
(1968) 11 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 190 of 1964

K. Appa Rao

APPELLANT

Vs

Director of Posts and Telegraphs and Others

RESPONDENT

Date of Decision : 29-11-1968

Acts Referred:

Constitution of India, 1950 — Article 341(1), 342(1)
Public Employment (Requirement as to Residence) Act, 1957 — Section 2

Citation : AIR 1969 Ori 220 : (1969) 35 CLT 55

Hon'ble Judges : S. Barman, C.J; S. Acharya, J

Bench : Division Bench

Advocate : R.N. Misra and P.V. Ramdas, for the Appellant; A.G. and Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Barman, C.J.—The petitioner a resident of Orissa (at Parlakhimedi) belonging to Konda Kapu Scheduled Tribe, challenges the order dated July 10, 1964 of the Director of Posts and Telegraphs, Orissa Circle, by which the petitioner then officiating as Inspector of Post Offices, Aska Sub Division, was reverted to his substantive post of clerk, Puri Division.

2. In 1956 the petitioner was appointed as a Clerk under the Posts and Telegraphs Department and the same year he was made permanent. By virtue of his caste and having qualified himself in the Inspector's Examination held in 1963 the petitioner was appointed as Inspector of Post Offices on May, 7, 1964. But on July 10, he was reverted to his substantive post of Clerk by the impugned order.

3. On July 27, 1964 the petitioner made a representation against the order of reversion. In reply to the representation the Director of Posts & Telegraphs intimated to the petitioner on August 6, 1964, the grounds of his reversion, namely, that the petitioner was selected for appointment as Inspector of Post Offices against a vacancy reserved for Scheduled Tribe candidates under a

reduced standard of qualification; that the Kanda Kapu Scheduled Tribe to which the petitioner belongs is not recognised as one of the Scheduled Tribes in Orissa State where he is a permanent resident and as such the petitioner's promotion as Inspector of Post Offices against a vacancy reserved for Scheduled Caste or Scheduled Tribe candidates on the basis of the results of the Inspector's Examination held in 1963 under a reduced standard having been made irregularly, he was reverted to his substantive post.

4. The points argued on behalf of the petitioners are, in substance, these: As the petitioner is a Konda Kapu which is recognised as a Scheduled Tribe in Andhra Pradesh under the Constitution (Scheduled Tribes) Order 1950, he must be taken to be a member of a Scheduled Tribe for purposes of employment under the Central Services, including the Posts and Telegraphs Department, irrespective of the place of his residence or employment. In support of this contention he relied on Section 2 of the Public Employment (Requirement as to Residence) Act, 1957 (Central Act No. 44 of 1957) which provides to the effect that upon the commencement of the said Act any requirement as to residence in a State or Union territory shall cease to have any effect. It was submitted that in view of this provision residence in a particular area or State will not be a bar to public employment under the Central Government, and that Statewise classification for the purpose of employment under the Central Services is not to be recognised.

In other words, the contention is that for the purpose of claiming the privileges admissible to a member of a Scheduled Caste or Scheduled Tribe it is enough if it is shown that he belongs to any recognised Scheduled Caste or Scheduled Tribe and not that he belongs to such a Tribe or Caste in a particular area or State.

5. Articles 341(1) and 342(1) which contain special provisions relating to Scheduled Castes and Scheduled Tribes are as follows:

"341(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be "Scheduled Castes in relation to that State" or Union territory as the case may be.

xx xx xx "342(1) The President" may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification specify the tribe or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed "to be Scheduled Tribes in relation to that State" or Union territory as the case may be."

xx xx xx (the underlining (here into " ") is ours). The phrase "in relation to that State"

occurring after the words "Scheduled Castes" in Article 341(1) and the phrase "in

relation to that State" occurring after the words "Scheduled Tribes" in Article 342(1) are not without significance. This shows that in order to get the benefit of being a member of a Scheduled Caste or Scheduled Tribe in the matter of public employment the person claiming it should be a member of such caste or tribe in relation to the particular area or State where he is residing and where he seeks employment. Section 2 of the Public Employment (Requirement as to Residence) Act 1957, cannot override the provisions of the Constitution.

6. This view gains support from paragraph 2 of the Constitution (Scheduled Tribes) Order, 1950 which provides that the tribes or tribal communities specified in Parts I to XII of the Schedule to that Order shall "in relation to the States" to which those parts respectively relate, be deemed to be the Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule. It is, therefore, clear that the particular Scheduled Tribes specified in the various Parts of the Schedule to that Order are recognised as Scheduled Tribes only for the particular area included in those Parts of the Schedule and not anywhere else. So, any reference to Scheduled Tribes or Scheduled Castes must be intended to be relatable to the Scheduled Tribes or Scheduled Castes in relation to the particular area or State as appearing in the Schedule to that Order.

7. This view is fully supported by the decision of the Supreme Court in *Bhaiyalal Vs. Harikishan Singh and Others*, where it was held that the object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. Before a notification is issued under Article 341(1) an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary and in doing justice it would obviously be expedient not only to specify parts of or groups of castes, races or tribes, but to make the said notification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification.

8. In the present case, the petitioner is not a member of a Scheduled Tribe in (relation to Orissa State. Admittedly Konda Kapu is mentioned in the list of Scheduled Tribes in Andhra Pradesh in the Constitution (Scheduled Tribes) Order, 1950, and does not find mention in any of the Scheduled Tribes in Orissa under that Order. The petitioner cannot therefore, while residing in Orissa, claim the benefit of his being a member of a Scheduled Tribe in another State, for the purposes of public employment. The erroneous description in the certificate issued to him by the Tahsildar of Parlakhimedi cannot therefore confer any right on him.

9. In this view of the case, the writ petition must fail and it is accordingly

dismissed, but there will be no order as to costs.

Acharya, J.

10. I agree.