

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.**

ORIGINAL APPLICATION NO.2166/2019

Dated : 6th August, 2019

**CORAM:- R.VIJAYKUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)**

Jyoti w/o S.K.Matia, Ex-Director, aged about 62 years, R/o 162, Swamy Colony, Katol Road, Aakar Nagar, Nagpur-440013.Applicant

(By Advocate Shri Alok Upasani)

Vs.

1. The Union of India, Through Secretary, Ministry of Agriculture and Farmers Welfare, Krishi Bhawan, New Delhi-110001.

2. The Addl. Secretary, Co-operation Division, Ministry of Agriculture and Farmers Welfare, Krishi Bhawan, New Delhi.

3. National Cooperative Development Corporation, thruhg its Managing Director, 4, Siri Institutional Area, Hauz Khas, New Delhi.Respondents

Reserved on :- 25.07.2019

Pronounced on:- 06.08.2019

ORDER

R. Vijaykumar, Member (A)

This application has been filed on 19.7.2019 against orders of the Disciplinary Authority dt. 18.10.2018 and the Appellate Authority dt. 10.6.2019 by which the applicant had

been allowed to superannuate while continuing with the disciplinary proceedings in accordance with NCDC rules of respondents. The applicant was appointed as Assistant by the National Co-operative Development Corporation w.e.f. 17.1.1981 on the claim of being Scheduled Tribe for which she had produced a certificate dated 5.7.1980 issued by the Executive Magistrate, Nagpur. On a complaint received by the respondents, the matter had been referred to the District Magistrate and Collector, Nagpur to verify the genuineness of the caste certificate in letter dt. 14.10.2016 and they received a reply on 4.11.2016 stating that there was no such entry in their office records of a certificate having been issued to Kum.Jyoti Lingamuri (now Smt.Jyoti Matia) against the caste certificate No.812/MRC-81/79-80 dt. 5.7.1980 and they had verified Sl.No.812 in Register No.1 and S.No.812 in Register No.2 and found that caste certificates had been issued to two persons in these two certificates named Mr.Punjabraoji Harda and to Mr.Shivaji Hedau. Therefore, they had given the opinion that the caste certificate was forged. The respondents issued Memorandum of Charge No.NCDC:7-1/2016-Admn. dated 30.11.2016 charging

her with furnishing a fake/forged certificate to support her caste status and required her explanation. In the course of these proceedings, the applicant, who had already secured release of her Provident Fund amount, approached the Principal Bench of this Tribunal in OA No.3380/2017. The Principal Bench permitted continuation of inquiry, but directed the respondents to pay some of her leave encashment amount due to the applicant on her superannuation estimated at Rs.5,00,000/- tentatively, considering that such benefit of leave encashment constituted the savings of the employee made for decades of service. Later, the applicant also approached this bench of the Tribunal in OA No.2040/2019 which was decided on 20.2.2019 by giving directions to the Appellate Authority to dispose of her appeal and to consider her appeal and dispose of the matter including by reference to the law as settled by the Hon'ble Apex Court and the Maharashtra Act of 2000 (2001).

2. The inquiry was finally completed and orders have been passed by the Disciplinary Authority which are as below:

"23 AND WHEREAS, in the light of the evidence of the witness, documents, position of law and records, I, Sundeep

Kumar Nayak, Managing Director, NCDC being the competent authority, hold that Smt.Jyoti Matia has secured job in the Corporation by producing a forged/fake caste certificate and therefore the Article of Charge is fully proved against her. Thus appointment of Smt.Jyoti Matia is vitiated by fraud, forgery and illegality and hence her appointment is liable to be treated as void *ab initio*.

24. AND WHEREAS, in the light of the evidence of the witness, documents, position of law and records, I Sundeep Kumar Nayak, Managing Director NCDC being the competent authority, hold that Smt.Jyoti Matia has secured the job in the Corporation by producing forged/fake caste certificate and therefore the Article of Charge is fully proved against her. Thus I treat the appointment of Smt.Jyoti Matia which is vitiated by fraud, forgery and illegality as void *ab initio*.

25. NOW THEREFORE, after due application of mind and in exercise of the powers conferred under Regulation 39 read with Regulation 38 of NCDC Services Regulations, 1967, I, Sundeep Kumar Nayak, Managing Director, NCDC, as disciplinary authority hereby order imposition of major penalty of "dismissal" from the service of the Corporation. In compliance with the orders of Hon'ble CAT dated 19.7.2018, in O.A. No.3380/2017, NCDC has made a tentative payment of Rs.5.00 lacs towards leave encashment. With the imposition of the penalty of dismissal on Smt.Jyoti Matia, the remaining post-retirement benefits i.e. gratuity, employers' share of CPF, GSLI, medical facilities and superannuation benefit of Smt.Jyoti Matia, shall stand forfeited".

3. The Appellate Authority has confirmed these orders. The Appellate Authority also referred to the request of the applicant to refer her

certificate to the Caste Scrutiny Committee for Scheduled Tribes at Nagpur and the offer made by the Appellate Authority that she could either obtain a new caste certificate or get her earlier caste certificate dt. 5.7.1980 validated from the Caste Scrutiny Committee in accordance with the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, she declined both options.

4. Learned counsel for the applicant was inquired on the basis of the challenge posed in this OA against the said orders of the Disciplinary and Appellate Authorities by reference to the law in question. He argued that at para 25 of the orders of the Disciplinary Authority, the Disciplinary Authority had ordered the imposition of the major penalty of dismissal from service, which was patently incorrect because the applicant had already superannuated from service even during the pendency of the disciplinary proceedings.

5. The pleadings in the case and arguments of the learned counsel for the applicant have been carefully considered and reference has been made to the grounds raised by the applicant in the OA.

6. The orders of the Disciplinary Authority

primarily declare that the initial appointment of the applicant had itself been vitiated by fraud, forgery and illegality and therefore, her appointment was liable to be treated as void *ab initio*. Accordingly, in para 24 of the orders, it is noted that the applicant secured the job in the Corporation with the respondents by producing forged/fake caste certificate and therefore, the Disciplinary Authority held her appointment to be vitiated by fraud, forgery and illegality and void *ab initio*. This particular order is in strict conformity with the rulings of the Hon'ble Apex Court in **R.Vishwanatha Pillai vs. State of Kerala & Ors. (2004 SCC (L&S) 350)**, and the recent orders of the Hon'ble Apex Court in **Chairman and Managing Director, FCI v. Jagdish Balaram Bahira (AIR 2017 SC 3271)**, both of which declared that fraudulent entry into service based on bogus caste certificate merit the declaration that the appointment itself was void *ab initio* and that no claim of any benefit can be made arising from the period of employment or service considering its void nature. A relevant excerpt of the rulings of the Hon'ble Apex Court in **R.Vishwanatha Pillai (supra)** is extracted below:

"This apart, the appellant obtained the

appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

In Ishwar Dayal Sah Vs. State of Bihar, 1987 Lab.I.C. 390, the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held:

"If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possible flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Art. 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Art.311 is not attracted."

The point was again examined by a Full Bench of the Patna High Court in Rita

Mishra Vs. Director, Primary Education, Bihar, AIR 1988 Patna 26. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held:

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service.

Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow it."

We agree with the view taken by the Patna High Court in the aforesaid cases.

It was then contended by Shri Ranjit Kumar, learned senior counsel for the appellant that since the appellant has rendered about 27 years of service the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission, as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the

appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud".

7. Therefore, the remarks and the orders passed by the Disciplinary Authority at para 25 imposing the penalty of dismissal and then recording that while the respondents had made a tentative payment of Rs.5 lacs towards leave encashment as ordered by this Tribunal on 19.7.2018 in OA No.3380/2017, the remaining post retirement benefits would stand forfeited, were clearly superfluous. By virtue of the orders based in paras 23 and 24 which are in strict conformance with the rulings of the Hon'ble Apex Court in the

above cited cases, no claims past or present were valid for the applicant against the respondents, including the provident fund benefits or any tentative payment for 'decades of service' that have been made in the context. On the aspect of reference to the Caste Scrutiny Committee which was considered by the Appellate Authority based on the orders of this bench in OA No.2040/2019, the issue in the present case is that there was no caste certificate in existence relatable to the applicant as per records of the District Magistrate, Nagpur. Therefore, there is nothing that could have been referred to the Caste Scrutiny Committee either by the applicant or by the respondents when the issue is relating to the production of fake/forged certificate as certified by the District Magistrate. For this purpose, the Maharashtra Act, 2001 requires prosecution preceded by filing a Police Complaint by the authorities concerned which has clearly been overlooked by the respondents. It is also evident that although the Maharashtra Act took effect only from 18.10.2001, it was entirely an elaboration of the judgment of the Hon'ble Apex Court in **Kumari Madhuri Patil vs. Addl. Commissioner** (1994 SCC (6) 241), where the need to

initiate prosecution by respondents is underlined. Complete obedience by the respondents of the orders of this bench in OA No.2040/2019 therefore, requires adherence to this aspect of the orders under examination thereof to study its applicability with reference to a forgery committed well prior to the commencement of the Act under the general provisions of the Indian Penal Code read with the above mentioned rulings of the Hon'ble Apex Court in the three citations discussed herein. Further, since the applicant's service itself is void, no benefits can flow from such service and any payments due or made will have to be examined in this context and ordered accordingly on their eligibility and with regard to recovery in accordance with law.

8. In the circumstances, this OA is clearly devoid of any basis and is accordingly dismissed. No costs.

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(R.N. SINGH)
MEMBER (J)

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(R. VIJAYKUMAR)
MEMBER (A)

B.