
(1998) 09 AP CK 0092
In the Andhra Pradesh High Court
Case No : W.P.No. 27550 pf 1997

K. Rajaiah

APPELLANT

Vs

State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Constitution of India, 1950 — Article 341, 341(1), 342, 342(2)

Citation : (1998) 6 ALD 500 : (1998) 6 ALT 494

Hon'ble Judges : Neelam Sanjiva Reddy, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. G.V.L.N. Murthy, for the Appellant; Government Pleader for Social Welfare, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—This Writ Petition is directed against the order of the 2nd respondent-Appellant Authority dated 10-10-1997 rejecting the appeal preferred by the petitioner, working as Technician Grade-I (Elect) in the Fertilizer Corporation of India Ltd., Ramagundam Unit, against the order dated 2-7-1997 passed the 4th respondent-Disciplinary Authority, removing him from service.

2. The factual matrix of the case is that the petitioner was initially appointed as a casual mazdoor on daily wages with effect from 17-2-1973 in the Fertilizer Corporation of India Ltd. (for short "the FCI") and subsequently he was appointed as mazdoor with effect from 15-12-1973 in the Electrical Department as a general category candidate. He was promoted as Helper Grade II with effect from 1-10-1975 and as helper Grade-I with effect from 1-10-1978. He belongs to "Vanjara" (Vanjari) caste which is Backward Class Community at S.No.32 of Group "D" category as per G.O.Ms.No.1793, Edn. dated 23-9-1970. In the attestation form submitted by him on 11-9-1973, his caste is indicated as "vanjara" which comes under BC "D" category.

3. While things stood thus, it appears that the Government of Andhra Pradesh in G.O.Ms.No.245 Social Welfare (E) Department dated 30-6-1977 issued certain guidelines in the matter of issue of Caste Certificates and Community certificates

with respect to persons belonging to Scheduled Tribes, to be strictly followed by the certifying authorities in the State. Annexure-II appended to the said G.O. mentions various particulars relating to the Scheduled Tribes residing in the State of Andhra Pradesh. For the purpose of this case, Columns 2 and 5 of Annexure-II are only relevant. Column 2 of the annexure mentions the name of the Tribe, while column 5 relates to synonyms of the Tribe. Before advertng to the details of these two columns of the Annexure, it may be noted that the Presidential Order, 1976 viz., the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No. 108 of 1976), as required under Article 342 of the Constitution of India, notified 33 categories of tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of the Constitution be deemed to be Scheduled Tribes in relation to the State of Andhra Pradesh. At Serial No.29 of the said notification, the tribes-"Sugalis, Lambadis" are notified as Scheduled Tribes. Now, we may refer back to Annexure-II of G.O.Ms.No.245 referred to above. At S.No.21 of the said Annexure, in Col.2, the Tribe "Sugali" is referred to. The Col.5 the synonyms "Banjara, Lambadi, Lambari, Brinjara, Banjari, Wanjari, Boipari and Sukari" are mentioned. It may be noted here that the caste Vanjara (Wanjari) as mentioned at S.No.32 of BC "D" category has not been deleted.

4. The inclusion of "Wanjari" as one of the synonyms of the Tribe "Sugali" in Annexure-II of G.O.Ms.No.245 dated 30-6-1977 has prompted the petitioner herein to obtain a caste certificate from the Tahsildar, Mahabubabad, Warangal district on 13-10-1978 and after obtaining the same he made an application on 11-11-1978 to FCI informing the authorities that he belongs to "Wanjari" Tribe which is recognised as "Scheduled Tribe" and to substitute the same in his records. On the strength of the said certificate, it appears that petitioner had earned the promotions viz., Technician G.-III with effect from 1-4-1981 against the reserved ST point by extending six months relaxation in experience; Technician Gr-II with effect from 1-4-1985 against the reserved ST point and as Technician Gr-I with effect from 1-1-1990 against the reserved ST point by giving three months relaxation in experience. It may be stated here that by G.O.Ms.No.44, Social Welfare Department dated 23-2-1979 the synonym "Wanjari" mentioned in Col.5 at S.No.21 of Annexure-II of G.O.Ms.No.245 has been deleted.

5 Events started against the petitioner in the year 1992 when a written complaint was received from the General Secretary, Scheduled Castes and Scheduled Tribes Employees Welfare Association FCI Ltd., Ramagundam Unit alleging that the petitioner has obtained a false ST certificate and enjoying the facilities extended to Scheduled Tribes. On that the Vigilance Department of FCI by letter dated 6-1-1993 referred the matter to District Collector, Warangal. It appears that in the meantime, the petitioner had obtained another caste certificate from the Mandal Revenue Officer, Nellikudur Warangal on 24-2-1993, by which he was certified to be a person belonging to "Vanjara" caste at S.No.32 of BC "D" category and the same was also submitted to the 5th respondent stating that as

per G.O.Ms.245 dated 30-6-77 he was treated as "Wanjari" of Scheduled Tribe, but he came to know that his caste was mentioned in BC "D" category. The District Collector by Lr No.RC.D2/8896/92, dated 25-1-1997 informed the FCI that the petitioner obtained ST certificate as "Wanjari" from the then Tahsildar, Mahabubabad as per G.O.Ms.No.245, that "Vanjara" is included in BC "D" category at S.No.32 and that petitioner had also obtained another certificate to the effect that he belongs to "Vanjara" BC "D" on 24-2-1993, that the earlier certificate certifying him as belonging to "Wanjari", ST is not genuine and that show-cause notice is being issued to him for cancellation of ST certificate.

6. The above led to the issue of a charge Memo dated 6-2-1997 to the petitioner under C1.42 (ii) of the Certified Standing Order of FCI Ltd., Ramagundam Unit, stating that he has committed misconduct under C1.40 (iv) of the Certified Standing Orders for he has secured promotions on a false caste certificate against the reserved points meant for Scheduled Tribe candidates to which the petitioner submitted his explanation on 14-2-1997 stating that his caste was recognised as ST as per G.O.Ms.245 but under slipping view of revenue authorities, he was issued another certificate as belonging to BC "D" and he has no intention to misrepresent the facts and it is only because of G.O.Ms.No.245 he obtained the ST certificate. Thereafter, the FCI conducted departmental enquiry and the charges are held to be proved against the petitioner for producing a false caste certificate. After considering the report of the enquiry officer, the departmental authority found that petitioner committed major misconduct under C1.40 (iv) of Certified Standing Orders and accordingly order dated 2-7-1997 was passed by the 4th respondent dismissing the petitioner from service. Aggrieved by the same, the petitioner filed WP No.14831 of 1997 which was dismissed on 16-7-1997 on the ground that petitioner has an effective alternative remedy by way of appeal. Thereafter, the petitioner made an appeal on 22-7-1997 which was, however, rejected by the appellate authority upholding the order of dismissal from service by order dated 10-10-1997. Aggrieved by the same, the present petition is filed.

7. Sri G.V.L.N. Murthy, learned Counsel for the petitioner attacked the order of removal on several grounds. The main among them are that the authorities failed to take into consideration that there was no fraud or misrepresentation on the part of the petitioner in producing the certificate to the effect that he belongs to ST and on the other hand there was a bona fide mistake on the part of the MRO who based his conclusion on Annexure-II appended to G.O.Ms.No.245 dated 30-6-1977 which inserted "Wanjari" caste as a synonym to "Sugali" and accordingly issued ST certificate. If such insertion of "Wanjari" caste was not there in Annexure-II and the Mandal Revenue Officer not issued the certificate, the petitioner would not have produced the certificate. Even otherwise, the petitioner did not seek his initial appointment on the basis of ST certificate but he got the job as Mazdoor under the category of OBC therefore, there was no misrepresentation or fraud played by the petitioner and as such the petitioner should not have been removed from service. He also contended that the order is

not preceded by a proper enquiry in that the material that was relied upon by the Management was not made available to the petitioner. Further, the petitioner was not given sufficient opportunity of hearing to prove his case that he is not liable to be removed from service.

8. Sri Jayaprakash, the learned Government Pleader appearing for the Department of Social Welfare submitted that though "Vanjara" is classified as a synonym to "Sugali" as per G.O.Ms.No.245, unless they are enumerated in the Schedule to SCs and STs Order (Amendment) Act, 1976, the persons called in the such synonym are not entitled to seek the benefit of Scheduled Tribe. In support of his contention, he has also referred to the decisions of the Supreme Court in *Bhaiyalal Vs. Harikishan Singh and Others*, and *B. Basavalingappa Vs. D. Munichinnappa*, . According to him, as on the date of petitioner's appointment as a mazdoor, it was a backward class and on the dates of respective promotions also it was a backward class. Regarding the correctness or otherwise of the order of removal of the petitioner from service he submitted that it is a matter within the discretion of the management.

9. Sir Gopalarao, the learned Standing Counsel for FCI Ltd., submitted that if the petitioner had not produced the false certificate of caste he would not have secured the promotions. He misrepresented the authorities. According to him, the petitioner was quite aware that he never belongs to Scheduled Tribe yet he produced such caste certificate and as such enquiry was ordered and on the basis of the outcome of the enquiry, the authorities had thought it fit that removal is just one. During the enquiry, the petitioner was given sufficient opportunity and after receipt of his explanation, enquiry was conducted and the impugned order of removal from service was passed. He contended that order of removal is just one and interference is not required.

10. Articles 341 and 342 of the Constitution of India deal about how a caste shall be declared as Scheduled Caste or Scheduled Tribe. Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 replaced 1950 Order which is applicable to the State of Andhra Pradesh. The law is well settled that unless a caste is enumerated in the Schedule of SCs and STs Order by the President as required under Articles 341 and 342 of the Constitution, it cannot take the status of SC or ST. Merely because in the list issued by the State Government, certain caste is notified as a synonym of a tribe notified in the Schedule of Presidential Order, such caste cannot be treated as ST unless it finds place in the Presidential Order. In *Basavalingappa v. Munichinnappa* (supra), the Supreme Court held that it is not open to make any modification in the Presidential Order by producing evidence to show (for example) that though Caste A alone is mentioned in the Order, Caste B is also a part of Caste A and, therefore, must be deemed to be included in Caste A. The Apex Court clearly held that it is not open to any party to give evidence to the effect that caste A mentioned in Presidential Order includes or was the same as caste B where Caste A does exist in the area to which the order applies. In *Bhaiya Lal v. Harikishan Singh* (supra), the Supreme

Court held as follows:

"In order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. Any person who claims that he belongs to the same status by reason of the fact that he belongs to a particular caste which is a sub-caste of the Caste declared by the President cannot be accepted unless it is expressly mentioned in the Public notification under Article 341(1). An enquiry of this kind would not be permissible having regard to the provisions contained in Article 341. Article 341(1) provides additional protection to the members of the Scheduled Castes having regard to their economic and educational backwardness from which they suffered..."

In the above case, the Supreme Court has followed the earlier decision of the Apex Court in *Basavalingappa v. Mumchinnappa*'s case. Therefore, it follows that the law is well settled that unless a caste is included in the Schedule of SCs and STs Order, it cannot be treated as SC or ST.

11. It appears that Wanjari Sangram Parishad, a group claiming to protect the interests of the Wanjari people also questioned the G.O.Ms.No.44 dated 23-2-1979 whereby "Wanjari" as a synonym of "Sugali" is deleted from Annexure-II of G.O.Ms.245, in W.P.No.3490 of 1979. This Court held that G.O.Ms.245 is neither capable of granting the social status of ST on "Wanjari" community nor the guidelines issued thereto are capable of assisting the members of "Wanjara" community to claim the benefits of ST community. It was also held that the synonyms mentioned in Col. 5 of Annexure-II are not of such a nature that any person, by merely proving to be a member of a group/caste known by that name, can automatically obtain a ST certificate. The synonyms are mentioned only with a view to aid the officers in the matter of verification. They are not by themselves conclusive. Each of them is a synonym for a particular Scheduled Tribe. It is not as if each of those by itself is declared as Scheduled Tribe. Merely providing that one is a "Wanjari" is of no consequence. One must prove that he is a Wanjari, which is in truth the "Sugali" tribe. This Court accordingly rejected the claim of Wanjari Sangram Parishad. In W.P.No.15786 of 1990 dated 16-1-1996, the same question arose for consideration before this Court. This Court, relying upon the decision of the Supreme Court in *Bhaiya Lal v. Harikishan Singh* and the decision of this Court in W.P.No.3490 of 1979 held that when the claim of a subgroup is not found in the Presidential Notification, such claim cannot be accepted nor any enquiry in that regard is permissible and accordingly rejected the claim of the petitioners therein.

12. Therefore, there is no dispute as held by the Supreme Court that unless a caste or tribe or sub-group etc., is notified to be a Schedule Tribe by the President as required under Article 342 that cannot be taken as Scheduled Tribe. In the instant case, the synonym "Wanjari" has not been notified as a Scheduled Tribe in the Schedule of SCs and STs (Amendment) Order, 1976. Therefore, the Annexure-II of G.O.Ms.No.245 which mentions "Wanjari" as synonym to "Sugali"

tribe has no relevance and on that basis one cannot claim that he belongs to Scheduled Tribe.

13. Keeping the contentions raised and the scope of Article 342 and the interpretation given by the Supreme Court in various decisions cited above into account, we would like to consider how far the order of removal of the petitioner from service is justified.

14. In this case, the petitioner is not disputing the fact that he belongs to "Vanjara" (Vanjari) which comes under EC "D" category at S.No.32 as he had himself obtained a certificate from the MRO subsequently on 25-2-1993 certifying him to be a candidate belonging to "Vanjara" and submitted the same to FCI. His initial appointment is not based on the status that he belongs to Schedule Tribe Community. He was initially appointed as mazdoor under the general category. Though he belongs to OBC at that point of time there is no reservation for OBCs. It is only subsequent to the issue of G.O.Ms .No. 245 wherein in Annexure-II, "Wanjara" has been inserted as a synonym to "Sugali" tribe, the petitioner had thought it fit to obtain a certificate and accordingly submitted the certificate on 11-11-78 to FCI. He secured the first two promotions under the general category. It is only in the year 1981 he secured promotion as ST candidate. The management contend that the petitioner had deliberately obtained a false ST certificate to misrepresent the FCI and to gain unlawfully. But, no, material is placed on record that the petitioner had deliberately obtained a false ST certificate. It may be that under a bona fide impression that his caste is also shown as synonym to "Sugali" he might have obtained the certificate. If the synonym "Wanjari" is not inserted in Annexure-II of G.O.Ms.245 and petitioner had obtained ST certificate and submitted the same to the FCI then, it can be said that he has committed fraud and misrepresented the FCI. Further, it is not the case of the Management or the revenue authorities that there is actually some other "Vanjara" caste other than the one mentioned in Annexure-II i.e., "Wanjari" which is shown as a synonym to "Sugali" in G.O.Ms.No.245 and though the petitioner belongs to the other "Vanjara" caste and does not belong to the "Wanjari", he had obtained the ST certificate for illegal gain by misleading the revenue authorities. It is also not the case of the Government that actually the Government intended to refer some other synonym in Col 5 of Annexure-II instead of synonym "Wanjari" and by mistake the synonym "Wanjari" was inserted in Annexure-II. The fact that the Government have themselves subsequently deleted the synonym "Wanjari" from Annexure-II by G.O.Ms.No.44 dated 23-2-1979 clearly indicates that there was confusion somewhere and the Government after obtaining report from the Director of Tribal Welfare thought it fit to delete the synonym "Wanjari" from Annexure-II of G.O.Ms.No.245, dated 30-6-1977. At the cost of repetition, we may again refer here that the community people of Wanjara have filed a Writ Petition against the deletion of the synonym, but that WP was rejected on the ground that unless any caste or Tribe is modified by the President in the Schedule to the SCs and STs (Amendment) Order, 1976, as required under Article 342 of the Constitution, it

cannot be treated as "Scheduled Tribe". How "Wanjari" has been inserted as a synonym to "Sugali" is a matter which has to be explained by the Government. Had not there been such as insertion of synonym "Wanjari" the petitioner would have no occasion to obtain the ST certificate. Further, it may be noted that petitioner has obtained certificate in the month of the November, 1978 i.e., before the deletion of the synonym "Wanjari" from Annexure-II of G.O.Ms.No.245. Therefore, no motive can be attributed to the petitioner. This is also supported by the proceedings of the District Collector, Medak in Proc.No.D4/5530/94-1 dated 8-8-1997 whereby the certificate issued to the petitioner was cancelled, The relevant paras of the said proceedings read thus:

"As a matter of fact the caste "Wanjari" was included in the list of Scheduled Tribes vide G.O.Ms.No.245, SW Dept. dated 30-6-1977 indicating that Wanjari is synonym of sugali which comes under ST. It is also evident that the candidate has obtained the caste certificate in question based on the G.O.Ms.No.245 dated 30-6-1977 in the month of November, 1978 i.e., before deletion of the caste Wanjari from the list of ST vide G.O. Ms. No.44, dated 23-2-79. Therefore, no ill intention can be attributed to the candidate.

However, in view of the Govt. Orders vide G.O.Ms.No.44 SW(E) Dept., dated 23-2-1979 deleting the caste Wanjari from the list of STs and in exercise of the powers conferred on me the Caste certificate issued by the Mandal Revenue Officer, Narayankhed vide No.B5/149/79 dated 23-1-1979 is hereby ordered to be cancelled."

15. Therefore, we are of the view that it would be difficult to conclude that there was deliberate misrepresentation or fraud played by the petitioner in obtaining the ST certificate. It is only because of confusion created by G.O.Ms.245, the petitioner might have been prompted to obtain ST certificate. The contention of the respondent that the petitioner had subsequently obtained BC certificate on 24-2-1993 and submitted the same to FCI only to cover up his misrepresentation has no merit because by that time the synonym has already been deleted by G.O.Ms.No.44, dated 23-2-1979. The letter dated 8-8-1997 of the Collector clearly indicates that the petitioner had obtained the certificate based on G.O.Ms.No.245 which subsisted at the time the certificate was issued by the revenue authorities. It also appears that the officials of the Mandal Revenue Office themselves were also under the impression that because of the insertion of the caste "Wanjari" in Annexure-II of G.O.Ms.No.245 as a synonym to "Sugali", the petitioner is entitled to be certified as a candidate belonging to ST community and they proceeded to cancel the same only after the synonym was deleted by G.O.Ms.No.44 and on a clarification from the Commissioner, Tribal Welfare, AP Hyderabad by letter dated 18-12-1996. Further, it is not borne out from the counter or the material on record that the officials of the MRO office have been examined during the enquiry to prove that the petitioner with an intention to gain unlawfully and illegally had deliberately obtained a false ST certificate and thereby misrepresented the FCI and committed fraud on the

Corporation. The enquiry having not been done in that direction, it is very difficult to sustain the order of removal of the petitioner from service. Further, the petitioner has not obtained his initial appointment as Mazdoor on the basis that he belongs to ST community. Under these circumstances, the authorities should have applied their mind whether producing a certificate not by way of fraud or misrepresentation, but has been obtained based on G.O.Ms.No.245 would amount to misconduct and deserves the punishment of removal of the petitioner from service or it would have been proper or would have been sufficient if the promotions of the petitioner obtained as belonging to Scheduled Tribe are cancelled and reverted back to the position which he was holding prior to his first promotion given based on ST certificate and allow him to make all his claims for promotion in the category of OBC. In our view, the authorities should have followed the latter one that too after giving opportunity of hearing to the petitioner including to lead evidence and to examine any other witnesses to show that he did not obtain promotion by making misrepresentation or playing fraud.

16. The learned Counsel for the petitioner contends that though the Wanjari community is entitled to be included in the schedule of the Presidential Order as ST, it is not being included because the people belonging to the said caste have no political support. As far as this aspect is concerned, this Court cannot go into the same as the power to include in or exclude any caste, tribe etc., from the list of Scheduled Tribes is within the discretion of the Parliament under Article 342(2) of the Constitution of India-17. In the result, the Writ Petition is allowed and the order of removal of the petitioner from service is quashed. However, it is open for the management to hold a fresh enquiry in the matter and if the authorities find that the promotions obtained by him are not in accordance with the rules, then they are at liberty to take steps to revert him. However, the claim of the petitioner under OBC category for further benefits shall not be denied. It is needless to state that the petitioner is entitled to be reinstated into service forthwith and also entitled for all consequential benefits. No costs.