

(2024) 09 JH CK 0043
In the Jharkhand High Court
Case No : Writ Petition (C) No. 269 Of 2024

Nikita Kumari

APPELLANT

Vs

State Of Jharkhand `

RESPONDENT

Date of Decision : 25-09-2024

Acts Referred:

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

Citation : (2024) 09 JH CK 0043

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Manoj Tandon, Rakesh Kumar Roy, Neha Bhardwaj, Adamya Kerketta, Jai Prakash, Omiya Anusha

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Manoj Tandon, learned counsel appearing for the petitioner and Mr. Jai Prakash, learned A.A.G.-IA appearing for the respondent-State.

2. The prayer in the writ petition is made for quashing the letter dated 28.10.2023, contained in Annexure-6 issued by the Circle Officer, Sahibganj Sadar, whereby, the caste certificate issued in the name of the petitioner has been cancelled. The further prayer is made for direction to respondent no.2 to allow the petitioner to appear in the first professional examination of MBBS first year for the Session 2022-23. The prayer is also made to declare that since the father of this petitioner as well as mother of this petitioner, both have been issued caste certificates in the category of Scheduled Caste in the years 1981 and 2002 respectively and both are working in Government Services, as such, caste certificates issued to the petitioner cannot be doubted. The further prayer is made for quashing the decision dated 05.01.2024, contained in Annexure-11 taken by respondent no.2, whereby, the petitioner has been debarred from all educational work.

3. Mr. Manoj Tandon, learned counsel appearing for the petitioner submits that the father of this petitioner was issued caste certificate from Sahibganj district itself prior to bifurcation of the State on 25.08.1981, contained in Annexure-1. Similarly, the caste certificate of the mother of this petitioner was issued on 24.09.2002, contained in Annexure-2 and, thereafter, caste certificate was also issued in favour of the petitioner on 15.04.2017 belongs to Scheduled Caste category in view of her caste and again the caste certificate was issued in favour of the petitioner on 27.12.2021 saying that the petitioner belongs to the Scheduled Caste category in view of her caste. He further submits that on the basis of such caste certificate, the petitioner faced National Eligibility-cum-Entrance Test (UG) 2022 (in short NEET, 2022) and as per her marks, she was admitted in Medini Rai Medical College, Palamu as MBBS student for the Session 2022-26 and she was admitted in the said College on 03.11.2022 by way of Annexure-5. He then submits that respondent no.2 wrote a letter to the Circle Officer, Sahibganj to verify the caste certificate of this petitioner and pursuant to that, Annexure-6 was issued cancelling the caste certificate of this petitioner. He submits that the father and mother of this petitioner, both are of same caste and their caste certificates have been issued by the State of Jharkhand only and in view of that, the caste of the petitioner cannot be doubted. He also submits that on flimsy ground, the caste certificate of the petitioner has been cancelled by the Circle Officer, Sahibganj without providing any opportunity of hearing to the petitioner and show-cause. He further submits that the Government of Jharkhand has come up with the circular, contained in Annexure-G of the counter affidavit filed by the respondent-State, wherein, it has been disclosed in Clause 11 that the caste certificate will be issued on the basis of caste of father of the applicant. He then submits that the issue in question was the subject matter before the Hon'ble Supreme Court in the case of Pankaj Kumar v. State of Jharkhand and others, reported in 2021 SCC OnLine SC 616, wherein, it has been held that if the father and mother, both are of the same State and caste certificates have been issued to them by the same State, based on that the caste certificate of the sibling will be issued. He refers to paragraphs 29, 30, 53, 54 and 55 of the said judgment, which read as under:

"29. The President, after consultation with the Governor and States concerned in exercise of its power conferred under Articles 341(1) and 342(1) of the Constitution of India notified the Constitution(Scheduled Castes) Order 1950 and the Constitution(Scheduled Tribes) Order, 1950 the part of which relevant for the purpose is as under:-

(Scheduled Caste)

PART II – BIHAR

1. Throughout the State:-

1. Bauri

2. Bantar

3. Bhogta
4. Chamar
5. Chaupal
6. Dhobi
7. Dom
8. Dusadh, including Dhari or
9. Ghasi
10. Halalkhor
11. Hari, including Mehtar
12. Kanjar
13. Kurariar
14. Lalbegi
15. Mochi
16. Musahar
17. Nat
18. Pan Dharhi
19. Pasi
20. Rajwar
21. Turi

2. In Patna and Tirhut divisions, and the districts of Monghyr, Bhagalpur, Purnea and Palamau:-

Bhumij

3. In Patna, Shahabad, Gaya and Palamau districts:- Bhuiya

4. In Shahabad district:-

Dabgar

(Scheduled Tribe)

PART II – BIHAR

1. Throughout the State:-

1. Asur

2. Baiga

3. Bathudi
4. Bedia
5. Binjhia
6. Birhor
7. Birjia
8. Chero
9. Chik Baraik
10. Gond
11. Gorait
12. Ho
13. Karmali
14. Kharia
15. Kharwar
16. Khond
17. Kisan
18. Kora
19. Korwa
20. Lohara
21. Mahli
22. Mal Paharia
23. Munda
24. Oraon
25. Parhaiya
26. Santal
27. SauriaPaharia
28. Savar

2. In the districts of Ranchi, Singbhum, Hazaribagh, Santal, Parganas and Manbhum:-

Bhumij

30. It may be relevant to note that in the Constitution (Scheduled Castes) Order,

1950, 21 castes have been notified in the category of Scheduled Castes which applies throughout the State. At the same time, there are castes like "Bhumij, Bhuiya and Dabgar", which are identified on region basis. In the Constitution (Scheduled Tribes) Order, 1950, 28 castes have been notified as Scheduled Tribes which applies throughout the State and caste "Bhumij" in certain regions is in the schedule of Scheduled Castes and the very caste "Bhumij" of the same nomenclature in other districts/regions in the unified State of Bihar is notified as Scheduled Tribes. Certain modifications were made at a later stage in the year 1956 and thereafter but that may not be so relevant for the present purpose.

53. It will be highly unfair and pernicious to their interest if the benefits of reservation with privileges and benefits flowing thereof are not being protected in the State of Jharkhand after he is absorbed by virtue to Section 73 of the 2000 Act that clearly postulates not only to protect the existing service conditions but the benefit of reservation and privileges which he was enjoying on or before the appointed day i.e. 15-11-2000 in the State of Bihar not to be varied to his disadvantage after he became a member of service in the State of Jharkhand.

54. The collective readings of the provisions of the 2000 Act makes it apparent that such of the persons whose place of origin/domicile on or before the appointed day was of the State of Bihar now falling within the districts/regions which form a successor State i.e. the State of Jharkhand under Section 3 of the 2000 Act became ordinary resident of the State of Jharkhand, at the same time, so far as the employees who were in public employment in the State of Bihar on or before the appointed day i.e. 15-11-2000 under the 2000 Act, apart from those who are domicile of either of the district which became part of the State of Jharkhand, such of the employees who have submitted their option or employees who are junior in the cadre of their seniority as per the policy of the Government of India of which a reference has been made, either voluntarily or involuntarily call upon to serve the State of Jharkhand, their existing service conditions shall not be varied to their disadvantage and stands protected by virtue of Section 73 of the 2000 Act.

55. In our considered view, such of the employees who are members of the SC/ST/OBC whose caste/tribe has been notified by an amendment to the Constitution (Scheduled Castes)/(Scheduled Tribes) Order, 1950 under Vth and VIth Schedule to Sections 23 and 24 of the 2000 Act or by the separate notification for members of other backward class category, benefit of reservation including privileges and benefits flowing thereof, shall remain protected by virtue of Section 73 of the 2000 Act for all practical purposes which can be claimed (including by their wards) for participation in public employment."

Relying on the above judgment, Mr. Manoj Tandon, learned counsel appearing for the petitioner submits that the case of the petitioner is fully covered.

4. On these grounds, Mr. Manoj Tandon, learned counsel appearing for the petitioner submits that the impugned letter may kindly be quashed.

5. Per contra, Mr. Jai Prakash, learned A.A.G.-IA appearing for the respondent-State opposed the prayers on the ground that the Principal of the said College has sought for clarification about the caste certificate of this petitioner and pursuant to that, the Circle Officer, Sahibganj has directed the Revenue Sub Inspector and Circle Inspector to enquire into the matter and in the enquiry report, it has come that the rent receipt produced by the petitioner was manipulated and on that basis, the caste certificate has been cancelled. He submits that there is no illegality in the said cancellation. He further submits that the allegation with regard to Annexure-6, there is no denial in the writ petition. He submits that even Gram Sabha was not held with regard to the caste certificate of the petitioner and correct documents were not produced in the office and in view of that, the caste certificate has been cancelled. On these grounds, he submits that this petition is not maintainable as disputed question of fact is involved in this petition and, as such, this petition may kindly be dismissed.

6. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that admittedly Annexure-1 is the the caste certificate of the father of the petitioner, which clearly suggests that the father of the petitioner belongs to Scheduled Caste and that certificate has been issued by the competent officer of Sahibganj district. Annexure-2 is the document, which is the caste certificate of mother of this petitioner, which is also issued in the district of Sahibganj saying that she also belongs to the Scheduled Caste. Thus, it is an admitted position that the father and mother of this petitioner, both belong to the same caste. The question remains how the caste of the sibling of the father and mother will be changed. It appears that in light of the notification of the Government of Jharkhand, contained in Annexure-G of the counter affidavit, on the basis of the caste of the father, the caste certificate of the children is required to be issued. In course of argument, further document of the Government of Jharkhand has been produced by Mr. Manoj Tandon, learned counsel for the petitioner, which was issued after the judgment of the Hon'ble Supreme Court in the case of Pankaj Kumar (supra), whereby, it has been clarified that if the father and mother are of the same State and caste certificates have been issued to them by the same State, the sibling will also be entitled for caste certificate of that particular caste. That notification is taken on the record.

7. The Court further finds that in absence of providing any opportunity of hearing to the petitioner, the said action has been taken by way of cancelling the caste certificate of this petitioner and that is directly related to the education of this petitioner.

8. Further, in the counter affidavit not even a single chit of paper is annexed to suggest that this petitioner has manipulated anything with regard to manipulation, on which, much argument has been made by the learned counsel appearing for the respondent-State.

9. The Court further finds that the case of the petitioner is fully covered in light

of the judgment passed by the Hon'ble Supreme Court in the case of Pankaj Kumar (supra) as well as two circulars/notifications, which have been discussed herein above.

10. It is well settled if major action is taken by any of the authority, the concerned person is required to be given an opportunity of hearing by issuing show-cause and that has also not taken place in the case in hand and that has been asserted in paragraphs 18(d) and 20 of the petition, which have not been denied in the counter affidavit filed by the respondent-State, as such, the impugned letter dated 28.10.2023, contained in Annexure-6 issued by the Circle Officer, Sahibganj Sadar is, hereby quashed.

11. In view of the above, there will be no impediment in allowing the petitioner to continue in the Medini Rai Medical College, Palamu.

12. Accordingly, this petition is allowed in above terms and disposed of.