

THE HIGH COURT OF MADHYA PRADESH**WP-3761-2013*****(Sultan Singh Vs. Union of India & Ors.)*****Gwalior, Dated : 05/09/2019**

Shri M.P.S. Raghuvanshi, learned counsel for the petitioner.

Shri Purushottam Pandey, learned Government Advocate for the respondent No.1/State.

Shri Ashok Mehta, learned counsel for the respondents No.2 and 3.

Heard finally with the consent of both the parties.

In this petition under Article 226 of the Constitution of India, the petitioner has assailed the legality, validity and propriety of the order dated 02/05/2013 passed by the respondent No.3, whereby services of the petitioner have been terminated inter-alia stating therein that caste certificate submitted by the petitioner was false.

(2) The brief facts leading to filing of this case are that the petitioner was initially appointed on the post of Helper vide order dated 01/10/1990 in the respondent company and thereafter, petitioner has been granted promotion from time to time. At the time of initiation of departmental inquiry, the petitioner was posted as Senior Operator.

(3) Respondent No.2/ National Fertilizer Limited, Vijaypur

is an undertaking of Government of India and as such, is an “State” within the meaning of Article 12 of the Constitution of India.

(4) On the basis of alleged complaint in respect of caste of the petitioner, a show cause notice was issued to the petitioner inter-alia stating therein as to why penal action should not be taken against him for obtaining appointment on the basis of false caste certificate. The petitioner denied the allegations levelled in the show cause notice. Respondent, without considering the reply, decided to initiate the departmental inquiry. Charge-sheet dated 04/04/2011 was issued to the petitioner. Inquiry was conducted and respondent authorities came to the conclusion that new caste certificate dated 08/06/2011 submitted by the petitioner claiming that he belongs to “Binjhawar” Tribe has been set-aside by the Additional Collector, Guna vide its letter dated 07/12/2011 and order has been issued to cancel and confiscate the caste certificate No.1400 B 121 (3) 2010-11 dated 08/06/2011 as the same has been obtained by submitting false documents and affidavits. In view of the aforesaid, Disciplinary Authority proceeded and imposed punishment based on the cancellation of caste certificate and discharged/terminated the petitioner from services. The said order dated 02/07/2013 (Annexure P/1) has been put to challenge in this petition.

(5) Learned counsel for the petitioner contended that order of cancellation of caste certificate dated 03/12/2011 was put to challenge in W.P. No.3198/2012 before this Court. The said writ petition was decided vide order dated 16/12/2015 and this Court passed following order :-

“Mr. M.P.S Raghuvanshi, learned counsel for the petitioner.

Mr. Kamal Jain, learned Government Advocate for the respondents No. 1 to 6..

Shri Ashok Mehta, learned counsel for respondent No.7.

With the consent of parties, this petition is heard finally.

In this petition under Article 226 of Constitution of India, the petitioner has assailed the validity of order dated 03/12/2011 passed by Sub Divisional Officer, Dist. Guna, by which, caste certificate issued in favour of the petitioner has been cancelled. Learned counsel for the petitioner has raised singular objection that in view of laid down by the Apex Court in the case of **Ku. Madhuri Patil vs. Additional Commissioner, Tribal Development** reported in **AIR 1995 SC 94**, the authority to take action with regard to cancellation of caste certificate is vested with High Power Committee constituted by the State Government and the order passed by the Sub Divisional Officer is per-se illegal and without authority of the law.

Learned Government Advocate for the State

could not dispute the aforesaid submission made by learned counsel for the petitioner.

In view of aforesaid submission and taking into consideration the decision rendered by the Apex Court in the case of **Ku. Madhuri Patil** (supra), the impugned order dated 03/12/2011 passed by the Sub Divisional Officer, Dist. Guna is hereby quashed.

Needless to state that the competent authority is at liberty to take action against the petitioner, if so advised, in accordance with law.

With the aforesaid observation, this writ petition stands disposed of.”

(6) Learned counsel for the petitioner contended that impugned order dated 02/07/2013 (Annexure -P/1) has been passed by the Disciplinary Authority which is based on cancellation of the caste certificate dated 08/06/2011. In the order passed by this Court in W.P. No.3198/2012, the order dated 03/12/2011 passed by Sub-Divisional Officer, District-Guna was quashed meaning thereby, caste certificate dated 08/06/2011 stood automatically restored to its original position. As a natural corollary, the petitioner still belongs to the caste “Binjhawar” and therefore, impugned order deserves to be quashed and respondents be directed to re-instate the petitioner forthwith. The petitioner has filed I.A. No.3310/2019, an application for taking facts and subsequent developments on

record alongwith order dated 03/12/2011 passed by the SDO, District Guna and also order dated 16/12/2015 passed in W.P. No.3198/2012 in support of his contentions. It is further submitted by the learned counsel for the petitioner that action taken by the respondents is contrary to the guidelines issued by the Apex Court in the case of **Ku. Madhuri Patil Vs. Additional Commissioner, Tribal Development** reported in **AIR 1995 SC 1994**. In the aforesaid dictum, the Apex Court held that only High Level Scrutiny Committee has the power to cancel the caste certificate and SDO has no power to cancel the same and therefore, impugned order of dismissal is contrary to the aforesaid decision.

(7) *Per contra*, learned counsel for the respondents No.2 and 3 contended that impugned order passed by the Disciplinary Authority terminating/discharging the service on the ground of false and fake certificate is correct. According to the Standing Order, Clause 20 provides for appeal against the punishment order. The petitioner has approached this Court without availing opportunity of appeal as provided under Standing Order, therefore, petition deserves to be dismissed at this stage on the ground of non-availing of the alternative remedy, therefore, petition is not maintainable and liable to be dismissed.

(8) In view of the aforesaid discussions, it can be safely

concluded that order dated 03/12/2011 passed by the SDO, District Guna cancelling the caste certificate of the petitioner dated 08/06/2011 has been set-aside by the Coordinate Bench of this Court in W.P. No.3198/2012. As a consequence whereof, caste certificate dated 08/06/2011 stood revived.

(9) In light of the Apex Court judgment in the case of **Ku. Madhuri Patil (supra)**, it is not in dispute that the power with regard to cancellation of caste certificate is vested with the High Power Committee constituted by the State Government and as such, order passed by the SDO, District Guna is *per se* illegal and without authority of the law. On bare perusal of the impugned order, it can be seen that entire proceedings are based on cancellation of caste certificate vide order dated 03/12/2011 passed by SDO, District Guna which has already been set-aside. This Court has no hesitation to hold that caste certificate dated 08/06/2011 stood revived. Petitioner belongs to “Binjhawar” Tribe and as such, is liable to be re-instated in services.

(10) The Apex Court in the case of **Ku. Madhuri Patil (supra)** has laid down the procedure for issuance of social status certificates, their scrutiny and their approval. Relevant extract is reproduced below :-

"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 scrutinized 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 high-er inrank 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 acknowledgment 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 finalizing 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 acknowledgment 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."

(11) In the present case, such procedure has not been followed while cancelling or approving caste certificate of the petitioner, as such, impugned order dated 02/05/2013 (Annexure P/1) passed by the General Manager/Disciplinary Authority is hereby quashed. Respondents are directed to re-instate the petitioner in services forthwith. The petitioner, however, shall not be entitled for back wages from the date of termination till re-instatement, on the principle of "No Work No Pay"

(12) Needless to state that competent authority shall be at liberty to take action against the petitioner, if so advised in accordance with law and in the light of law/procedure laid down in the case of **Ku. Madhuri Patil** (supra).

(13) With the aforesaid, the writ petition stands allowed.

(S.A. Dharmadhikari)
Judge

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