
(1999) 05 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3179 of 1994

Kishna Das Mahar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Citation : (1999) 2 MPJR 100 : (2000) 1 MPLJ 23

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : G.S. Baghel, for the Appellant; G.S. Ahluwalia, Government Advocate, for the Respondent

Judgement

D.M. Dharmadhikari, J.

The petitioner appeared in competitive examination conducted by the Public Service Commission of Madhya Pradesh for recruitment to the post of Civil Judge Class-II in the judicial services of the State in the year 1993. By communication dated 8th November 1993 (Annexure-P/1) he was informed that his name appears in the select list at serial No. 133. The petitioner sought recruitment in open competition as also against the seats reserved for scheduled castes. The petitioner along with his application for the post filed a certificate stating that he belongs to scheduled caste "Mahar". However, before offering the appointment to the petitioner against the seat reserved for scheduled caste, enquiry was made by the Law Department of the State from the District Magistrate, Shahdol by letter dated 1-12-1993 (Annexure-R/1) filed with the return. The District Magistrate, Shahdol by his reply dated 2-3-1994 informed the State Government in the Law Department that as per the enquiry made from village Majmankala, District Shahdol which is the domicile of the petitioner he belongs to caste "Mahara". Along with the report of the District Magistrate was enclosed the enquiry report of Sub Divisional Officer, Bandhavgarh dated 7-2-1994 (Annexure-R/III) in which it has been stated that in the land records, the petitioner's caste is recorded as "Mahara" and not "Mahar". On the basis of the above report made

by the District Magistrate and the S.D.O., the petitioner was sent a show cause notice dated 29-3-1994 (Annexure-R-IV) to submit his explanation. In response to the notice, the petitioner stated that in all his educational and other relevant records he has been rightly described as belonging to caste "Mahar". Since the petitioner thereafter was not offered any appointment, he approached this Court in this writ petition. This Court while admitting the petition, passed an interim direction on 15-9-1994 that one post of Civil Judge Class II shall be kept vacant subject to the decision of the petition.

Shri Rajendra Mishra, learned Counsel appearing for the petitioner states that instead of Shri G.S. Baghel, counsel earlier engaged, he has been instructed by the petitioner to appear in the case. Learned Counsel appearing for the petitioner submits that unless the caste certificate issued by the competent authority is annulled or cancelled after grant of opportunity to the petitioner, the said caste certificate has to be honoured and relied by the State Government. It is contended that the State Government could not have ignored the caste certificate and refused to offer appointment to the petitioner on the basis of his position in the select list.

The other alternative submission made on behalf of the petitioner is that castes described as "Mahara" and "Mahar" both are included in the schedule issued by the Central Government under the Constitution. The petitioner, therefore, could not have been denied opportunity of selection even as belonging to caste against the reserved quota of scheduled castes.

The contention advanced on behalf of the petitioner cannot be accepted that caste certificate issued by the competent authority cannot be scrutinised and further verified for ascertaining its genuineness by the appointing authority at the time of offering appointment. Before offering the appointment to a judicial post, the State Government is within its right to verify the testimonials and certificates submitted by the candidate to find out whether they are correct or not. The State Government, therefore, was fully within its right to wake further enquiry into the caste certificate of the petitioner.

The other submission alternatively made is that both castes "Mahara" and "Mahar" are included in the scheduled caste and in either case the petitioner was eligible for offering appointment. In the instant case, the petitioner has approached this Court with a specific case that he belongs to Scheduled Caste "Mahar". It is not his case that he is "Mahara". The authorities on enquiry have reported that he belongs to caste "Mahara". This discrepancy, therefore, justified a thorough enquiry.

In the educational testimonials as also in the petitioner's certificate of registration as a member of Bar Council, the petitioner has been described as belonging to caste "Mahar". There is a solitary entry in the revenue records on the basis of which an adverse report was submitted by the District Magistrate and the Sub Divisional Magistrate. In the report there is also mention of some

enquiry made in the village where the petitioner resided and had his ancestral house. In the course of enquiry, the petitioner was not at all involved and got no opportunity to support his claim of status as a member of scheduled caste.

The Supreme Court in the case of Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, , has given general directions to all the State Governments to constitute committees for the purpose of scrutiny and verification of the caste certificate issued by the concerned authorities of the State. The Supreme Court made several detailed directions solely with a purpose that spurious certificates are not allowed to be used and to check misappropriation of advantages of reservation intended for scheduled castes and scheduled tribes by those not eligible for them. Such detailed enquiries are also necessitated to avoid denial of opportunities to the reserved classes for seeking public employment on the basis of unsubstantial objections to their status. In the instant case, the documents produced by the petitioner prima facie show that he was throughout described as a member of scheduled caste "Mahar". The enquiry report submitted was behind his back and he got no effective opportunity to lead any oral or documentary evidence.

This Court has already passed an interim order for keeping one post vacant to accommodate the petitioner. In the aforesaid facts and circumstances, it would be just and legal to direct the State Government to constitute a committee in accordance with the directions contained in the case of Madhuri Patil (supra) and grant the petitioner opportunity to substantiate his claim to the status of scheduled caste "Mahar". The enquiry to be conducted through the committee be initiated and completed within a period of two months in accordance with the directions of the Apex Court and necessary action depending upon the outcome of the enquiry be taken within an outer limit of one month from the date of the report of the enquiry. The one post shall be kept vacant until the conclusion of the enquiry with grant of due opportunity of participation in it to the petitioner. With these directions, the petition is disposed of. There shall be no order as to costs.