

(2019) 05 JH CK 0024
In the Jharkhand High Court
Case No : Writ Petition (C) No. 6771 Of 2016

Nitu Kumari

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Citation : (2019) 05 JH CK 0024

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Rajendra Krishna, Chanchan Jain, Shristi Sinha, Anuj Burman,

Final Decision : Disposed Off

Judgement

1. Heard Mr. Rajendra Krishna, counsel appearing on behalf of the petitioner assisted by Mr. Chanchan Jain, Advocate and Ms. Shristi Sinha, Advocate.

2. Heard Mr. Anuj Burman, counsel appearing on behalf of the respondents.

3. This writ petition has been filed for the following reliefs:-

"i. For quashing of the order dated 28.10.2015 passed by Circle Officer, Jaridih, District Bokaro (respondent no. 6) whereby and whereunder the application of the petitioner for issuance of residential and caste certificate has been rejected erroneously without considering the letter vide memo no. 1853 dated 26.02.2015 issued by Principal Secretary to the Government, Personnel Administrative Reforms and Raj Bhasha Department, Government of Jharkhand (respondent no. 2).

ii. For a further direction to the respondents to issue caste and residential certificate for the purpose of employment in services, which is required for the petitioner and the petitioner is entitled to the same."

4. Counsel for the petitioner by referring to the impugned order dated 28.10.2015, passed by Circle Officer, Jaridih, submits that the application for

grant of caste certificate as well as residential certificate to the petitioner under backward class category has been rejected by the said authority mainly on three grounds namely, (a) form was incomplete, (b) the applicant was living in a rented house and (c) Khatian was not enclosed. Counsel submits that a counter affidavit has been filed in this case and the respondents has taken a specific plea that caste certificate/ residential certificate cannot be issued to the petitioner, as the ancestors of the petitioner originally belonged to Nawada within the district in the present State of Bihar. Counsel further submits that the petitioner was born in the State of Jharkhand in the District of Bokaro and birth certificate was also issued. The date of birth is of the year 1976 and further the specific status of the petitioner is that father of the petitioner had left Nawada about more than 40 years back and has permanently settled in Jaridih within the district of Bokaro in the State of Jharkhand. He further submits that a certificate to the effect that father of the petitioner has left Nawada 40 years back has also been issued by the competent authority of the District of Nawada after due enquiry. Counsel submits that so far as requirement of Khatian is concerned, the same has no relevance in the matter. Counsel further submits that caste certificate was issued to the own brothers of the petitioner by the then State of Bihar as back as in the year 1993 and 1996 and the caste certificate issued to the brothers of the petitioner has been annexed with the writ petition as Annexure-4 series. Counsel submits that supplementary counter affidavit has been filed by the respondents in the case vide affidavit dated 16.05.2019 and respondents have annexed copy of the Circular No. 6763 dated 05.08.2016 and as per this circular, for the purposes of determining as to whether a person is local resident in the State of Jharkhand or not, one of the following guidelines ,which is applicable to the petitioner, is at Clause-(iii) of the said circular which is as follows:-

"जब तक यह संतुष्ट नहीं हो कि आवेदक या उनके पूर्वज वास्तव में इस राज्य में अनुसूचित जाति/अनुसूचित जनजाति के मामले में संविधान (अनुसूचित जाति/अनुसूचित जनजाति) आदेश, 1950 के समय से स्थायी रूप से निवास करते आ रहे हैं, या अत्यंत पिछड़ा वर्ग(1) और पिछड़ा वर्ग के मामले में वर्ष-1978 से स्थाई रूप से निवास कर रहे हैं, तब तक जाति प्रमाण पत्र निर्गत नहीं किया जाये।"

5. He submits that only requirement as per this clause is that the applicant should be a permanent resident of State of Jharkhand from 1978 in order to get a certificate under backward category from the competent authority in the State of Jharkhand. He submits that there is sufficient materials on record to show that the petitioner and/or her father are permanent resident of State of Jharkhand since prior to 1978. He submits that residential certificate has also been annexed by the petitioner along with their supplementary affidavit. Counsel submits that in view of this circular, there cannot be any dispute that the petitioner is entitled for issuance of caste certificate by the State of Jharkhand and accordingly the stand taken by the respondents in the counter affidavit that caste certificate of the petitioner can be issued only by the competent authority in the present State of Bihar is contrary to their own circular.

6. Counsel appearing on behalf of the respondents on the other hand submits

that impugned order itself discloses the reason for non-issuance of caste certificate i.e. the application was incomplete, the petitioner was found living in a rented house and a copy of the khatiyan was not enclosed. He submits that one of the document on the basis of which it can be conclusively established is copy of khatiyan which would have shown that the petitioner and/or her father are permanent resident of the State of Jharkhand. However, it is not disputed that if in terms of the aforesaid circular dated 05.08.2016, the petitioner and/or her father is found to be permanently residing in the State of Jharkhand since prior to 1978, then under that circumstances, the petitioner shall be entitled for issuance of caste certificate and residential certificate. He further submits that this point is required to be gone into at the first instance by the competent authority and as the application for issuance of caste certificate was itself incomplete and the documents which have been produced by the petitioner in the writ records were not produced by the petitioner before the competent authority, therefore, under such circumstances, it would be proper to enable the petitioner to file a fresh application and upon filing of fresh application, claim of the petitioner that she is permanent resident of Jaridih, District - Bokaro in the State of Jharkhand since prior to 1978 can be verified.

7. After hearing the counsel for the parties and after considering the materials on record, this Court finds that respondents have themselves issued aforesaid circular dated 05.08.2016 and the modality to determine as to whether a person can be treated as permanent resident of the State of Jharkhand with particular reference to the Backward Category as mentioned in clause-(iii) of the said circular which has been quoted above. This Court further finds that impugned order was issued on account of aforesaid reasons and it appears that necessary inquiry for the purposes of caste certificate could not be done in absence of the necessary details which was not available along with the form. In such circumstances, considering the fact that petitioner claims to be a permanent resident of the State of Jharkhand since prior to 1978, this aspect of the matter is required to be verified by the respondents at the first instance. Therefore, this writ petition is disposed of with a liberty to the petitioner to apply afresh along supporting documents to satisfy the authority regarding her permanent residence in the State of Jharkhand since prior to 1978 and if the petitioner is able to establish this before the competent authority, then competent authority is under legal obligation to proceed in terms of the aforesaid circular dated 05.08.2016. Fresh decision is required to be taken without being prejudiced with the impugned order of rejection of caste certificate/ residential certificate to the petitioner.

8. This writ petition is disposed of with the aforesaid observations and directions.