
(2005) 03 MP CK 0034
In the Madhya Pradesh High Court
Case No : W.P.S. No. 343 of 2004

Usha Yadav

APPELLANT

Vs

Government of M.P. and others

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Madhya Pradesh Non-Gazetted Class III (Executive and Ministerial) Fisheries Service
Recruitment Rules, 1971 — Rule 13

Citation : (2005) 4 MPLJ 569

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : G.P. Dubey, for the Appellant; Ashok Agrawal, Government
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra , J.

Petitioner in this writ petition has prayed for the relief to direct the respondents to promote the petitioner under the reserved quota of scheduled tribe and to continue to give the benefit of reservation to the petitioner.

It is averred in the petition that petitioner belongs to Batham (Keer) which scheduled tribe caste. She was appointed on 24-4-1981. She has married with Shri Bankeswar Yadav. She has been promoted as UDC, Asstt. Grade II under ST category. Gradation list (P.1) has been published in the year 2002: She has been placed at serial No. 87. As per order (P.3) dated 6-2-1996, petitioner was promoted as Asstt. Grade I in reserved quota. As per order (P.4) dated 30-10-2000, 41 persons were reverted to the post of Asstt. Grade HI including the petitioner on the ground that due to mistake of the Department some senior persons were left to be promoted; on the same day 30-10-2000 another list of 15 persons was issued in which petitioner was shown as promoted to the post of Asstt. Grade I w.e.f. 31-5-1997 as per order (P.5).

In the year 2002 one post of Asstt. Superintendent was vacant of ST quota, petitioner was the only candidate. Two posts of general category had also fallen vacant. DPC was held on 21-2-2003. Order (P.7) was issued on 30-12-2003. Petitioner was not promoted. Petitioners has filed representations (P.8 and P.9) which have not been attended to. Petitioner has submitted by her marriage with her husband of Yadav caste; she continues to be of ST category. Batham belongs to Keer caste which has been declared as of ST category. "Certain incumbents have been given the benefit of reservation having Batham/Keer caste, hence, writ petition has been preferred.

In the return filed by the respondents, it is contended that petition is devoid of substance. DPC met on 21-2-2003 to consider the cases as required under Rule 13 of M.P. Non-Gazetted Class III (Executive and Ministerial) Fisheries Service Recruitment Rules, 1971 (R.1). Two posts of general category and one post of ST category were to be filled. Smt. Usha Yadav, the petitioner was in the zone of consideration as ST candidate. In view of amendment in SC and ST order 1950 vide Amendment Act, 2002 (Act No. 10 of 2003) for Madhya Pradesh Entries No. 21, 31 and 39 were deleted. Amendment Act (R.2) was promulgated. The entry at "serial No. 21" has been omitted; entry at serial was that of "Keer". Petitioner is resident of Bhopal. Petitioner has claimed herself to be Batham included in Keer caste. Additionally it is submitted that petitioner has performed marriage with Yadav, her husband is Yadav. By deletion of Keer tribe in view of amendment in SC and ST order 1950 vide Amendment Act, 2002 (Act No. 10 of 2003) the petitioner cannot claim her to be member of ST category. Reliance has also been placed on the decisions of the Apex Court and of this Court.

Shri G. P. Dubey, learned counsel for the petitioner, has submitted that merely by deletion of Keer caste, petitioner cannot be made to suffer; petitioner has to enjoy the benefit of ST category as petitioner is Batham which is included in Keer caste. State of M.P. has not issued any notification. State has also issued orders of promotion of several incumbents. Petitioner has been discriminated with. He has further submitted that by virtue of marriage of petitioner with husband having Yadav caste, petitioner cannot be made to loose the benefit of reservation of ST category.

Shri Ashok Agrawal, learned GA appearing on behalf of the respondents, has submitted that even before deletion of entry 21 by Amendment Act, 2002 the entry was that of "Keer". "Batham" was not the entry at serial No. 21. Petitioner is of Batham caste which cannot be said to be included in Keer caste. He has placed reliance on a decision of the Apex Court in State of Maharashtra v. Milind and Others, 2001 (1) MPU (S.C.) 1 : AIR 2001 SC 393. He has further submitted that even Keer caste has been deleted as per Amendment Act, 2002, thus, even a person of Keer caste is not entitled to avail the benefit of reservation in view of the notification dated 7-1-2003. DPC met on 21-2-2003. Meeting was held subsequently to the enforcement of the Amendment Act, 2002. He has further submitted that it is of insignificance that petitioner has performed the marriage

with Yadav; as petitioner's caste is Batham, she cannot be said to be included in Keer and Keer itself stands deleted as per the Amendment Act, 2002.

In my opinion, it is wholly irrelevant that petitioner has to lose benefit or not as she has performed marriage with husband having Yadav caste. Petitioner's caste is admittedly Batham and Batham cannot be said to be included in Keer caste. In the entry under order of 1950 at serial No. 21 "Keer" was mentioned not Batham. State Government has clarified the position way back as per the notification dated 3-8-1993 and decision of Cabinet on 20-3-1995 which has been relied upon by this Court at Gwalior Bench in W.P. No. 2999/2003 (Smt. Sita Batham and Another v. State of M.P. and Ors.) decided on 16-2-2005, question has been considered by me. Relevant portion is quoted below :-

3. In the return filed by the respondents, it is contended that petitioners are Batham. Batham cannot be included in Majhi caste; they are scheduled tribe, hence, petitioners have no right to be appointed as ST candidates. Batham is not ST in M.P. is apparent from notification (R.1) dated 3-8-1993. Further decision (R. 2) was taken by the State Cabinet on 20-3-1995 to the effect that such Batham caste is not included as Majhi, except for the district of Bhopal, Sehore and Raisen. Notification (R.3) has been issued on 7-6-1995 to the effect that such sub-castes are not Majhis. Competent authority has cancelled the caste certificate as per order (R.4 and R.5). Petitioners do not hold any caste certificate, hence, the application is not maintainable and is liable to be dismissed with costs.

It is apparent from notification (R.1) issued by the State Government that Bathams are not included in Majhi caste; same is tune by the decision of the Apex Court in State of Maharashtra v. Milind (supra); caste certificate has been rightly cancelled as Bathams cannot claim to be member of scheduled tribe as per the entry which prevailed in M. P. State. I find no ground to grant the relief prayed by the petitioners.

Relying upon the decision of the Apex Court in State of Maharashtra v. Milind and Ors. (supra), the order passed by the State Government has been found to be in accordance with law as scope of entry cannot be enlarged; no enquiry is permissible. The Apex Court in State of Maharashtra v. Milind and Others (supra) has clearly laid down that:-

The High Court in paragraphs 20 to 23 dealt with circulars/resolutions/instructions/orders made by the Government from time to time on the issue of "Halba-Koshtis". It is stated in the said judgment that up to 20-7-1962 "Halba-Koshtis" were treated as "Halbas" in the specified areas of Vidarbha. Government of Maharashtra, Education and Social Welfare Department issued Circular No. CBC 1462/3073/M to the effect that "Halba-Koshits" were not Scheduled Tribes and they are different from "Halba"-Halbis". In the said circular it is also stated that certain persons not belonging to "Halba" Tribe have been taking undue advantage and that the authorities competent to issue Caste Certificates should

take particular care to see that no person belonging to "Halba-Koshtis" or "Koshti" community is given a certificate declaring him as member of Scheduled Tribes. On 22-8-1967 the above mentioned circular of 20-7-1962 was withdrawn. Strangely, on 27-9-1967, another circular No. CBC-1466/9183/M was issued showing the intention to treat "Halba-Koshti" as "Halba". On 30-5-1968 by letter No. CBC-1468-2027/-O, the State Government informed the Deputy Secretary to the Lok Sabha that "Halba-Koshti" is "Halba/Halbi" and it should be specifically included in the proposed Amendment Act. Government of Maharashtra on 29-7-1968 by letter No. EDC-1060/49321-J-76325 informed the Commissioner of Scheduled Castes and Scheduled Tribes that "Halba-Koshti" community has been shown included in the list of Scheduled Tribes in the State and the students belonging to that community were eligible for Govt. of India Post Matric Scholarships. On 1-1-1969 Director of Social Welfare, Tribal Research Institute, Pune by his letter No. TRM/H-K/68-69 stated that the State Government could not in law amend the scheduled tribe order and that a tribe not specifically included, could not be treated as scheduled tribe. In this view the Director sought for clarification, the Govt, of India on 21-4-1969 wrote the State Government that in view of B. Basavalingappa Vs. D. Munichinnappa, "Halba-Koshti" community could be treated as scheduled tribe only if it is added to the list as sub-tribe in the Scheduled Tribes order and not otherwise. Thereafter, few more circulars were issued by the State Government between 24-10-1969 and 6-11-1974 to recognize Halba-Koshtis as Halbas and indicated as to who were the authorities competent to issue certificates and the guidelines were given for enquiry. There was again departure in the policy of the State Government by writing a confidential letter No. CBC-1076/1314/Desk-V dated 18-1-1977. Govt, informed the District Magistrate, Nagpur that Halba-Koshtis should not be issued Halba caste certificate. Thereafter, few more circulars referred to in Para-22 of the judgment were issued. It may not be necessary to refer to those again except to the circular dated 31-7-1981 bearing No. CBC-1481/(703)/D.V. by which the Govt, directed that until further orders insofar as Halbas are concerned. The School Leaving Certificate should be accepted as valid for the purpose of caste. Vide resolution dated 23-1-1985 a new scrutiny Committee was appointed for verification of caste certificate of Scheduled Tribes. The High Court has observed in Para-23 of the judgment that several circulars issued earlier were withdrawn but the said circular dated 31-7-1981 was not withdrawn. For the first time on 8-3-1985 the Scrutiny Committee was authorised to hold enquiry if there was any reason to believe that the certificate was manipulated or fabricated or have been obtained by producing insufficient evidence. Referring to these circulars/Resolutions the High Court took the view that the caste certificate issued to the respondent No. 1 could be considered as valid and upto 8-3-1985 the enquiry was governed by circular dated 31-7-1981. The High Court dealing with the stand of the State Government on the issue of Halba-Koshti from time to time and also referring to circulars/Resolution/Instructions held in favour of the respondent No. 1 on the ground that the appellant was bound by its own circulars/orders. No doubt, it is true, the stand of the appellant as to the

controversy relating to "Halba-Koshti" has been varying from time to time but in the view we have taken on question No. 1, the circulars/resolutions/instructions issued by the State Government from time to time, same time contrary to the instructions issued by the Central Government, are of no consequence. They could be simply ignored as the State Government had neither authority nor competency to amend or alter the Scheduled Tribes Order. It appears taking note of false and frivolous claims being made by persons not entitled to claim such status, the Government of India addressed letters and issued instructions between the period from 21-4-1969 to 1982 to impress that there should be strict enquiry before issuance of caste certificates to persons claiming Scheduled Caste/Scheduled Tribe status; strict scrutiny into the caste of the parent should be effected as a check-point. The State Government issued Resolution dated 29-10-1980 in consonance with the instructions given by the Central Government laying down the guidelines on which the enquiry should be held before issue of Caste Certificate. Another Resolution dated 24-2-1981 was also issued for appointing a scrutiny committee to verify whether the Caste Certificate has been issued to person who is really entitled to it in view of the complaints of misuse of reservation benefits on a large scale. These Resolutions were operative as they had not been repealed. This Court in its judgment dated 19-10-1984 State of Maharashtra Vs. Abhay and Others, , directed that the State of Maharashtra should devise and frame a more rational method for obtaining much in advance a certificate on the strength of which a reserved seat is claimed. But the High Court committed an error in interpreting the scope of the Circular dated 31-7-1981 that the School Leaving Certificate was conclusive of the caste. This interpretation was plainly inconsistent with the instructions and resolutions stated above. Further it may be also noticed here that the joint Parliamentary committee did not make any recommendation to include "Halba-Koshti" in the Scheduled Tribes Order. At any rate the Scheduled Tribes Order must be read as it is until it is amended under clause (a) of Article 342. In this view also, the circulars/resolutions/instructions will not help the respondent No. 1 in any way. Even otherwise as already stated above, on facts found and established the authorities have rejected the claim of the respondent No. 1 as to the Caste Certificate. The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record. The jurisdiction of the High Court would be much more restricted while dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution. These being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having

examined all relevant materials and having recorded a finding that respondent No. 1 belong to "Koshti" caste and has no identity with the "Halba/Halbi", which is the Scheduled Tribe under Entry 19 of the Presidential Order, relating to State of Maharashtra, the High Court exceeded its supervisory jurisdiction by making a roving and in-depth examination of the materials afresh and in coming to the conclusion that "Koshtis" could be treated as "Halbas". In this view the High Court could not upset the finding of fact in exercise of its writ jurisdiction. Hence, we have to essentially answer the question No. 2 also in the negative. Hence it is answered accordingly.

Scope of entry has also been discussed by their Lordships of Apex Court. It has been held that Halba-Koshti cannot be included in Halba at Entry No. 19 of the Order. No enquiry is permissible. No evidence can be let in to find out and decide that if any tribe or tribal community is included within the scope of meaning of the concerned entry in the Presidential order when it is not expressly or specifically included. The Apex Court has held thus:

Plain language and clear terms of these Articles show (1) the President under Clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes. 27. Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in, to found out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the concerned Entry in the Presidential Order when it is not so expressly or specifically included. Hence, we answer the question No. 1 in negative.

In the light of what is stated above, the following positions emerge:-

It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

A Notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

It is not open to State Governments or Courts or Tribunals or any other authority

to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

Decisions of the Division Benches of this Court in *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, and *Dina v. Narayan Singh*, (1968) 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter.

Apart from that as the Keer caste stands excluded as per Amendment Act, 2002; hence the petitioner cannot be treated as person belonging to ST category; as the entry itself has been deleted from the order of 1950, it is without prejudice to the above finding that petitioner cannot be said to be included in Keer caste as petitioner's caste is Batham. DPC met on 21-2-2003 after enforcement of the Act of 2002; as the petitioner cannot be said to be of ST category even as per order issued by the State Government and also in view of the aforesaid finding, thus, in my opinion, petitioner cannot claim her to be ST category.

The submission raised by the petitioner's counsel that other persons of Raikwar caste have been promoted recently; petitioner has to stand on the positive equality. Petitioner's counsel has relied upon some newspaper cuttings which cannot be made basis of adjudication; even otherwise as I find no merit in the case of petitioner; she cannot be treated to be of ST category, cannot be allowed to avail the benefit of reservation which is made for ST category.

Thus, I find no merit in this writ petition. Same is hereby dismissed. Parties to bear their own costs as incurred.