
(2019) 06 JH CK 0025
In the Jharkhand High Court
Case No : Writ Petition (S) No. 801 Of 2009

Shashi Bhushan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 14-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 136, 226

Citation : (2019) 06 JH CK 0025

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rajiv Ranjan, Gaurav Abhishek, Aditi Shreya, Anil Kumar

Final Decision : Disposed Off

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Rajiv Ranjan, learned senior counsel for the petitioner and Mr. Anil Kumar, learned A.C. to S.C. (Mines-II) for the respondents.

2. The petitioner has preferred this writ petition for quashing the order dated 18.07.2008 issued by the respondent no. 2 whereby the respondent no. 2

has expressed his inability to verify the caste certificate of the petitioner at the same time illegally and wrongfully ordered that the appointment of the

petitioner is illegal and has also refused to pay the salary of the petitioner and also for quashing the order dated 18.07.2008 by which the petitioner was

terminated from his service without affording adequate opportunity of hearing.

3. Pursuant to advertisement issued by the Bihar Public Service Commission in the year 1998 for conducting first Regional Competitive Examination,

1998 for the various posts including for the post of Assistant/Clerk. The petitioner competed for that said post and the petitioner was also declared

successful and his name found the place in the final result of scheduled tribe category candidates of Jamshedpur bearing advertisement no. 35/95. The name of the petitioner was accordingly recommended by the BPSC for making his appointment on Grade-III post. The Deputy Commissioner East Singhbhum, Jamshedpur issued appointment letter dated 15.09.2004 in favour of the petitioner. The petitioner was posted at Sub-Divisional Office, Dhalbhum, Jamshedpur and on 21.09.2004 he joined the office of the Sub-Divisional Officer. Thereafter, the petitioner was working in that post. It is contended that although the petitioner was working continuously but the petitioner was not paid salary and for that the petitioner moved before this Court for direction to the concerned authority to make the payment of salary in W.P.(S) No. 5661 of 2007. This petition was disposed of taking into account that some dispute relating to caste certificate is there and the said certificate yet to be verified. This Court directed the petitioner to file representation before the Deputy Commissioner, Jamshedpur in the district of Singhbhum East, stating in details about his claim alongwith the supporting documents, if any, within a period of three weeks from today. If such a representation is filed by the petitioner within the said period, the Deputy Commissioner, Jamshedpur shall on consideration of facts may pass an appropriate order in accordance with law within a period of 8 weeks thereafter. It is made clear that I have not gone through the merit of the claim of the petitioner. In view of the above order passed by this Court, the Deputy Commissioner passed the order dated 05.08.2008 annexed as Annexure-16 to the writ petition in which the Deputy Commissioner, Jamshedpur has categorically stated that the certificate produced by the petitioner is forged and the petitioner has not produced the relevant documents so that his caste be ascertained properly. The validity of the order was also challenged in this writ petition. Mr. Rajiv Ranjan, learned senior counsel appearing for the petitioner submits that once the certificate is issued by the competent authority, the Deputy Commissioner has got no authority to question that certificate. Particularly, when the certificate is issued by the State of Jharkhand. To substantiate his argument he relied upon the case of Kavita Kumari Kandhaw & Ors. Vs. State of Jharkhand & Ors. reported in 2006 Vol. II JCR 512 (Jhr.) paragraph no. 14 of the said judgment stipulates as under:-

14. The writ petitioners, private respondents of L.P.A. Nos.722 of 2004 and 570 of 2005 and the appellant of L.P.A. No. 457 of 2005 belong to

Backward Class, including Scheduled Castes and Scheduled Tribes. Most of them belong to the State other than the State of Jharkhand, such as,

Uttar Pradesh, or the districts, which now fall within the territory of the successor State of Bihar. Thus, they cannot derive the advantage of

reservation for the purposes of appointment in the State of Jharkhand. We have noticed that some of the petitioners have enclosed Castes

Certificates, most of which have been issued by the district authorities, which now fall within the successor State of Bihar or Uttar Pradesh whereas

one or other petitioner have enclosed the Caste certificates, issued by the district authorities, territory of which now fall within the State of Jharkhand.

But in many of the cases, the certificates, so enclosed, have been issued much after submission of the application for appointment. It has brought to

our notice that many persons though have enclosed the caste certificates, issued by the district authorities of the State of Bihar, in the writ petitions

certain certificates, issued by the district authorities of the State of Jharkhand, have also been enclosed to suggest that they belong to the State of

Jharkhand. Such individual cases cannot be scrutinized by this Court nor such claim can be determined, which can be taken care of by the competent

authorities of the State. If any certificate, enclosed by one or other petitioner, issued by the district authorities of the State of Jharkhand prior to

submission of the application forms, has been enclosed, then the authorities may consider the case of such person for appointment against the reserved

categories, if it is found that such person belongs to the State of Jharkhand. But those, who have enclosed the certificates, issued by the district

authorities, now fall within the State of Bihar, or the certificates, issued by the district authorities of Uttar Pradesh or any other State, cannot claim

reservation for appointment in the services of the State of Jharkhand. Similarly, those, who have obtained certificates from the district authorities of

the State of Jharkhand after the last date of filing of the application form, those certificates also cannot be taken into consideration to grant benefit of

reservation.

Mr. Rajiv Ranjan further submitted that in view of the judgment rendered by the Hon'ble Supreme Court in the Case of Kumari Madhuri Patil &

Anr. Versus Addl. Commissioner, Tribal Development and Ors. Reported in (1994) 6 SCC 241 in which it is held that only the scrutiny committee can

examine the validity of the certificate and paragraph 13 of the said judgment reads as under:-

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has 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 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 or groups of tribes or tribal communities, the place from which

he originally hails from and other particulars as may be prescribed by the Directorate concerned.

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 officer higher in rank

of the Director of the department concerned, (II) the Director, Social Welfare/ Tribal Welfare/Backward Class Welfare, as the case may be, 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 over-all 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 should

also 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 of dead bodies etc. by the castes or tribes or tribal communities concerned 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 acknowledgement due or through the head of the educational institution concerned 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/Additional 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-to-day 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 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 educational institution concerned or the appointing authority by registered post with acknowledgement 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 from further study or continue in office in a post.â??

Mr. Rajiv Ranjan, learned senior counsel in support of his argument produced the circular dated 8.07.2004 issued by Personnel, Administrative

Reforms Department, Government of Jharkhand, who constituted the Scrutiny Committee. According to the circular the Scrutiny Committee is

authorized to look into the irregularities in obtaining the caste certificate and whether the person by false and forged documents and facts obtained the caste certificate fraudulently.

4. Mr. Kumar, appearing for the state draws the attention of the Court at paragraph 15 of the counter-affidavit, wherein it has been stated that the report of the SDO, Sadar Hazaribagh has been manipulated as entire report is typed one as there is no initial on written portion. Looking to the nature of this case this Court is not going to examine whether the certificate produced by the petitioner is correct or not. In the light of the judgment of Honâ??ble Supreme Court rendered in the Kumari Madhuri Patil Case (Supra) the matter is referred to the scrutiny committee to find out as to

whether the certificate produced by the petitioner is correct or not.

5. At this stage, this Court is not in a position to grant any further relief to the petitioner. It goes without saying if the report is in favour of the petitioner,

if so advised, the petitioner may approach the appropriate forum.

6. With the above observations and directions, the writ petition stands disposed of.