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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3894 OF 2009

Atul Yadavrao Barapatre,

Age 42 years, r/at Gajanan Apartment
Room No.3, Tisgaon Road, Behind
Shiv Sena Office, Kalyan (East),
District Thane 421 305

... Petitioner

ATUL
GANESH
KULKARNI

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ATUL GANESH
KULKARNI
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Vs.

- 1. University of Mumbai,**
through the Registrar, D.N. Road,
Fort, Mumbai 400 023
- 2. The Joint Director Higher & Technical
Education,** Elphinstone Technical
Institute, Dhobi Talao, Mumbai
- 3. State of Maharashtra,**
through the Department of Higher &
Technical Education, Mantralaya
Annexe, Mumbai 400 032

... Respondents

Mr. Mihir Desai, Senior Advocate i/by Ms. Rishika
Agarwal for the petitioner.

Mr. Rui A. Rodrigues for respondent No.1-University.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 30, 2026.

PRONOUNCED ON : MAY 7, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the legality, correctness, and propriety of the order dated 17 March 2009 passed by the learned College Tribunal, whereby the proceedings initiated by the petitioner came to be dismissed, and the action impugned therein was sustained.
2. The brief facts giving rise to the present writ petition, as set out by the petitioner, may be stated thus. A Government Resolution dated 15 June 1995 came to be issued by the State Government, whereby the Koshti community was identified and included in the category of Special Backward Class (SBC), and reservation to the extent of 2% was provided for candidates belonging to the said category. The petitioner came to be appointed on 14 August 1996 as a Clerk with respondent No.1 University against a post reserved for Scheduled Tribe category, namely Halba community. Subsequently, the caste claim of the petitioner was referred to the competent Caste Scrutiny Committee for verification. The Scrutiny Committee, by its decision rendered in the year 1997, invalidated the caste claim of the petitioner as belonging to Halba Scheduled Tribe and recorded a finding that the petitioner in fact belonged to the Koshti community, which was recognized as falling under the Special Backward Class category.
3. Being aggrieved by the order passed by the Caste Scrutiny Committee, the petitioner along with two similarly situated employees approached this Court by filing separate writ petitions

challenging the invalidation of their caste claims. However, by an order dated 5 February 2004, the writ petition preferred by the present petitioner came to be dismissed. In the meanwhile, the State Government issued another Government Resolution dated 30 June 2004 providing, inter alia, that those candidates who had been erroneously appointed against posts reserved for Scheduled Tribes prior to 15 June 1995, though subsequently found not to belong to the Scheduled Tribe category, would be granted protection against termination from service.

4. Thereafter, respondent University constituted a Committee under the chairmanship of Shri Rajendra Goswami for considering the service status and continuation of the petitioner and two other similarly situated employees. The said Committee, upon consideration of the matter, recommended that the petitioner and the concerned employees be absorbed against posts meant for the Special Backward Class category in the University establishment. The recommendations of the Committee came to be accepted by the Management Council of the University, and the said decision was communicated to the petitioner by letter dated 25 May 2005. Thereafter, the petitioner came to be promoted to the post of Senior Typist by an office order dated 9 December 2005. The petitioner was accordingly treated as having been absorbed in service as an SBC category employee and continued to discharge duties in such capacity. By a further order dated 19 June 2006, the services of the petitioner were continued by the University. It further appears that the petitioner was subsequently issued a fresh caste certificate recognizing him as belonging to the SBC category

by the competent Caste Scrutiny Committee at Nagpur.

5. It is the case of the petitioner that respondent University thereafter received a communication dated 13 February 2007 issued by the Desk Officer, Higher and Technical Education Department, directing that the services of the petitioner and two other similarly situated employees be terminated. Apprehending coercive action on the basis of the said communication, the petitioner approached this Court by filing Writ Petition No.486 of 2007. During pendency of the said proceedings, the petitioner was served with an order dated 2 March 2007 terminating his services. On the very same date, a copy of the communication dated 13 February 2007 was also furnished to the petitioner, which according to him had not been supplied earlier, though the apprehension arising therefrom had already compelled him to invoke the writ jurisdiction of this Court.

6. This Court, by an order dated 25 March 2008, directed the petitioner to avail of the alternative statutory remedy before the College Tribunal. Pursuant thereto, the petitioner approached the learned College Tribunal by instituting appropriate proceedings challenging the order of termination. The learned College Tribunal, however, by its order dated 17 March 2008, dismissed the appeal preferred by the petitioner. Being dissatisfied with the said adjudication and contending that the Tribunal failed to properly appreciate the factual and legal aspects governing the controversy, the petitioner has instituted the present writ petition invoking the supervisory and extraordinary jurisdiction of this Court.

7. Mr. Desai, learned Senior Counsel appearing on behalf of the petitioner, submitted that the petitioner was never continued against the very same post on which he was initially appointed under the Scheduled Tribe category and reflected as such in the reservation roster. According to the learned Senior Counsel, the petitioner possessed all requisite qualifications for holding the post in question and had rendered uninterrupted service for more than a decade with an unblemished record. It is further submitted that, in recognition of his satisfactory service performance, the petitioner was also promoted to the post of Senior Clerk. Learned Senior Counsel would contend that the petitioner was subsequently absorbed against an altogether distinct post earmarked for the Special Backward Class category in terms of the Government Resolution dated 15 June 1995. It is therefore urged that the continuation of the petitioner in service was not by way of any protective measure extended to employees appointed prior to 15 June 1995, nor could such continuation be equated with the protection contemplated by the judgment of the Supreme Court in *State of Maharashtra vs. Milind*, 2001(1) Mh.L.J. (SC) 1.

8. Elaborating the aforesaid submissions, Mr. Desai contended that merely because the Government Resolution contemplates filling up of posts reserved for Special Backward Class candidates through direct recruitment, the same by itself does not prohibit or exclude absorption of an employee in an appropriate case. According to him, the petitioner, pursuant to the recommendations of the Jitendra Goswami Committee, came to be adjusted and absorbed within the 2% quota reserved for Special Backward Class

candidates and that too at a separate and distinct point in the reservation roster. It is submitted that by virtue of such absorption, the petitioner ceased to hold the post reserved for Scheduled Tribe candidates and the conditions attached to such reserved category post no longer survived. Learned Senior Counsel therefore urged that the absorption of the petitioner against the Special Backward Class quota was lawful, valid and regular in all respects.

9. Per contra, Mr. Rodrigues, learned Counsel appearing for respondent No.1 University, opposed the petition and submitted that the University had referred the case of the petitioner to respondent No.2, namely the Joint Director of Higher and Technical Education, Mumbai Region, Mumbai, for approval in respect of the action taken by the University in absorbing the petitioner under the Special Backward Class category and continuing him in service. It is submitted that respondent No.2 thereafter referred the matter to respondent No.3, namely the Department of Higher and Technical Education, Government of Maharashtra, Mantralaya, Mumbai. According to the learned Counsel, respondent No.3, by communication dated 13 February 2007, informed respondent No.1 University that since the petitioner had entered service after issuance of Government Resolution dated 15 June 1995, he was not entitled to any protection in service, and accordingly directed the University to terminate his services forthwith. Pursuant thereto, respondent No.1 issued the order dated 2 March 2007 terminating the services of the petitioner. Learned Counsel submitted that being aggrieved thereby, the petitioner preferred an appeal under Section 59(1) of

the Maharashtra Universities Act, 1994 before the College Tribunal, Mumbai being Appeal No.79 of 2008. It is submitted that the learned College Tribunal, upon consideration of the matter, categorically held that the petitioner was not entitled to absorption against the backlog vacancy of the Special Backward Class category and further held that the petitioner was not entitled to reinstatement with full back wages.

10. Mr. Rodrigues further submitted that the reservation contemplated under the Government Resolution was intended exclusively for candidates belonging to the Special Backward Class category at the stage of initial recruitment and not for absorption of persons like the petitioner, who had originally secured appointment against a post reserved for Scheduled Tribe candidates upon claiming to belong to a Scheduled Tribe category. According to the learned Counsel, the very basis of the petitioner's initial appointment was his representation that he belonged to Halba Scheduled Tribe, and therefore subsequent absorption in the Special Backward Class category could not be sustained in law.

11. Inviting attention to paragraph 4 of the Government Resolution dated 15 June 1995, Mr. Rodrigues submitted that the reservation of 2% in favour of Special Backward Class candidates was specifically made applicable at the stage of fresh recruitment. According to him, though the petitioner was appointed after issuance of the said Government Resolution, such appointment was admittedly against a post reserved for Scheduled Tribe category and not against a post reserved for Special Backward Class category. Learned Counsel further submitted that an identical

contention had earlier been raised by the petitioner before this Court in Writ Petition No.5281 of 1997, which came to be expressly rejected.

12. Learned Counsel for respondent No.1 further pointed out that subsequent to termination of the petitioner from service, the University has already appointed one Smt. A.A. Kadulkar against the post which was earlier held by the petitioner.

13. Without prejudice to his principal submissions, Mr. Desai, learned Senior Counsel appearing for the petitioner, submitted that even assuming this Court were to uphold the legality of the impugned order, the services rendered by the petitioner from the date of his initial appointment i.e. 20 August 1996 till the date of termination deserve to be treated as qualifying service for the purposes of pensionary and retiral benefits. In support of the said submission, reliance was placed upon Rule 30 of the Maharashtra Cooperative Societies Rules, 1961.

14. In rejoinder, Mr. Rodrigues, learned Counsel for respondent No.1, by inviting attention to the communication issued by the State Government, submitted that the decision ultimately taken by the University was merely in compliance with the binding directions issued by the State Government under the provisions of the Maharashtra Universities Act. It is submitted that in absence of any substantive challenge to the communication and directive issued by the State Government, the challenge raised only to the consequential order passed by the University under Section 59 proceedings would be of no avail. Learned Counsel further

submitted that merely because the petitioner's case had been favourably considered by a one member committee and such recommendation was accepted at the level of the Vice Chancellor, the same could not override or prevail upon the binding directive subsequently issued by the State Government. He therefore submitted that the learned College Tribunal committed no error in dismissing the appeal preferred by the petitioner.

REASONS AND ANALYSIS:

15. I have given thoughtful consideration to the rival submissions advanced on behalf of the parties and also to the documents and material placed on record.

16. The first submission advanced by Mr. Desai, learned Senior Counsel appearing for the petitioner, is that the petitioner was never thereafter continued on the very same post which was originally earmarked for Scheduled Tribe category in the reservation roster. Learned Senior Counsel submitted that after the caste claim came to be invalidated, the petitioner was shifted and absorbed against a different post reserved for SBC category and, therefore, the present case should not be treated as a case of protecting a wrongly appointed Scheduled Tribe employee. According to him, once the petitioner stood absorbed in another category and at another roster point, the original defect attached to the first appointment ceased to survive. At first glance, this submission appears attractive and carries certain persuasive value because the material placed on record indeed shows that the University authorities took steps to treat the petitioner differently

after the Scrutiny Committee decision. However, upon deeper examination, this Court is unable to accept the submission in the manner canvassed by the petitioner. The issue cannot be decided merely on change of nomenclature of roster position. Substance of the matter must prevail over form. The petitioner entered service only because he claimed to belong to Halba Scheduled Tribe category and secured appointment against a reserved post meant for such category. The foundation of entry into service was therefore based on the Scheduled Tribe claim. Once the Scrutiny Committee invalidated such caste claim and recorded a finding that the petitioner did not belong to Halba community, the foundation of the appointment itself became vulnerable. In such situation, mere subsequent absorption by an administrative procedure would not cure the defect unless the law itself specifically authorises such course. No provision has been shown to this Court under which a candidate whose original caste claim failed could migrate into another reserved category by way of absorption. The petitioner has relied more upon equitable considerations and administrative decisions than upon any statutory source of power. In absence of such legal authority, the subsequent absorption cannot independently create a vested right in favour of the petitioner. The Court cannot overlook the origin of the initial appointment while examining legality of subsequent continuation.

17. The second limb of submission advanced on behalf of the petitioner is that the petitioner was qualified for the post, rendered service continuously for more than ten years, discharged duties

satisfactorily and was even promoted to the post of Senior Clerk. It is submitted that these circumstances justify protection of service. There is no serious dispute before this Court regarding the fact that the petitioner had in fact worked for a considerable period in the University establishment. The record also does not indicate that his work performance was unsatisfactory or that there existed any disciplinary proceedings or adverse remarks against him. On the contrary, the fact of promotion granted to him prima facie indicates that his work was found acceptable by the employer. This Court is conscious of the hardship which may be caused to an employee who has served for long years and thereafter loses employment. However, hardship alone cannot become the sole basis of judicial determination. Courts exercising writ jurisdiction are required to test legality of action. A long period of service, cannot by itself legalise an appointment if the entry into service suffers from legal infirmity. Equally, grant of promotion cannot operate as conclusive proof validating an appointment which was initially obtained against a reserved category post on the basis of a caste claim that ultimately failed verification. If such argument is accepted, it would amount to holding that passage of time cures every defect in appointment, which proposition is contrary to settled principles governing public employment. Public posts reserved under constitutional scheme are intended for genuine candidates belonging to the concerned category, and continuation of an ineligible person on such post affects rights of other eligible candidates waiting within that category. Therefore, though equity and compassion may persuade the Court at the emotional level,

the same cannot override the reservation policy and the binding Government Resolutions governing the field. The Court has to balance individual hardship with constitutional discipline. In the present case, the latter must prevail.

18. Much emphasis was laid by Mr. Desai upon the Government Resolution dated 15 June 1995 and the subsequent recommendation of the committee constituted by the University, in support of the contention that the petitioner was absorbed against a separate post within the 2% quota reserved for Special Backward Class candidates. According to the learned Senior Counsel, the Government Resolution merely speaks about earmarking reservation for SBC candidates and nowhere prohibits absorption of existing employees into such quota. It was argued that when the policy itself does not bar absorption, the University was justified in accommodating the petitioner within the SBC category after recognising him as belonging to Koshti community. This submission also requires careful consideration. It is true that administrative authorities may in certain circumstances adopt practical measures to avoid hardship. However, when the matter concerns reservation and public employment, the action must trace its source to law and cannot rest only upon administrative convenience. On careful reading of the Government Resolution placed before this Court, it appears that the reservation contemplated therein was intended for fresh recruitment of SBC candidates. The language employed in the resolution does not indicate any independent scheme authorising migration or transfer of employees from one reserved category to another after

invalidation of caste claim. The petitioner seeks to infer such power by implication. Where the policy specifies the mode and stage of reservation, the Court cannot introduce an additional procedure not contemplated therein. Absorption is not an incidental consequence flowing from reservation policy. It requires a legal foundation because it directly affects roster management and rights of other reserved category candidates. In absence of enabling provision, the action of absorption undertaken by the University cannot be elevated to the status of a protected right. Administrative recommendation of a committee may carry equitable value, but it cannot override the reservation structure or enlarge the scope of Government policy.

19. The petitioner has further placed reliance upon the decision in *State of Maharashtra v. Milind* in support of his contention that protection ought to have been extended to him despite invalidation of caste claim. This Court is unable to find assistance from the said judgment in the facts of the present case. The principle flowing from the said decision was considered in earlier proceedings also. However, what assumes importance is that after the said judgment the State Government itself issued policy decisions prescribing a cut-off date and limiting the benefit of protection only to those employees who satisfied the conditions mentioned therein. The material placed before this Court indicates that the petitioner was appointed in the year 1996, namely after the cut-off date of 15 June 1995 referred to in the Government Resolution. Therefore, the petitioner does not fall within the category of employees whom the State decided to protect despite

invalidation of caste claim. The distinction created by the State policy cannot be ignored by the Court. Once the Government has fixed a date and restricted protection only to a class of employees, the Court cannot enlarge such protection to another class on equitable considerations. Doing so would amount to rewriting the policy itself. Furthermore, the petitioner's appointment originated from a caste claim which ultimately came to be rejected by the Scrutiny Committee. Therefore, even on equitable considerations, the petitioner cannot seek parity with those cases where protection was intended by the State policy. The submission of the respondents that the petitioner stood outside scope of the Government Resolution therefore deserves acceptance.

20. The alternative submission advanced by Mr. Desai that, at the least, the period of service rendered by the petitioner from the date of appointment till termination ought to be treated as qualifying service for pensionary and retiral benefits also cannot constitute an independent basis for interfering with the order of termination. The issue of pension stands on a different footing altogether. A claim regarding retiral benefits arises from service rules and length of qualifying service. Such claim does not determine legality or illegality of appointment. Even if it is assumed that the petitioner may otherwise become entitled to limited service benefits under applicable rules, that circumstance would not validate continuation in service if the continuation itself lacks legal sanction. The Court cannot set aside a termination merely because the employee may subsequently become entitled to certain consequential benefits. The two questions are separate and

must be independently examined. At the highest, if the applicable rules permit consideration of past service for pensionary purpose, the competent authority may examine such issue in accordance with law.

21. Coming now to the submissions advanced on behalf of the University, Mr. Rodrigues, learned counsel appearing for respondent No.1, has strongly contended that the University had not acted arbitrarily while terminating the services of the petitioner. According to him, after the issue regarding continuation of the petitioner arose, the matter was specifically referred by the University to the State Government through the concerned educational authorities for guidance. It is submitted that the State Government thereafter examined the issue and by communication dated 13 February 2007 clearly directed that the petitioner was not entitled to protection since he had entered service after 15 June 1995, namely after the cut-off date prescribed in the Government policy. Therefore, according to the respondents, once such direction was issued by the competent department of the State Government, the University was left with no discretion except to implement the same. On careful consideration of the record, this submission cannot be brushed aside lightly. The documents placed before this Court do indicate that the University had sought guidance from governmental authorities and the termination order came to be issued only after receipt of the Government communication. Thus, it cannot be said that the University acted on its own desire or out of any independent intention to remove the petitioner from service. The action appears to have been taken

pursuant to a direction issued from the department exercising control over universities.

22. In matters relating to public employment and reservation policy, directions issued by the State Government carry considerable force, especially where the institution concerned functions within the statute created under State legislation. The University may possess certain administrative autonomy, but such autonomy cannot be stretched to ignore binding governmental instructions relating to reservation policy and continuation of employees whose caste claims have failed. The petitioner has challenged the consequential order of termination issued by the University. However, significantly, the foundational communication dated 13 February 2007 issued by the State Government has not been independently assailed on grounds of lack of authority, mala fides or violation of constitutional provisions. Unless the source direction itself is shown to be illegal, the consequential implementation thereof by the University cannot be faulted. Once the superior authority directs a course permissible in law, the subordinate authority implementing the same cannot be singled out for invalidation merely because at some earlier stage another internal view was prevailing. Therefore, merely because an earlier committee of the University had once recommended absorption of the petitioner, that circumstance alone does not render the later action of the University illegal when the same was undertaken in obedience to the State Government directive.

23. The petitioner has placed considerable reliance upon the recommendation made by the Jitendra Goswami Committee and

the fact that such recommendation was accepted by the Vice Chancellor and the Management Council. It has been urged that once the highest authorities of the University decided to absorb the petitioner in the SBC category and continued him in service, a legitimate expectation arose in favour of the petitioner that his service stood regularised. At an equitable level, the submission appears understandable because an employee who is continued for years after a decision of absorption may believe that the controversy regarding his appointment has attained finality. However, the legal position stands on a different footing. An administrative recommendation, even if approved by university bodies, cannot create an indefeasible right if the same is contrary to statutory policy or binding governmental direction. Administrative authorities are creatures of statute and their decisions must remain within the limits prescribed by law. If the State Government, which exercises policy control in such matters, takes a contrary decision on interpretation of the Government Resolution and directs termination, the earlier administrative arrangement cannot prevail over such directive. The recommendation of the committee therefore has to be understood only as an administrative measure intended perhaps to avoid hardship to the petitioner. Such recommendation may show that the University was initially sympathetic towards the petitioner and attempted to find a solution after invalidation of the caste claim. However, administrative accommodation cannot substitute a source of power. If the underlying Government Resolution did not authorise such absorption. The Vice Chancellor or Management

Council could not have exercised powers beyond what was permissible. Therefore, once the State Government clarified by its later communication that protection was not available to employees appointed after 15 June 1995, the earlier recommendation necessarily became subordinate to the later binding direction. In such circumstances, the subsequent order of termination cannot be labelled arbitrary merely because at one earlier point of time the University had adopted a different approach. In administrative law, a later direction issued by the competent controlling authority supersedes prior administrative decisions. Hence, the submission of the petitioner based upon the committee recommendation cannot be accepted as sufficient to invalidate the impugned action.

24. The petitioner has also attempted to rely upon the fact that after termination of his services, one Smt. A.A. Kadulkar came to be appointed against the same post earlier occupied by him. According to the petitioner, this circumstance indicates that the post continued to exist and therefore there was no necessity to remove him from service. This submission also cannot carry the matter further. Existence of vacancy and entitlement to occupy such vacancy are two distinct matters. Merely because a post survives after termination of one employee does not mean that the terminated employee acquires an enforceable right to continue on that post irrespective of eligibility. Public employment is regulated by constitutional and statutory norms. If the petitioner's continuation became inconsistent with the reservation policy after invalidation of his caste claim and after issuance of the

Government direction refusing protection, the mere fact that another person later came to be appointed cannot revive or validate the petitioner's claim. At the highest, the later appointment only establishes that the University filled the vacancy in accordance with its requirements. It does not establish illegality in termination of the petitioner.

25. There is another aspect also. Once the petitioner's continuation itself became legally doubtful in view of the Government policy, the University was under obligation to fill the post in accordance with applicable reservation rules and roster requirements. Therefore, appointment of another candidate after termination of the petitioner cannot be treated as unfair.

26. The findings recorded by the learned College Tribunal also do not appear to suffer from perversity or patent legal infirmity. This Court exercising jurisdiction under Articles 226 and 227 of the Constitution does not sit as an appellate authority over every finding recorded by the Tribunal. Interference is ordinarily warranted only when findings are shown to be perverse, wholly unsupported by record, contrary to law, or resulting in manifest injustice. In the present matter, the reasoning adopted by the Tribunal appears to flow logically from the Government policy and the admitted chronology of events. The Tribunal cannot be faulted merely because another possible view could also be argued by the petitioner. So long as the view adopted by the Tribunal is a plausible and legally sustainable view emerging from the material before it, this Court would be slow in exercising supervisory jurisdiction to upset such conclusion. On careful scrutiny, no

jurisdictional error or patent illegality is demonstrated in the order of the Tribunal.

27. In view of the foregoing discussion, and upon overall assessment of the material submissions, the following order is passed:

- (i) The writ petition stands dismissed;
- (ii) The judgment and order dated 17 March 2009 passed by the learned College Tribunal are hereby confirmed;
- (iii) The order dated 2 March 2007 terminating the services of the petitioner does not warrant interference in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India;
- (iv) It is, however, clarified that dismissal of the present petition shall not preclude the petitioner from making an appropriate representation before the competent authority for consideration of pensionary or other retiral benefits, if otherwise permissible in law and under the applicable service rules;
- (v) In the event such representation is made by the petitioner within a period of eight weeks from today, the competent authority shall consider and decide the same on its own merits and in accordance with law, without being influenced by dismissal of the present writ petition;
- (vi) Rule stands discharged. No order as to costs;

(vii) Pending interim applications, if any, do not survive and stand disposed of accordingly.

(AMIT BORKAR, J.)