
(2009) 12 CHH CK 0046
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1515 of 2007

Suresh Kumar Koshti

APPELLANT

Vs

State Government of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Constitution of India, 1950 — Article 338(5), 338(6), 338(7)

Citation : (2010) 4 MPJR 37

Hon'ble Judges : S.K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Agnihotri, J.—Challenge in this petition is to the order dated 9-10-2006 (Annexure -P/2) passed by the Collector, Durg, whereby the appeal No. 58/B/121/06 filed by the petitioner has been dismissed and maintained the order dated 14-3-2002 (Annexure-P/1) passed by the Assistant Commissioner, Tribal Welfare, Durg, by which the services of the petitioner has been terminated and forfeited all the dues of the petitioner.

2. The Indisputable facts, in nutshell, as projected by the petitioner, are that in the year 1984 the petitioner was appointed on the post of assistant Teacher against the post reserved for Scheduled Tribe category, as the petitioner claims himself to be of Halbi caste, On the basis of complaint received by the respondent-authorities with regard to social status of the petitioner, an enquiry was conducted by the District Level Caste Scrutiny Committee (for short "the District Level Committee") and on 10-1-2001 the District Level committee declared the caste certificate of the petitioner as illegal., pursuant to the said report, a departmental enquiry was conducted against the petitioner in the departmental enquiry, the Enquiry officer found that the caste of the petitioner is Koshti and not Halbi. After receipt of the enquiry report, the assistant Commissioner, Tribal welfare, Durg, terminated the petitioner from service by order dated 14-3-2002 (Annexure P/1).

3. Being aggrieved by the said order, the petitioner preferred an appeal before the Commissioner, Department of Tribal Welfare, Raipur, which was disposed of by the Commissioner by order dated 10-5-2002 with a direction to the petitioner to approach the Collector. Thereafter, the petitioner preferred an appeal before the Collector, Durg which was dismissed by order dated 9-10-2000 (Annexure P/2) and maintained by the removal order dated 14-3-2002. While dismissing the appeal, the Collector observed that the mother, father, grand father and great grand father of the petitioner belong to Koshti caste, Thus, the petitioner also belongs to Koshti caste. The Koshta/ Koshti caste comes under the category of Other Backward Class (OBC). Koshti caste does not come under the Scheduled tribe category. Thus, this petition.

4. Learned counsel appearing for the petitioner, would submit that it is well settled principle 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 valid. In the present case, the District Level Committee has found that the petitioner does not belong to Halbi and, as such, the order of termination passed on the basis recommendation of the District Level Committee and the departmental enquiry report dated 14-3-2002 (Annexure - P/1) is not sustainable in the eye of law. The District Level Committee has found that the petitioner does not belong to Halbi caste and, as such, his appointment against the reserved quota has been obtained in a fraudulent manner. Learned counsel would further submit that the order of termination is bad and illegal, as the same has been passed on the basis of a report, which was submitted by an authority, which has no jurisdiction to make such a recommendation or declaration. Learned counsel in support of his contention, placed reliance upon the decisions of the Supreme Court rendered in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , GM, Indian Bank v. R. Rani and Another (2008) 2 SCC (L&S) 956.

5. Per contra, learned counsel appearing for the State would submit that after affording proper & sufficient opportunity of hearing and after conducting the departmental enquiry, the impugned order dated 14-3-2002 was passed.

6. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto. It is evident that on the basis of some complaint, without disclosing the details, the District Level Committee 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, prima facie, the impugned action taken by the respondent authorities is not sustainable in the eye of law.

7. "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 imitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a Court of appeal may be 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 record the finding. Each case must be considered in the backdrop of its own facts."

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

9. In *State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another*, , the Supreme Court observed as under:

31. Reliance has also been placed in *Gayatrilaxmi Bapurao Nagpure vs. State of Maharashtra* wherein this Court referring to *Madhuri Patil* 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 "SI. No. 9" which led the Committee ultimately to records 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 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 for otherwise of the claim for issue of a caste certificate.

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

7. The directions given in *Madhuri Patil* have been reiterated in the case of *Director of Tribal Welfare, Government of A.P. vs. Laveti Giri* in which while reiterating it was observed that the Government of India should have the matter examined in greater detail and bring about a uniform legislation in relation to

these matters. In *Baswant vs. State of Maharashtra* this court held that the constitution of the Committee was not in accordance with the decision rendered by this Court in *Madhuri Patil*, as such the appeal was allowed and it was directed to constitute the Committee in terms of the decision of this court in *Madhuri Patil* and decide the matter afresh. The said directions of this Court in *Madhuri Patil* regarding constitution of Committee have been approved by a 3-Judge Bench of this Court in *Sudhakar Vithal Kumbhare v. State of Maharashtra* in which the matter was not referred to appropriate committee in terms of directions given in *Madhuri Patil* 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 *Madhuri Patil* were simply guidelines. In our view, the law laid down in the case of *Madhuri Patil* has been reiterated times without number not only by 2-Judge Benches but even by a 3- Judge Bench of this Court.

11. The recommendation of the District Level Committee that the petitioner does not belong to Halbi caste is not binding, as the District Level Committee has no power to determine the genuineness of social status of a particular person.

12. The Division Bench of this Court in *Ajit P.K. Jogi v. National Commission for Scheduled Castes and Scheduled Tribes & Others* 2007 (1) CGLJ 146, while considering the power of the National Commission for Scheduled Castes and Scheduled Tribes, observed as under:

20. We do not think that the provisions of article 338(5)(a)(b) of the Constitution would come to the aid of the Commission to claim that it has jurisdiction to decide caste/social status of an individual like the petitioner. By no stretch of imagination, even liberally interpreting as suggested by Shri Ravi Shankar Prasad, the Commission could claim to have jurisdiction to enquire into the caste or tribal status of an individual like the petitioner. The Commission cannot claim aid of the provisions of Article 338(5)(a)(b) for arrogating to itself the jurisdiction to make enquiry into the truthfulness or otherwise of an individual's caste or social status. Having regard to the language employed in the provisions of Article 338(5) of the Constitution, the power of investigation into the complaints with regard to the deprivation of safeguards, by necessary implications, only means deprivation of safeguards vis-?-vis the State which has to guarantee the safeguards under various provisions of the Constitution and other related laws. Thus, the Commission can at the most investigate into the complaints pertaining to deprivation of the safeguards in relation to the State and not an individual like the petitioner. The provisions contained in Article 338(6) and (7) clearly spell out in unequivocal terms the aforesaid intendment of the Constitution.

13. 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 orders dated 14-3-2002 (Annexure - P/1) and 9-10-2006 (Annexure - P/2) passed on the basis of recommendation made by the District Level Committee, which has no jurisdiction, are quashed with all consequential benefits

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 report of the High Power Committee.

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