

(2023) 09 OHC CK 0247
In the Orissa High Court
Case No : Writ Petition (C) No. 36822 Of 2022

Raghunath Naik

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 420, 468

Citation : (2023) 09 OHC CK 0247

Hon'ble Judges : Sibio Sankar Mishra, J

Bench : Single Bench

Advocate : P.K.Ray, K.C. Dash, M.K.Sahoo, N.K.Praharaj

Final Decision : Allowed

Judgement

Sibio Sankar Mishra, J

1. By way of this Writ Petition, the Petitioner has essentially challenged the order passed by the Opposite Party No.3 removing him from the service with effect from 28.01.2011.

2. The Petitioner was provisionally appointed as a Sepoy on 22.12.2006 after undergoing the rigors of the recruitment process. In the appointment letter dated 22.12.2006, there is a recitation that the appointment is purely provisional and temporary. In case of any discrepancy/falsity/adverse report, they will be summerly discharged from service without calling for any explanation and whenever necessary appropriate criminal proceedings will also be initiated against them.

3. It appears, at the time of appointment, the Petitioner relied upon a Caste Certificate to avail the reservation benefit under Schedule Caste category. He produced a Caste Certificate No.3661 of 2003 purported to have been issued by the Tahasildar, Dhenkanal. On the strength of the Caste Certificate he has represented that he belongs to "PANA" Caste as such a Schedule Caste. The certificate is annexed to the Writ Petition as Annexure-3.

4. While he was continuing in the service, the certificate appears to have been verified. A verification report was received from the Additional Tahasildar, Dhenkanal on 06.05.2010. On the basis of the said verification report, the Petitioner was suspended from 22.05.2010 and was subjected to a departmental proceeding. In the departmental proceeding the Tahasildar, Dhenkanal was examined, who deposed against the Petitioner inter alia stating that the Caste Certificate produced by the Petitioner bearing No.3661 of 2003 purported to have been issued by the Additional Tahasildar, Dhenkanal is a forged one and the same is not matching with the entry made in the Register maintained at the Dhenkanal Tahasil.

5. On the basis of the said departmental proceeding the Petitioner was removed from the service vide B.O. No.164 dated 28.01.2011 issued by the Opposite Party No.3.

6. The Petitioner filed Original Application being O.A. No.362(C) of 2011 before the Orissa Administrative Tribunal challenging the order dated 28.01.2011 by way of which punishment of removal from service was imposed on him. After abolition of Orissa Administrative Tribunal, the said substantive petition was transferred to this Court and registered as WPC(OAC) No.362 of 2011. The learned Single Judge of this Court vide its order dated 24.08.2021 dispose of the said Writ Petition permitting the Petitioner to pursue his remedy before the Appellate Authority. Pursuance thereof the Petitioner filed an Appeal against the order dated 28.01.2011 passed by the Commandant, OSAP, 4th Bn. Rourkela- Opposite Party No.3 before the Appellate Authority-cum-Additional D.G. of Police, OSAP, Odisha Bhubaneswar i.e. Opposite Party No.2. The memo of the Appeal filed by the Petitioner before the Appellate Authority is annexed with the Writ Petition as Annexure-7, which indicates that he had pleaded his case in detail supported with documents.

7. The Additional D.G. of Police vide its order dated 13.07.2022 rejected the Appeal inter alia stating as under:-

"After going through the material of the facts, the grounds of appeal and parawise comments of the D.A., it is seen that the appeal cannot be considered as per the recruitment rules."

8. By way of the present Writ Petition, the Petitioner is assailing the order dated 13.07.2022 passed by the Additional D.G. of Police i.e. Opposite Party No.2 in the Appeal preferred by the Petitioner against the order of removal from service.

9. It is worthwhile to mention here that, on the basis of allegation that forged certificate was being produced by the Petitioner at the time of his appointment as a genuine document, a F.I.R. was also lodged apart from Departmental Proceeding. The Petitioner was put to trial under G.R. Case No.857 of 2010.

10. The F.I.R. was lodged on 24.05.2010. Charge-sheet was filed on 31.12.2010 by the Police on the accusation of forging and using the forged documents as

genuine documents for procuring appointment to the post of Sepoy. The learned trial Court on 07.12.2011 framed charges against the Petitioner under Section 468/420 of I.P.C. and subjected the Petitioner to trial. Eventually the trial Court vide its detailed judgment dated 13.10.2022 recorded an acquittal in favour of the Petitioner and stated that the prosecution has miserably failed to establish the case against the Petitioner. It would be relevant to produce the penultimate paragraphs of the judgment dated 13.10.2022 passed by the J.M.F.C., Rourkela:-

"In order to make a person liable for the offence punishable U/s.-420 of IPC. Prosecution has to prove cheating, dishonest inducement to deliver property and mens-rea of the accused at the time of making inducement. In this case the prosecution did not prove how the accused induced or cheated the informant or any other victim. In order to make a person liable for the offence punishable U/s.-468 of IPC. Prosecution has to prove that there is a forgery in respect of the document, the intention of forgery should be that the forged document is to be used for purpose of cheating and the forgery is with particular intent. In this case no witness deposed in the court that the accused has forged any document, for the purpose of cheating.

The offences commission of which have been alleged against the accused are traditional offences punishable under the Indian Penal Code which needs to be proved beyond all reasonable doubt by the prosecution by adducing cogent and legally acceptable evidence. As per the principles of Criminal law it is the duty of the prosecution to prove it's case against the accused beyond any reasonable doubt. The statements of the witnesses must be uncontradictory and corroborative in nature to become reliable chain of evidence must be complete. The prosecution has failed to prove the allegation made against the accused that on 22.12.2006 at O.S.A.P., 4th Battalion Rourkela by submitting forged caste certificate before the Authority of O.S.A.P. and thereby dishonestly induced the O.S.A.P. Authority to appoint him as recruit Sepoy and thereby committed an offence and the accused committed forgery of caste certificate intending that the said document shall be used for the propose of cheating. The prosecution has miserably failed to prove the commission of offence by the accused punishable U/s. 420/468 of I.P.C."

Since no Appeal preferred by the State against the acquittal order passed in favour of the Petitioner before any superior court of law, the acquittal order attains finality.

11. The Opposite Parties filed a detailed counter affidavit controverting the contention raised by the Petitioner in the Writ Petition. However broadly the aforementioned factual matrix are not disputed.

12. Heard Mr. P.K.Ray, learned counsel for the Petitioner and Mr. N.K. Praharaj, learned Additional Government Advocate.

13. Mr. Ray, learned counsel for the Petitioner contended that in the Departmental proceeding the sole oral testimony of Smt. Gitanjali Naik, the

Tahasildar, Dhenkanal recorded in 2010 was made the basis for proving the Caste Certificate No.3661 of 2003 to be a forged document. Baring her deposition no other material supports the case of the Opposite Parties to establish that the Caste Certificate produced by the Petitioner being forged. He submits that the Appellate Authority in its order dated 13.07.2022 even goes on to the record that the Caste Certificate subsequently produced by the Petitioner in the year 2010 is found to be genuine, however since the Petitioner had applied for the Post of Sepoy in 2006 on the basis of a Caste Certificate of 2003 and the said Caste Certificate is not a genuine document. From the factual scenario it emerges that the Petitioner belongs to Schedule Caste category being a "PANA=.

14. Mr. Praharaj, learned Additional Government Advocate fairly admits the fact that the Petitioner belongs to "PANA" Caste is not doubted, however, the certificate he produced at the time of applying for appointment to the post of Sepoy was a forged document. The Petitioner was subjected to a departmental proceeding and it is established that he had used a forged document to be a genuine one for the purpose of availing reservation in the appointment. Therefore, he submits that although the Petitioner is a Schedule Caste, the fact that he had used a forged certificate cannot be doubted in view of the deposition made by the Tahasildar, Dhenkanal in the departmental proceeding.

15. Mr. Praharaj, learned Additional Government Advocate further submits that acquittal in the criminal prosecution recorded by the J.M.F.C., Rourkela is of no consequence in so far as the departmental action against the Petitioner is concerned. Because the standard of proof required to be adopted in both the proceedings are different.

16. The fact that the Petitioner belongs to "PANA" Caste is not disputed and also it is not disputed that his father namely Rabinarayan Naik was also working as a Sepoy under the reserved category of Schedule Caste being a "PANA=. To establish the same, the Petitioner has placed on record the pension document of his father. Therefore, there was no occasion for the Petitioner to forge a document to avail the reservation benefit as admittedly he is a Schedule Caste.

17. The genuinity of the document was also subjected to judicial scrutiny under the parameter of strict proof beyond the reasonable doubt and in the said scrutiny it was found that the subject document could not be proved to be a forged document. Therefore, the Petitioner was honourably acquitted.

18. Mr. Praharaj, learned Additional Government Advocate vehemently contended that the department is not doubting regarding the Caste but he was removed from the service only on the ground of proved allegation of using a fraudulent document as genuine for availing the reservation. No doubt the departmental proceeding has a different standard of proof and goes by the principle of preponderance probability of doctrine but in the present case all the facts and documents are tilted in favour of the Petitioner baring the sole statement of Smt. Gitanjali Naik, the Tahasildar, Dhenkanal, which she made in the departmental

proceeding.

19. It is relevant to mention that the subject document was produced by the Petitioner in the year 2006 at the time of applying for recruitment to the post of Sepoy whereas the departmental proceeding, the statement of the Tahasildar, Dhenkanal was recorded on 10.02.2010. In her statement she has admitted that Dhenkanal Tahasil has been bifurcated in the year 2007 to Odapada Tahasil and Dhenkanal Tahasil. Therefore, she had no advantage of seeing any relevant documents of Odapada, Tahasil being the Tahasildar of Dhenkanal. She also stated that Petitioner's subject Caste Certificate appears to have been generated from Odapada, Tahasil but it is not matching with the Register available at Dhenkanal Tahasil. Therefore, keeping in mind that the bifurcation took place in 2007, the Register maintaining in Dhenkanal Tahasil would not reflect the entry pertaining to the subject certificate. The Tahasildar, Dhenkanal also deposes that all records pertaining to Odapada Tahasil has already been transferred in the year 2009. Therefore, in all possibility neither she had the advantage seeing the record to support her statement nor she was the right witness to be relied upon in the departmental proceeding being from a separated Tahasil. In that view of the matter the statement of Smt. Gitarani Naik, the Tahasildar, Dhenkanal made in the departmental proceeding inspires no confidence to be relied upon particularly when series of facts mentioned above are staring on the face of the records in favour of the Petitioner.

20. Mr. Praharaj, learned Additional Government Advocate also relied upon a judgment reported in (2018) 14 SCC 279 in the case of Ex Sig. Man Kanhaiya Kumar versus Union of India and others to support his case. However, factually the said case is distinguishable as in that case the certificate was established to be a fake certificate, whereas the mitigating facts of the present case gives different narrative.

21. Per contra, Mr. Ray, learned counsel for the Petitioner relied upon the judgments of the Hon'ble apex Court in Civil Appeal No.487 of 2018 in the case of Sunita Singh vs. State of Uttar Pradesh & others and stated that there cannot be any dispute that caste be determined by birth and if born as a Schedule Caste, it always remain and continuing a Schedule Caste. The fact of the present case being same, it cannot be doubted that the Petitioner belongs to Schedule Caste being a "PANA=". Therefore, he is entitlement to the reservation for the post of Sepoy cannot be find fault with. Evaluating the facts scenario in toto, I am of the view that forging a document to prove something which really he is may not be comprehensible. Moreover, undisputedly the Petitioner is a Schedule Caste and the element of forgery also could not be proved by the Opposite Parties conclusively either in the criminal trial or in the departmental proceeding. Therefore, the Petitioner succeeds in this lis.

22. For the foregoing reasons, the Writ Petition deserves merit and the removal order dated 28.01.2011 passed by the Opposite Party No.3 is set aside and consequentially the impugned order dated 13.07.2022 passed by the Appellate

Authority namely Opposite Party No.2 also stands quashed. The Opposite Parties are directed to reinstate the Petitioner forthwith with all consequential benefits applicable under law.

23. The Writ Petition is allowed accordingly.

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