

(2019) 10 CHH CK 0151
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 2205 Of 2019

Ku. Pooja Awsarmol

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Chhattisgarh Scheduled Caste And Scheduled Tribe And Other Backward Classes
(Regulation Of Social Status Certification) Rules, 2013 — Rule 3, 11, 12
Constitution Of India, 1950 — Article 341, 342

Citation : (2019) 10 CHH CK 0151

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Love Kumar Ramteke, Vikram Sharma

Final Decision : Dismissed

Judgement

Parth Prateem Sahu, J

1. The petitioner, who appeared in the National Eligibility -cum-Entrance Test (UG), 2019 (for short 'NEET'), has approached this Court, after

declaration of result of NEET, seeking for following reliefs:-

10.1. That, this Hon'ble Court may kindly be pleased to call the entire records from the respondents.

10.2 That, the Hon'ble Court may kindly be pleased to direct the respondent competent caste certificate issuing authority S.D.O. Durg by issuing the writ in the nature of mandamus to provide a permanent caste certificate of Schedule Caste to the petitioner.

10.3. That, this Hon'ble Court may kindly issue an appropriate writ directing respondent authority to consider the case of petitioner and allow the petitioner for participate in counseling/admission process in MBBS Court.

10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief or pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case in the interest of justice.

2. Facts of the case, in brief, are that the petitioner applied for and appeared in the NEET examination for admission to MBBS under-graduate course as a Scheduled Caste candidate. She came out successful in NEET examination and her all India rank is '126960' and category rank is '7494'. After declaration of result, the petitioner has approached this Court by filing instant writ petition on 10.6.2019 and prayed for a direction to respondent authority concerned to issue permanent caste certificate of Scheduled Caste in her favour and also to consider case of the petitioner and allow her to participate in counselling/admission process in MBBS course. It has been pleaded in writ petition that in the year 1964 the petitioner's grandfather was appointed in the Bhilai Steel Plant, Bhilai, District Durg (for short 'BSP') and he retired on 30.6.1997 from the post of 'Charge-man'. Petitioner's father is also an employee of BSP and presently working as 'Senior Operative (Rolling)'. Petitioner and her father were born in Bhilai, District Durg. Since the place of birth of petitioner and her father is Bhilai, which comes within the geographical area of Chhattisgarh, and the petitioner belongs to 'Mahar' community, which is a Scheduled Caste in the State of Chhattisgarh, therefore, the petitioner is entitled for permanent Scheduled Caste community certificate so as to enjoy benefits of reservation for Scheduled Caste.

3. Learned counsel for the petitioner submits that the petitioner belongs to 'Mahar' caste, which is a Scheduled Caste in the State of Chhattisgarh and she took her education in Bhilai upto 12th standard. As the birth place of petitioner and her father is Bhilai, District Durg (CG), which comes under the territorial jurisdiction of State of Chhattisgarh, the petitioner is entitled for a permanent caste certificate of Scheduled Caste in the State of Chhattisgarh, which is being denied to her for one reason or other. He further submits that as per Rule 12 of the Chhattisgarh Scheduled Caste and Scheduled Tribe and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013 (henceforth 'the Rules of 2013') also a migrant working in public sector is entitled for benefits of Scheduled Caste in the State. He further submits that temporary caste certificate has already been issued in favour of petitioner on 12.7.2018 and therefore action on the part of

respondent No.2 in rejecting her on-line application and relegating her to file application before the Sub Divisional Magistrate, Bhilai is arbitrary, illegal and liable to be interfered. Reliance is placed on the decisions of Hon'ble Supreme Court in Director of Tribal Welfare, Govt. of Andhra Pradesh v. Laveti Giri reported in AIR 1995 SC 1506 and Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribe in the State of Maharashtra & another vs. Union of India & another reported in (1994) 5 SCC 244.

4. Per contra, learned counsel for the respondent State submits that earlier on 4.7.2018 the petitioner filed writ petition bearing WPC No.1890/18 seeking, inter alia, relief that respondent authorities therein be directed to consider case of the petitioner and to allow her to participate in counselling/admission process in MBBS course. Said writ petition came up for hearing on 11.7.2018 and a Division Bench of this Court directed the Sub-Divisional Officer (Revenue) Durg to take a holistic view of the matter and to take into consideration even temporary caste certificate issued to petitioner as a migrant. Pursuant to order dated 11.7.2018 passed by this Court, on 12.7.2018 petitioner moved application (Annexure R-4) for issuance of permanent caste certificate in Form-4A prescribed under Rule 11 of the Rules of 2013 mentioning number of writ petition and order dated 11.7.2018 passed by this Court. On filing of such application, a temporary caste certificate was issued to petitioner with an endorsement that certificate has been issued in pursuance of the order passed by the High Court. He submits that the petitioner did not plead in writ petition that in the year 2017 also the petitioner applied for caste certificate showing herself to be permanent resident of 'village Fubgaon, District Amravati, Maharashtra' and on account of such declaration, a report was called from the Sub-Divisional Officer (Revenue), Achalpur, District Amravati (Maharashtra), which was received on 1.11.2017, and on the basis of said report, the Sub Divisional Officer, Durg had issued caste certificate in Form- 4C on 15.12.2017. He submits that the petitioner is not entitled for any relief as claimed in writ petition for the reason that process for admission in MBBS course is already over as the last date for admission was 31.8.2019, as fixed by the Medical Council of India; further the forefathers of petitioner are migrants and not permanent resident of the State of Chhattisgarh,

therefore, the petitioner is not entitled to get a permanent Scheduled Caste certificate.

5. We have heard learned counsel for the parties and also perused the records.

6. This petition has come up for hearing for the first time on 3.7.2019 and looking to the nature of relief claimed in writ petition, particularly Prayer

Clause No.10.3 of writ petition, ten days was granted to the learned counsel representing the State, without going into the defects as pointed out by the

Registry of this Court. Thereafter, learned counsel for petitioner has not taken any step to get the matter listed immediately after ten days and the

petition has been listed for hearing on 3.10.2019 only, by which time all the proceedings of admission to MBBS Course were over.

7. Caste certificate issued in favour of the petitioner in the year 2017 has been filed as Annexure R-4 along with return filed on behalf of the State and

a glance of the same reveals that in the said certificate the petitioner's permanent address is shown as "village Fubgaon, District Amravati,

Maharashtra'. It has also been mentioned in the said certificate that the same has been issued on the basis of caste certificate issued to the petitioner's

father Shri Murlidhar Aswarmol and also verification report dated 1.11.2017 of the Sub-Divisional Officer, Achalpur, District Amravati (MS).

Subsequently, on the strength of order dated 11.7.2018 passed by a Division Bench of this Court, on 12.7.2018 the petitioner again applied for caste

certificate and accordingly a social caste certificate in Form-4C has been issued to her.

8. The procedure to obtain caste certificate has been prescribed in the Rules of 2013. Rule 3 of the Rules of 2013 provides for making an application

in Form 1A to the competent authority for issuance of certificate. Sub-rule (3) of Rule 3 provides for documents to be filed along with application by a

permanent resident of Chhattisgarh State or an officer/employee allocated to the geographical limits of Chhattisgarh State during the process of State

reorganization. Rule 11 of the Act of 2013 deals with the issuance of certificate for the applicant migrated from other State to the State of

Chhattisgarh. Rule 12 deals with 'involuntary migration' which envisages that government employees of undivided Madhya Pradesh and such other

officers and employees of Corporation, Commission, Board and Public Undertakings, who have been allocated to the State of Chhattisgarh due to

division of cadres between State of Madhya Pradesh and State of Chhattisgarh under the Madhya Pradesh Reorganization Act, 2000, shall be issued

certificate, if they belong to Scheduled Caste or Scheduled Tribe or Other Backward Classes, and shall be given benefits of reservation in the State of Chhattisgarh.

9. Keeping in mind the above provisions, if we examine the facts of present case, it is clear that petitioner's case is not covered under the provisions of

Rule 3 of the Rules of 2013 as the petitioner in her application for issuance of caste certificate has categorically mentioned the place of her ancestors

as 'village Fubgaon, District Amravati, Maharashtra'. Thus, the submission of learned counsel for the petitioner that the petitioner's grandfather was

employed in BSP, which is a public undertaking and therefore the petitioner is entitled for benefit as provided under Rule 12 of the Rules of 2013, has

no force. Rule 12 of the Rules of 2013 in very specific term provides that government employees of undivided Madhya Pradesh and such other

officers and employees of Corporation, Commission, Board and Public Undertakings, who have been allocated to the State of Chhattisgarh due to

division of cadres between State of Madhya Pradesh and State of Chhattisgarh under the Madhya Pradesh Reorganization Act, 2000, are only entitled

to get permanent caste certificate and benefits of reservation in the State of Chhattisgarh. In view of clear and unambiguous language used in Rule 12

of the Rules of 2013, the petitioner is not entitled to any benefit under Rule 12 of the Rules of 2013.

10. So far as the judgment rendered in the matter of Laveti Giri (supra) on which reliance is placed by learned counsel for the petitioner, is concerned,

the same being distinguishable on facts is of no help to the petitioner. In the said case, Hon'ble Supreme Court has held that burden of proof of social

status is always on the person who profound it to seek constitutional socio-economic advantages. It is no part of the duty of the State to disprove or

prove it otherwise.

11. As regards the reliance on the judgment delivered in the matter of Action Committee (supra), the same is also of no help to the petitioner for the

reason that in the said case Hon'ble Supreme Court has held that as per provisions of Articles 341 & 342 of the Constitution of India, the list of

Scheduled Castes & Scheduled Tribes is limited to state where the applicant and

his forefathers are permanently residing. Hon'ble Supreme Court taking into consideration the decision of its Constitutional Bench in the matter of Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & ors reported in (1990) 3 SCC 130, has further clarified that person belonging to Scheduled Caste, Scheduled Tribe will be deemed to be 'permanent resident' of that State where they were residing on the date of issuance of notification by the President of India i.e. on 10.8.1950 & 6.9.1950. Para-16 of the said judgment is quoted below;-

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution.....

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.

12. It appears that the petitioner in her first application for grant of caste certificate filed in the year 2017 mentioned her permanent address as 'village Fubgaon, District Amravati, Maharashtra' and therefore report was sought from the Competent Officer of Acharpur, District Amravati (Maharashtra) and only after receipt of report, caste certificate in Form 4(C) was issued on 1.11.2017 (part of Annexure R-2). As the petitioner was

not getting benefits of Scheduled Caste in State of Chhattisgarh on the basis of certificate issued in Form 4(c), she again filed an application showing

her present address and permanent address to be same i.e. at Bhiali. The act and approach of petitioner is not correct.

13. In the matter of Marri Chandra Shekhar Rao (supra), Hon'ble Supreme Court while considering the issue with regard to issuance of caste

certificate to migrants and benefits to them, has held thus:-

2.....The father of the petitioner had been issued a Scheduled Tribe Certificate by the Tahsildar, Tenali, Andhra Pradesh on 3rd August, 1977. On

the basis of the said certificate, the father of the petitioner was appointed in the Fertilizer Corporation of India, a public sector undertaking, on 17th

October, 1977 in the Scheduled Tribes quota. On the 19th June, 1978, the petitioner's father joined the Rashtriya Chemicals and Fertilizers Ltd., a

Government of India undertaking, under the quota reserved for Scheduled Tribes and he has been stationed in Bombay since then. The petitioner,

therefore, came to live in Bombay, in the state of Maharashtra, since the age of nine years. The petitioner completed his secondary and higher

education in Bombay. In March, 1989, the petitioner passed the 12th standard examination of 'the Maharashtra State Board of Secondary and Higher

Secondary Examination, Bombay Divisional Board, securing 165 marks in the aggregate in Physics, Chemistry and Mathematics.

For the academic year 1989-90, the petitioner submitted his application for three medical colleges in Bombay which are run by the Bombay Municipal

Corporation (Respondent No. 2 herein) and for one medical college in Bombay run by the State of Maharashtra (respondent No. 3). The total number

of seats in the three medical colleges run by the Municipal Corporation for the MBBS Course is 400 out of which 7% i.e. 28 seats were reserved for

Scheduled Tribes. The total number of seats in the medical college run by the State of Maharashtra is 200 out of which 7% i.e. 14 seats are re-

served for Scheduled Tribes. The petitioner sought and availed the benefit of the reservation in favour of the Scheduled Tribes. The petitioner was

however not admitted to the MBBS course in either the medical colleges run by the Bombay Municipal Corporation or the State of Maharashtra,

though indubitably Scheduled Tribes candidates who had secured lesser marks than him had been admitted.....

21. We have reached the aforesaid conclusion on the interpretation of the relevant provisions. In this connection, it may not be inappropriate to refer to the views of Dr. B.R. Ambedkar as to the prospects of the problem that might arise, who stated in the Constituent Assembly Debates in reply to the question which was raised by Mr. Jai Pal Singh ("Safeguards for Scheduled Caste and Tribes- Founding Father's view" by H.S. Saksena, at p. 60) which are to the following effect:

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing: the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them

22. In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on the basis of Scheduled Tribe Certificate in Maharashtra. In the view we have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration.

14. In *Subhash Chandra & another v. Delhi Subordinate Services Selection Board & ors* reported in (2009) 15 SCC 458, the Supreme Court has held as under:-

29. Concededly, in respect of education or service, there exists a distinction between State Service and State run institutions including Union Territory Services and Union Territory run institutions on the one hand, and the Central Civil Services and the institutions run by the Central Government on the other. Whereas in the case of the former, the reservation whether for admission

or appointment in an institution and employment or appointment in the services or posts in a State or Union Territory must confine to the members of the Scheduled Castes and Scheduled Tribes as notified in the Presidential Orders but in respect of All India Services, Central Civil Services or admission to an institution run and founded by the Central Government, the members of Scheduled Castes and Scheduled Tribes and other reserved category candidates irrespective of their State for which they have been notified are entitled to the benefits thereof. It is not denied or disputed that services in the Union Territory is essentially different from All India Services. It is also beyond any controversy that machinery for recruitment is also different. Indisputably again, not only the conditions of recruitment but also conditions of service differ.

40. The question which was posed was the effect of specification by the President of the Scheduled Castes or Scheduled Tribes, as the case may be, for the State or Union territory or part of the State.

Noticing that the specification was "for the purposes of this Constitution", it was found to be necessary to determine what the expression 'in relation to that State' seeks to convey. This Court noticed not only the various provisions of the Constitution but also the earlier decisions governing the field as well as the views of Dr. B.R. Ambedkar in the Constituent Assembly, to hold:

22. In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on the basis of Scheduled Tribe Certificate in Maharashtra. In the view we have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration.

15. Recently, a Full Bench of Bombay High Court in the matter of K. Umari Shweta Shantalal Lal v. State of Maharashtra reported in 2010 (2) Mh.L.J.

904 after considering all the earlier verdicts of Hon'ble Supreme Court on the issue, has held thus:-

26. Having said so, we may now answer the Reference. In case of a migrant belonging to a Scheduled Caste, not ordinarily resident as on 10.3.1950

in the area that now constitutes the State of Maharashtra and in a case of S.T., considering Rule 5, on 6.9.1950, would not be entitled to benefits of

reservation as S.C./S.T. in the State of Maharashtra. They and their progeny will continue to get the benefits of reservation in the State of origin.

Reference answered accordingly.

Thus, in the above judgments the Hon'ble Supreme Court and High Court of Bombay have held in very specific terms that the person belonging to SC

& ST categories, who migrated after Presidential Notifications dated 10.8.1950 & 6.9.1950, cannot take benefit of their reserved caste even if the

said caste is notified as Scheduled Caste or Scheduled Tribe in the migrated State and their progeny will continue to get benefits of reservation in the

State of origin.

16. In view of above discussions made herein above and considering the provisions of the Rules of 2013 and further considering the caste certificate

already issued to petitioner in Form 4C wherein permanent address of her father is shown as 'village Fubgaon, District Amravati, Maharashtra"', we

are of the opinion that the petitioner is not entitled for the relief as claimed in Para-10.2 of writ petition.

17. For the foregoing reasons, writ petition being sans merit and is hereby dismissed.