

(2012) 01 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No. 1002 of 2009

Damodar Mohapatra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Citation : (2012) 114 CLT 298

Hon'ble Judges : B.P. Das, J;B.K. Nayak, J

Bench : Division Bench

Advocate : S.P. Mishra, S. Nanda, S. Mishra, S.K. Mohanty, S.S. Kasuyap and S.K. Sahoo, for the Appellant; Bharati Dash, C.A. Rao, M.K. Mohanty and Mr. B.C. Panda, for the Respondent

Judgement

B.K. Nayak, J.—The Petitioner in this writ application prays for quashing the order of termination from service vide Annexures-14 & 17 & the confirming Appellate order vide Annexure-21. The facts leading to filing of the writ application are that the Petitioner pursuant to a campus selection made by Opp. Party No. 3 was selected for appointment as Mechanic-B under Opp. Party Nos. 3 to 7. In the application & attestation form for such appointment he had declared his caste as scheduled caste, (MALA caste) & accordingly produced the caste certificate (Annexure-4) granted by the Additional District Magistrate, Cuttack dated 12.03.1973. Annexure-1 is also another caste certificate issued by the Additional District Magistrate in favour of the Petitioner on 18.05.1972. The caste "MALA" has been included as a scheduled caste in the Constitution (Scheduled Caste) Order, 1950 in so far as it relates to the State of Orissa vide Annexure-2. While the Petitioner was continuing in service, the Senior Manager, Security & Vigilance, H.A.L. vide his letter dated 18.08.1995 (Annexure-11) requested the Collector, Cuttack to verify the genuineness of caste certificates of some employees including the Petitioner as the H.A.L. authorities have received letters from S.P., C.B.I., Bhubaneswar that some employees of H.A.L. had allegedly submitted false caste certificates at the time of employment. On receipt of such letter in the office of the Collector, Cuttack, the Additional District Magistrate,

Cuttack vide his letter dated 04.09.1995 under Annexure-7 requested the Tahasildar, Cuttack to enquire & report regarding the caste, sub-caste & religion of the Petitioner opining that the caste certificate produced by the Petitioner (Annexure-4) appears not to have been issued from the office of the Additional District Magistrate, Cuttack, as it does not bear the Misc. Case No. /Year or issue number & date. In turn, vide letter No. 5336 dated 14.09.1995 under Annexure-8 the Additional Tahasildar, Cuttack intimated the Senior Manager (S & V), H.A.L. that on verification it was found that the caste of the Petitioner is "MALLA" which does not come under S.T. or S.C. community. Thereafter, vide letter dated 19.10.1995 under Annexure-9, the H.A.L. Authorities called upon the Petitioner to show cause as to why disciplinary action shall not be taken against him on the charge that the Petitioner at the time of his initial appointment & also subsequently during promotion declared that he belonged to scheduled caste & also produced the caste certificate at the time of initial appointment, but on verification it was found that he does not belong to "MALA" community, as claimed by him, but actually he belongs to "MALHA" community which is not a scheduled caste & as such he has made false declaration of his caste & fraudulently secured appointment in violation of Clause Nos. 25(b) (ii), 25(b) (vi) & 25(b) (xxii) of the Company's Standing Orders & as such committed breach of such rules & misdemeanour. The Petitioner submitted his show cause (Annexure-10) denying the charges & further contended that he is a member of "MALA" community, which is a Scheduled Caste & accordingly caste certificate was issue of in His favour & that he does not belong to "MALHA" community. It is further stated by him that for generations his family members are being treated as scheduled caste. Dissatisfied with the explanation of the Petitioner, the authorities initiated the disciplinary proceeding against the Petitioner & the Senior Manager, Training was appointed as Inquiry Officer. On completion of the enquiry, the Inquiry Officer submitted his enquiry report vide Annexure-12 wherein he held that the letter of the Additional Tahasildar bearing No. 5336 dated 14.09.1995 no where mentioned that the original caste certificate issued in favour of the Petitioner was false or it was cancelled. It was further held that in the said letter though the Additional Tahasildar has stated, that the Petitioner is "MALLA" by caste, in the charge-sheet it is mentioned that the Petitioner is "MALHA" by caste. The Inquiry Officer, therefore, concluded that if the statement of the Additional Tahasildar in his letter is to be taken as correct then the charge-sheet against the Petitioner should be withdrawn. It was ultimately found by the Inquiry Officer from other documents produced in course of the proceeding that the Petitioner belongs to scheduled caste, i.e., "MALA" & relations of the Petitioner were issued scheduled caste certificate as "MALA". The State Government was issuing scheduled caste certificate to "MALLA" & "MALHA" community people as "MALA" & therefore, the Petitioner did not submit false caste certificate at the time of his appointment. The Inquiry Officer ultimately suggested for a fresh verification from the Government authority as to whether the caste certificate issued to the Petitioner as "MALA" which was a synonym of "MALLA" or not & whether the authorities were issuing Scheduled Caste

certificates to "MALHA" & "MALLA" community people as "MALA" or not before taking any further action. The Petitioner was, therefore, found not guilty by the Inquiry Officer.

2. On receipt of the enquiry report, the General Manager, H.A.L. Opp. Party No. 4, who is the disciplinary authority, issued notice dated 08.02.1997 (Annexure-13) to the Petitioner asking him to show cause as to why he shall not be visited with the proposed punishment of termination from service. The notice reveals that the disciplinary authority differing from the findings of the Inquiry officer had already taken a decision that the Petitioner was guilty of the charge on the ground that the Additional Tahasildar, Cuttack in his letter No. 5356 dated 14.09.1995 had indicated that the Petitioner belongs to "MALLA" community which is not a scheduled caste & that as per the suggestion of the Inquiry Officer on further re-verification it was established that "MALLA" community to which the Petitioner belongs is not a local variant of "MALA" community. It was further indicated by the disciplinary authority that the caste certificate issued to the Petitioner by the Government authorities in the name of "MALA" is based on false declaration given by him & the said certificate is defective. The Petitioner submitted his explanation dated 13.03.1997. The disciplinary authority passed Order Dated 21.04.1997 as per Annexure-14 terminating the service of the Petitioner. Challenging the show cause notice under Annexure-13, the Petitioner had filed OJC No. 2912 of 1997 & in Misc. Case No. 2315 of 1997 arising there from this Court by Order Dated 04.03.1997 had directed that though the disciplinary proceeding may continue, no coercive action would be taken against the Petitioner. The proceeding having come to an end on passing of the order of punishment under Annexure-14, the aforesaid writ application was withdrawn as infructuous giving the Petitioner liberty to move appropriate forum challenging the final order of punishment. On the disposal of the writ application letter dated 23.02.2000 was issued by the authorities under Annexure-17 whereby the order of punishment of termination from service was given effect to. Thereafter, the Petitioner preferred an appeal before the Managing Director, H.A.L. in the form of a representation under Annexure-19 to reconsider his case with the further clarification of the Tahasildar, Cuttack vide Annexure-18 which was to the effect that till 01.10.1993 "MALA" community included "MALHA" & "MALHAR" & that on enquiry it was revealed that the Petitioner had been issued with scheduled caste certificate vide Memo No. 1412 dated 19.05.1972 (Annexure-1). It is the further case of the Petitioner that since the Appellate authority did not take steps to dispose of his appeal, the Petitioner approached this Court by filing W.P.(C) No. 5190 of 2000. After hearing the Learned Counsel for both parties this Court vide Order Dated 22.09.2008 (Annexure-20) directed the Appellate authority to hear & dispose of the representation/appeal filed by the Petitioner before the Managing Director within a period of six weeks from the date of receipt of records from the Managing Director. Before passing such direction, this Court clearly held that the Petitioner does not belong to "MALLA" or "MALHA" caste & to that effect there was no evidence available before Opp. Party Nos. 3 to 6.

Such finding of the Court is apparent from the following observation:

On due consideration of the aforesaid contention, we are prima facie satisfied that the Petitioner does not belong to "MALA" or "MALHA" caste & at least to that effect there was no evidence available before Opp. Party Nos. 3 to 6, when they took a decision to issue the second show cause notice to terminate him. Be that as it may, when the matter is pending in shape of appeal, it is for the Appellate authority to consider the same in accordance with law. As stated by Learned Counsel for Opp. Party Nos. 3 to 6, if the Managing Director is not the Appellate authority & some body else is the Appellate authority, then it would be far the managing Director to transfer the said appeal pending in shape of representation for due consideration by the Appellate authority. When, we intend to pass such an order, it will not be appropriate at this stage to quash Annexures-14, 15 & 17 & that is to be considered & appropriate order is to be passed by the Appellate authority.

3. After disposal of the writ application, the appeal of the Petitioner was transferred to the Executive Director, H.A.L., Koraput Division, Koraput (Opp. Party No. 7) & the said Appellate authority by his Order Dated 20.10.2008 under Annexure-21 confirmed the order of punishment of termination of service of the Petitioner holding that on verification of caste certificate with the concerned district authorities, it was ascertained that the Petitioner belonged to "MALLA" community, which was not a Scheduled Caste & therefore, it was proved in the enquiry proceeding that the Petitioner does not belong to "MALA" caste, which is a Scheduled Caste.

4. In assailing the impugned order of punishment passed by the disciplinary authority & the confirming order of the Appellate authority, it is contended by the Learned Counsel for the Petitioner that the Inquiry Officer exonerated the Petitioner from the charge, but the disciplinary authority without affording any opportunity of hearing to the Petitioner pre-judged the matter & found the Petitioner guilty of the charge & thereafter issued the notice to the Petitioner to show cause on the proposed punishment, which was in clear violation of principle of natural justice & as such illegal. Therefore, the final order of punishment passed under Annexure-14 by the disciplinary authority. & the subsequent order giving effect to the same vide Annexure-17 are bad in law. It is further submitted that there was no acceptable evidence to the effect that, the Petitioner does not belong to "MALA" caste or that he belongs to "MALLA" caste & therefore, the finding of the disciplinary authority cannot be sustained. It is his further submission that this Court in W.P.(C) No. 5190 of 2000 has clearly given a finding that the Petitioner does not belong to "MALLA" or "MALHA" caste & to that effect there was no evidence available before the Opp. Parties when they took decision to issue the second show cause notice to terminate him & that the said finding has become final inasmuch as the order of this Court was not challenged by the Opp. Parties, but the Appellate authority Opp. Party No. 7 mechanically passed the Appellate order confirming the order of punishment of the Petitioner ignoring

the finding of this Court & therefore, the Appellate order is illegal & unjust, which is liable to be quashed.

5. Opp. Party No. 3 to 6 have filed a counter affidavit contending inter alia that in view of the observation of the Additional District Magistrate in his letter under Annexure-7 that the caste certificate of the Petitioner was not issued from his office as because it does not bear Misc. Case No. /Year or issue number & date, the caste certificate must be held to be a false one & not genuine & therefore, the Petitioner cannot be said to be a member of "MALA" caste, which is a scheduled caste & that the authorities having been satisfied in that respect the Petitioner was rightly visited with the punishment. It is further stated that the disciplinary authority was not inclined to accept the findings recorded by the Inquiry Officer & after going through materials on record & taking into consideration the submission made by the Petitioner came to hold that the caste certificate produced by the Petitioner was false & he belonged to caste "MALLA", which was not a scheduled caste, & that the Petitioner failed to establish that he was a member, of the caste, "MALA" & accordingly passed the order of punishment & there was no violation of principle of natural justice. It is stated further that the Appellate authority applied his mind to all relevant facts & circumstances of the case including the Judgment of this Court rendered in W.P. (C) No. 5190 of 2000 & therefore, his order does not suffer from infirmity. Opp. Party No. 1 the Union of India has filed a counter affidavit through the Asst. Director, Government of India, Ministry of Social Justice & Empowerment disputing the facts stated in the Writ Petition but further stated that no relief has been sought against it by the Petitioner.

6. It is quite apparent from the report of the Inquiry Officer (Annexure-12) that after taking into consideration all materials placed before him, the inquiry Officer gave his finding that the original caste certificate of the Petitioner bears Government Seal & was signed by Additional District Magistrate & District Welfare Officer, Cuttack, which is the correct procedure for issuing a Scheduled caste certificate & the said certificate was not a false certificate, nor it was cancelled & therefore, he exonerated the Petitioner of the charge. The Inquiry Officer also took into account the defect in the charge to the effect that though the basis of initiation of the proceeding against the Petitioner was letter No. 5356 dated 14.09.1995 (Annexure-8) in which Additional Tahasildar, Cuttack indicated that the Petitioner belongs to "MALLA" caste which was not a Scheduled caste, in the charge-sheet the Petitioner was intimated that he belongs to "MALHA" caste. However, having come to the conclusion that the communities "MALLA" & "MALHA" were local variations of the caste, "MALA" & accordingly the competent authorities were issuing caste certificates in favour of all such communities as "MALA" caste which is admittedly a scheduled caste, he suggested for a further verification & accordingly exonerated the Petitioner on benefit doubt. The disciplinary authority, on the other hand, differed from the finding of the Inquiry Officer but has apparently accepted the suggestion of the Inquiry Officer & carried out a further verification of the social status of the Petitioner unilaterally,

as revealed from paragraph-2 of the second show cause notice under Annexure-13, & came to the conclusion that the Petitioner belongs to caste "MALLA" which is not a local variant of "MALA" community. The manner in which the disciplinary authority conducted further verification is not clear from Annexure-14. Whatever verification was made by him is behind the back of the Petitioner, for which he did not get any opportunity to contest the same. This amounts to clear violation of the principle of natural justice with regard to the conduct of the proceeding. It further appears that the disciplinary authority has fully relied upon the letter of the Addl. Tahasildar, Cuttack bearing No. 5356 dated 14.09.1995 (Annexure-8), which had been rejected by the Inquiry Officer giving cogent reasons for the same. The second show cause notice & the order of the disciplinary authority, however, mentioned no reason as to why the said letter of the Additional Tahasildar should be accepted. Apparently that letter was collected & utilised from the side of the department. Therefore, the dissenting finding of the disciplinary authority cannot be legally sustained.

7. We also find a material discrepancy in the charge as well as in the punishment order passed by the disciplinary authority & that to a great extent the finding of the disciplinary authority is not in consonance with the charge levelled against the Petitioner. The charge was framed alleging that the Petitioner did not belong to "MALA" community but he belongs to "MALHA" community. However, the charge was framed on the basis of letter of the Addl. Tahasildar under Annexure-8 in which it was stated that the Petitioner belongs to "MALLA" community. Undisputedly, "MALLA" & "MALHA" are two distinct communities & neither of them is synonymous with the other. The finding of the disciplinary authority, however, is primarily based on the letter of the Additional Tahasildar that the Petitioner belongs to "MALLA" caste which was not the charge against him. In such view of the matter, the Petitioner could not have been held guilty by the disciplinary authority.

8. It is very significant to note that in W.P.(C) No. 5190 of 2000 filed by the Petitioner against the Opp. Parties a Division Bench of this Court while disposing of the writ application by Order Dated 22.09.2008 gave a clear finding that the Petitioner does not belong to "MALA" or "MALHA" caste & to that effect there was no evidence available before Opp. Party Nos. 3 to 6 when they decided to issue second show cause notice to terminate him. This finding of the Court has reached finality & therefore, a different finding by the Appellate authority was wholly uncalled for. The Appellate order under Annexure-21 reveals that the Appellate authority has not taken into consideration, the aforesaid finding of this Court. This Court having already come to the conclusion that there was no acceptable evidence before the disciplinary authority to come to the conclusion that the Petitioner belongs to either "MALLA" or "MALHA" community, it was not open to the Appellate authority to accept the very same material & to agree with the finding of the disciplinary authority. With the finding of this Court, the Appellate authority should have set aside the order of punishment of the Petitioner. But he has failed to do so. His order is wholly contrary to the finding of

this Court in the earlier writ application & therefore it cannot be sustained.

9. For the aforesaid reasons, we are unable to sustain the original & Appellate orders of punishment of termination of service of the Petitioner.

10. During the course of hearing the Learned Counsel for Opp. Party Nos. 3 to 7 submitted that now that a Scrutiny Committee has been formed by the State Government in terms of the direction given by the Apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, the enquiry with regard to the caste status of the Petitioner may be referred to the said Scrutiny Committee. Being satisfied that the original caste certificate of the Petitioner which he produced before the Opp. Parties at the time of his appointment was not false & that admittedly in the meantime the Petitioner having crossed the age of superannuation since years, we are unable to accept the suggestion made by the Learned Counsel for the Opp. Parties. In the result, we allow the writ application & quash Annexures-14, 17 & 21 & further declare that the Petitioner be deemed to be continuing in service from the date of his termination till he reached the date of superannuation & shall be entitled to all financial benefits.

The writ application is accordingly disposed of. No costs.

B.P. Das, J.

I agree.