



Government of India
National Commission for Scheduled Tribes

Handwritten signature

6th floor, 'B' Wing,
Loknayak Bhawan,
Khan Market,
New Delhi-110 003.

No. HCC/Maha/1/2013/RU-IV

Date: 05.03.2014

To

- | | |
|---|---|
| (1) The Secretary,
Department of Personnel and Training,
North Block,
New Delhi. | (2) The Chief Secretary,
Govt. of Maharashtra,
Mantralaya,
Mumbai – 400 032. |
| (3) The Secretary,
Ministry of Law & Justice,
Deptt. of Legal Affairs,
Shastri Bhawan,
New Delhi. | (4) The Secretary,
Ministry of Tribal Affairs,
Shastri Bhawan,
New Delhi. |

Sub: Letter of Shri Harishchandra Chavan, Hon'ble MP (Lok Sabha) dated 18.12.2012 regarding cancellation of DoPT OM No. 36011/2/10-Estt.(Res.) dated 10th August, 2010 about appointment of candidates belonging to Halba Koshti/Halbi Koshti/Koshti caste against vacancies reserved for the STs.

Sir,

I am directed to enclose herewith the proceedings of the Sitting held in the Commission on the above mentioned subject on 30.08.2013 and 04.09.2013 for your information and necessary action.

Yours faithfully,

Handwritten signature
(K.D. Bhansor) Mrs.
Director

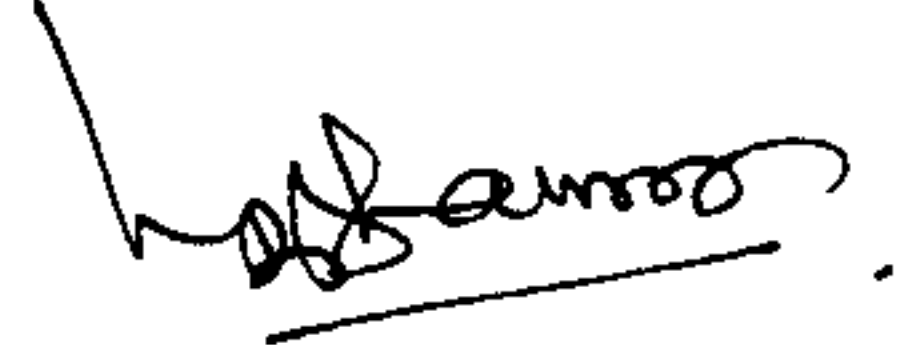
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10.03.2014

O/K

Copy for information to :

1. PS to Hon'ble Chairperson
- ✓ 2. SSA, NIC



**(K.D. Bhansor) Mrs.
Director**

NATIONAL COMMISSION FOR SCHEDULED TRIBES

File No. HCC/Maha/1/2013/RU-IV

Proceedings of the Sitting taken by the Hon'ble Chairperson on 30.08.2013 and 04.09.2013 on the letter of Shri Harishchandra Chavan, Hon'ble MP (Lok Sabha) dated 18.12.2012 regarding cancellation of DoPT OM No. 36011/2/10-Estt.(Res.) dated 10th August, 2010 about appointment of candidates belonging to Halba Koshti/Halbi Koshti/Koshti caste against vacancies reserved for the STs.

Lists of the officials present in the meeting are attached as **Annexure I**

Background

1 Shri Harishchandra Chavan, Hon'ble MP (Lok Sabha) sent a letter dated 18.12.2012 to the Commission enclosing representations from various Adivasi Associations for cancellation of the DoPT OM No. 36011/2/10-Estt Res dated 10.08.2010 regarding appointment of candidates belonging to Halba Koshti/Halbi Koshti/Koshti caste against the vacancies reserved for the STs in pursuance of the implementation of Judgement of the Supreme Court in the State of Maharashtra Vs Milind & Ors.

2. The NCST, vide letter dated 28.03.2013 had sought comments in the matter from the Secretary, DoPT, the Ministry of Tribal Affairs and the Govt. of Maharashtra. DoPT vide letter dated 22.04.2013 intimated that the matter was examined and the Hon'ble Member of Parliament had been informed at the level of the MoS (PP) by D.O. letter 30.01.2013, clarifying that specific relief was provided to the Halba Koshti/Halbi Koshti/Koshti caste, whose appointment had become final on or before 28.11.2000 in consonance with the Judgement of the Apex Court in the matter of State of Maharashtra Vs Milind & Ors and Punjab National Bank & Anr. Vs. Vilas Bokade after obtaining the opinion of the Department of Legal Affairs.


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Govt. of India
Min. of Tribal Affairs

3. In the aforesaid letter, MoS (PP) mentioned that in the matter of State of Maharashtra Vs Milind and others, respondents had been given the benefit of protection of appointment of the candidates belonging to Halba Koshti/Koshti caste whose appointment had become final on or before 28.11.2000 in the circumstances of the case. Subsequently, the Apex Court in its judgement in Civil Appeal No. 1547 of 2007 (Punjab National Bank & Anr Vs Vilas, S/o Govindrao Bokade) and some other cases observed that the protection in Milind's case was provided in no uncertain terms to such admissions and appointments that had become final. The Apex Court has held that such candidates belonging to Halba Koshti/Koshti caste whose appointment had become final on or before 28.11.2000, the date on which the Supreme Court had decided the Civil Appeal No. 2294/1986 (State of Maharashtra Vs Milind) shall not be affected. It was further mentioned that the aforesaid Judgement was examined in consultation with the Department of Legal Affairs, and the aforesaid OM was issued to the effect that the persons belonging to the Halba Koshti/Koshti case who got Scheduled Tribe certificates issued to them by the competent authority, under the Constitution (Scheduled Tribes) Order, 1950 (as amended from time to time) relating to the State of Maharashtra and whose appointments had become final on or before 28.11.2000 shall not be affected.

4. The Commission noted that OM of DoPT No. 42011/22/2006-Estt.(Res) dated 29.03.2007 was with reference to specific relief moulded by exercise of powers under Art. 142 of the Constitution by the Supreme Court only to those candidates who were party in the petition and in their individual peculiar circumstances. Therefore, the cases other than those protected by the specific order of the Apex Court not have appropriated powers of the Supreme Court but should have been dealt with in accordance with the instructions contained in DoPT's OM dated 19.05.1993 which, *inter-alia*, provides as follows:

"Wherever it is found that Government servant, who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to


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secure appointment, he should not be retained in service. If, he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become permanent Government servant, a inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any penalty be imposed."

5. The aforesaid OM dated 19.05.1993 also mentions that the above referred instructions are strengthened by the observations of the Supreme Court in Milind Katware's case (supra) to the effect that if the benefits of reservation are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their suffering will continue. Allowing the candidates not belonging to the reserved categories to have the benefit of reservation either in admission or appointments would lead to making a mockery of the very reservation against the mandate and scheme of Constitution.

6. The Commission also noted that while disposing Civil Appeal 231 of 2007, the Supreme Court held against respondents in the State of Maharashtra & Ors Vs Sanjay K. Nimje, that the 14 days delay from cut-off-date of 15.06.1995 even though he was selected on 15.06.1995 went against the case of the respondents since he joined only on 29.06.1995 and therefore fell within the mischief of caste certificate Act, 2000 of the State. In the Civil Appeal No. 2294 of 1986 (State of Maharashtra Vs Milind & ORS), the Supreme Court also held to the cut-off-date of 15.06.1995 and applied it to a variety of cases that depended on the decision of this Constitution Bench. However, DoPT by its OM dated 10.08.2010 appears to has declared, without any evident basis in logic or legal precedent, that in respect of the persons, whose appointments/admissions had become final on or before 28.11.2000, their appointments shall not be affected.

7. The order of the DoPT does not therefore appears, to be in consonance with law or logic or even the extended cut-off-date of 15.06.95 decided upon by


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the Legislature of the State of Maharashtra by the creation of a Special Backward Class thereby protecting ST rights. As a result of above order dated 19.05.1993, many more non-tribals appear to have received benefits that were intended for Scheduled Tribes who have consequently been deprived of their rights in consequence.

8. In view of the above consideration, in its 48th meeting held on 09.07.2013, the Commission decided to call for a detailed report from DoPT with justification along with relevant records/files for further examination and thereafter, hold another Sitting in the matter. Accordingly, a sitting was fixed for 30.08.2013 by the Commission requiring the Secretary, DoPT to send a detailed report and relevant records/files for examination of this Commission and Chief Secretary, Govt. of Maharashtra was asked to furnish their action/views on the subject.

9. The Secretary, DoPT appeared before the Commission and explained the position with reference to O.M. No. 36011/2/2010-Estt(Res).dated 10th August, 2010 that:-

- In the matter of Civil Appeal No. 2294/1986 (State of Maharashtra Vs Milind & Ors) before the Supreme Court, a person namely Shri Milind Katware belonging to the case "Halba Koshti" had got admission as an ST candidate to MBBS degree course for the year 1985-86 on the strength of a caste certificate issued to him by the competent authority. A Constitution Bench of the Supreme Court in its judgement dated 28.11.2000 in the above mentioned case held that the respondent did not belong to a Scheduled Tribe community but did not annul his admission or cancel his degree. The Hon'ble Court observed that about 15 years had passed since the respondent took admission and he had already completed the course. It was for nobody's benefit to annul his admission in as much as any action against the candidate might lead to depriving the society of the service of a doctor on whom public money had already been spent. The Court also held that the admissions and


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appointments that had become final would remain unaffected by the judgement.

- A stand was taken by this Department in consultation with the Department of Legal Affairs that the admissions and appointments of some candidates in the case of Milind and in some other similar cases were not annulled by the Supreme Court as a special case. Keeping in view the special circumstances of those cases, the relief accorded by the Supreme Court was specific relief provided only to the candidates who were party in those cases, and the cases other than those protected by the specific orders of the Apex Court were to be dealt with in accordance with the instructions contained in this Department's OM No. 11012/7/91-Estt.(A) dated 19.05.1993 which provided that wherever it is found that a Government servant had furnished false information or produced a false certificate in order to secure appointment, he/she should not be retained in service. Instructions were issued accordingly vide OM No. 42011/22/2006-Estt.(Res) dated 29.03.2007. Thus the crux of the said OM was to convey that the judgement in the case of Milind was not applicable to those who were not party to it.
- Subsequently, the matter regarding effect of the judgement in Milind's case came before the Supreme Court in Civil Appeal No. 1547 of 2007 (Punjab National Bank & Anr Vs Vilas, S/o Govindrao Bokade). The Supreme Court in this case observed that the protection in Milind's case was provided in no uncertain terms to such admissions and appointments that had become final. The Supreme Court had concluded that the status of the Scheduled Tribe could not be conferred on candidates belonging to Halba Koshti/Koshti caste but candidates belonging to these caste whose appointment had become final as on 28.11.2000, the date on which the Supreme Court had decided the Civil Appeal No. 2294/1986 (State of Maharashtra Vs Milind & Ors), should not be affected. Thus, in the PNB Vs Vilas case, the Apex Court allowed the benefit


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of the judgement of the Milind's case to other persons belonging to the Halba-Koshti although they were not party to the Milind's case. While extending the benefit of Milind's judgement to Shri Vilas in the above case, it referred to the resolution dated 15.06.1995 of Maharashtra Government which NCST has also now referred in their present communication. Accordingly, in pursuance of the Apex Court's judgement in Civil Appeal No. 1547 of 2007 (Punjab National Bank & Anr Vs. Vilas, S/o Govindrao Bokade) and in supersession of OM dated 29.03.2007, this Department in consultation with the Department of Legal Affairs issued an OM No. 16011/2/2010-Estt (Res) dated 10.08.2010 stating that the persons belonging to the "Halba Koshti"/"Koshti" caste who got appointment against vacancies reserved for the Scheduled Tribes on the basis of Scheduled Tribe Certificate issued to them under Entry 19 (Halba/Halbi) of the Constitution (Scheduled Tribe) Order, 1950 relating to the State of Maharashtra shall not be treated as Scheduled Tribe but appointments of persons belong to these castes ("Halba Koshti"/"Koshti") made on or before 28.11.2000, the date on which Supreme Court delivered its decision in Civil Appeal No. 2294/1986 (State of Maharashtra Vs Milind & Ors), shall not be affected.

- A WP (No. 5287/2011) challenging this Department's said OM dated 10.08.2010 was filed by All India Adivasi Federation, Nagpur in the High Court of Bombay. In the said WP, Hon'ble High Court in its judgement dated 20.12.2012 has inter-alia stated that ".....Rather than finding the said office memorandum to be unconstitutional or illegal, we find that the said office memorandum is in consonance with the law laid down in the judgement dated 18.11.2000 of the Apex Court in the case of State of Maharashtra Vs Milind & Ors."


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10. The Commission having heard the Secretary, DoPT advised him to submit the records in respect of the following matters to NCST for further examination and also to furnish the information required below:

- i. File concerning the Court case in the Civil Appeal No. 2294/1986 (State of Maharashtra Vs Milind and Ors) O.M. No. 42011/22/2006-Estt.(Res) dated 29.03.2007 before the Hon'ble Supreme Court regarding action against government servants who got appointment on the basis of false SC/ST/OBC certificates.
- ii. File concerning DoPT OM No. 36011/2/2010-Estt.(Res) dated 10.08.2010 regarding appointment of candidates belonging to Halba Koshti/Halbi Koshti/Koshti caste against vacancies reserved for the Scheduled Tribes and the causes or demands placed before the DoPT that required action and the details of the concerned Ministry that championed this demands. The DoPT should also advise the Commission on their normal procedures in such matters.
- iii. File containing the views obtained from the Ministry of Law & Justice on the OM No. 42011/22/2006-Estt.(Res) dated 29.03.2007 and OM No. 36011/2/2010-Estt.(Res) dated 10.08.2010.
- iv. Copy of the Rules of the Business and the officers empowered to issue such orders on policy issues under the Rules. The deviations if any, in adhering to the instructions contained in the Rules of Procedure in the instant case may also be brought out. This need arose because it appeared from a brief perusal of the file that the Joint Secretary had approved the O.M without placing it before the Secretary or Minister concerned.
- v. Whether before issuance of the OM No. 42011/22/2006-Estt.(Res) dated 29.03.2007 and OM No. 36011/2/2010-Estt.(Res) dated 10.08.2010, views/suggestion or consultation were obtained/made with the State Government of Maharashtra and if these were taken into consideration. The record alongwith views/opinion of the Ministry of Law & Justice, if obtained on the references of the State Govt., may also be furnished.


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- vi. Whether the concerned administrative Ministry (MTA) and NCST were consulted, as mandated under article 338A clause (9) of the Constitution. If yes, records thereof.
- vii. List of officers of DoPT who initiated the proposal up to level of approval and issuance of O.M. No. 42011/22/2006-Estt.(Res) dated 29.03.2007 and O.M. No. 36011/2/2010-Estt.(Res) dated 10.08.2010. Whether DoPT's O.M. was tabled in Parliament for amendment to the Constitution (ST) Order, 1950.
- viii. File/instructions regarding verification of SC/ST caste/communities and OM's issued by the DoPT from time to time with regard to examination of fake claim. Whether such instructions were taken into consideration before issuance of said O.M.'s conferring benefits to Halba Koshti/Halbi Koshti/Koshti.
- ix. As per the Constitution (Scheduled Tribes) Order 1950 the Halba/Halbi are listed at Sl.No.19, whether extension of benefits of STs to Halba Koshti/Halbi Koshti/Koshti vide DoPT O.M.'s are as per the prescribed modalities vide MSJ&E letter of 2002.
- x. Court case file in WP No. 5287/2010. (All India Adivasi Federation, Nagpur, Vs Union of India and others)
- xi. Court case file in CA No. 5821 of 2012 (Kavita Solunke V/s State of Maharashtra and Ors).

11. At the request of the Addl. Chief Secretary, Government of Maharashtra he was permitted to appear before the Commission on 04.09.2013. The ACS explained the context of the problems in the ST claims made by Koshtis who were not Halba/Halbi as in the ST orders. The Govt. of Maharashtra had resolved the issue for State Govt. employees by creating a special Backward Class with cut-off date of 15.06.1995. Any later admission employment was compulsorily terminated in accordance with a Caste Certificate Act passed in 2000. The ACS, Govt. of Maharashtra also stated that the DoPT O.M. No 36011/2/2010-Estt(Res) dated 10.08.2010 was extremely disturbing and


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was not in consonance with judgements of the Hon'ble Supreme Court and the High Court as also the Constitution. The Government of Maharashtra soon upon receipt of the O.M. dated 10.08.2010, had invited the urgent attention of DoPT to the opinion of the States A.G. by their letter dated 23.09.2010 enclosing the AG'S opinion dated 14.09.2010 (**Annexure –II**). He also detailed various letters from the State Govt. to DoPT for which no replies had been received. He explained that the O.M. was affecting the safeguard for Scheduled Tribes and about 20,000 persons employed in Govt. of India/CPSU were getting illegal benefits.

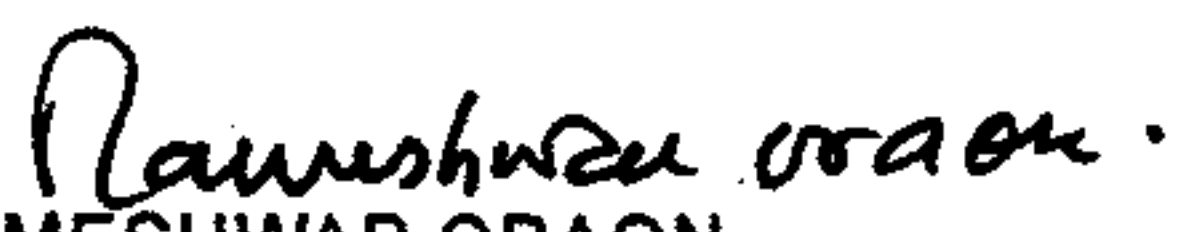
12. Having heard the Govt. of Maharashtra, Commission desired that Govt. of Maharashtra may submit the following information/details to the Commission.

- (i) As in W.P. No. 5287/2011 with W.P. No. 4283/2010 the Secretary, Tribal Welfare Department, Govt. of Maharashtra was respondent No. 7, the action taken and Counter Affidavit filed by the Govt. of Maharashtra.
- (ii) Views of the State Govt. as well as copies of the communications made with the DoPT in the matter.
- (iii) Copies of all court judgments/additional material in support of the views of the State Govt. and with reference to the stated views of the Secretary, DoPT in the meeting on 30.08.2013.
- (iv) Copy of the circular dated 13.02.1984 issued by DoPT regarding Halba Koshtis.

13. As the under Secretary, DoPT alone attended the Sitting on 04.09.2013, he was advised to trace all the references sent by the Govt. of Maharashtra and put up the files with a statement of action taken in respect of each item of correspondence. DoPT was also asked to specify the nature of action and legal consultation initiated upon receipt of the opinion of the A.G., Maharashtra which referred to a Full Bench interpretation of Milind.


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14. The Commission also desired to examine the linked/relevant file of Ministry of Law & Justice regarding the opinion sought by DoPT in the matter and the approval/ opinion of the M/o Law & Justice in DoPT No. FTS No. 2215/ADV., A/2010 F. No. 36011/2/2010-Estt.(Res) for further examination of the matter and thereafter to hold a Sitting for further discussion.


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Chairperson
National Commission for Scheduled Tribes
Govt. of India
New Delhi

Dated: 30.08.2013

List of participants

NCST

1. Dr. Rameshwar Oraon, Hon'ble Chairperson
2. Shri R. Vijaykumar Ph.D, Secretary
3. Shri Aditya Mishra, Joint Secretary
4. Mrs. K.D. Bhansor, Deputy Director
5. Shri H.R. Meena, Sr. Investigator

Department of Personnel and Training

1. Shri S.K. Sarkar, Secretary
2. Shri Manoj Joshi, Joint Secretary

Ministry of Tribal Affairs

1. Smt. Namita Priyadarshee, Director
2. Shri R. S. Mishra, Investigator

Date: 04.09.2013

Department of Personnel and Training

Shri Sandeep Mukherjee, Under Secretary

Government of Maharashtra

1. Dr. P. S. Meena, Addl. Chief Secretary.
2. Shri Dinesh R. Dingale, Deputy Secretary

GOVERNMENT OF MAHARASHTRA

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Speed Post

क्रमांक

No. STC- 1010/C.R.221/D.10

आदिवासी विकास विभाग,

Tribal Development Department

मंत्रालय विस्तार, मुंबई - ४०० ०३२.

Mantralaya Annexe, Mumbai - 400 032

दिनांक : 23 September, 2010

Date :

To,

Shri. K.G.Verma,

Director,

Government of India,

Ministry of Personnel, Public Grievances & pensions

Deptt. of Personnel Training

New Delhi

Sub :- Appointment of candidates belonging to Halba
Koshti/Halbi Koshti/Koshti caste against vacancies
reserved for the Scheduled Tribes-Implementation of
the judgement of Supreme court in the case of State
of Maharashtra Vs. Milind and Ors.

Sir,

Please refer your Office Memorandum dated 10th August, 2010 on the subject mentioned above. The Government of Maharashtra has taken opinion of Advocate General of Maharashtra State on the subject of your Office Memorandum. He has categorically opinioned that decision taken by the Ministry of Personnel, Public Grievances & Pensions, Deptt. of Personnel Training vide its office Memorandum dated 10th August, 2010 is not in consonance with judgements of the Supreme Court. The copy of the opinion of Advocate General of Maharashtra State is attached herewith for your kind attention.

It is, therefore, requested to look into the matter in the light of all relevant judgements of the Supreme Court and withdraw the Memorandum.

Yours

(Uttam Khobragade)

Principal Secretary to the Government.

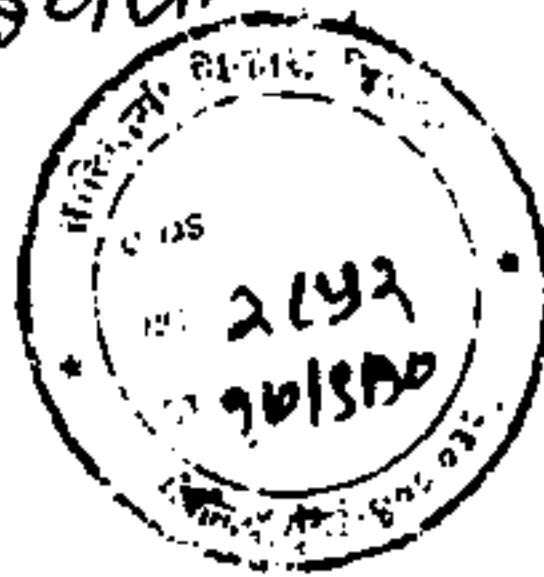
C. M. H. 2010/M.C.R.201 to 250cr 221.10 dt 12.08.2010

9/10
23/09/10



R. M. KADAM

ADVOCATE GENERAL



AG/422/2010

1st Floor, Chamber No.3
High Court Extension Bldg.
Fort, Mumbai 400 032.

September 14, 2010

To,
Shri Uttam Khobragade,
Principal Secretary to Government,
Tribal Development Department,
Mantralaya,
Mumbai 400 032.

Subject : Appointment of candidates belonging to Halba Koshti/Halbi Koshti/Koshti caste against vacancies reserved for the Scheduled Tribes - Implementation of judgement of the Supreme Court in the case of State of Maharashtra Vs. Milind and Ors.

Ref : Your letter dated 7th September, 2010 bearing No.STC-1010/CR-221/Desk 10.

Dear Mr. Khobragade,

I have seen your letter and the judgements referred to therein. In fact, the Full Bench of the Hon'ble Bombay High Court in the case of Ganesh Rambhau Khalale reported in 2009 (2) Mh.L.J. (FB) 788 has based its decision on judgement delivered by three Judges of the Supreme Court in the case of Union of India Vs. Dhuliraya Namdeo Mendhekar reported in (2008) 4 SCC 612. In this judgement the Hon'ble Supreme Court has made it clear that Milind's case was decided on its own peculiar facts and circumstances. The Hon'ble Supreme Court held that the decision in Milind's case had "no application to a case which does not relate

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to Govt
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to admission to a medical institution but relates to securing employment by wrongly claiming the benefit of reservation meant for Scheduled Tribe." In this judgement, the Hon'ble Supreme Court held that the High Court in the given case erred in giving the benefit of continuation in service to a person who had wrongly obtained employment on the basis of a false caste certificate.

2. The Full Bench of the Bombay High Court in my view has correctly appreciated the law laid down by the Hon'ble Supreme Court in the various judgements referred to in the said decision of the Full Bench.

3. The Office Memorandum dated 10th August, 2010 does not appear to have taken into consideration the subsequent judgements of the Supreme Court in the following cases :-

- (i) Union of India Vs. Dattatray Mendhekar reported in (2008) 4 SCC 612.
- (ii) Yogesh Ramchandra Naikwadi Vs. State of Maharashtra and Others reported in 2008 (5) Mh.L.J. 658



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4. In light of this, it would be appropriate to place both the aforesaid cases before the concerned offices of the Government of India, Ministry of Personnel, Public Grievances and Pensions so that they may appropriately review the Office Memorandum of 10th August, 2010.

Yours sincerely,


(R.M.KADAM)