

(2008) 10 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24316 of 2006

Bhoodev Singh

APPELLANT

Vs

R.K.Singh, I.A.S., D.M., Mathura and others

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Citation : (2008) 10 AHC CK 0092

Hon'ble Judges : Ashok Bhushan, J and A.P.Sahi, J

Final Decision : Disposed Of

Judgement

1. The petitioner Bhoodev Singh, has come up praying for quashing of the Caste Certificate issued to him treating him to be a "Gaderia" (OBC) and for further quashing of the order dated 28.3.2006 and consequential communication dated 29.3.2006 whereby the representation of the petitioner for treating him to be a scheduled caste has been rejected and the earlier caste certificate issued to the petitioner as Gaderiya has been reaffirmed.

2. The petitioner, claiming himself to be a scheduled caste, appeared for admission in the M.B.B.S. course and was granted admission subject to the condition that he shall obtain a caste certificate and file it before the Medical College in which he was granted admission. Since the caste certificate had not been issued, therefore, the petitioner preferred writ petition No. 48546 of 2002 which was disposed of on 12.7.2005. The petitioner had also prayed therein for quashing of the order of Tehsildar; whereby he had refused to issue a caste certificate to the petitioner as a Scheduled Caste.

3. The contention of the petitioner is that the caste certificate of Gaderia has several subcastes, and "Dhangar" is a Scheduled Caste as per the Central Government Notification and, therefore, the petitioner is entitled to the said Certificate as he is a "Dhangar". The petitioner has relied on material to demonstrate the same and on the strength thereof has prayed for quashing of the impugned orders.

4. We have heard Sri Ranjit Saxena, learned counsel for the petitioner, at length and the learned Standing Counsel Sri Neeraj Upadhyay on behalf of the State and perused the records.

5. The petitioner, during the pendency of this writ petition, had filed another petition seeking permission to appear in the MBBS examination and from the records, it appears that the petitioner appeared in the final professional examinations but his result was not declared. This he was able to do on the basis of an order passed in Writ Petition No. 45858 of 2007 where the petitioner also moved an application praying for declaration of his result which has been withheld on account of nonavailability of the caste certificate. The said application for declaration of result was rejected against which the petitioner preferred Special Appeal No. 593 of 2008 which was also dismissed stating therein that unless and until

the present writ petition is decided, it would not be appropriate to declare the result of the petitioner. This is how the matter has been heard by us today.

6. Sri Ranjit Saxena, learned counsel for the petitioner, has advanced his submissions by relying on the decision in the case of Palghat Jilla Thandon Samudhaya Samrakshna Samithi and another v. State of Kerala and another, JT 1993 (6) SC 622, and has urged that the petitioner is entitled for the issuance of the certificate in the category of Scheduled Caste inasmuch as Dhangar is a caste, which is a subcaste of Gaderiya and the petitioner also belongs to the same caste, therefore, he is entitled for the said benefit. He has further invited the attention of the Court to the decision reported in the case of R. Vishwantha Filial v. State of Kerala and others, (2004) 2 SCC 105, as followed by a learned single Judge of this Court in the case of Dr. Raj Kumar Gupta v. Director General and others, 2008 (26) LCD 1025, to urge that even assuming for the sake of argument that the petitioner is not entitled to the said caste certificate, the petitioner's claim for pursuing his MBBS course should not be jeopardised at this stage, as he has already appeared in the final professional examination of MBBS. It is urged that the petitioner may not be able to avail any such benefit in future but for the present purposes, this Court may in exercise of its jurisdiction and keeping in view the law laid down aforesaid be pleased to direct the respondents not to cancel his candidature as a student of MBBS course merely on account of the impugned orders.

7. A perusal of the impugned order dated 28.3.2006 indicates that a three member Committee of senior Officers of the district was constituted by the District Magistrate and the said Committee submitted a report recording that the petitioner's brothers Mukesh and Om Prakash and his sister Sunita had been given the Certificate of Gaderiya caste which is of the Other Backward Category. The parents of the petitioner also indicated their caste as Gaderia. The brothers of the petitioner's father also gave a statement to the same effect. According to the records, no certificate of "Dhangar" was ever issued to the petitioner nor was the petitioner issued any Certificate treating him to be a scheduled caste.

8. From a perusal of the said order, it appears that the said findings have been recorded after getting a report from a 3 Member Committee and which are findings of fact. The petitioner has been unable to successfully demonstrate as to how he belongs to "Dhangar" caste. The evidence which is sought to be relied upon by the petitioner are of questions of fact which cannot be gone into in exercise of writ jurisdiction under Article 226 of the Constitution. In case the petitioner seeks a declaration to the said effect, the same cannot be granted by this Court in view of the law laid down by the Apex Court in the case of *State of Maharashtra v. Milind and others*, (2001) 1 SCC 4.

9. We have refused to exercise our jurisdiction and the discretion in a similar matter today in Writ Petition No. 64019 of 2005. For the reasons recorded therein, we do not find any additional reason to interfere with the orders impugned in the present writ petition.

10. However, the second submission advanced by the learned counsel for the petitioner deserves consideration in the light of the decisions relied upon by the learned counsel for the petitioner. The Supreme Court in the case of *R. Vishwantha Pillai* (supra) which decision has been followed in the case of *Dr. Raj Kumar Gupta* (supra) by a learned single Judge of this Court, it appears that the admission was cancelled on the ground that fraud had been practised by the candidate while seeking admission. The said writ petitions were, however, allowed on the ground that if the falsehood of the caste certificate of the students is deducted within a short period of admission then the admission deserves to be cancelled. However, where the inquiry as in the case of *Dr. Raj Kumar Gupta*, was conducted in a manner without considering the evidence of the petitioner therein and the admission was cancelled after 3 years, the Court permitted the completion of the course without allowing any future benefits.

11. In the present case, the petitioner has been allowed to pursue his studies of MBBS course and the matter pertaining to his declaration of result is pending consideration in Writ Petition No. 48546 of 2002. In view of the submissions advanced, we are of the opinion that in the instant case merely on account of nonavailability of a caste certificate or the caste certificate of the petitioner being under the OBC category, the petitioner should not be deprived of the benefits of the course that he has already pursued and almost completed. Following the decisions aforesaid, we observe that the petitioner's career in pursuing the MBBS course shall not be put in jeopardy merely on account of passing of the impugned orders herein. The petitioner will, however, be not entitled to claim any benefit as a scheduled caste in future unless there is any such declaration by way of an appropriate Notification or a declaration by a court of competent civil jurisdiction.

12. With the aforesaid observations, the writ petition stands disposed of.