
(2019) 01 MP CK 0001
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 25 Of 2019

Ram Kishore Keer

APPELLANT

Vs

State of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2019) 01 MP CK 0001

Hon'ble Judges : S.K. Seth, CJ; Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Anand Singh, Namrata Agrawal

Final Decision : Dismissed

Judgement

Vijay Kumar Shukla, J

The instant intra-court appeal filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005 takes exception to the order dated 4-10-2018 passed by learned Single Judge, whereby the writ petition filed by the petitioner/appellant challenging cancellation of his promotion has been dismissed. The learned Single Judge has disposed of a batch of writ petitions including the petition filed by the appellant herein.

2. The facts adumbrated in the present case were taken note of by the learned Single Judge in para 5 of the impugned order. The appellant was appointed on the post of Forest Guard in the year 2002 under the Scheduled Tribe (ST) category as he belongs to "Keer" community which was in the list of the Scheduled Tribes at the time of the appointment. In the year 2003 the Govt. of India vide Notification dated 8-01-2003 removed the "Keer" community from the list of Scheduled Tribes. However, in spite of removal of the "Keer" community from the list of Scheduled Tribes, the appellant was promoted on the post of

Forester, vide order dated 31-03-2015 in the ST category. A show cause notice dated 5-11-2016 was issued for cancellation of promotion of the appellant on the post of Forest, as he was not entitled for the benefit of ST category, because the "Keer" community was already de-notified from the list of Scheduled Tribes.

3. Reply to the said show cause notice was filed by the appellant stating that there is no misrepresentation on behalf of the appellant, therefore, his promotion order cannot be cancelled. However, vide order dated 6-12-2016 promotion of the appellant on the post of Forester was cancelled. Being aggrieved by the said order the appellant preferred the writ petition (W.P. No.20934/2016) which was allowed and the order was quashed with the liberty to the respondents to pass a fresh order after affording opportunity of being heard to the writ petitioner.

4. In compliance to the order dated 9-10-2017 passed in the writ petition, a notice to show cause dated 14-11-2017 was issued to the appellant. He filed reply to the show cause reiterating that there is no misrepresentation or fraud on his part, therefore, his promotion order cannot be cancelled. The respondents passed the impugned order whereby promotion of the appellant has been cancelled by a speaking order affording opportunity of hearing to the appellant. The said order was subject-matter of challenge in the writ petition before the learned Single Judge, which faced dismissal by the impugned order.

5. Learned counsel for the petitioner strenuously urged that the present case is not a case of false caste certificate, misrepresentation or fraud by the employee and, therefore, cancellation of the promotion order is unjustified and untenable. He also submitted that the Department itself had promoted him in the year 2015 and cancelled the same after about six months. He urged with vehemence that in absence of any misrepresentation, cancellation of promotion and reversion is bad in law. He relied upon the judgment of the Apex Court rendered in *Kavita Salunke vs. State of Maharashtra and others*, AIR 2012 SC 3016.

6. It is not in dispute that on the date of promotion of the appellant on the post of Forester against ST category being a member of "Keer" community. The said community was already de-notified from the list of Scheduled Tribes in the year 2003. Once the said community was de-notified from the list, contention advanced on behalf of the appellant that, because there was no misrepresentation or fraud on the part of the appellant, he should be allowed to reap the benefit of the ST category, cannot be appreciated.

7. In the case of *Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others*, (2017) 8 SCC 670, it is ruled that question of mens rea or misrepresentation on the part of beneficiaries is of no relevance. Once it is found, that they did not have any right to enjoy the caste status, they cannot reap the benefit of promotion on the basis of the caste status.

8. In view of the aforesaid submission, we do not perceive any merit in the present intra-court appeal warranting any interference in the order passed by the learned Single Bench. Accordingly, the writ appeal being sans substance, is

dismissed.

No order as to costs.