

Court No. - 40

Case :- WRIT - C No. - 33282 of 2023

Petitioner :- Ram Chandar Gond

Respondent :- State Of U.P. And 10 Others

Counsel for Petitioner :- Nikhil Kumar, Prashant Kanha

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Shri Nikhil Kumar, learned counsel for the petitioner and Shri Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondents.

2. The petitioner has prayed for the following reliefs :-

"(i) issue, a writ, order or direction in the nature of certiorari calling for the record of the case and quashing the impugned communication 06.05.2022 made by the respondent no. 3, communication dated 27.04.2022 made by the respondent no. 4, communication dated 25.04.2022 made by the respondent no. 5, communication dated 25.04.2022 made by the respondent no.6, communication dated 22.04.2022 made by the respondent no. 7, communication dated 22.04.2022 made by the respondent no.8, communication dated 22.04.2022 made by the respondent no. 9, communication dated 21.04.2022 made by the respondent no. 10 and communication dated 15.03.2022 made by the respondent no. 11.

(ii) issue, a writ, order or direction in the nature of certiorari calling for the record of the case and quashing the order dated 13.07.2022 passed by the respondent no.11.

(iii) issue, a writ, order or direction in the nature of mandamus commanding the respondent authorities to issue caste certificate of "Dhuria" Tribe to the petitioner and other family members of the petitioner in a time bound manner."

3. Supplementary affidavit filed today is taken on record.

4. Precisely, the issue involved in the present writ petition is relating to issuance of caste certificate to the petitioner, who claims to be "Dhuria" caste (Scheduled Tribe). It appears that the persons belonging to "Dhuria, Gond, Nayak, Ojha, Pathari and Raj Gond" claim to be sub caste of "Kahar" (Tribe) community. It is also claimed that aforementioned sub castes are notified in the State of Uttar Pradesh as "Scheduled Tribes" in the Districts i.e. Maharajganj, Siddharth Nagar, Gorakhpur, Deoria, Mau, Azamgarh, Jaunpur, Ballia, Ghazipur, Varanasi, Mirzapur and

Sonbhadra and Scheduled Caste in remaining Districts. The said claim had been set up before this Court in Public Interest Litigation (PIL) No. 62359 of 2013 (**Adiwasi Vikash Sewa Sansthan & Another v. State of U.P. & 02 Others**), wherein, the Division Bench while considering the notification in the State of U.P. had passed a detailed order on 24.08.2018 with following effect:-

"Having considered all the facts of the case, we deem it appropriate to dispose of this petition for writ by directing the District Magistrates of the Districts Maharajganj, Siddharth Nagar, Gorakhpur, Deoria, Mau, Azamgarh, Jaunpur, Ballia, Ghazipur, Varanasi, Mirzapur and Sonbhadra to issue the caste certificate to the members of sub castes of Kahar community, which are Dhuriya, Gond, Naik, Ojha, Pathari and Raj-Gond in accordance with the Government of Uttar Pradesh directives and if such persons falls then within the category of scheduled tribes, then the certificate in this regard be issued."

5. Learned counsel for the petitioner in this backdrop has placed reliance on the judgement and order dated 06.09.2014 passed in Writ-A No. 4011 of 2008 (**Praveen Kumar Gond v. State of U.P. & Others**), wherein, learned Single Judge has considered the Presidential notification published in the Gazette of India (Extraordinary) dated 07.01.2003 and qua the State of Uttar Pradesh the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 was amended and following Entry '6' was inserted "6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Maharajganj, Sidharth Nagar, Basi, Gorakhpur, Deoia, Mau, Azamgarh, Jonpur, Ballia, Ghazipur, Varanasi, Mirzapur and Sonbhadra)". Finally, learned Single Judge had proceeded to allow the writ petition on 06.09.2014 and while setting aside the order dated 31.12.2007, the petitioner was made entitled to all consequential benefits. Relevant portion of the judgement and order is extracted below:

"34. Now looking to the entire issue from the angle as above, it is not disputed that petitioner belongs to "Gond" caste and is resident of District Azamgarh. He, therefore, clearly falls in the Entry 6 of Order, 1967 as amended in 2003. The District Magistrate thus has no jurisdiction or authority to embark upon himself to go into the question, whether Gonds are normally resident of Azamgarh or not since that jurisdiction is beyond his competence. The only inquiry open to him is to find out whether petitioner belongs to Gond caste in one of the districts for which Gond caste is declared to be Scheduled Tribe under notification dated 07.01.2003. Once the inquiry is in favour of the person who claimed caste certificate, nothing more can be looked into to deny him status under the aforesaid notification.

35. In the present case, however, even otherwise the caste certificate issued to petitioner has never been cancelled. That being so, the entire exercise undertaken by respondent-department so as to cancel appointment of

petitioner is ex facie and patently illegal, unauthorized and wholly without jurisdiction.

36. In the result, the writ petition is allowed. Impugned order dated 31.12.2007 is hereby quashed. Petitioner shall be entitled to all consequential benefits. He shall be deemed to have joined service on the date when he submitted his joining report with respondents and is entitled to all attending benefits including arrears of salary etc."

6. Learned counsel for the petitioner submits that it is not in dispute that aforementioned sub caste belongs to the Scheduled Tribe and therefore, the claim set up by the petitioner as Scheduled Tribe is no more res integra as the matter is already settled by this Court in Praveen Kumar Gond (supra). On the basis of supplementary affidavit filed today, he has also placed reliance on the certificate of his father namely Fagoo Lal Gond son of late Lautoo, resident of Jayrampur, Tehsil- Sadar, District- Azamgarh. Initially, the scheduled caste certificate was issued in his favour having Certificate No.1324 dated 21.03.1984 and later on, on the basis of the Presidential Notification published in Gazette of India (Extraordinary) dated 07.01.2003, for the State of U.P., the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967, the father of the petitioner was accorded caste certificate as "Scheduled Tribe" on 16.10.2004. He has also placed reliance on the School Leaving Certificate of petitioner, wherein column of Caste, 'Gond' is mentioned and the same is also brought on record as SA-3 to the supplementary affidavit.

7. Learned counsel for the petitioner submits that in view of aforesaid facts, the impugned communication made by the Tehsildar is *per se* unsustainable. He submits that the claim of the petitioner is to be addressed by the District Level Caste Scrutiny Committee in the aforesaid facts and dictum of this Court in Praveen Kumar Gond.

8. Sri Devesh Vikram, learned Additional Chief Standing Counsel states that all remedial measures are provided in view of the Government order, wherein three tier Caste Scrutiny Committees i.e. District Level Caste Scrutiny Committee, Regional Level Caste Scrutiny Committee and State Level Caste Scrutiny Committee, have been provided for redressal of grievance qua the caste certificate. He submits that with all documentary evidence in case the petitioner approaches to the District Level Caste Scrutiny Committee, the same would be considered as per law.

9. Considering the facts and circumstances and without adverting to the merits of the case, we are of the considered opinion that the

District Level Caste Scrutiny Committee must proceed as per law and decide the same strictly in accordance with law within a period of three weeks from the date of receipt of certified copy of this order and while considering the claim set up by the petitioner, the impugned communication made by the Tehsildar would not be relevant consideration for processing the case on merits.

10. With the aforesaid direction, the writ petition stands **disposed of**.

Order Date :- 2.11.2023

Rama Kant