



they may achieve excellence, equality of status and live with dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. Hence, the tribes, by reason of State's policy of reservation, have been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For availment of such exclusive rights by citizens belonging to tribes, the President by a notification specified the Scheduled Tribes or tribal communities or parts of or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights. The Union of India and the State Governments have prescribed the procedure and have entrusted duty and responsibility to Revenue Officers of gazetted cadre to issue social status certificate, after due verification.

x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x

3. Therefore, the Apex Court gave the following directions:

13. The admission wrongly gained or a appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts of groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee

shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any office higher in rank of the Director of the concerned department, (II) the Director, Social Welfare / Tribal Welfare / Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial and dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine"" or "doubtful"" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation / reply shall convene the Committee and the Joint/Addl. Secretary as Chairperson who shall give reasonable opportunity to the candidate / parent / guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and

consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents / guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9 The inquiry should be completed as expeditiously as possible preferably by day-today proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent / guardian and the applicant.

10 In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition / Miscellaneous petition/matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational

institution or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post."

4. It is thus clear that all the State Governments were directed to constitute a Committee of three officers namely, Additional or Joint Secretary or any officer of higher in rank of the Director of the department concerned, Director Social Welfare/Tribal Welfare/Backward Class Welfare and in the case of Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes and tribal communities. This committee should have been constituted in the State of Himachal Pradesh by now, but the learned Deputy Advocate General was not in a position to make a statement one way or the other.

5. Therefore, it is directed that in case such committee has not been constituted, the same be constituted within one month from today. It is obvious that it is only such a committee which can verify the status of persons and in case of dispute it is these committees which will go into the question as to whether a person belongs to the scheduled tribes/scheduled caste category or not.

6. The Apex Court considered a similar question in Action Committee on issue of caste certificate to scheduled castes and scheduled tribes in the Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, wherein the concept of ordinarily resident has been dealt with in great detail.

7. In Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, or the second Madhuri Patil case, the Apex Court modified the direction and constituted three separate committees for this purpose comprising of five members with quorum of three members.

8. In Union of India and Others Vs. Dudh Nath Prasad, the Apex Court considered the meaning of word reside and domicile.

9. In State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, the Apex again dealt with this question, approved the directions given in Madhuri Patil cases and held as follows:

32. The said decision, therefore, is also an authority for the proposition that the Committee can go into the question as to whether a caste certificate has rightly been issued or not. The authorities concerned were also found to have some role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate.

10. Therefore, it is obvious that the committees constituted can go into the question whether a scheduled tribe/caste certificate issued in case of a person is

valid, proper or not.

11. In Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, the Apex Court held that where a person gets appointment by procuring a false or fraudulent certificate showing him to be a member of the scheduled tribe, even if he has spent many years in service, his service must be terminated.

12. In view of the aforesaid law, this writ petition is disposed of with the following directions:

- i) That in case the State of Himachal Pradesh has not constituted a Caste Scrutiny Committee in terms of the judgments in the 2 Madhuri Patil Cases, the same shall be constituted within one month from today;
- ii) That the present Petitioner shall be given notice by the Caste Scrutiny Committee within one week from today or of its constitution and the Petitioner shall make a detailed representation to the Caste Scrutiny Committee challenging the Scheduled Tribe certificate granted in favour of Respondent No. 5;
- iii) The Caste Scrutiny Committee shall after hearing the Petitioner and Respondent No. 5 and giving them reasonable opportunity of hearing decide whether the Respondent No. 5 belongs to a Scheduled Tribe or not. This decision shall be taken latest by 30th April, 2011;
- iv) In case Respondent No. 5 tries to delay the matter or does not appear before the Committee despite service of notice, a decision can be taken in his absence;
- v) In case it is found by the Caste Scrutiny Committee that the certificate procured by Respondent No. 5 showing him to be a member of the Scheduled Tribe is false, the State of Himachal Pradesh shall immediately remove him from service.

The petition is disposed of in the aforesaid terms. No order as to costs.