

(2013) 04 CHH CK 0028
In the Chhattisgarh High Court
Case No : Writ Petition (s) No. 1195 of 2012

Chandra Shekhar Kotriwar	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 3 CGLJ 315 : (2013) LabIC 3143

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : P.S. Koshy, Mateen Siddiqui, A.S. Rajput, Sunil Otewani and Amrito Das, for the Appellant; V.V.S. Murthy, Dy. Advocate Gen., for the Respondent

Judgement

Satish K. Agnihotri, J.—WP (S) Nos. 1195 & 1533 of 2012, involve the same question of law and common facts and, as such, are being disposed of by this common order. WP(S) No. 1195 of 2012: The petitioner was appointed on the post of District Organizer, Department of Tribal Development, in the year 1983 against the post reserved for the Scheduled Tribe category candidates, as according to the petitioner, the petitioner belongs to "Chattri" Tribe and it was a part of Tribal community. Thereafter, in 1991 & 2000, the petitioner was promoted to the posts of Assistant Commissioner and the Deputy Commissioner, respectively. A complaint was made with regard to the social status of the petitioner. On the basis of the same, an enquiry was conducted and subsequently, by order dated 29-8-2005 (Annexure-P/8) the High Power Caste Scrutiny Committee (for short "the Committee") held that the caste certificate issued by the Sub Divisional Officer, Balod, in favour of the petitioner, was wrong and, as such, the same was cancelled. It was also directed that the appointment of the petitioner against the reserved post of Scheduled Tribe be cancelled.

2. Thereagainst, the petitioner preferred a petition before this Court, being WP (S) No. 4951 of 2005. This Court considered the said writ petition along with other connected matters and by order dated 19-8-2010 allowed the writ petition and remitted back to the Committee to consider the case of the petitioner afresh

after following the guidelines/directions of the Supreme Court and also as per the circulars issued by the State of Chhattisgarh as well as the Government of India from time to time. The Committee, after reconsideration, by order dated 29-2-2012 held that "Chattri" community was not scheduled tribe and cancelled the caste certificate of the petitioner. Thus, this petition.

3. On 15.03.2012 this Court issued notices to the respondents and directed for listing the case 16-4-2012 with an observation that the application for interim relief shall be considered on the next date of hearing. However, all of a sudden by order dated 26-3-2012 (page 396 of the paper book), the petitioner was dismissed from service. The said event was brought by the petitioner on record by way of amendment application (I.A. No. 6) and challenge was made, therein, which was allowed by order dated 14-1-2013.

4. WP(S) No. 1533 of 2012: The petitioner was appointed on the post of Deputy Collector in the year 1993 against the post reserved for the Scheduled Tribe category candidates, as according to the petitioner, the petitioner belongs to Gond tribe and it was a part of Tribal community. A complaint was made with regard to the social status of the petitioner. On the basis of the same, an enquiry was conducted and subsequently, by order dated 26-5-2008 (Annexure-P/9) the Committee held that the caste certificate issued by the Sub Divisional Officer, Bilaspur, was wrong and, as such, the same was cancelled. It was also directed that the appointment of the petitioner against the reserved post of Scheduled Tribe be cancelled.

5. Thereagainst, the petitioner preferred a petition before this Court, being WP (S) No. 3206 of 2008. This Court considered the said writ petition along with other connected matters and by order dated 19-8-2010 allowed the writ petition and remitted back to the Committee to consider the case of the petitioner afresh after following the guidelines/directions of the Supreme Court and also as per the circulars issued by the State of Chhattisgarh as well as the Government of India from time to time. The Committee, after reconsideration, by order dated 29-2-2011 (according to the petitioner the date of order is 29-2-2012) cancelled the caste certificate of the petitioner. Thus, this petition.

6. The question involved herein is that if a person has obtained service against the reserved category and continued in service for a long period whether the consequence would be removal from service or continuation in service without availing the benefits of reservation.

7. The petitioners are not seriously contesting the orders passed by the Committee holding the petitioners as non-tribal. Even otherwise, it is well settled principle of law that the High Court should be loath in interfering with the decision of the Committee, if the same has been passed after considering all the facts in accordance with the procedure laid down after affording opportunity of hearing. On perusal, it is found that the decision was taken after following the due process of law.

8. A constitution Bench of the Supreme Court in *State of Maharashtra Vs. Milind and Others*, in respect of the candidates who had obtained appointment on the basis of false social status certificate, observed as under:

38. Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practicing as a doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

9. In *Milind (supra)*, it was directed the petitioner's result be declared and he be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him.

10. The aforesaid question came up for consideration before the Supreme Court in *Dattu Thakur Vs. State of Maharashtra and Others*, wherein it was held that the benefits, which have already been availed would continue, but the candidate would not be entitled to any further benefits under the caste certificate issued, on the basis of which the petitioner has obtained employment, following the judgment of the Supreme Court in *Swati v. State of Maharashtra (Civil Appeal No. 7411 of 2010, order dated 6-9-2010 (SC))*.

11. In *Kavita Solunke Vs. State of Maharashtra and Others*, , relying on the decision of the Constitution Bench in *State of Maharashtra Vs. Milind and Others*, , held that the employee should not be ousted from service and shall be reinstated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained before a long period of 10 years.

12. Be that as it may, it is found that the orders passed by the Committee, by which the caste certificates of the petitioners have been cancelled, do not suffer from any perversity or illegality and, as such, no interference is warranted, as the said orders were passed after following the guidelines, as laid down by the Supreme Court as well as this Court in umpteen number of cases.

13. 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. In the result, the writ petitions are allowed to the above extent. No order as to costs.