

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 326 of 2000.

Dated this Friday, the 9th day of February, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

Smt. Vidya Prakash Salunke,  
Technical Officer under  
Director of National  
Institute of Virology,  
20-A, Dr. Ambedkar Road,  
Pune - 411 001.

... Applicant.

(By Advocate Shri Uday Warunjikar)

VERSUS

1. Union of India through  
The Director General,  
Indian Council of Medical  
Research, New Delhi.

2. The Director,  
National Institute of  
Virology,  
20-A, Dr. Ambedkar Road,  
Pune - 411 001.

.... Respondents.

(By Advocate Shri A.B. Avadh).

OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Smt. Vidya Prakash Salunke seeking the relief from this Tribunal for the quashing and setting aside of the interim order dated 11.04.2000 (Annexure A-1) or in the alternative for a direction to the Respondents to consider the candidature of Applicant for general category post on notional basis for D.P.C. of 1990/subsequent D.P.Cs. and for consequential relief of promotions.

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2. The case made out by the Applicant and strenuously argued on her behalf by the Learned Counsel, Shri Uday Warunjikar, is as follows :

The Applicant entered the service of the Respondents in 1973 and is admittedly a person belonging to the open (non-reserved) category. In 1984, she married a person belonging to the Scheduled Caste. In 1989, she was promoted as Sr. Technical Assistant on a post reserved for Scheduled Caste category i.e. she obtained the benefit of reservation. She was promoted with effect from 04.09.1990, on regular basis. Subsequently, in 1992 she appeared at a selection process wherein a special Recruitment Drive was held for Scheduled Castes and Scheduled Tribes and after being successful at the process of selection, was further promoted as Technical Officer on a post reserved for S/C category, being appointed on 08.01.1993. The grievance of the Applicant starts in view of the impugned order dated 11.04.2000 where it has been held that her status of reserved category is withdrawn and that the benefits of promotion given to her as per orders quoted therein are also withdrawn. The Applicant is thereafter reverted. It is also stated that benefits of promotion, if any, to the Applicant as a general candidate, would be reviewed in the next D.P.C. meeting. It may be noted here that this order has been passed after providing her with an opportunity to show cause as per Show Cause Notice dated 02.03.2000 (Page 24, Exhibit A-6). Thus, the principles of natural justice have admittedly been followed.

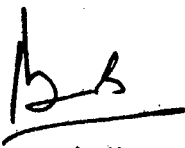
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3. The Respondents in the case have filed a written statement where the defence taken is that the benefits accorded to the Applicant were wrong and that the caste certificate issued as a Scheduled Caste and the benefits provided accordingly were also wrong. Details of the case have been described in the Written Statement. It is stated that the matter has been settled in the judgement of the Apex Court and the contention of the Applicant that it has prospective effect is not correct. The judgement referred to is a judgement in the matter of Valsamma Paul (Mrs.) V/s. Cochin University & Others reported in 1996 (3) SCC 545.

4. We have perused all papers in the case and have heard the Learned Counsel on both sides. We have also provided one adjournment to enable the Respondents to file some documents to show whether benefits as open category candidate have subsequently been granted.

5. The Learned Counsel for the Applicant argued the case mainly on the point that the effect of the judgement of the Hon'ble Supreme Court will have to be taken prospectively. He made the contention that it was clear, in the background of the litigation prior to the Supreme Court judgement, that the law was not settled earlier. What has happened, according to the Learned Counsel, was that a new law is now brought in position by the judgement of the Supreme Court. Therefore, he argues, this must necessarily have prospective effect, and the benefits granted prior to this date should remain unaffected.



6. It was also argued by the Learned Counsel for Applicant that in the case of State of Tripura V/s. Smt. Namita Majumdar decided by the Hon'ble Supreme Court (1998 SCC L&S 526) the benefit was accorded ultimately to the person concerned, even though the basic ratio was the same..

7. The Learned Counsel, Shri Warunjikar, also referred to the judgement of the Supreme Court in the case of Madhuri Patil V/s. Additional Commissioner, Tribal Development reported in 1994 SCC (L&S) 1349, stating that a Caste Certificate remains valid until it was cancelled duly by a competent authority. Till this was done, the validity would remain. In fact, the pointed argument made here was that the action of the Respondents in declaring the Caste Certificate as invalid in the impugned order was bad in law. A judgement of the Hon'ble Calcutta High Court was also cited in this regard (M.C. Misra V/s. Rabindra Nath Das reported in 1996 (2) SLR 559). Another plank of argument made by the Learned Counsel for the applicant relied, of course, on the plea that in any case the benefits that the Applicant was entitled to, as a open category candidate, should be provided to her without prejudice to the stand taken by the Applicant otherwise.

8. Arguing the case on behalf of the Respondents, the Learned Counsel, Shri A.B. Avad rested his argument on the written statement and further made the point that it was clear from a reading of the judgement of the Supreme Court in Mrs. V. Paul's case that it was not a new law which was being laid down,

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but an interpretation was being made. Even executive instructions (Guidelines in Appendix-4 issued by M.H.A. circular dated 22.03.1977) before the judgement came to be made, were against the case of the Applicant in as much as they held that such persons who married a husband from Scheduled Caste was not entitled to benefits of reservation. It was argued that there was no force in the contention that the judgement would have only prospective effect and that the Applicant could not be saved from earlier effect

9. Now there is not much to be discussed on the basic issue of entitlement, since this has been settled by the Hon'ble Apex Court in the matter of Valsamma Paul. It is, therefore, clear that the Applicant is not entitled to benefits of reservation at all, since the ratio of the case of the Apex Court is applicable here.

10. We now take up the argument regarding the prospective effect or otherwise, as argued by the Applicant's Learned Counsel. It can straightaway be said after considering all aspects of the arguments made that it is not a new law that has been laid by the Hon'ble Supreme Court. It is not true to say that a different law prevailed earlier on. The position may well have been unclear to some, but it has clearly been decided by the Supreme Court that for a lady who comes to a family of a reserved class by a voluntary act, cannot ex-facto claim to entitle reservation.

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It is clear from the judgement that no retrospective benefit can be claimed merely by citing the ratio of the judgement of the Supreme Court. Even the point made by the Learned Counsel about the benefit being granted in Mrs. Majumdar's case cannot come to his rescue, because such powers cannot be exercised by Tribunals like Ours and the quoting of powers exercised by the Supreme Court will not help the case of the present Applicant.

11. We have also seen in this connection that even the executive guidelines, as far as in 1977, had noted that no person who was not a SC/ST by birth will be deemed to be a Member of a SC/ST because he or she married a person belonging to SC/ST. Hence, it is not as if different executive instructions existed in the past. This issue has also been considered by a Bench of this Tribunal in O.A. No. 588/97 decided on 16.03.2000 and as argued by the Learned Counsel for Respondents, it has been held in this case that such a cancellation of appointment deserves to be upheld. In this case, of course, the cancellation is only of promotion but the decision in O.A. No. 588/97 certainly provides help to the argument made by the Respondents. Similarly, the judgement of the Calcutta High Court cannot help the Applicant.

12. The Learned Counsel for Applicant sought to seek help of the ratio in the case of Madhuri Patil decided by the Hon'ble Supreme Court. We have considered this aspect clearly and we find that the effort that is being made is to take support of a hyper-technical argument. What is really being stated is that,

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even if we agree, as is clear, that the applicant is not entitled to any benefit in terms of a clear decision by the Hon'ble Supreme Court, the Tribunal should be hamstrung merely by the fact that the Certificate has not been cancelled. Such an aspect goes contrary to the need for substantial justice and in fact, any reliance on Madhuri Patil's case in the peculiar facts and circumstances of the case would defeat the ends of justice by resorting to a wrong application of a ratio. Therefore, the case as made out by the Learned Counsel for the Applicant cannot be sustained.

13. Now we come to the point regarding the eligibility of the Applicant to benefits as open category employee of the Respondents. We have no doubt that such benefits are obviously available to her in terms of the facts and circumstances in her case and subject to rules. Nor has this been denied by the Respondents. In fact, it is stated that such benefits have already been provided. Beyond saying that she is entitled undisputably to such benefits, we need not go further, since neither do we have full facts in the matter nor indeed is it before us specifically herein.

14. In the consequence, this application is hereby dismissed. No order as to costs.

  
(S.L. JAIN)  
MEMBER (J).

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(B.N. BAHADUR)  
MEMBER (A).