

(2011) 09 AHC CK 0371
In the Allahabad High Court
Case No : Writ A No. 53340 of 2011

Smt. Babita

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2011) 09 AHC CK 0371

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The claim of the Petitioner for being sent for training by distance education under the Government Order dated 11th July, 2011 as a candidate belonging to the Scheduled Tribe category has not been considered for the reason that Mallah Tribe which is a Vimukt Tribe cannot be treated to be a Scheduled Tribe.

2. Learned Counsel for the Petitioner has submitted that in view of the decision of this Court in Writ Petition No. 25142 of 2002 (Bhaiya Lal and Anr. v. Special Secretary Deptt. of Education U.P. and Ors.) decided on 14th July, 2004, the Petitioner should be treated as a candidate belonging to the Scheduled Tribe since he is a Mallah and is Vimukt Tribe.

3. Learned Standing Counsel, on the other hand, placed reliance upon a judgment of this Court in Writ Petition No. 18236 of 2011 (Vijay Kumar v. State of U.P. and Anr.) decided on 8th April, 2011 in which it has been held that the State Government cannot issue any Government Order or circular that denotified Tribes become entitled for the benefit meant for Scheduled Tribes.

4. I have considered the submissions advanced by learned Counsel for the parties.

5. This judgment in Vijay Kumar (supra) relies on two Division Bench judgments

and is as follows:

Heard learned Counsel for the Petitioner and learned Standing Counsel for the Respondents.

Petitioner, who belongs to "Aheriya Tribe" applied for B.T. C. Training-2010. When he was not selected, he approached this Court making a grievance that his candidature should have been considered under Scheduled Tribe category since Aheriya Tribe is a Vimukt Tribe and thus falls under Scheduled Tribe. The writ petition was disposed of with direction to the Principal, District Institute of Education and Training, Bulandshahr to consider the claim of the Petitioner. By means of an order dated 6.12.2010 his case has been rejected on the ground that Aheriya caste which is a Vimukt Tribe cannot be treated to be Scheduled Tribe.

Learned Counsel for the Petitioner has placed reliance upon a Government Order issued by the State Government filed as Annexure "5" to the writ petition notifying that "Aheriya Tribe" which is a denotified tribe falls under the Scheduled Tribe. It is contended that in view of the said Government Order, the Petitioner is entitled to be extended the benefits and reservation admissible to Scheduled Tribe.

Learned Standing Counsel has pointed out that issue stands settled by a Division Bench judgment of this Court dated 04.02.2005 in Special Appeal No. 89 of 2005 wherein it has been held that State is not competent to bring such circular/ Government Order. The issue was also considered in the case of Viresh Misra v. State of U.P. and Ors. ADJ 2011 (2) 111. It is conceded by the learned Counsel for the Petitioner that issue stands settled by the aforesaid two Division Bench judgments that the State Government cannot issue any such Government Order or circular so that denotified tribes become entitled for the benefit meant for Scheduled Tribes.

In view of the settled law on the point, no illegality is reflected in the impugned order which may warrant interference in rejecting the claim of the Petitioner for extending the benefit of Schedule Tribe.

The writ petition accordingly fails and stands dismissed.

6. In the instant case, same submissions have been raised by learned Counsel for the Petitioner. According to him Mallah Tribe is a Vimukt Tribe and should be treated as a Scheduled Tribe. In view of the aforesaid decision, the Petitioner is not entitled to any relief.

7. The writ petition is, accordingly, dismissed.