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(2023) 08 OHC CK 0199

In the Orissa High Court

Case No : Writ Petition (C) No.325 Of 2014

Narottam Mallick @ Naik — APPELLANT

Vs

State Of Odisha And Others — RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:
Constitution of India, 1950 — Article 13

Citation : (2023) 08 OHC CK 0199

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Susanta Ku. Mishra, Suman Pattanayak

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. The writ petition was heard on several occasions. Today it has been called on for final hearing, upon State having filed additional affidavit dated 28th August, 2023. Mr. Mishra, learned advocate appears on behalf of petitioner while Ms. Pattanayak, learned advocate, Additional Government Advocate, for State.

2. Petitioner’s challenge is against final order dated 27th July, 2013 of the State Level Scrutiny Committee (SLSC). On behalf of petitioner it was pointed out that by impugned order there was no cancellation of caste certificate but instead, finding that petitioner had faked his caste identity. There is no dispute that petitioner obtained a caste certificate on 26th December, 1980 from the then Member of Legislative Assembly (MLA), certifying him to belong to a Scheduled Tribe (ST). On query from Court Mr. Mishra demonstrated that Orissa Caste Certificate (for Scheduled Castes and Scheduled Tribes) Rules, 1980 came into force as directed by circular dated 2nd December, 1980, ‘at once’. As aforesaid, the caste certificate stood issued by the MLA later, on 26th December, 1980.

3. Facts are that petitioner was appointed as ‘Orderly Peon’ in General Administrative (GA) Department on 17th September, 1986. He entered

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government service on 20th September, 1986. For purpose of the writ petition, petitioner obtained documents upon making query under Right to Information Act, 2005 and they have been disclosed. There is nothing on record to show that petitioner entered government service on basis of his caste certificate dated 26th December, 1980, issued by the MLA. On behalf of petitioner it was demonstrated, office order dated 28th March, 2011 issued by Government of Orissa Parliamentary Affairs Department, was purportedly on basis of allegation of mention in his service roll that he belongs to ST 'Kandha'. On thereby having been directed by letter dated 8th January, 2008 to produce his caste certificate, petitioner produced said caste certificate dated 26th December, 1980.

4. Counter and rejoinder stood filed and the writ petition was heard on 18th July, 2023. In that hearing, office order dated 28th March, 2011 was perused. It appears, report was made to Revenue and Disaster Management Department on letter dated 4th January, 2008 that petitioner belongs to ST category (Kandha) as indicated in his service roll and his caste certificate is not available in the department. Also perused were documents disclosed by petitioner and those annexed to the counter and rejoinder. Nothing on the record was found to show petitioner was given appointment on 17th September, 1986 based on him belonging to a Scheduled Tribe. It was, therefore, not clear how there came to be indication in the service roll that petitioner belongs to ST category (Kandha).

5. The circular handed up directed all administrative officers that Orissa Caste Certificate (for Scheduled Castes and Scheduled Tribes) Rules, 1980 had come into force immediately with issuance of it on 2nd December, 1980. There is nothing disclosed in the counter to show there was a notification to inform the public that the rules had come into force and were in operation. Unless State is able to demonstrate that elected members of the State Legislature were notified as no longer competent to issue caste certificates, it cannot place reliance on the circular for at once effectiveness of the 1980 Rules as on 2nd December, 1980 to merely contend that the MLA had issued the caste certificate without authority. More so, the Rules of 1980 is law under article 13 of the Constitution but not one that was made by legislation, involving the MLAs. In any event, the Rules empowering cancellation is only in respect of a caste certificate issued thereunder. So it is not surprising that the SLSC said petitioner had faked his caste identity.

6. State, after having filed counter had prayed for leave to file additional affidavit, to disclose the service roll indicating petitioner belongs to ST category (Kandha). On subsequent date of hearing (21st August, 2023), on behalf of State it was submitted that two additional affidavits, both dated 16th August, 2023, had been filed. One was on behalf of opposite party nos. 1 to 3 and the other, on behalf of opposite party no.4. This was because originally petitioner was appointed by GA Department. Service roll disclosed by the additional affidavits were those produced by the subsequent departments. State thereafter again sought further adjournment for the GA Department to produce the service book/

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record of petitioner's appointment but could not produce the same. Here it is necessary to reproduce below paragraph-3 from order dated 21st August, 2023 made after hearing that day.

"3. Paragraph 6 from order dated 18th July, 2023 is reproduced below.

"6. Adjournment granted is peremptory for State to produce by the records or file additional affidavit, disclosing the service roll on indication that petitioner belongs to ST category (Kandha). It is made clear that the indication cannot merely be an endorsement but has to be backed up by some basis."

(emphasis supplied)

There is apparent discrepancy appearing from handwriting of the endorsement made on the service roll. State has been obtaining adjournment after adjournment on pretext of producing the record. It has not been produced. Petitioner cannot be faulted for opposing the prayer for adjournment."

State, then filed yet another affidavit dated 28th August, 2023.

7. Today Ms. Pattanayak relies on continuation paga-2 of communication no.8455 dated 4th December, 1997 disclosed by said affidavit dated 28th August, 2023 saying, inter alia, petitioner had been promoted temporarily in post of 'Jamadar' to office of Minister, Revenue from earlier post of Peon in the same office. She points out, petitioner is stated to belong to ST as indicated in the communication, against his name. Mr. Mishra in response draws attention to additional affidavit dated 16th August, 2023 filed by opposite party nos. 1 to 3 to submit, referred letter no.8453 dated 4th December, 1997 in said letter no.8455 also dated 4th December, 1997 has been disclosed therein. There is no reference to his client belonging to ST category in the letter. Text of letter no.8453 dated 4th December, 1997, as appearing from the affidavit is reproduced below.

"As per recommendation of D.P.C. held on 24.11.97 Shri Narottam Mallick, Peon is here by promoted temporarily to the post of Jamadar in the scale of pay of Rs.775-12-87-14-1025/- with usual DA and other allowances sanctioned from time to time by Govt."

8. There is no material on record to show that petitioner entered into government service claiming to be or having used his caste certificate issued by the MLA. Thus, Court is confronted with petitioner's grievance and claim for relief on contention he has been dismissed from service pursuant to impugned final order made by the SLSC, on purported finding that he had a fake caste identity as opposed to a fake caste certificate.

9. There was submission made on behalf of State that the SLSC had verified petitioner's caste to find he did not belong to ST category (Kandha). The writ Court should not interfere with such finding. It is one on verification of facts. A consequence would be that petitioner and after him his heirs would then claim to belong to ST category (Kandha) and obtain advantage of reservation in future.

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The SLSC had found from the land records, petitioner's father and his brothers had been mentioned therein to belong to caste 'Pano'.

10. Court is convinced the Rules of 1980 do not provide for verification of caste certificates issued by an MLA, the issuance permissible prior to coming effect of the Rules. Competent authorities to issue caste certificates and those to verify them have been clearly provided for in the Rules. Hence, impugned final order proceeds on basis of petitioner having faked his caste identity. This finding, however, is not supported by corresponding finding that petitioner faked his identity in obtaining government service as would appear from the record. Petitioner as aforesaid, was given appointment as 'Orderly Peon' on 17th September, 1986 and had entered into government service on 20th September, 1986. The appointment letter and petitioner entering government service are borne out by documents on record. Said documents do not indicate petitioner obtained the service on reservation, claiming to belong to ST category (Kandha). In the circumstances, impugned final order bearing penal consequences against petitioner does not appear to be based on relevant evidence/material. Omission to mention in the appointment documents that petitioner belongs to a reserved category makes it clear, petitioner did not get his appointment as such. That would relegate petitioner to belong to a caste in the general category. As such, his heirs cannot get reservation by claiming to belong to ST category (Kandha). This Court on not being presented with cogent material to demonstrate petitioner had obtained government service on reservation for members of, inter alia, ST category (Kandha), impugned final order cannot be sustained on judicial review, inspite of petitioner, obviously wrongfully, having obtained his said caste certificate.

11. Impugned final order and all consequent orders are set aside and quashed. The writ petition is allowed and disposed of.

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