

(2012) 09 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition M.P. No. 6976 of 2012 in Writ Petition No. 2025 of 2007

K. Ravi Sankar

APPELLANT

Vs

The Inspector General of Police, Guntur Range, Guntur and
Another

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 342(1)

Citation : (2013) 3 ALT 388

Hon'ble Judges : V. Eswaraiah, J;N. Ravi Shankar, J

Bench : Division Bench

Advocate : M. Pitchaiah, for the Appellant;

Judgement

N. Ravi Shankar

1. Petitioner is the applicant in O.A. No.5345 of 2005 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (Tribunal). He filed that OA challenging the order of the second respondent (Superintendent of Police, Guntur) dated 17.05.2005 and confirmed by the first respondent (Inspector General of Police, Guntur - appellate authority) by his order dated 01.09.2005 removing him from the job of Police Constable on the ground that he did not belong to Scheduled Tribe (ST) but was appointed in a vacancy reserved for STs on his misrepresentation. The Tribunal, after a contest, dismissed the above OA by its order dated 22.11.2006. Questioning the correctness of the said order, the petitioner has come up with this petition under Article 226. Before we state the points which are raised in this writ petition, the factual background of the matter should be noted.

2. The petitioner was appointed as Police Constable by the second respondent through his proceedings dated 12.08.1993 in a vacancy reserved for STs after verification of the certificates produced by him. At the time of recruitment, he produced a certificate which purports to have been given by Tahsildar, Guntur showing his caste as "Boya (Valmiki)" and in that certificate it was stated that

petitioner's caste is an ST. Basing on that certificate, the petitioner declared himself to be an ST and he was given appointment accordingly.

3. Subsequently an anonymous petition was received against the petitioner with the allegation that he did not belong to ST. Thereupon, the second respondent issued a charge memo dated 12.03.2003 proposing to hold a disciplinary enquiry against the petitioner on the allegation that he cheated the Government by producing a false caste certificate to the effect that he was an ST candidate though he did not belong to any ST community and that constitutes grave misconduct on his part. He submitted an explanation dated 21.03.2003 to the said charge memo. Not satisfied with the explanation, the second respondent appointed an enquiry officer to enquire into the matter.

4. One Sri Nadapaul, the then Deputy Superintendent of Police, Guntur, who was the enquiry officer, held enquiry and submitted his report dated 10.03.2004 to the effect that the petitioner's caste or community Boya (Valmiki) is not notified as an ST under the Constitution (Scheduled Tribes) Order, 1950 (Presidential Order) issued under Article 342(1) of the Constitution as amended from time to time. The finding of the enquiry officer was that the community Boya (Valmiki) is not an ST as per the Presidential Order. He further reported that the petitioner claimed to be an ST basing on the above certificate issued by the Tahsildar and the Special Branch acted upon that certificate and the petitioner did not produce any forged certificate.

5. Basing on the above enquiry report, the second respondent concluding that the petitioner submitted false caste certificate and false information, removed him from service by his order dated 17.05.2005 and that was confirmed in appeal by the first respondent in his order dated 01.09.2005 which was again communicated by the second respondent. The Tribunal in its turn confirmed the said orders in the OA.

6. The first contention of Sri Pitchaiah, learned counsel for the petitioner, is that the certificate produced by the petitioner at the time of his appointment has not been cancelled in accordance with the provisions of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993) (for short Act), and the Rules framed thereunder and therefore unless that is cancelled by the competent authority under the Act, respondents 1 and 2 have no power to hold any enquiry on the above ground and remove him from service. The above Act was brought into force with effect from 08.05.1997. The Rules were brought into force from 16.05.1997. It is seen that the petitioner has filed W.P.M.P. No.6976 of 2012 to amend his pleadings in the writ petition to raise the above point. That miscellaneous petition is allowed permitting him to raise that plea as it is a question of law.

7. Sri Pitchaiah also incidentally pointed out that Boya (Valmiki) community mentioned in his certificate is an ST community and therefore respondents 1 and

2 committed a serious illegality in acting on the enquiry officer's report. Thus the above two contentions are raised as points 1 and 2. He also pointed out that the enquiry officer's report itself shows that he did not produce any false certificate and both the respondents went wrong in observing that he made a misrepresentation and cheated the Government and their findings to that effect have to be set aside.

8. The third contention raised by Sri Pitchaiah is that the orders of the respondents are also illegal inasmuch as the enquiry report was not furnished to him and the enquiry is vitiated on that ground and for not following the procedure. On the other hand, the learned Government Pleader supported the removal of the petitioner from service.

9. We will now take up the first and second contentions or points raised by Sri Pitchaiah as both of them having regard to the controversy go together. In support of the said contentions he relied upon the provisions of the Act and the A.P. (Scheduled Castes, Scheduled Tribes & Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short Rules), and their non-compliance. His contention is that the caste certificate produced by the petitioner must be validly cancelled by the District Collector, who is the competent authority, under the provisions of the Act and Rules by following the procedure prescribed therein and until it is so cancelled, the certificate produced by him must be held to be valid u/s 21 of the Act.

10. His further contention is that the second and first respondents in view of the provisions of the Act have no power to decide one way or the other about the petitioner's caste or caste certificate and the impugned orders must be set aside on that ground alone. He first relied upon a decision of a Division Bench of this court given in D. Sudershan Vs. Govt. of A.P. and Others, regarding the necessity for cancellation of a caste certificate showing the petitioner as an ST candidate under the provisions of the Act before terminating his services. Secondly, he relied upon another Division Bench decision of this court given in Vice-Chancellor-cum-Chairman, Sri Venkateswara University, Tirupathi and Another Vs. T. Rajeswari and Others,) in support of his contention that he has put in around 12 years of service by the date of his removal and since no fraud was played by him his services ought not to have been terminated. We will refer to these two decisions in detail and their applicability to the petitioner's case a little later.

11. A perusal of the provisions of the Act and Rules show that they provide a scheme for issuance of caste or community certificates which are classified as Backward Classes (BCs), Scheduled Castes (SCs) and STs and they also prescribe various authorities which are competent to issue such certificates community wise or caste wise.

12. It may then be noted that Section 5 speaks of cancellation of the false community certificate and it prescribes the procedure for cancellation of such certificate issued before or after the commencement of the Act. This Section 5

empowers the District Collector of the concerned district for canceling the certificate if it is found that it was obtained fraudulently. Section 6 speaks of burden of proof and says that the burden of proving that he belongs to an SC or an ST or a BC shall be upon the claimant in any such enquiry. Then Section 11 says that if any person not belonging to an SC or an ST or a BC secures any benefit reserved for such categories either in an educational institution or any public employment, then such benefit can be withdrawn and no time limit is prescribed for this.

13. Then coming to the Rules, they prescribe the detailed procedure for issuance of caste certificate and cancellation thereof. Rule 9 says that where the District Collector receives a complaint that a person not belonging to SC or ST or BC has obtained a false certificate, then he shall refer the same for enquiry to the scrutiny committee constituted under the Act and Rules and the scrutiny committee shall enquire into the matter as prescribed therein and then submit its report to the District Collector who may act thereon in taking a decision for cancellation. The Act also provides for appeals and revisions against the orders of the competent authority either granting or refusing to grant certificate or an order canceling the certificate.

14. Then Section 21 of the Act which speaks of transitional provisions says that a community certificate issued by any competent authority before the commencement of the Act shall be valid and shall be deemed to have been issued under the provisions of the Act unless it is cancelled under the provisions of the Act. These are the provisions which are relied upon by Sri Pitchaiah.

15. In *D. Sudershan Vs. Govt. of A.P. and Others*,) relied upon by Sri Pitchaiah, this court was dealing with the case of a person who produced a caste certificate showing him as belonging to Lingadhari Koya community. This community falls under Entry-18 of the list of STs notified for the State of Andhra Pradesh in the Presidential Order. On facts, it was therefore found that the said certificate is required to be cancelled by the District Collector i.e. the competent authority in accordance with the provisions of the Act, but he cancelled without referring the matter to the scrutiny committee for enquiry as required by Rule 9 read with other relevant rules of the Rules and therefore the cancellation was invalid and the certificate continued to be in force in view of Section 21 of the Act. This court therefore on that ground held that the order of the District Collector was bad. The question there was whether the petitioner therein belonged to Lingadhari Koya community which is admittedly an ST, but not whether that community was an ST as per the Presidential Order.

16. Then coming to the decision in *Vice-Chancellor-cum-Chairman, Sri Venkateswara University, Tirupathi and Another Vs. T. Rajeswari and Others*, the principle laid down therein is also easily distinguishable and it also related to a case where the caste of the person in question there was also admittedly an SC. That was a case where the unofficial respondent therein by name Dr K.Vijaya Kumari who was by birth a forward caste woman married an SC person by name

M.Rajeswara Rao. It should be noted that the caste to which Sri M.Rajeswara Rao belonged is admittedly notified as an SC for the State of Andhra Pradesh in the Constitution (Scheduled Castes) Order, 1950. It was also found on the facts that the Tahsildar, Kavali, who issued the caste and community certificate of Dr K.Vijaya Kumari reads that she belongs to a forward caste but since she married an SC person she acquired the caste and community of her husband and therefore she is entitled to that certificate. This court further held that the Tahsildar issued the above caste certificate for Dr.K.Vijaya Kumari in view of the earlier decision of this court in P.Usha Kiran v. Government of Andhra Pradesh 1976 ALT 87 (NRC) wherein it was held that after marriage even a forward caste woman would acquire the caste and social status of her husband and in that view of the matter, such a woman would be entitled to the benefits which are given to SC persons.

17. This court in the above decision further held that in view of the above legal position then laid down or existing the caste certificate of Dr K.Vijaya Kumari can be treated as valid and it cannot be held to be bad 13 years later in view of the subsequent development of law and the legal position laid down by the Supreme Court in Mrs. Valsamma Paul Vs. Cochin University and others, to the contrary and therefore the certificate cannot be held to be invalid until it is cancelled. This court then went into the merits of the matter also and found that the selection of the aforesaid Vijaya Kumari and on an overall view on the facts of that case held that cancellation of the appointment of Vijaya Kumari was not justified after a lapse of 13 years. Thus, it was also not a case where the caste certificate produced by the woman therein did not disclose that she belongs to a caste which is not notified as an SC.

18. The facts in the petitioner's case are however different. The petitioner produced a certificate which is found to be true by the enquiry officer, but that certificate shows that the petitioner belongs to Boya (Valmiki) community. We have gone through the Presidential Order notifying the STs for the State of Andhra Pradesh and this community Boya (Valmiki) is not notified as an ST for the State of Andhra Pradesh. In fact Entry-31 of the STs notified for the State of Andhra Pradesh would show that only Valmiki community in the scheduled areas of Visakhapatnam, Srikakulam, Vizianagaram, East Godavari and West Godavari Districts is notified as an ST. The petitioner admittedly belongs to Guntur District which is not a scheduled area.

19. The petitioner made a feeble attempt to show that his forefathers belong to a scheduled area and subsequently they migrated to Guntur District and therefore his community should be treated as an ST. Even accepting this argument for a moment, it may be noted that what is notified as ST in the Presidential Order for Andhra Pradesh is only Valmiki community in the aforesaid scheduled areas, but not Boya (Valmiki). Thus the above argument of the petitioner cannot be accepted. In fact to answer the question whether a particular caste or community is an ST or not for the State of Andhra Pradesh, one has to look into the list of

STs notified by the Presidential Order.

20. The petitioner made another feeble attempt relying upon a research work of an Anthropologist by name Mr. Edgar Thurston on castes and tribes of Southern India and argued that people belonging to Valmiki and Boya castes are same having origins from Valmiki community residing in the forests in Anantapur, Kadapa and Kurnool Districts and in some districts of Karnataka State (described as canaries districts). It is not possible to accept this argument also as it is now settled that no court can add or equate another caste or tribe with an ST notified for a state or a Union Territory by the President under Article 342(1) of the Constitution.

21. The above legal position is settled in a Full Bench decision of this court given in Andhra Pradesh Scheduled Tribes Employees Association Vs. Aditya Pratap Bhanj Dev and Others, which was given after considering the previous case law on the point. Thus for the aforesaid reasons it is clear that the petitioner's community shown as Boya (Valmiki) in his caste certificate cannot be treated as an ST.

22. The question now is whether cancellation of the above certificate is still required to be made in accordance with the procedure prescribed under the Act and the Rules framed thereunder. In our opinion, it is not necessary for these reasons. It is true that normally this court cannot go into the question whether a person belongs to an ST community and that has to be decided upon evidence and it can be done only by the competent authority. That rule however applies only to those cases where the caste or the tribe of a person shown in the certificate produced by him is admittedly an ST as notified in the Presidential Order. In such an event evidence may be necessary to decide the question whether that person belongs to that community or not and that can be done by the only competent authority under the Act.

23. The above rule cannot be applied to a case where the caste or tribe of a person shown in his certificate produced by him is not notified at all as an ST in the Presidential Order for the State of Andhra Pradesh as in such a case no further enquiry is necessary as contemplated in the above decision or in the Act and Rules. This verification can be done by looking into the list of castes and tribes notified as STs for the State of Andhra Pradesh in the Presidential Order and no further enquiry taking evidence is necessary. In the present case, to repeat, the petitioner's caste or tribe Boya (Valmiki) is not found notified as an ST for the State of Andhra Pradesh in the Presidential Order. It for this reason, the enquiry officer also found that the petitioner did not produce a false certificate, but the officer who gave that certificate and the police authorities who verified it acted on a mistaken impression that Boya (Valmiki) community is an ST community as per the Presidential Order.

24. That being the position, the impugned orders of the second and first respondents cannot be said to be bad even though the District Collector has not

cancelled the certificate of the petitioner. In fact such a certificate showing the petitioner who belongs to Boya (Valmiki) community as an ST community must be treated as non-ST inasmuch as according to the Presidential Order his caste or community is not an ST community. It is for this reason, the appointment given to the petitioner in a vacancy reserved for ST must be treated to be invalid with all the consequences mentioned in Section 11 of the Act. Thus the principles laid down in the aforesaid Division Bench decision in *D. Sudershan Vs. Govt. of A.P. and Others*, and *Vice-Chancellor-cum-Chairman, Sri Venkateswara University, Tirupathi and Another Vs. T. Rajeswari and Others*, are easily distinguishable on facts and cannot be applied to the petitioner's case.

25. Then coming to the third point or contention raised by Sri Pitchaiah relating to the fairness in holding the enquiry, it may, as already mentioned, be noted that the memorandum of charges in C.No.11/PR/2003 issued by the second respondent would show that the substance of the accusation and the relevant charges were communicated to the petitioner regarding the contents of the certificate produced by him and the caste mentioned by him stating that it cannot be treated as an ST. After receiving the explanation of the petitioner, the then Deputy Superintendent of Police, Guntur, was appointed as enquiry officer and he submitted his report dated 10.03.2004 concluding that the petitioner does not belong to ST community and that he belongs to Boya (Valmiki) which does not come under Presidential Order notifying the STs for Andhra Pradesh. Of course, the enquiry officer, as already mentioned, found that the petitioner did not produce any false certificate. There is no ground to disturb this finding of the enquiry officer to the effect that the petitioner did not produce a false certificate, but that does not help the petitioner for continuing him in service.

26. It may then be noted that the proceedings dated 17.05.2005 of the second respondent removing the petitioner from service would show that the above enquiry report was furnished to the petitioner and he was called upon to give further explanation or representation. The said proceedings further read that the petitioner also submitted his final explanation dated 30.09.2004. It was after considering the entire material, the second respondent passed the order dated 17.05.2005 and that was confirmed by the first respondent by his order dated 01.09.2005.

27. The petitioner has not been able to show any circumstances to conclude that the enquiry against the petitioner was not held in accordance with the CCA Rules or it has resulted otherwise in any prejudice to him. It is true that in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, relied upon by Sri Pitchaiah, it was held that non-supply of report of the enquiry officer to the delinquent amounts to denial of reasonable opportunity. However, in this case, the impugned order of the second respondent would show that the enquiry report was furnished to the petitioner and his explanation was also called for regarding that report and the proposed punishment. Hence, the petitioner's contention that the enquiry was not fair and reasonable cannot be accepted.

28. Another contention raised was that the original certificate given by him was not before the first respondent. On this aspect, the first respondent mentioned in his impugned order that the petitioner himself admitted that Boya (Valmiki) community is classified as BC-A and he raised that original certificate aspect only in his final explanation and therefore it cannot be accepted. It should be noted here that the petitioner himself filed a xerox copy of the original caste certificate dated 07.07.1984 given by the Tahsildar, Guntur and that shows that his community is mentioned as Boya (Valmiki) which is not an ST. In these circumstances, we are unable to uphold the contentions of the petitioner that there was an illegality in the orders of second and first respondents.

29. Regarding the punishment, it may be noted that if a person even by producing a genuine caste certificate in which his community or caste is wrongly shown as an ST and which was accepted by the appointing authority without proper verification and has appointed him in a vacancy reserved for an ST, such person has to be removed from service if it is subsequently discovered that his community is not an ST. The mistake of the appointing authority or the mistake committed by the persons securing the job cannot be a ground for continuing him in service in a post reserved for STs or reducing the punishment. In fact this is the purport of Section 11 of the Act also. In these circumstances, we are unable to agree with the petitioner's contention regarding the gravity of the punishment also. It therefore follows that the impugned orders of respondents 1 and 2 and the Tribunal order cannot be found fault with on the contentions of the petitioner.

30. Lastly it was submitted on behalf of the petitioner that basing on the principle laid down in Vice-Chancellor-cum-Chairman, Sri Venkateswara University, Tirupathi and Another Vs. T. Rajeswari and Others, the petitioner's caste certificate may be treated as valid or in any event he may be continued in service as he has put in more than 11 years of service and the authorities may be directed to consider his case leniently. We have already mentioned about the facts and the principles laid down in Vice-Chancellor-cum-Chairman, Sri Venkateswara University, Tirupathi and Another Vs. T. Rajeswari and Others, . We cannot apply them here as the petitioner's caste or community cannot be treated as an ST at all and this is unfortunately a negative point for the petitioner.

31. It was then submitted that having regard to the length of service put in by the petitioner the authorities may be directed to consider his case for retention in the job in any vacancy meant for BC-A candidates as in the Articles of charge it is mentioned that his caste Boya (Valmiki) comes under BC-A community. Nothing is brought to our notice as to under what provision, this court can grant the said relief. Even otherwise the recruitment is of 1993 and the several vacancies meant for BC communities must have been filled up as per rules and the merit lists prepared. We do not also propose to go into the question whether the petitioner's caste can be treated as BC-A community as that is not necessary. It would not therefore be proper to grant any relief on the above lines to the

petitioner and therefore the said request is also rejected. For the aforesaid reasons, we conclude that there are no merits in this writ petition and it is accordingly dismissed. No costs. All the miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of according to the result of this writ petition.