

(RESERVED)

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

O.A. No. 330/00588/2019

This the 10th day of June, 2021.

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr.Tarun Shridhar, Member (A)**

Sudhanshu Nayak son of Purushottam Nayak r/o village Barhaj, Post Madaria, District- Gorakhpur.

Applicant

By Advocate: Sri N.P.Singh

Versus

1. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Establishment Reservation-I, Section.
2. Union Public Service Commission, Dholpur House, Shajjahan Road, New Delhi to its Secretary.

Respondents

By Advocate: Sri L.P.Tiwari

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Heard Sri N.P. Singh, learned counsel for the applicant and Sri L.P. Tiwari , who is representing all the respondents, (as per order sheet dated 20.10.2020) and perused the record.

2. The instant O.A. has been filed by the applicant, praying for the following reliefs:-

- i) to issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 8.4.2019 issued by the respondent No. 2 (Annexure A-7 of compilation No. 1).
- ii) To issue a writ, order or direction in the nature of mandamus commanding the respondent No.2 to finalized the candidature of applicant provisionally and sent the same to the respondent No.1 for allocation of service and sent for training subject to final outcome of the writ petition pending before the Hon'ble High Court of Allahabad and Lucknow Bench.
- iii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to provide the parity as given in Misc. bench No. 8666 of 2014 (Rajendra Prasad nayak and 104 Ors Vs. State of U.P. and others) under Article 14(2) of Constitution of India as laid down by the Hon'ble Apex Court in the case of K.L. Shephard and others Vs. Union of India and others 91987) 4 SCC 431, which has been subsequently explained elaborately by the Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass 92) and others (2011) 4 SCC 374, and State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others (2015) 1 SCC 347.
- iv) Issue a proper direction which the Hon'ble Court may deem fit and proper in the circumstances of the

present case narrated in the pleadings of original application including the judicial pronouncement.

v) Award the cost of the original application to the applicant.

3. Shorn of unnecessarily details, the brief facts of the case are that the applicant belongs to Nayak community. He appeared and became successful in Civil Service Examination for the year 2018, conducted by the UPSC. The impugned notice dated 8.4.2019 (Annexure No. A-7) was issued by the UPSC to some of the successful candidates, to submit the requisite documents urgently, in order to clear their provisional status, so as to enable the department to finalize service allocation in a time bound manner. In the notice, there existed a mandatory condition that if a candidate fails to submit the requisite documents, while appearing in personality test, his/her service allocation shall be withheld.

4. As per the averments made in the O.A., the applicant being a 'Nayak' by caste and a resident of Gorakhpur District belongs to ST Community. By virtue of the Schedule Castes and Schedule Tribes orders (Amendment) Act, 2002 (**No. 10 of 2003**) published by Legislative Department, Ministry of Law and Justice through gazette notification dated 8.1.2003, the persons belonging to Nayak Community residing at Gorakhpur

commissionerate and 12 Districts, come under the category of Scheduled Tribes. For a ready reference, the relevant section of it is quoted below:-

“(2) In the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967, after entry 5, insert:-

“6. *Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the district of Mehrajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jonpur, Balia, Gazipur, Varanasi, Mirzapur and Sonbhadra)*”

It has been pleaded that by virtue of above provision, the applicant belongs to the ST category.

5. Vide order dated 28.7.2014 passed by District Level Caste Scrutiny Community, Gorakhpur, a total number of 3413 caste certificates, issued to Nayak community depicting them as members of ST community, were cancelled. Against the aforesaid order, several writ petitions were filed before the Hon'ble High Court of Allahabad.

6. One of such Writ petitions No. 8666/2014 was filed by Sri Rajendra Prasad Nayak alongwith 104 others Vs. State of U.P. and others, which was connected with other 9 identical writ petitions. The aforesaid bunch of writ petitions was decided by Hon'ble High Court by a

common order dated 28.5.2019, whereby Hon'ble High Court declined to entertain the writ petition in relation to the cancellation of caste certificate and directed the petitioner to approach the Regional Level Caste Scrutiny Committee by filing an appeal. It was further observed that in case such an appeal is filed, the same shall be dealt with by the appellate authority in accordance with law, after giving due and proper opportunity of hearing to all the affected parties. The Regional Level Committee was further directed to decide the appeal expeditiously, preferably within 3 months, from the date of production of certified copy of the order.

7. In compliance of the aforesaid order dated 28.5.2019 of Hon'ble High Court, as many as 890 candidates filed appeal before the Regional Level Committee, Gorakhpur. The appeal was decided by the Regional Level Committee vide a detailed and speaking order dated 21.9.2019, whereby the Regional Level Committee allowed the appeal and quashed the order dated 28.7.2014, passed by District Level Caste Scrutiny Committee.

8. However, while deciding question No. 2, framed in appeal, the Regional Level Committee held that only those nayaks, who are synonym to "Gond" are entitled for caste certificate of ST category.

9. The aforesaid finding recorded by the Regional Level Committee in the appellate order dated 21.9.2019 was challenged before the Hon'ble Allahabad High Court, Lucknow Bench by means of two Writ Petitions, Writ C No. 35021 of 2019 (Ayush J. Nayak and 3 others Vs. State of U.P. and 2 others) and in Writ C No. 39551 of 2019 (Atul Shekhar Nayak and 863 others Vs. state of U.P. and 2 others), Hon'ble High Court vide order dated 31.10.2019 and 12.12.2019 passed in both the writs respectively, held that the observation of Regional Level Committee that only those persons of Nayak Community who are synonym of Gond caste, are entitled for the caste certificate of ST, *prima facie* appear to be unsustainable, due to the reasons that in the presidential order, Gond and Nayak are separately mentioned with a comma inserted between them. Hon'ble High Court asked the parties to file Counter and Rejoinder Affidavit. Both these writ petitions were connected and are pending consideration before the Lucknow Bench of Hon'ble High Court of Allahabad. In the mean time, the Hon'ble High Court has directed that no further proceedings shall be commenced or continued by the respondents, pursuant to the impugned order dated 21.9.2019.

10. It is the case of the applicant that he had submitted his document within time, but he was informed by the

UPSC that his father's name, as mentioned in his caste certificate is not matching with the name of his father as mentioned in his High School certificate. Therefore, he was required to submit a fresh caste certificate, showing his father's name as mentioned in his High School certificate. The applicant was informed that till the submission of the same, his candidature will remain provisional. The letter sent by the UPSC on 9.4.2019 has been annexed by the applicant as Annexure No.A-8 to the O.A., which reads as follows:-

“No. CS (M)/Roll No. 856586/2019-E.IV
Union Public Service Commission
Dholpur House, Shahjahan Road,

New Delhi -110069 , the dated 9th April, 2019

To

Shri Sudhanshu Nayak
c/o Sh. Radhe Shyam Nayak
Vill. Barhaj Post Madria via Barhalganj,
Tehsil-Gola, Distr. Gorakhpur
Pincode-273402.

Sub: Civil Services (Main) Examination, 2018- return of original documents- reg.

Dear Candidate,

With reference to your candidature for the above mentioned examination and your letter dated nil (received in the Commission's office on 27.2.2019) , I am directed to return herewith your 10th certificate (in original) after verification. The caste certificate has not been found in order. Your father's name in the caste certificate is not as per 10th certificate in caste certificate. You are therefore,

requested to submit a fresh caste certificate (in original) showing your father's name as in your 10th certificate at the earliest. Your candidature will remain PROVISIONAL till the submission of the same.

Encl- As stated above.

Yours faithfully,
(Ronita Bhadury)
Section Officer
Union Public Service Commission"

11. The further case of the applicant is that he applied to District Social Welfare Officer, Gorakhpur for issuance of a fresh caste certificate and along with the application, he submitted an affidavit stating therein that name of his father as mentioned in his caste certificate is Purshottam Nayak whereas in the High School certificate, name of his father is entered as Purshottam Prasad Nayak. Both names are of the same person, therefore a fresh caste certificate be issued to him by entering the same father's name as is in his High School certificate.

12. However, the District Social Welfare Officer, Gorakhpur refused to issue the fresh caste certificate to the applicant on the ground that there is a stay order of Hon'ble High Court passed in the writ petition pending before the Hon'ble High Court, Allahabad, which restrains any further action in caste certificate matters. Therefore, they are unable to issue fresh caste certificate to him.

13. Being aggrieved, the applicant is before us by means of the instant O.A. The learned counsel for the applicant has vehemently argued that by a Presidential Order, the Nayak community has been declared as ST community and so long as the Presidential order is not declared ultra virus, all the persons belonging to Nayak community shall continue to be treated as ST community and the State authorities are not permitted to interpret, modify or add anything in the Presidential Order. It is further argued that it is not at all permissible for the State authorities to hold any enquiry or to let in any evidence to decide or declare that any tribe or tribal community is included in the Presidential order or not. The Presidential order must be read as it is. It is well settled legal position that a notification issued under class I of Article 342 , specifying ST community, can be amended only by law to be made by the Parliament and by no other authority. It is not open to the State Govt. or Court or Tribunals or any other authorities to modify, amend or alter the list of ST, specified in the notification issued under class I of Article 342.

14. The grievance of the applicant is that Regional Level Committee while deciding the appeal has wrongly held that only those Nayak, who are synonyms to the

Gond Tribe, are entitled to the ST status, which is against the law. Placing reliance on several judgments passed by the Hon'ble Allahabad High Court and Hon'ble Supreme Court, the learned counsel for applicant has contended that in almost all these cases, the Courts have held that the applicants who have qualified and are otherwise eligible, may be appointed provisionally, subject to final outcome in the pending writ petitions, therefore, on the ground of parity, the applicant is also entitled for provisional appointment.

15. The following cases have been filed by learned counsel for applicant in support of his contention:-

1. Service single No. 18922 of 2017 Akash Kumar Nayak vs. State of U.P. Thru. Prin. Secy.Tax & Registration deptt. & others.
2. Writ A No.63383 of 1015 (Atul Kumar Nayak Vs. State of U.P. and 2 others).
3. Writ A No. 17078 of 2016 (Ajay Kumar Nayak Vs. State of U.P. and 3 others).
4. Writ A No. 11979 of 2015 (Km. Nllam Nayak Vs. State of U.P. and 6 others).
5. Writ A No.3031 of 2015 (Dhananjay Nayak Vs. State of U.P. and 2 others).
6. Writ A No. 4232 of 2015 (Anand Kumar Nayak Vs. State of U.P. and 3 others).

7. Service Single No. 3 of 2016 (Anoop Nayak and 4 others Vs. State of U.P. and another).
8. Writ A No. 58844 of 2015 (Sandeep Kumar Nayak and 2 others Vs. State of U.P. and 2 others).
9. Writ A No.31543 of 2015 (Suyanka Nayak Vs. State of U.P. and 2 others).
10. Writ A No. 987 of 2016 (Navin Kumar Nayak Vs. State of U.P. and 2 others).
11. Writ A No. 6350 of 2016 (Vipin Kumar Nayak Vs. State of U.P. and 2 others).
12. Writ A No.9030 of 2016 (Pinkal Nayak Vs. State of U.P. and 2 others).
13. Writ A No.9325 of 2016 (Krishna Kumar Nayak Vs. State of U.P. and 2 others).
14. Writ A No. 58844 of 2015 (Sandeep Kumar Nayak and 2 others Vs. State of U.P. and 2 others).
15. Writ A No. 67437 of 2015 (Atul Kumar Nayak Vs. State of U.P. and 3 others).
16. Writ C No. 29542 of 2016 (Km. Rubey Vs. State of U.P.)
17. Writ A No. 8658 of 2019 (Manoj Kumar Nayak Vs. State of U.P. and 3 another).
18. Writ C No. 31409 of 2017 (Pranjali Nayak Vs. State of U.P. and 2 others).
19. Writ C No. 23480 of 2018 (Vaishnavi Nayak and 2 others Vs. State of U.P.).

20. Writ A No. 19997 of 2019 (Kritika Nayak Vs. State of U.P. and another order dated 11.2.2020).

21. Writ A No.21207 of 2019 (Amit Naik Vs. State of U.P. and 3 others order dated 9.1.2020).

It is contended that in all these cases, the courts have directed to give provisional appointment to the petitioners, if he is found otherwise eligible, subject to decision in respect of tribe certificate validation.

16. Apart from these, reliance has also been placed on the judgment of Hon'ble Supreme Court rendered in the case of **Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others, AIR 1995 SC 94.**

17. Our attention has been drawn on DOP&T O.M. dated 8.10.2015, copy whereof has been annexed as Annexure No.A-13 to the O.A., the relevant paras 3 and 4 of which are reproduced below:-

“3. Instances have been brought to the notice of this Department that despite the aforesaid instructions, the appointments of the candidates belonging to SC/ST/OBC communities are withheld/delayed due to pending caste certificates verification.

4. It is, therefore reiterated that in the situation where a candidate belonging to a

Scheduled Caste, Scheduled Tribe and other Backward classes is unable to produce a certificate from any of the prescribed authorities, he/she maybe appointed provisionally on the basis of whatever prima facie proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time and if there is genuine difficulty in his/her obtaining a certificate, the appointing authority should itself verify his/her claim through the District Magistrate concerned.”

18. It is contended by Ld. Counsel for the applicant that as the applicant is a similarly placed person, and being a member of Nayak community, he should be given similar treatment by directing the respondents to give him provisional posting subject to final outcome of the controversy pending before the Hon'ble High Court.

19. Learned counsel for the respondents has filed counter affidavit and has opposed the O.A. on the ground that as the controversy involved in the present O.A. is subjudice before the Hon'ble High Court, this Tribunal has no jurisdiction to pass any order or to direct the respondents authorities to give the applicant provisional posting. It is vehemently contended by the learned

counsel for respondents that the applicant's case is entirely different from the cases cited above by his Id. counsel because due to discrepancy in the father's name of the applicant, he was requested to submit a fresh ST certificate and UPSC kept his status provisional till the submission of fresh ST certificate. But the applicant failed to submit the fresh ST certificate. Therefore, in absence of a valid ST certificate, his candidature could not be cleared and he could not be allocated any service even provisionally.

20. It is further contended by the learned counsel for the respondents that Rule 24 of Civil Service Examination Rule, 2018 explicitly provide that candidate seeking reservation benefits available for SC/T/OBC/PH/ ex service man, must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the rules. As the candidature of the applicant was cancelled with the approval of the competent authority due to lack of submission of ST certificate, the applicant cannot claim provisional allocation of posting. Moreover, the applicant was not even a party in Writ Petition No. 8666/2014 before the Lucknow Bench of Allahabad High Court.

21 It is next contended that Rule 20 of Civil Service Examination, 2018 clearly provides that:-

“Success in the examination confers no right to appointment unless Government is satisfied after such enquiry as may be considered necessary that the candidate, having regard to this character and antecedents is suitable in all respect for appointment to the Service.”

22. Learned counsel for the respondents has contended that as the further proceedings have been stayed by the Hon'ble High Court, the fresh caste certificate could not be issued to the applicant and in absence of a valid caste certificate, applicant's provisional status cannot be finalized. In this regard, our attention has been drawn to aforementioned order dated 12.12.2019 passed by Hon'ble Allahabad High Court in Writ C No. 39551 of 2019, copy whereof has been filed by the applicant as Annexure No. RA-2 to the Rejoinder Affidavit. For a ready reference, the aforesaid order is quoted below:-

“Court No. – 37

Case :- WRIT - C No. - 39551 of 2019Petitioner :-

Atul Shekhar Nayak And 863 Others

Respondent :- State Of U.P. And 2 Others

**Counsel for Petitioner :- Krishna Mohan Misra
Counsel for Respondent :- C.S.C.,Rakesh Kumar
Gupta**

Hon'ble Pankaj Bhatia,J.

The present petition has been filed seeking quashing of the findings recorded by the

respondent no.2 in the appellate order dated 21.9.2019 (Annexure No.2 to the writ petition) to the extent that it holds that only those persons of 'Nayak' community who are synonym of 'Gond' castes' are entitled to be issued the Caste Certificate of S.T. category after due verification by the State Authority.

The submission of Sri H.R. Mishra, Senior Advocate assisted by Sri Swatantra Pratap Singh, learned counsel for the petitioner is that a similar controversy arising out of the same impugned order is pending consideration in this Court in Writ-C No.35021 of 2019 (Ayush J. Nayak and 3 others Vs. State of U.P. and 2 others). In the said case this Court had passed the following order:-

"Sri B.C. Naik, learned counsel has appeared and stated that his caveat has been wrongly mentioned on this petition. The Computer Section is consequently directed to delete the name of Sri B.C. Naik as appearing for the respondents.

Learned Standing Counsel appearing for the respondents shall file a reply within a period of three weeks. The petitioner shall have a week thereafter to file a rejoinder affidavit.

List thereafter before the appropriate Court.

In the meanwhile, the Court notes that the Appellate Committee has recorded findings referring to a Government Order of 20 April 1981 to the effect that 'Nayaks' shall be treated as belonging to the Scheduled Tribes provided they are recognised as being synonymous to 'Gond'. The attention of the Court however is invited to the relevant entry in the Presidential Order which reads thus:

"6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Mehrajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jonpur, Balia, Gazipur, Varanasi, Mirzapur and Sonbhadra)." In view of the above, the observations as entered prima facie appear unsustainable.

Consequently and till the next date of listing, no further proceeding shall be commenced or

continued by the third respondent pursuant to the impugned order dated 21 September 2019."

Considering the fact that the similar matter is engaging the attention of this Court. The interim order granted on 31.10.2019 in the said case shall apply to the present case also.

Sri Rakesh Kumar Gupta, who is not a party to the present proceeding has filed a preliminary (objection) affidavit upon the instruction of this Court, however, as he is not a party to the present proceeding, the said preliminary objection cannot be considered at this stage, however, the same is taken on record.

Respondents are granted four weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed by the petitioners within two weeks thereafter. List and connect this case along with Writ-C No.35021 of 2019 (Ayush J. Nayak and 3 others Vs.State of U.P. and 2 others) before the appropriate Court after expiry of the aforesaid period.

Order Date :- 12.12.2019"

23. Learned counsel for respondents submitted that due to a clear mandate of Hon'ble High Court that till the next date of listing, no further proceedings shall be commenced or continued pursuant to the impugned order dated 21.9.2019 (Appellate order passed by Regional Level Committee), and as the stay order is still in force, the respondents are unable to issue a fresh caste certificate to the applicant. Resultantly, the respondents are unable to give even the provisional allocation of posting to him.

24. It is next contended that the applicant, by means of the instant O.A. has prayed to quash the impugned letter

dated 8.4.2019 (Annexure A-7). In case, Annexure A-7 is quashed as a whole, the entire list annexed with it, containing the names of as many as 109 candidates will also be quashed. As a result, great prejudice will be caused to all the 109 candidates, who have already been granted provisional status and their provisional status will also come to an end without even given any opportunity of hearing to them as none of them has been made a party in the instant O.A.

25. It is further contended that the impugned order dated 8.4.2019 is merely a notice sent to the applicant through g.mail by the respondent/competent authority,, requesting him to submit the required documents at the time of appearing in personality test before UPSC with a further direction that in case of default, his service allocation shall be withheld. It is contended that as per well settled legal position, a mere show cause notice cannot be challenged unless it is issued without jurisdiction, whereas it is not the case of the applicant that impugned notice was issued by someone incompetent to issue it.

26. It is lastly contended that service allocation is a time bound process. There is no provision under CSE Rule of 2018 through which a vacancy of service/post can be kept vacant for an uncertain period for the applicant. The

vacancy which cannot be allocated to the applicant due to his fault with regard to his ST claim on account of mismatch of his father's name, is meant to be allocated to other genuine ST candidate and they cannot be deprived from getting benefit of service.

27. On the aforesaid grounds, it has been prayed that the O.A. is liable to be dismissed and accordingly it may be dismissed.

28. Learned counsel for applicant has filed Rejoinder Affidavit in which he has reiterated almost the same averments made in the O.A. and has prayed that as the applicant is a similarly placed candidate and several other candidates of Nayak community have already been given provisional posting by the respondents' department, several of them have even jointed and are working on the various posts, the applicant is also entitled to the same treatment on the ground of parity

29. We have given our thoughtful consideration to the rival submissions made by the learned counsel for the parties.

30. In all the cases cited in para 15 of this judgment, it appear that Hon'ble High Court has either disposed of the Writ Petition or has directed the parties to file counter and

Rejoinder affidavits and in the mean time, respondents have been directed to give provisional appointment to the petitioners, if they are otherwise qualified, subject to final outcome of their writ petitions.

31. In so far as, the instant O.A. is concerned, the status of the applicant is not similar to the other candidates, who have been given provisional postings by the respondents. The learned counsel for the applicant has nowhere stated that any of those provisionally appointed candidates was also required to furnish a fresh caste certificate. No doubt, that all the other candidates also belong to Nayak community notified as ST by Presidential order and the applicant too belong to Nayak Community but his case is different from others due to discrepancy found in the name of his father as mentioned in his High School Certificate and Caste Certificate. The respondents could have issued a fresh caste certificate to him, after rectifying the discrepancy in the name of applicant's father but due to stay order of Hon'ble High Court, the respondents found themselves unable to do so. In absence of a valid caste certificate, the respondents could not select him even provisionally.

32. As the matter is still subjudice before the Hon'ble High Court and any further proceedings in pursuance of the impugned order dated 21.9.2019 (Appellate order

passed by the Regional Level Committee) have been stayed by the Hon'ble High Court, this Tribunal cannot direct the respondents either to issue fresh caste certificate to him or to give provisional posting to the applicant even in absence of a valid caste certificate. The applicant's case being different from rest of the Nayak community candidates, he cannot be granted similar benefits . The remedy for the applicant is to approach the Hon'ble High Court by means of a writ petition, if so advised.

33. O.A. is liable to dismissed and is accordingly dismissed. All the pending MAs, are also dismissed having being infructuous.

34. No order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

HLS/-