

(2016) 09 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No. 29850 of 2014 (S-DIS).

Smt. J. Hemavathy - Petitioner @HASH State of Karnataka and Others

Date of Decision : 06-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 AirKarR 303

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Srim. Naga Prasanna, Advocate, for the Petitioner; M.S. Prathima, AGA, for the Respondent No. 1; Pradeep Sawkar, M/s. Sundarswamy and Ramdas, Advocates, for the Respondent No. 3

Final Decision : Allowed

Judgement

B.S. Patil, J. - Challenge in this writ petition is to the order dated 14.01.2014 passed by the disciplinary authority viz., the Director, Hindustan Aeronautics Limited (HAL), thereby imposing punishment of dismissal from service on the ground that petitioner had obtained appointment in respondent - HAL by producing false caste certificate against a post meant for reserved candidate. As the appeal filed against this order was dismissed on 04.03.2014 by the Appellate Authority/3rd respondent, petitioner has also challenged the order passed by the appellate Authority.

2. Facts leading to the writ petition stated briefly are, petitioner applied for the post of Engineer (Grade-II) in the respondent - Company enclosing the caste certificate showing her as a person belonging to ?Jenu Kuruba? community/scheduled tribe. The Tahsildar, Mandya had issued a caste certificate showing petitioner as person belonging to scheduled tribe. Petitioner was appointed by respondent - Company on 10.07.1997. On 24.06.2013 petitioner received a show-cause notice from his employer as to why she should not be dismissed from service based on the findings of the District Caste Verification Committee dated 16.11.2009 where under it had been found that the caste certificate issued in favour of petitioner showing her as a person belonging to scheduled tribe was

wrong and that the same deserved to be cancelled. The disciplinary authority alleged that petitioner had secured employment on the basis of false caste certificate and therefore, she was liable to be dismissed from service.

3. Petitioner submitted a reply to the said show-cause notice. Considering the reply submitted, 3rd respondent passed the impugned order dated 14.01.2014 dismissing petitioner from service. Appeal filed against the said order has been dismissed on 04.3.2014. In this background, present writ petition has been filed.

4. It is necessary to notice at this stage the parallel developments that took place. The District Caste Verification Committee which is the competent authority to verify the caste status of the candidate concerned initiated proceedings against petitioner for allegedly obtaining false caste certificate. On 11.11.2009 Caste Verification Committee passed an order cancelling the certificate issued in favour of petitioner holding that the caste certificate obtained by petitioner was false. It was held that petitioner did not belong to ?Jenu Kuruba? and therefore, she was not entitled for the benefit of status of scheduled tribe. Appeal preferred against this order before the appellate authority was also dismissed. That is how petitioner approached this Court in W.P.No.6383 of 2014 challenging both the orders. Employer-HAL was made party respondent No.3 in the said proceedings. This Court after hearing all the parties has by its order dated 18.08.2016 disposed of the writ petition by referring to various judgments of the Apex Court including the judgments in the cases of Punjab National Bank and another v. Vilas (2008) 14 SCC 545, Shalini v. New English High School Association and others (2013) 16 SCC 526, State of Maharashtra v. Milind and others, AIR 2001 SC 393 and Additional General Manager - Human Resources, Bharath Heavy Electricals Limited v. Suresh Ramakrishna Burde (2007) 5 SCC 336. In paragraph Nos. 15 to 17 of the said order, this Court has held as under:

"15. If in the light of the above discussion, the orders dated 11.11.2009 and 27.01.2014 are perused minutely, the ultimate conclusion by both the authorities is that the petitioner does not belong to ?Jenu Kuruba? but her caste is ? Kuruba?, which is backward class Category-2A. That in any event is the accepted position at this point in time, but in the circumstance explained above, despite such position the appointment of the petitioner would stand protected and saved, but without any benefits attached to the post reserved for Schedule Tribe. Hence, even in the teeth of the orders dated 11.11.2009 and 27.01.2014, the respondent No.3 employer was required to keep these aspects in view and was required to modulate the same as has been done by the employer of the petitioner?s father.

16. Therefore, in that situation the order dated 11.11.2009 and 27.01.2014 though not required to be set aside shall be read down to that effect by the respondent No.3 -employer and the employment be regulated in the terms as has been stated above in view of such protection being extended by the Hon?ble Supreme Court in cases of present nature. Since it is stated that the respondent No.3 instead of doing so has passed a dismissal order dated 14.01.2014 which is

assailed in another petition in W.P.No.29850 of 2014, the directions relating to reinstatement and to regulate the employment is left open to be urged therein.

17. In the result, for all the reasons afore stated the following,

ORDER

a. The orders dated 11.11.2009 and 27.01.2014 (Annexures-A and B) though need not be set aside for the reasons stated above they shall be read down as the orders declaring the caste status of the petitioner to regulate the benefits as not attached to Schedule Tribe, but without adversely affecting the appointment of the petitioner, with the respondent No.3 company.

b. Further directions in that regard are however left open to be urged in W.P.No.29850 of 2014 which is said to be pending.

c. This writ petition is allowed in the above terms with no order as to costs."

5. Thus, the main controversy with regard to the status of petitioner and the validity of the caste certificate issued in her favour has been already dealt with and decided by this Court by following the principles laid down by the Apex Court in various judgments. Therefore, it is unnecessary to again deal with any of the contentions touching the certificate issued in favour of petitioner and the effect of its cancellation. Suffice to observe now that benefit given to similarly placed persons by various pronouncements of the Apex Court as followed by this Court in several other judgments has been indeed ordered to be accorded to petitioner. Hence, now the question only boils down to the nature of consequential order to be passed in favour of petitioner.

6. While it is contended by learned counsel for petitioner that petitioner is entitled for all consequential benefits including back wages treating as if she has been in service all through out, learned counsel appearing for respondent company submits that there is absolutely no fault or mistake on the part of the company in passing the order dismissing her from service which was a natural consequence of the cancellation of caste certificate and therefore, the company cannot be saddled with back wages. He also points out that company is contemplating filing a writ appeal against the order dated 18.08.2016 passed in W.P.No.6383 of 2014 and therefore, disposal of this writ petition may be deferred awaiting result of the appeal to be presented by the company.

7. Having considered the entire matter at length and after giving anxious consideration to the issue raised with regard to the consequential order to be passed, I am of the view that request made by learned counsel for respondent - Company to defer consideration of this matter cannot be acceded to. The question raised regarding the caste status and the protection to be accorded to petitioner who has not obtained the caste certificate by any fraudulent means but the certificate had been issued having due regard to the existing confusion regarding the synonyms of the caste, particularly, in the States of Karnataka and Maharashtra has been authoritatively pronounced. Hence, the request made for

deferring consideration of this case in anticipation of the writ appeal to be filed by respondent-Company is rejected.

8. As regards the challenge made to the order of dismissal and the appellate order passed, the same deserves to be set aside as petitioner has been held entitled for the benefit of continuance in service in the light of the pronouncements made by the Apex Court in the cases of Milind (AIR 2001 SC 393), Shalini and Punjab National Bank, referred to supra.

9. Insofar as payment of back wages is concerned, it is brought to the notice of the Court by the learned counsel for petitioner that the respondent - Company in the case of one Chandrakanth who was similarly placed, has allowed him to continue in service after the criminal proceedings initiated against him in Criminal.P.No.2482 of 2005 was quashed vide order dated 08.02.2007 and the order passed on 22.09.2004 in W.P.No.47206 of 2002 remitting the matter back to the employer for consideration with regard to disciplinary enquiry initiated.

10. Be that as it may, fact remains that petitioner has been out of employment from January 2014 till today, for a period of nearly 21A years. Respondent is a public undertaking which cannot be saddled with the burden of paying back wages for no fault on its part inasmuch as the order of dismissal was passed based on the order passed by the Caste Verification Committee cancelling the caste certificate of petitioner. Therefore, in my view, petitioner will not be entitled to any back wages. She is no doubt entitled for reinstatement and continuity of service for all other purposes. She shall be reinstated within two weeks from the date of receipt of a copy of this order and be entitled for salary and all other emoluments as if she had continued in service uninterrupted. Petition is accordingly allowed.