

**Court No. - 35**

**Case :-** WRIT - A No. - 17964 of 2023

**Petitioner :-** Deepika Nayak

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Krishna Mohan Misra

**Counsel for Respondent :-** C.S.C,Rohit Pandey

**Hon'ble Vikas Budhwar,J.**

Heard Shri Pradeep Kumar Rai, Advocate(A/P0204/2018) holding brief of Shri K.M. Mishra, learned counsel for the writ petitioner, Shri Santosh Kumar Mishra, learned Standing Counsel who appears for the respondent No. 1 and Shri Rohit Pandey, learned counsel who appears for respondent Nos. 2 and 3.

The case of the writ petitioner is that she belongs to Nayak community and she is under S.T. category. As per the writ petitioner, pursuant to an advertisement published by the respondents bearing No. 1/UPUMS/CBT/2023-24 dated 18.05.2023 for recruitment exercise was undertaken for filling up the post of Nursing Officer being based upon Computer Based Test (CBT), the writ petitioner claims to have participated in the selection, armed with the scheduled tribe category certificate. According to the writ petitioner, she possesses a relevant certificate issued by the Tehsildar which is annexed at Annexure 2 at page 24 of the paper-book. According to the writ petitioner, the select list has been published wherein the name of the writ petitioner finds place at Serial No. 21 of the same, however, she has not been issued appointment order as in front of the name of the writ petitioner following remarks have been made:

*"ST certificate is doubtful and is not in proper format as per UP State Govt.*

*and also not having a valid certificate number which can be checked online."*

Learned counsel for the writ petitioner submits that there happens to be a litigation pending before this Court in the case of Ayush J. Nayak and 3 others Vs. State of U.P. and 2 others in Writ C No. 35021 of 2019 whereby interim protection has been accorded in the following manner:

*"Sri B.C. Naik, learned counsel has appeared and stated that his caveat has been wrongly mentioned on this petition. The Computer Section is consequently directed to delete the name of Sri B.C. Naik as appearing for the respondents.*

*Learned Standing Counsel appearing for the respondents shall file a reply within a period of three weeks. The petitioner shall have a week thereafter to file a rejoinder affidavit.*

*List thereafter before the appropriate Court.*

*In the meanwhile, the Court notes that the Appellate Committee has recorded findings referring to a Government Order of 20 April 1981 to the effect that 'Nayaks' shall be treated as belonging to the Scheduled Tribes provided they are recognised as being synonymous to 'Gond'. The attention of the Court however is invited to the relevant entry in the Presidential Order which reads thus:*

*"6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Mehrajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jonpur, Balia, Gazipur, Varanasi, Mirzapur and Sonbhadra)."*

*In view of the above, the observations as entered prima facie appear unsustainable.*

*Consequently and till the next date of listing, no further proceeding shall be commenced or continued by the third respondent pursuant to the impugned order dated 21 September 2019."*

Learned counsel for the writ petitioner relies upon the interim order passed on 27.09.2021 in Writ A No. 9731 of 2021 (Sudhanshu Nayak Vs. State of U.P. and Another), Writ A No. 5247 of 2020 (Piyush Kumar Nayak Vs. State of U.P. and 2 others) dated 10.11.2020 and Writ A No. 4811 of 2023 (Sumit Kumar Nayak Vs. State of U.P. and Another) passed on 27.04.2023 with a relief that the writ petitioner be issued a provisional appointment order at this stage itself though he is entitled for a final appointment order bestowing with all benefits. Shri Rohit Pandey who appears for the respondent no. 2 and 3 has produced before this Court the communication dated 27.10.2023 of the University to the District Magistrate, District Gorakhpur which according to Shri Pandey, the University is not disputing the caste of the writ petitioner being Nayak, however, they are seeking to verify the caste certificate in that regard. Shri Pandey has also invited the attention of the Court towards Annexure-6 at page 53 of the paper-book so as to contend that even from the online application, the said certificate was not verifiable. He submits that as soon as the said certificate stands verified, consequential follow up actions will be taken in this regard.

Shri Santosh Kumar Mishra, learned Standing Counsel has adopted the submission of Shri Pandey and he submits that he has nothing more to aid.

Shri Rai who appears for the writ petitioner submits that in case the respondents are seeking to verify the caste certificate for their own satisfaction that should be within a time bound manner as the writ petitioner should not be allowed to be denuded of its fruits which even otherwise he is entitled to.

I have heard the learned counsel for the parties and perused the

record.

Since a stand has been taken up by Shri Pandey who appears for the University that the caste certificate is being sought to be verified and a communication has been made on 27.10.2023 to the District Magistrate, District Gorakhpur. Thus, this Court is not going into the issue any further, however, requiring the University to take follow up actions with the District Magistrate and in case the University comes to a conclusion that the caste certificate of the writ petitioner is verifiable then appropriate action be taken in this regard with most expedition within a period of two months from the date of the production of the certified copy of this order. The order passed today is on the concession made by Shri Rohit Pandey and as per the instructions so provided by him dated 27.10.2023 of the University to the District Magistrate, District Gorakhpur.

With the aforesaid observations, the writ petition stands **disposed of**.

Instructions filed today are taken on record as marked as appendix-A.

**Order Date :- 27.10.2023**

A. Prajapati