
(2014) 01 MP CK 0095
In the Madhya Pradesh High Court
Case No : Writ Petition No. 547 of 2013

Sharda Nimje

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Citation : (2014) 1 JLJ 333 : (2014) 2 MPLJ 354

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Romil Malpani, Advocate for the Appellant; V. Saran, Assistant Solicitor General for Respondent/Union of India, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.C. Sharma, J.—The petitioner before this Court, a lady Sub-Inspector serving the Central Industrial Security Force, has filed this present writ petition being aggrieved by the order dated 19.5.2011 passed by the respondent No. 2 by which the respondent No. 2 has refused to verify the caste certificate of the petitioner on the ground that the relevant documents are not available with them. The contention of the petitioner is that based upon the letter dated 19.5.2011 (Annexure P-10) issued by the Director, Schedule Tribe Research and Training Centre, Chhattisgarh, a charge-sheet has been issued on 8.10.2012 and the respondents have instituted a Departmental Enquiry alleging that the noticee has procured a fake caste certificate. The contention of the petitioner is that she was appointed as a Sub-Inspector by order dated 22.10.2004 and she belongs to Scheduled Tribe. In the year 1995 petitioner's father was posted at Raigarh, Chhattisgarh and the petitioner, as she is a member of Scheduled Tribe (Halba), applied for grant of a caste certificate and the same was issued on 12.5.1995. The petitioner thereafter applied for appointment to the post of Sub-Inspector and she was appointed by order dated 20.10.2004. It has been further stated that a charge-sheet was issued on 20.4.2009 and the petitioner preferred a writ petition before the High Court of Chhattisgarh and the same was allowed with

liberty to the respondents to verify the matter by placing it before the High Power Committee. The contention of the petitioner is that the High Power Committee has not given any final finding in case of the petitioner and based upon the letter of the Director (Annexure P-10) a fresh charge-sheet has been issued.

2. On the other hand, a reply has been filed on behalf of the employer and it has been stated by the employer that a letter has been received from the Member-cum-Joint Director of the High Power Committee expressing his inability to verify the petitioner's certificate in absence of the documents and based upon the letter of the Joint Director dated 19.5.2011 they have initiated action against the petitioner.

3. This Court has carefully gone through the documents, on record and it nowhere establishes that the High Power Committee has given any findings in respect of the caste status of the petitioner.

4. This is the second visit of the petitioner before a High Court. In the earlier order passed by the Chhattisgarh High Court, in paras 2 to 13, the Chhattisgarh High Court has held as under:

2. Caste of the petitioner, in brief, is that the petitioner is working as Sub-Inspector at unit A.S.G., Jaipur (Rajasthan). The petitioner belongs to Halba community, i.e., Scheduled Tribe category. The caste certificate was issued by the Tahsildar Raigarh on 12.5.1995. On promotion of the petitioner on the higher post, the respondent No. 3 vide letter dated 24.8.2005 (Annexure P-3) enquired about the social status of the petitioner from the District Magistrate/Collector, Raigarh. Thereafter the Collector directed the Tahsildar to ascertain about the social status of the petitioner. The Tahsildar submitted his report dated 18.7.2008 (Annexure P-4) stating that the caste certificate issued in respect of the petitioner is not in proper format, therefore, the same cannot be treated as genuine document. On 30.7.2005 (Annexure P-5) again the respondent No. 3 requested the District Magistrate to conduct fresh enquiry in respect of the social status of the petitioner. The respondent No. 5 after recording the statement of the petitioner's father and after completion of enquiry submitted his report on 13.10.2008 (Annexure P-9) stating that the father of the petitioner was not resident of Raigarh prior to 1950, therefore, the certificate obtained by the petitioner was not a valid caste certificate. The respondent No. 4 without considering the facts and circumstances of the case and without applying his mind, accepted the report and it was further sent on 31.12.2008 to the respondent No. 3. The report adversely affects the service career of the petitioner. Thus, this petition.

3. Learned counsel appearing for the petitioner submits that it is well settled principles of law that the State Level High Power Caste Scrutiny Committee (for short, "the High Power Committee") alone is competent to verify and declare the social status certificates to be invalid or valid. In the present case, the District

Authorities have found that the petitioner does not belong to Halba and, as such, impugned communication is not sustainable in the eye of law. Learned counsel further submits that the impugned communication is bad and illegal, as the same has been sent on the basis of a report, which was submitted by an authority, which has no jurisdiction to make such a recommendation. Learned counsel in support of his contention, placed reliance upon the decisions of the Supreme Court rendered in Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development and others, G.M. Indian Bank v. R. Rani and another.

4. Per contra, learned counsel appearing for the respondents submit that after affording proper and sufficient opportunity of hearing and after recording the statement of the father of the petitioner, the report was prepared.

5. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

6. It is evident that on the basis of some communication sent by the respondent No. 3, the District Authorities conducted enquiry for verification of social status of the petitioner, which has no jurisdiction because the High Power Committee alone is competent to verify the social status of a particular person. Thus, the impugned action taken by the respondent authorities is not sustainable in the eye of law.

7. In Kumari Madhuri Patil (supra), the Supreme Court observed as under:

15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a Court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and record a finding, though another view, as a Court of appeal maybe possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts.

8. The Supreme Court in Gayatrilaxmi Bapurao Nagpure v. State of Maharashtra and others, reiterated the view taken in Kumari Madhuri Patil (supra).

9. In State of Maharashtra and others v. Ravi Prakash Babulal Singh Parmar and another, the Supreme Court observed as under:

31. Reliance has also been placed in Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, , wherein this Court referring to Madhuri Patil (supra), on the fact situation obtaining therein opined:

17. Applying the above test to the facts of the present case, we are satisfied that

the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "Sl. No. 9" which led the Committee ultimately to record a finding against the appellant. By a wrongful denial of the caste certificate to the genuine candidate, he/she will be deprived of the privileges conferred upon him/her by the Constitution. Therefore, greater care must be taken before granting or rejecting any claim for caste certificate.

18. The High Court without appreciating the probative value of the documents placed before it has dismissed the writ petition filed by the appellant by simply accepting the conclusions reached by the second respondent Committee. Undoubtedly, in cases of this type, the burden heavily lies on the applicant who seeks such a certificate. That does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. We are of the view that the authorities concerned must also play a role in assisting the Committee to arrive at a correct decision. In this case, except the documents produced by the appellant, nothing has been produced by the authorities concerned to arrive at a different conclusion.

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. The Supreme Court in *G.M., Indian Bank (supra)*, observed as under:

6. The directions given in the decision of *Kumari Madhuri Patil (supra)*, have been reiterated in the case of *Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another*, , in which while reiterating it was observed that Government of India should have the matter examined in greater detail and bring about a uniform legislation in relation to these matters. In the case of *Baswant Shankarappa Swami Vs. State of Maharashtra and Others*, , this Court held that the Constitution of the Committee was not in accordance with the decision rendered by this Court in *Kumari Madhuri Patil (supra)*, as such the appeal was allowed and it was directed to constitute the Committee in terms of the decision of this Court in the case of *Kumari Madhuri Patil (supra)*, and decide the matter fresh. The said directions of this Court in the case of *Kumari Madhuri Patil (supra)*, regarding Constitution of Committee have been approved by a 3 Judges Bench of this Court in the case of *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others*, , in which as the matter was not referred to appropriate Committee in terms of directions given in the case of *Kumari Madhuri Patil (supra)*, the appeal was allowed and it was directed that the properly constituted Committee shall decide the matter. In view of the foregoing discussions it cannot be said that the directions given in the case of *Kumari Madhuri Patil (supra)*, were simply guidelines. In our view, the law laid down in the case of *Kumari Madhuri Patil (supra)*, has been reiterated times without number not only by 2 Judges Bench but also by a 3 Judges Bench of this Court.

11. The recommendation of the District Authorities that the petitioner do not belong to Halba caste is not binding as the District Authorities have no power to determine the social status of a particular person.

12. Applying the well settled principles of law, for the reasons stated hereinabove and without expressing any opinion about the social status of the petitioner, the impugned communication dated 31.12.2008 (Annexure P-1) is quashed. However, liberty is reserved to the respondent authorities to get the caste certificate of the petitioner verified from the High Power Committee and pass the appropriate order accordingly on the basis of the report of the High Power Committee.

13. In the result, the writ petition is allowed to the extent indicated above. No order as to costs.

5. A liberty was granted to the respondents to place the matter before the High Power Committee and the High Poverty Committee was required to verify the caste status/caste certificate of the petitioner. The same has not been done keeping in view the judgment delivered by the apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, .

6. Resultantly, the impugned order passed by the Director dated 19.5.2011 as well as the subsequent charge-sheet dated 8.10.2012 are hereby quashed. The respondents No. 1 and 3 are directed to again refer the matter to respondent No. 2 for placing it before the High Level Caste Scrutiny Committee. It is needless to mention that the High Level Caste Scrutiny Committee will conduct a detailed enquiry as per the procedure prescribed by the apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . The High Power Committee shall also accord an Opportunity of hearing to the petitioner and shall pass a reasoned order in the matter. The respondent No. 3 shall immediately forward the matter to the High Power Committee within 30 days and the High Power Committee shall conduct an appropriate enquiry and submit a report after following the prescribed procedure, as early as possible, preferably within 90 days from the date of receipt of request from the respondent No. 3. The respondent No. 3 shall be free to take any further consequential action in the matter after receiving the report from the Committee. With the aforesaid, the writ petition stands disposed of. No order as to costs.