

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00056/2016

Jabalpur, this Wednesday, the 11th day of April, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ganpati, S/o Shri M. Rammurti, aged about 47 years, Operator CO & CCD Bhilai Steel, R/o Sadak S-4, Block 27/A, Zone-2, Bhilai District Durg (C.G.) 49100
-Applicant

(By Advocate – Shri Udayan Tiwari)

V e r s u s

1. The Bhilai Steel Plant through it's General Manager, Bhilai Steel Plant, Bhilai Distict, Durg (C.G.) – 491000.
2. The General Manager, Bhilai Steel Plant, (Personnel), Bhilai District, Durg (C.G.) – 491000
- Respondents

(By Advocate – Shri P. Shankaran Nair)

(Date of reserving order : 28.11.2017)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant has filed this Original Application against Annexure A-1 order dated 18.12.2015, whereby the respondent department has cancelled the offer of appointment of applicant dated 30.12.1996.

2. The applicant has sought for the following reliefs:

“8.(i) *Quash the order Annexure A/1 dated 18.12.2015.*

8.(ii) The Hon'ble Tribunal may be further pleased to command the respondents to permit the petitioner to work on the post on which he was working before termination of his service and continue to do so till the age of superannuation.

8.(iii) Any other writ, order or direction as deemed fit in the circumstances of the case may also be given together with awarding of cost of these proceedings.”

3. Briefly, the facts of the case are that the applicant entered in the service of the Bhilai Steel Plant (in short ‘BSP’), Durg, on the basis of a Caste Certificate of Pardhi tribe, issued by the Naib Tehsildar, Rajanandgaon. It has been submitted that applicant originally belong to Erukula caste, which is recognized as Schedule Tribe in Andhra Pradesh. The Erukula caste is known as Pardhi in State of Chhattisgarh. The applicant was born in Bhilai and educated in the school at Bhilai up to metric class. He had given an affidavit that he belongs to the Pardhi caste on the basis of which, a certificate was issued by the Tehsildar, Rajnandgaon (Annexure A-3). When the certificate was issued, the State of Chhattisgarh was not in existence and the BSP was a part of State of Madhya Pradesh. The applicant applied for employment as a Majoor (Khalasi) in the BSP and was appointed as such. When the State of C.G. came into existence, there was an inquiry in all the castes and tribes cases in C.G. In the course of inquiry, the officers

of the State Government submitted a report that the applicant did not belong to the Pardhi caste, and as such, the BSP terminated the services of the applicant by an order dated 01.05.2007.

4. The applicant filed Writ Petition (S) No.3117 of 2007 before the Hon'ble High Court of Chhattisgarh at Bilaspur, challenging the order of his termination dated 01.05.2007. The same was allowed by the Hon'ble High Court vide its order dated 07.04.2008 (Annexure A-4) and the order of termination was quashed and the matter was referred to the State Level Caste Scrutiny Committee to take a decision in accordance with law laid down by the Hon'ble Supreme Court in case of **Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and others, 1994 (6) SCC 241**. In pursuance to the order passed by Hon'ble High Court, the matter was referred to the High Level Scrutiny Committee. The applicant was given notice to submit his reply, which he submitted on 24.06.2015 (Annexure A-6). In the reply, the applicant mentioned that revenue documents prior to the year 1950, cannot be demanded and the matter has to be proved before the committee by other means. However, the Caste Scrutiny Committee, vide its report dated 17.08.2015 (Annexure A/8-A) has not considered the

same and merely taking into account the certificates of primary level and middle school level and came to the conclusion that the applicant has failed to prove his Pardhi caste, and therefore, he is not entitled to take advantage of the same. There has been no other inquiry made except the consideration of the two school leaving certificates of primary and middle levels and on the basis of non mention of Pardhi caste in the same, it was held that the applicant did not belong to the Pardhi community.

5. The main ground of the applicant is that he was not allowed to produce evidences to prove himself as a member of Pardhi community of C.G., as this caste was known as Erukula in Andhra Pradesh. Therefore, the reports and order of removal from service are liable to be quashed. It has been submitted that the order terminating the services of the applicant has been passed behind the back of the applicant, without following due process of law. Moreover, the action of the respondents in cancelling the appointment order of the applicant is also without following the principals of natural justice.

6. The respondents have filed their reply. It has been submitted that the applicant was appointed as Plant Attendant on 23.01.1995 against a post reserved for ST candidate and the appointment was based on a caste certificate issued by Naib Tehsildar, Rajnandgaon. Subsequently, it was noticed by the respondents that the applicant has produced a false caste certificate for gaining employment under the respondents as a ST candidate, and accordingly, he was removed from service vide order dated 09.05.2007. It has been further submitted that a Writ Petition No.3117/2007 was preferred by the applicant before the Hon'ble High Court of Chhattisgarh at Bilaspur and vide the order dated 04.04.2008, the Hon'ble High Court quashed the removal order of the applicant dated 09.05.2007. But, at the same time, liberty was given to the respondents to refer the dispute of caste to the State Level Caste Scrutiny Committee for taking the decision in accordance with law laid down by the Hon'ble Supreme Court in the case of **Madhuri Patil (supra)**.

7. The respondents further submitted that they have challenged the order of the Hon'ble High Court dated 04.04.2008 by filing a Writ Appeal No.115/2008, wherein while admitting the appeal, the

Hon'ble High Court vide its interim order dated 19.06.2008, directed that the effect and operation of the direction contained in para 9 of the order i.e., "the petitioner is entitled to all the benefits flowing from this order", shall remain stayed until further orders.

The Writ Appeal was finally disposed of vide order dated 25.08.2009 (Annexure R-2), with a direction that the interim order passed on 19.06.2008 shall remain in force till the Caste Scrutiny Committee gives its finding with respect to social status of applicant and the respondents may proceed thereafter as per decision of the Caste Scrutiny Committee. Accordingly, the caste dispute was referred to Caste Scrutiny Committee, Raipur for establishing the caste status of the applicant. It has also been submitted by the respondents that after affording opportunity to the applicant to produce his caste status, the High Level Caste Scrutiny Committee, Raipur, vide its order dated 17.08.2015 reported that the applicant does not belong to Pardhi caste in the State of Chhattisgarh, and accordingly, the Caste Certificate issued by Naib Tehsildar, Rajnandgaon dated 15.10.1993, was cancelled by the Caste Scrutiny Committee.

8. The applicant challenged the order dated 17.08.2015 of the High Level Caste Scrutiny Committee before the Hon'ble High Court of Chhattisgarh at Bilaspur by way of filing WP (S) No. 3815/2015 in which no stay was granted by the Hon'ble High Court. In the meanwhile, the applicant filed an Interim Application IA No.02/2016 for withdrawal of the aforesaid W.P, which was dismissed as withdrawn vide order dated 06.01.2016 with liberty to challenge the subsequent order of removal.

9. The respondents have submitted that in view of the dismissal of the WP No.3815/2015, the order dated 17.08.2015 of the High Level Caste Scrutiny Committee, cancelling the caste certificate issued by the Naib Tehsildar, Rajnandgaon dated 15.10.1993, has attained finality. Moreover, it was established that the applicant secured employment under the respondents against a post reserved for ST candidates based on false caste certificate. When the same was established by the High Level Scrutiny Committee, the applicant is not entitled to hold the appointment, and accordingly, vide order dated 18.12.2015 (Annexure A-1), his appointment was cancelled, which was served to the applicant on 21.12.2015. Therefore, the applicant is not entitled to any benefits like gratuity, pension, CPF, SESF and leave encashment etc. The

applicant does not belong to Pardhi caste, as claimed by him and no valid Caste Certificate is available with him.

10. In the rejoinder, the applicant has submitted that certain adverse allegations made in the reply are contrary to the instructions and order of the State of Chhattisgarh. It was denied by the applicant that he had produced false caste certificate for gaining

the employment. The certificate was never treated to be false. It has been further submitted that report of the High Power Scrutiny Committee dated 17.05.2015 was based on non production of documents by the applicant, prior to 1950. As per Annexure A-2, the applicant's caste is Yerukula, which is recognized as Pardhi in the State of Chhattisgarh. The Committee had mentioned that the list of SC/ST is limited to their own State and they cannot take benefits of that status in the other States, and thus, cancelled the Caste Certificate of the applicant. The applicant has denied the fact that he does not belong to Pardhi and it is submitted by the applicant that Erakula caste is Pardhi-ST, in the State of

Chhattisgarh and on the certificates submitted by the applicant, the caste certificate was issued to him. The applicant has further submitted that the respondents have discriminated the applicant by terminating him from service, while similarly placed Mahendra Kumar Decate was found to be belonging to Halba (Kosthi)-ST, which is recognized as ST in M.P. (Tehsil – Wara Seoni, Balaghat) and the same is contrary to circular of Government of India dated 22.03.1977. The said person was retained in service holding that he will not be entitled to any further benefits of his Tribe. But, the same decision is not taken in the case of the applicant.

11. We have gone through the pleadings, submissions made by the parties and also the annexures annexed with the pleadings.

12. It is an admitted fact that the applicant had applied for the employment as a Mazdoor (Khalasi) and was appointed as Plant Attendant in the BSP on 30.12.1996. It is also admitted fact that an ST caste certificate was issued to the applicant by the Naib Tehsildar, Rajnandgaon on the basis of the documents submitted by the applicant. As per Annexure A-2 dated 10.09.2009, a certificate was issued by the President, Yerukula (Pardhi), Caste Welfare Association, Zinkibadra (V), Sompeta Mandal,

Srikakulam, District – Andhra Pradesh, in which it has been certified that father of the applicant belongs to caste, i.e. Yerukula (Pardhi) – ST (S.No.21). It is also admitted fact that on the basis of the certificate issued by the Naib Tehsildar, Rajnandgaon, the applicant got the employment under the respondents. When the State of Chhattisgarh came into existence, there was an inquiry on all the caste and tribes cases of Chhattisgarh. In the course of inquiry, the officer of State of Chhattisgarh submitted a report that the applicant does not belong to the Pardhi in the State of Chhattisgarh, and as such, the respondents terminated the services of the applicant on 09.05.2007. Against the said order, the applicant filed Writ Petition No.3117/2007 before the Hon'ble High Court of Chhattisgarh at Bilaspur and the same was allowed vide Annexure A-4 order dated 07.04.2008 by quashing the order of termination and the matter was referred to the State Level Caste Scrutiny Committee to take a decision in accordance with the law laid down by the Hon'ble Supreme Court in the case of **Madhuri Patil** (supra). The applicant was given notice and reply was submitted by him vide Annexure A-6. But the Caste Scrutiny Committee, vide its report dated 17.08.2015 (Annexure A/8-A) has concluded that the applicant has failed to prove his caste ‘Pardhi’,

and therefore, he is not entitled to take advantage of the same. The relevant portion of the report of Caste Scrutiny Committee is as under:

“भारत सरकार गृह मंत्रालय के परिपत्र क्र. – 12025/2-76/एस.सी.टी./1 दिनांक 22.03.1977 की कंडिका 2 में निर्देश है कि एक जिले का राजस्व अधिकारी दूसरे जिले के मूल निवासी को जाति प्रमाण पत्र जारी करने के लिये सक्षम अधिकारी नहीं है। माननीय उच्चतम न्यायालय के संवैधानिक पीठ (माननीय न्यायधीशों की पांच सदस्यीय बैंच) द्वारा एकशन कमेटी बनाम भारत संघ एस.सी.सी. 1994 एस.सी. 224 में उल्लेखित है कि संविधान के अनुच्छेद 341 व 342 के तहत विभिन्न राज्यों के लिये जारी अनुसूचित जाति/जनजाति की सूची अपने राज्य तक ही सीमित है। अलग-अलग राज्यों में निवासरत एक ही जाति के लोगों की सामाजिक आर्थिक स्थिति, पिछड़ेपन एवं अन्य निर्योग्यताओं में भिन्नता होती है। अनुसूचित जाति जनजाति संबंधी राष्ट्रपति नोटिफिकेशन जारी होने के दिनांक 10.08.1950 एवं 06.09.1960 को व्यक्ति जिस राज्य को मूल निवासी था, उसी के लिये उसे अनुसूचित जाति या जनजाति का माना जावेगा। अनुसूचित जाति/जनजाति का व्यक्ति रोजगार या शिक्षा के उद्देश्य से अन्य राज्य में प्रवर्जित करता है तो उसे मूल जाति प्रमाण पत्र व संवैधानिक लाभ दूसरे राज्य में प्राप्त करने की पात्रता नहीं आयेगी।

श्री गणपति को अपने जाति प्रमाण पत्र के समर्थन में दस्तावेज प्रस्तुत करने हेतु अवसर प्रदान करने पर भी वे वांछित दस्तावेज प्रस्तुत नहीं कर सके। विजिलेंस सेल द्वारा प्रस्तुत जांच/अन्वेषण प्रतिवेदन दिनांक 12.09.2013 एवं धारक श्री गणपति के प्राथमिक प्रमाण पत्र परीक्षा 1980 एवं संभागीय पूर्व माध्यमिक परीक्षा 1975 में भी जाति पारधी का उल्लेख नहीं होने के कारण समिति धारक गणपति को छ0ग0 के लिये अधिसूचित अनुसूचित जनजाति पारधी मान्य नहीं करती है। अतः तत्कालीन नायब तहसीलदार, राजनांदगांव (छ.ग.) द्वारा दिनांक 15.10.1993 को जारी किया गया अविधिमान्य जाति प्रमाण पत्र छ0ग0 शासन द्वारा जारी छ0ग0 अनुसूचित जाति, अनुसूचित जनजाति एवं अन्य पिछड़ वर्ग

(सामाजिक प्रास्थिति का प्रमाणीकरण विनियमन) अधिनियम के नियम 2013 के उपनियम 23 (2 एवं 5) में किये गये प्रावधान अनुसार तत्काल प्रभात से निरस्त किया जाता है।”

13. The applicant has challenged the finding of the High Level Caste Scrutiny Committee by filing WP (S) No.3815 of 2015 before the Hon'ble High Court of Chhattisgarh, Bilaspur and vide order dated 06.01.2016, the WP was dismissed as withdrawn with liberty to challenge the subsequent order of removal passed by the respondent department. Resultantly, this Original Application has been preferred.

14. Though in the reply the respondents have submitted that the appointment of applicant was cancelled vide order dated 18.12.2015 (Annexure A-1), which was served to the applicant on 21.12.2015, as he does not belong to Pardhi and no valid caste certificate was available with him, however, it is relevant to mention that the caste certificate (Annexure A-3) was issued by the Naib Tehsildar, Rajnandgaon on the basis of the documents submitted by the applicant. At the same time, if Annexure A-2 is seen, the caste of the applicant is Yerukula (Pardhi) – ST in the State of Andhra Pradesh. So, it is clear that the applicant belongs

to the caste Yerukula (Pardhi), which is ST in Andhra Pradesh. As per Annexure A/8-A, which is the report of Caste Scrutiny Committee, it also mentioned that the Revenue Officer of the one District is not competent to issue caste certificate to the person belonging to other District and as per notification issued by the President, the person of original origin of the State is to be considered as ST in that State only and it will not be valid for eligibility in the other State. The Caste Scrutiny Committee has recommended for cancellation of the caste certificate, as it is not valid.

15. The applicant has specifically stated in the rejoinder that he had not produced the false caste certificate for gaining employment and the certificate was never treated to be false. Furthermore, the applicant has also raised the issue regarding the validity of the report of the State Level Caste Scrutiny Committee dated 17.08.2015 on the basis of non production of documents prior to 1950. In this regard, he has relied upon the judgment passed by the Hon'ble High Court of Chhattisgarh, Bilaspur in WPS No.1284 of 2015 (**Rakesh Kumar Dhuliya vs. Union of India & Ors.**) decided on 07.05.2015, whereby the Hon'ble High

Court has held regarding the fact for verification of scrutiny of the caste status, without insisting for submission of land records prior to the year 1950. The relevant Para 4 of the order reads as under:

“4. Accordingly, the present writ petition is also disposed of with a direction to respondent No.5 to consider and decide the petitioner’s application for grant of permanent caste certificate without insisting for submission of land records prior to the year 1950 because in the above referred writ petitions, this Court has already taken a view that possession of land records alone is not the criteria for verification of caste certificate. Respondent No.5 shall decide the petitioner’s application at the earliest, preferably within a period of one month from the date of submission of certified copy of this order.”

So, it is clear as per the verdict of Hon’ble High Court, the competent authority has to scrutinize the caste status of the applicant without insisting for submission of land records prior to 1950. However, in the instant case, as per Annexure A/8-A, the Caste Scrutiny Committee, while scrutinizing the caste status of the applicant has given the finding that the applicant has failed to produce the land records prior to 1950 to show that he belongs to Pardhi.

16. The applicant has also raised the issue of arbitrariness on the part of the respondents and has submitted that similarly placed Mahendra Kumar Decate was found to belonging to Halba

(Kosthi)-ST, which is recognized as ST in State of Madhya Pradesh and the said person was retained in serving holding that he will not be entitled to any further benefits of his Tribe. However, a different view has been taken on applicant's case.

17. In Annexure – A/8-A order dated 17.08.2015, it has been indicated that in compliance with the guidelines laid down by the Hon'ble Supreme Court in the case of **Madhuri Patil** (supra), the appointment of the applicant is cancelled as the caste certificate is not as per the provision of sub section 23 (2 and 5) of the Scheduled Castes, Scheduled Tribes and other Backward Classes (Regulation of Social Status Certification) Act, 2013.

18. The applicant has also relied upon the judgment passed by the Hon'ble Apex Court in the matters of **Kavita Solunke vs. State of Maharashtra and Others**, (2012) 8 SCC 430, wherein the similar issue arose before the Hon'ble Apex. Considering the various judgment, the Hon'ble Apex Court has held as under:

“16. Applying the above to the case at hand we do not see any reason to hold that the Appellant had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an undeserved benefit in the matter of appointment as a Teacher. There is, therefore, no reason why the benefit of protection against ouster should not be extended to her subject to the usual

condition that the Appellant shall not be ousted from service and shall be re-instated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained and which was 10 years after its issue cancelled by the Scrutiny Committee.

17. In the result, we allow this appeal, set aside the order passed by the High Court and direct the reinstatement of the Appellant in service subject to the condition mentioned above. We further direct that for the period the Appellant has not served the institution which happens to be an aided school shall not be entitled to claim any salary/backwages. She will, however, be entitled to continuity of service for all other intents and purposes. The Respondent shall do the needful within a month from the date of this order. The parties are left to bear their own costs.”

19. The respondents have placed reliance upon the judgment of Hon'ble Apex Court in the cases of **State of Orissa and another vs. Bibhisan Kanha**, AIR 2017 Supreme Court 3417 and **Commissioner of Customs (Export) Nhava Sheva vs. M/s. Mascot International**, AIR 2017 Supreme Court 3419. However, the facts of the present case are quite distinguishable. In the above referred cases before the Hon'ble Apex Court, the caste certificate has been obtained by fraudulent/false means for procuring employment. But, in the present case, we do not find anything to show that the applicant has obtained the caste certificate fraudulently. Thus, the judgment relied upon by the respondents

are not applicable to the facts and circumstances of the present case.

20. In the instant case, the applicant belongs to caste, i.e. Yerukula (Pardhi)-ST in Andhra Pradesh, which is clear as per Annexure A-2. Admittedly, this is not a case of false certificate. The applicant belongs to ST in the State of Andhra Pradesh, but it is an admitted fact that after existence of the State of Chhattisgarh, the caste certificate of Andhra Pradesh is not valid in Chhattisgarh. So, it is clear that this is not the case of false certificate or fraudulent certificate obtained by the applicant for procuring employment. Moreover, in the case of Mahendra Kumar Decate, a different view has been taken by the respondents, who is similarly situated as of applicant.

21. The applicant has also relied upon the judgment of Hon'ble High Court of Chhattisgarh, Bilaspur in Writ Petition (S) No.1195 of 2012 (**Chandra Shekhar Kotriwar vs. State of Chhattisgarh & Others**) and Writ Petition (S) No.1533 of 2012 (**Anurag Lal vs. State of Chhattisgarh & Others**) decided on 08.04.2013, wherein

similar issue has been decided by the Hon'ble High Court. The relevant portion of the order is reproduced as under:

“14. For the reasons mentioned hereinabove, the orders passed by the Committee are just & proper and do not warrant any interference of this Court. However, in view of the aforesaid facts and circumstances of the case, the order dated 26-3-2012 (page 396 of the paper book of WP (S) No.1195 of 2012) is quashed. The petitioner – Chandra Shekhar Kotriwar be reinstated in service forthwith. No dismissal order be passed in respect of Anurag Lal. It is further made clear that both the petitioners are not entitled to any further benefits on the basis of their claim of being Scheduled Tribe, which was rejected by the Committee.”

22. Indisputably, the applicant was appointed on 30.12.1996 as Lab Attendant and was confirmed on 09.12.1998. A caste certificate was issued by the Naib Tehsildar, Rajnandgaon on the basis of the documents furnished by the applicant at the relevant point of time. Moreover, the applicant was working as such till 18.12.2015 and has served for more than 19 years. It is not the case of false certificate but it is a case where the certificate is not valid in the State of Chhattisgarh. No fraudulent act has been done by the applicant and in view of the ratio laid down by the Hon'ble Apex Court in the cases of **Dattu Thakur vs. State of Maharashtra and others**, (2012) 1 SCC 549 and **Kavita Solunke**

(supra), we feel that the applicant is also entitled for the similar benefits.

23. In view of the aforesaid facts and circumstances of the case, the order dated 18.12.2015 (Annexure A-1) is quashed. We direct the respondents to reinstate the applicant in service forthwith. It is made clear that applicant shall not be entitled for any salary/back wages for the period he has not served the department. However, the intervening period (i.e. from the date of dismissal till the date of reinstatement) shall be regularized for the purposes of pension etc. The respondents are directed to do the needful within a period of two months from the date of receipt of certified copy of this order.

24. In the result, the O.A is allowed to the above extent. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member