) issued a notice to show cause to the first respondent after registering Rev. Misc. Case No. 47 of 2011. In her response dated 16 August 2011, the first respondent stated she was born into a Brahmin family. However, she claimed to have attained the status of a Scheduled Caste upon her marriage on 21 July 1993 to a person belonging to a Scheduled Caste.

6. On 16 August 2011, the Tehsildar passed an order cancelling the caste certificate of the first respondent under Rule 8(2) of the Orissa Caste Certificate (for Scheduled Castes and Scheduled Tribes) Rules, 1980. Placing reliance on the decisions of this Court in Valsamma Paul v. Cochin University¹ and Anjan Kumar v. Union of India², the Tehsildar rejected the submissions of the first respondent that as a result of marriage, she had become a member of a Scheduled Caste.

The Tehsildar also relied on the directions of the Union Ministry of Home Affairs dated 2 May 1975 stating that a person who is not a Scheduled Caste or Scheduled Tribe by birth will not be deemed to belong to the reserved community. Moreover, the Tehsildar noted that the husband of the first respondent belonged to the "Kaibarta" caste, but the caste certificate of the first respondent showed her as belonging to the "Dewar" caste. Therefore, the Tehsildar observed that the first respondent had misled the authority at the time of the grant of the caste certificate.

7. Following the cancellation of the caste certificate, the appellant commenced disciplinary proceedings against the first respondent on 26 August 2011 by issuing a memorandum of charges under the Orissa Civil Services (Classification, Control, and Appeal) Rules, 1962. An enquiry officer was appointed to inquire into the charges against the first respondent. The first respondent was permitted to participate in the enquiry.

8. On 13 January 2012, the enquiry officer submitted the report, a copy of which was served on the first respondent in order to furnish an opportunity of submitting her representation on the findings. Thereafter, the disciplinary authority proposed to dismiss the first respondent from service and recover the salary which was paid to her upon the findings in the enquiry. A show cause notice was issued to the first respondent.

9. The first respondent challenged the order cancelling her caste certificate before the Collector, Khurda. By an order dated 23 March 2012, the Collector rejected the appeal of the first respondent and upheld the order of the Tehsildar dated 16 August 2011 cancelling her caste certificate.

10. On 13 March 2012, the appellant passed an order dismissing the first respondent from service. The appellant also ordered recovery of all the money received by the first respondent towards her salary and other perquisites during service. The first respondent challenged her dismissal before the High Court under Article 226 of the Constitution of India.

11. By a judgment dated 25 January 2018, a Single Judge upheld the cancellation of the caste certificate of the first respondent but directed the appellant to consider her continuance in the post, inter alia, by relying upon the decisions of this Court in *Kavita Solunke v. State of Maharashtra*³ and *Shalini v. New English High School Association*⁴.

The Single Judge observed that the first respondent did not obtain the caste certificate fraudulently. Therefore, the court directed the appellant to consider her continuance in the post in the event that the post was lying vacant. In the event that the post was not vacant, the Single Judge directed the appellant to consider her immediate absorption in a parallel post. However, the Single Judge directed that if the first respondent is reinstated, she would be disentitled to any future promotions and benefits.

12. A writ appeal was filed against the order of the Single Judge with a delay of five hundred and sixty-four days. The Division Bench by its impugned judgment dated 30 October 2019 declined to condone the delay. The Court held that the reasons for delay provided by the appellant did not constitute sufficient cause. Consequently, the writ appeal was dismissed.

13. The first respondent has filed a counter-affidavit averring that the appellant failed to assign sufficient reason to account for the inordinate delay of five hundred and sixty-four days. Moreover, the first respondent urged that the order of the Single Judge dated 25 January 2018 should not be interfered with. It has been urged that the Single Judge did not direct the appellant to compulsorily reinstate the first respondent, as was done in *Kavita Solunke* (supra) and *Shalini* (supra). Therefore, the directions passed by the Single Judge are (according to the submission) not based on the decisions of this Court in *Kavita Solunke* (supra) and *Shalini* (supra).

14. We have perused the reasons which were placed on the record of the Division Bench for condoning the delay. The State had explained in detail the steps which were taken to take necessary approvals for the purpose of processing the writ appeal. Besides declining to condone the delay in this case would have serious consequences of allowing an imposter to continue having the benefit of a reserved seat. This is not just a matter of detriment to the state but to genuine aspirants to the reserved seat who would be ousted. We are of the considered view that the Division Bench ought to have condoned the delay in the facts of this case.

15. The first respondent obtained employment with the appellant against a post which was reserved for the Scheduled Caste. She did so on the strength of a caste certificate. The caste certificate has been invalidated by the Tehsildar by relying upon the decisions of this Court in *Valsamma Paul* (supra) and *Anjan Kumar* (supra).

16. In *Valsamma Paul* (supra), the appellant belonged to a forward caste but claimed that she had become a member of the reserved community by marriage. The appellant's selection for the post of lecturer as a reserved candidate was challenged by another candidate. The question before a two Judge Bench was whether a person of a forward caste becomes entitled to claim reservation under Articles 15(4) or 16(4) of the Constitution by marrying a person belonging to the reserved community. This Court held that a person from a forward caste who is transplanted in the backward caste by adoption, marriage or conversion will not be entitled to reservation:

34. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

17. In Anjan Kumar (supra), the question before this Court was whether a person born from a marriage between a tribal wife and a non-tribal husband could claim the status of Scheduled Tribe. This Court held that such a person cannot claim tribal status, unless they show that they have suffered social, economic, and educational disabilities. This Court referred to a catena of decisions, including Valsamma Paul (supra), to observe that a condition precedent for granting a tribe certificate is that one must suffer disabilities from where one belongs.

18. In the order dated 16 August 2011, the Tehsildar observed that the first respondent did not claim that she suffered disability or disadvantage as a result of her marriage. Therefore, the Tehsildar was correct in invalidating the caste certificate of the first respondent on the ground that she did not belong to a Scheduled Caste by birth and her marriage to a person belonging to a Scheduled Caste would not entitle her to the benefit of the reservation for persons belonging to the caste of her spouse.

19. The Single Judge of the High Court directed the appellant to reconsider the claim of the first respondent for reinstatement on the basis of the decisions of this Court in Kavita Solunke (supra) and Shalini (supra). However, both these decisions have been overruled by a larger Bench of three Judges of this Court in Chairman and Managing Director, Food Corporation of India v. Jagdish Balaram Bahira.⁵

20. In Shalini (supra), a two Judge Bench of this Court relied on Kavita Solunke (supra) to propound a test of dishonest intention for the grant or denial of protection to persons whose caste claims have been invalidated. In Shalini (supra), this Court directed reinstatement of the individual whose caste certificate was found to be invalid because they did not intentionally falsify their caste certificate.

21. In Chairman and Managing Director, Food Corporation of India (supra), the issue before this Court was whether protection should be granted to individuals who secure access to reservation in spite of the fact that they do not belong to the reserved community. This Court overruled Kavita Solunke (supra) and Shalini (supra) on the ground that it would be contrary to the express provision of the law to import the requirement of dishonest intention. This court held:

55. The intent of a candidate may be of relevance only if there is a prosecution for a criminal offence. However, where a civil consequence of withdrawing the benefits which have accrued on the basis of a false caste claim is in issue, it would be contrary to the legislative intent to import the requirement of a dishonest intent.

In importing such a requirement, the Bench of two Judges in Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] has, with great respect, fallen into error. The judgment in Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] must, therefore, be held not to lay down the correct principle. In the very nature of things it would be casting an impossible burden to delve into the mental processes of an applicant for a caste certificate.

This Court further held that granting protection to individuals who are ineligible for the post has a deleterious effect on good governance as it: (i) allows an ineligible person to gain access to a scarce public resource (public employment); (ii) violates the rights of eligible persons; and (iii) perpetuates illegality by unduly bestowing benefits on an ineligible person.

22. The first respondent obtained employment against a post reserved for Scheduled Castes to which she was not entitled. The effect is to displace a genuine candidate, who would otherwise have been entitled to the post. No fault can be found with the conduct of the appellant in convening a disciplinary enquiry. The findings of the enquiry are unexceptionable.

The punishment which was imposed could not be regarded as disproportionate. Irrespective of whether or not the caste claim of the first respondent was fraudulent or otherwise, it is evident that the benefit which she obtained of securing employment against a reserved post would have to be recalled once the caste claim has been rejected.

23. In view of the clear principle of law which has been formulated in the judgment of this Court in Chairman and Managing Director, Food Corporation of India (supra), we are of the view that the Single Judge of the High Court was in error in issuing a direction for reconsideration of the claim of the first respondent for reinstatement.

24. However, in the facts and circumstances of the case, we order and direct that no recovery shall be made from the first respondent of the salary which was paid to her for the period for which she has actually

worked.

25. With the above reasons and subject to the aforesaid clarification, we allow the appeal and set aside the impugned judgment and order of the High Court dated 30 October 2019. In consequence, the judgment of the Single Judge shall also stand set aside. The writ petition instituted by the first respondent shall stand dismissed.

26. Pending applications, if any, stand disposed of.

Bhubaneswar Development Authority Vs. Madhumita Das & Ors.

[Civil Appeal No. 3320 of 2023 arising out of SLP (C) No. 9090 of 2020]

1. Leave granted.

2. This appeal arises from a judgment of a Division Bench of the High Court of Orissa dated 30 October 2019.

3. The first respondent joined the service of the appellant as a Junior Assistant against a post reserved for women belonging to Scheduled Castes category. In support of her plea of belonging to a Scheduled Caste, the first respondent submitted a caste certificate which was issued by the Tehsildar, Bhubaneswar. The caste certificate was issued on 5 January 1996.

4. A Miscellaneous Case No 7/1996 was filed mentioning that the first respondent belong to a Scheduled Caste, "Dewar".

5. On 2 August 2011, the appellant requested the Sub-Collector, Khurda (the fourth respondent) to enquire into the veracity of the caste certificate on the ground that the high school certificate and provisional marks sheet of the first respondent and the 12th standard examination reveal that she was a Brahmin.

6. The Tehsildar issued notice to show cause to the first respondent after registering Rev. Misc. Case No 47 of 2011.

7. In her response dated 16 August 2011, the first respondent stated that she was born into a Brahmin family but claimed to have attained the status of a Schedule Caste upon her marriage on 21 July 1993 to a person belonging to a Scheduled Caste.

8. On 16 August 2011, the Tehsildar passed an order cancelling the caste certificate of the first respondent under Rule 8(2) of the Orissa Caste Certificate (for Scheduled Castes and Scheduled Tribes) Rules, 1980. Placing reliance on the decisions of this Court in Valsamma Paul vs Cochin University⁶ and Anjan Kumar vs Union of India⁷, the Tehsildar rejected the submissions of the first respondent that as a result of marriage, she had become a member of a Schedule Caste. The Tehsildar also relied on the directions of the Union Ministry of Home Affairs that a person who is not a Scheduled Caste or Schedule Tribe by birth will not be deemed to belong to a reserved community.

9. Following the cancellation of the caste certificate, the appellant commenced disciplinary proceedings against the first respondent on 26 August 2011 by issuing a memorandum of charges under the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. The first respondent was permitted to participate in the enquiry.

10. The enquiry officer submitted his report dated 13 January 2012, a copy of which was served on the first respondent in order to furnish an opportunity of submitting her representation on the findings.

11. The disciplinary authority proposed to dismiss the first respondent from service and to recover the salary which was paid to her upon the findings in the enquiry. A show cause notice was issued to the first respondent.

12. The first respondent challenged the order cancelling her caste certificate before the Collector, Khurda.

13. In the meantime, on 13 March 2012, the appellant passed an order dismissing the first respondent from service.

14. The first respondent challenged her dismissal before the High Court under Article 226 of the Constitution of India.

15. By a judgment dated 25 January 2018, a single Judge upheld the cancellation of the caste certificate of the first respondent but directed the appellant to consider her continuance in the post, inter alia, by relying upon the decisions of this Court in Kavita Solunke Vs State of Maharashtra & Ors⁸ and Shalini Vs New English High School Assn & Ors⁹. However, the single Judge directed that if the first respondent is reinstated, he would be disentitled to any future promotions and benefits.

16. A writ appeal was filed against the order of the single Judge with a delay of 564 days. The Division Bench by its impugned judgment dated 30 October 2019 declined to condone the delay and consequently dismissed the writ appeal.

17. We have perused the reasons which were placed on the record of the Division Bench for condoning the delay. The State had explained in detail the steps which were taken to take necessary approvals for the purpose of processing the writ appeal. We are of the considered view that the Division Bench ought to have condoned the delay in the facts of this case.

18. On the merits, it is evident that the first respondent obtained employment with the appellant against a post which was reserved for the Scheduled Castes. She did so on the strength of a caste certificate. The caste certificate has been invalidated correctly on the ground that the first respondent did not belong to a Scheduled Caste by birth and her marriage to a person belonging to a Schedule Caste would not entitle her to the benefit of the reservation for persons belonging to the Schedule Castes.

This aspect is settled by the decisions of this Court in Valsamma Paul (supra) and Anjan Kumar (supra). The High Court, however, persuaded the appellant to reconsider the claim of the first respondent for reinstatement on the basis of the two decisions of this Court in Kavita Solunke and Shalini noted above. Both these decisions have since been overruled by a larger bench of three Judges of this Court in Chairman and Managing Director, Food Corporation of India Vs Jagdish Balaram Bahira¹⁰.

19. The first respondent obtained employment against a post reserved for Scheduled Castes to which she was clearly not entitled. The effect is to displace a genuine candidate, who would otherwise have been entitled to the post. No fault can be found with the conduct of the appellant in convening a disciplinary enquiry. The findings of the enquiry are unexceptionable.

The punishment which was imposed could not be regarded as disproportionate. Irrespective of whether or not the caste claim of the first respondent was fraudulent or otherwise, it is evident that the benefit which she obtained securing employment against a reserved post would have to be set aside once the caste claim has been rejected.

20. In view of the clear principle of law which has been formulated in the judgment of this Court in Chairman and Managing Director, Food Corporation of India (supra), we are of the view that the single Judge of the High Court was in error in issuing a direction for reconsideration.

21. However, in the facts and circumstances of the case, we order and direct that no recovery shall be made from the first respondent of the salary which was paid to her for the period to which she had actually worked.

22. With the above reasons and subject to the aforesaid clarification, we allow the appeal and set aside the impugned judgment and order of the High Court dated 30 October 2019. In consequence, the judgment of the single Judge shall also stand set aside and the writ petition instituted by the first respondent shall stand dismissed.

23. Pending applications, if any, stand disposed of.

1 (1996) 3 SCC 545

2 (2006) 3 SCC 257

3 (2012) 8 SCC 430

4 (2013) 16 SCC 526

5 (2017) 8 SCC 670

6 (1996) 3 SCC 545

7 (2006) 3 SCC 257

8 (2012) 8 SCC 430

9 (2013) 16 SCC 526

10 (2017) 8 SCC 670

Item No. 7

Bhubaneswar Development Authority Vs. Madhumita Das & Ors.

[Petition(s) for Special Leave to Appeal (C) No(s). 9090/2020 arising out of impugned final judgment and order dated 30-10-2019 in IA No. 625/2019 passed by the High Court Of Orissa At Cuttack]

[IA No. 66501/2020 - EXEMPTION FROM FILING O.T.]

These matters were called on for hearing today.

CORAM:

HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s)

Mr. Ashok Panigrahi, AOR Mr. Nabab Singh, Adv. Ms. Geetanjali Das Krishnan, Adv.

For Respondent(s)

Mr. Animesh Kumar, Adv. Mr. Neeraj Shekhar, AOR Mr. Nishant Kumar, Adv. Ms. Aprajita, Adv.

UPON hearing the counsel the Court made the following

1. The appeal is allowed in terms of the signed reportable judgment operative part of which reads as under:

"20. In view of the clear principle of law which has been formulated in the judgment of this Court in Chairman and Managing Director, Food Corporation of India (supra), we are of the view that the single Judge of the High Court was in error in issuing a direction for reconsideration.

21. However, in the facts and circumstances of the case, we order and direct that no recovery shall be made from the first respondent of the salary which was paid to her for the period to which she had actually worked.

22. With the above reasons and subject to the aforesaid clarification, we allow the appeal and set aside the impugned judgment and order of the High Court dated 30 October 2019. In consequence, the judgment of the single Judge shall also stand set aside and the writ petition instituted by the first respondent shall stand dismissed.

23. Pending applications, if any, stand disposed of."

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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