
(2023) 05 OHC CK 0067
In the Orissa High Court
Case No : Writ Petition (C) No.8891 Of 2013

Binayak Digal

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 04-05-2023

Acts Referred:

Citation : (2023) 05 OHC CK 0067

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Susanta Kumar Mishra, Suman Pattanayak

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Mishra, learned advocate appears on behalf of petitioner and submits, impugned is final order dated 28th January, 2013. He demonstrates from relevant materials disclosed in the writ petition that there never was issued a caste certificate to his client. Question of declaring fake a non-existent caste certificate cannot arise. Consequently, other directions made in final order are illegal and the entire order passed with material irregularity. He relies on view taken by this Bench on judgment dated 2nd December, 2022 in WP(C) no.1003 of 2010 (Pinas Digal v. State of Odisha and others), paragraph-2. The paragraph is reproduced below.

"2. Mr. Babu, learned advocate, Additional Government Advocate appears on behalf of the State and submits, his instructions are, the Employment Exchange sponsored petitioner as a scheduled caste candidate, for employment. This must have happened on petitioner having produced a caste certificate. On query from Court Mr. Babu is unable to disclose particulars of the case registered on the application, under which the caste certificate was issued. On pain of repetition it must be said that impugned final order of the State Level Scrutiny Committee does not disclose existence of a caste certificate, for there to be proceeding

regarding establishing whether it is genuine.”

(emphasis supplied)

2. He draws attention to impugned final order and submits, purported finding is that his client forged his caste identity. Relied upon impugned final order, appearing in paragraph 4 therein, is extracted and reproduced below.

“4. xx xx xx Under these premises having regard to the available documents and evidences, the committee unanimously decided that the alleged person does not belong to Pano community, but belongs to Pano Christian community and came to the conclusion that he has forged his caste identity in order to avail the benefits meant for SC people. Therefore, the committee passed orders as detailed below taking into consideration of all the facts and records and evidences.”

(emphasis supplied)

Drawing attention to the enquiry report, based on which impugned final order was made, he demonstrates that categorical statement therein repeatedly is that caste certificate is not available in his client’s service book. He seeks interference.

3. Ms. Pattanayak, learned advocate, Additional Government Advocate appears on behalf of State and submits, petitioner obtained job as teacher in a Government school by claiming to belong to a Scheduled Caste. He was born into a Christian household. She draws attention to admission made by petitioner, as appearing in the enquiry report. Relied upon passage in the report is reproduced below.

“Being asked Binayak Digal S/O-Ebel Digal he stated that at present he is a PANA CHRISTIAN. Prior to 1984 he was a PANA HINDU and after that he changed his religion to CHRISTIANITY. In the year 1980 he got the job and at that time he had produced a SC caste certificate before the selection committee which he had obtained from the then MLA G.Udayagiri. The copy of the caste certificate is not available with him. He has not obtained any caste certificate officially. He further stated that after change of religion he has not intimated the fact to the authority. In this regard he has submitted an undertaking which is countersigned by SI of Schools Raikia.”

(emphasis supplied)

4. State Level Scrutiny Committee(s) came to be constituted by the State, for implementing directions made by the Supreme Court in Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development, reported in AIR 1995 SC 94. By paragraph 12 in the judgment the Supreme Court laid down streamlined procedure for issuance of social status certificates, their scrutiny and approval. Direction no.9 is reproduced below.

“9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after

inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.”

(emphasis supplied)

5. Per view already taken in *Pinas Digal* (supra), obviously following *Madhuri Patil* (supra), it is necessary for there to be a caste certificate for the State Level Scrutiny Committee to enquire into genuineness thereof. In this case there is no caste certificate. This absence of the certificate is compounded on the enquiry not being able to unearth one. That there was no social status certificate issued to petitioner stands confirmed because, there is no official record also of issuance. It is not that there was a caste certificate, which was produced and submitted by petitioner but misplaced by the school authority. Official record ought to have borne evidence of its issuance.

6. It appears but cannot be said as a fact that petitioner obtained job on strength of a recommendation made by a Member of Legislative Assembly (MLA), G. Udayagiri. The State Level Scrutiny Committee is not empowered to enquire into the authority of representatives of the people, on their power or authority to issue certificates to members of the public. If the school acted on a certificate issued by a representative of the people, State must find redress and remedy against the same but the State Level Scrutiny Committee cannot declare fake a non-existent certificate or a certificate issued by an MLA. Contents of the certificate, issued by the MLA in favour of petitioner, is also not known. What the State Level Scrutiny Committee has sought to do is find that petitioner forged his caste identity in order to avail the benefits meant for Scheduled Caste people. This finding appears to be perverse as not based on any evidence whatsoever.

7. Impugned final order is set aside and quashed.

8. The writ petition is disposed of.

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