
(2010) 08 AHC CK 0041
In the Allahabad High Court
Case No : C.M.W.P. No. 26836 of 2004

Dinesh Kumar

APPELLANT

Vs

Dy. Inspector General of Police C.R.P.F. and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2010) 6 AWC 6423

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Mithilesh Kumar Tiwari, for the Appellant; K.C. Sinha, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—The Petitioner applied for being appointed as a constable in the Central Reserve Police Force on the basis of a caste certificate dated 30th June, 1995 issued by the Tehsildar Karchhana district Allahabad indicating that the Petitioner is a scheduled tribe. The caste of the Petitioner is mentioned as "Kol".

2. In the year 2003 the department instituted a departmental enquiry against the Petitioner on the ground that the Petitioner had obtained appointment on the basis of a wrong caste certificate and ultimately he was removed vide order dated 12th April, 2004. The Petitioner has come up assailing the said order and during the pendency of the writ petition the Petitioner had preferred an appeal which has also been dismissed as such the consequential relief has also been claimed.

3. A counter affidavit has been filed on behalf of the Respondents wherein it has been stated that the Petitioner had deliberately and intentionally got employment on the strength of a certificate even though the caste of the Petitioner is not included within the scheduled tribe order.

4. I have perused the impugned order as well as the facts stated in the counter affidavit and the reply submitted by the Petitioner.

5. Without entering into the other merits of the procedure for dispensing with the services of the Petitioner it would be appropriate to mention that the Constitution Scheduled Tribes Order, 1950 promulgated by the President of India under Article 342 does not contain the caste of the Petitioner namely "Kol" as a scheduled tribe. The Constitution Scheduled Tribe Uttar Pradesh Order, 1967 published on 24th June, 1967 includes only five castes as scheduled tribes namely (1) Bhotia (2) Buksa (3) Jannasari (4) Raji and (5) Tharu. The caste of Kol is not included in the said order. The power to include a caste as a scheduled tribe or a scheduled caste is vested under Article 342 of the Constitution in the President of India and any notification by the State Government to the contrary is of no relevance.

6. Learned Counsel for the Petitioner contends that the State Government had issued a Government Order in this regard. The aforesaid reliance placed is without any basis inasmuch as the said declaration has to be made under a presidential order.

7. Learned Counsel for the Petitioner has been unable to furnish any such document which may indicate that there is a presidential order including the caste of Kol as a scheduled tribe. In view of this the issuance of the certificate or even otherwise does not come to the aid of the Petitioner once it is established that the caste of the Petitioner does not fall within the scheduled tribe category as per Article 342 of the Constitution of India. Accordingly the writ petition lacks merit and is hereby dismissed.