

(1994) 06 CAL CK 0018
In the Calcutta High Court

Case No : Appeal ... of 1991 (Arising out of Matter No. 1017 of 1988)

Canara Bank

APPELLANT

Vs

E.K. Madhavan

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Citation : (1995) 1 ILR (Cal) 396

Hon'ble Judges : Nikhil Nath Bhattacharjee, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bhagabati Prasad Banerjee, J.—This is an appeal against the order of the learned trial Judge dated July 16, 1991, passed in Matter No. 1017 of 1988. The learned trial Judge by that order allowed the writ application and quashed the order of reversion by which the writ Petitioner opposite party was reverted to the clerical cadre from the promoted post.

2. The facts are not in dispute that originally the writ Petitioner opposite party was treated as a Scheduled Tribe candidate. In Malabar district Kerala Pulayan caste was considered as Scheduled Tribe. But the said caste was changed from Scheduled Tribe to Scheduled Caste after the Amendment Act of 1976. It is also admitted that for Scheduled Caste candidates 15 % of the quota in promotional post was reserved and 7-1/2 % was reserved for Scheduled Tribe candidates. The writ Petitioner opposite party was promoted in the quota reserved for Scheduled Tribe candidate, and in the order of promotion of the writ Petitioner opposite party it was specifically provided that he should have to submit a fresh caste certificate as per pro forma schedule within three months from the date of the order. Subsequently, on verification it was found that at the time when the promotion was given the said caste was de-categorized from Scheduled Tribe to Scheduled Caste and it was found that the promotion was given in a quota reserved for Scheduled Tribe the writ Petitioner opposite party had to be reverted back to his substantive post. Brochure on Reservation for Scheduled Castes and

Scheduled Tribe in Services (7th Ed., Government of India) provides as follows:

The appointing authority should verify the caste status of a Scheduled Caste/Tribe officer at the time of initial appointment and promotion against a vacancy reserved for Scheduled Caste/Tribe. For this purpose, the caste and the community to which a SC/ ST person belongs, his place of residence and the name of the State should be pasted on the top of the service book, personal file or any other relevant document covering its employee to facilitate such verification. It may be mentioned that a Scheduled Caste person, whose caste has been de-scheduled after his initial appointment as a Scheduled Caste, is no longer entitled to enjoy the benefit of reservation in promotions. This verification of caste status at every important upturn . of employee's career is necessary so that the benefit of reservation and other scheme of concessions etc. mean for SC/ ST should go only to the rightful claimants and not those who become disentitled to therein.

3. In the instant case, the promotion was given treating the writ Petitioner opposite party as a Scheduled Tribe, but when it was found that he was not entitled to get promotion in the said reserved vacancy as Scheduled Tribe as the caste had been rescheduled and had been treated by the Act of Amendment as Scheduled Caste, in that event, he was not entitled to get any benefit of reservation in the post earmarked for Scheduled Tribe. Scheduled Caste and Scheduled Tribe are the castes specified in the Schedule under the Constitution and/or the Laws and that on the basis of that Schedule certain percentage of posts have been reserved by the Government for appointment and/or promotion. The right of the writ Petitioner opposite party accrues from such schedule. When it was found by the authority concerned on verifying the caste status that the writ Petitioner opposite party was a Scheduled Caste and not a Scheduled Tribe, in that event it automatically follows that any benefit which has been wrongly given treating him as a Scheduled Tribe candidate should automatically go and to be reverted in the original position."

4. The learned trial Judge made the rule, absolute on the ground that the de-categorisation was made for no fault on the part of the writ Petitioner opposite party but because it was made by law, in that event he had not to suffer. This is not the correct approach. Scheduled Caste and Scheduled Tribe are the creatures of the Statute and they are from particular community and their rights are created from such particular schedule and it is not an independent and legal right devoid of the Constitution and the Statute.

5. Accordingly, we do not find any infirmity in the action taken by the Appellant concerned in reverting the writ Petitioner opposite party. Further, as there was no vacancy for Scheduled Caste candidate at the time when such promotion was given and the only vacancy available was for Scheduled Tribe candidate, the authority concerned had correctly reverted the writ Petitioner opposite party from that post, to make the said post available to the Scheduled Tribe candidate. Of course, the writ Petitioner opposite party would be entitled to all benefits of

reservation of Scheduled Caste and in case vacancy arises he will get all the benefits. In that view of the matter, the order of the learned trial Judge is set aside. The writ petition is dismissed. The appeal is allowed. There will be no order as to costs.

6. All" parties" concerned to act on a signed Xerox copy of this judgment and order on the usual undertaking.

Nikhil Nath Bhattacharjee, J.

7. I agree.