

GAHC010124692014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3605/2014

SMTI LILA KAIRI @ LILA KAIRI PRASAD
W/O- SHRI MOHAN PRASAD
R/O VILL.- TANGNAPARA
WARD NO. 3
P.O. and P.S.- DHEMAJI- 787057
DIST.- DHEMAJI
ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
LABOUR and EMPLOYMENT DEPTT.
ASSAM
DISPUR
GHY- 6.

2:THE DIRECTOR OF EMPLOYMENT and CRAFTSMAN TRAINING
REHABARI
GUWAHATI
ASSAM.

3:THE DY. DIRECTOR OF EMPLOYMENT
CENTRAL ASSAM ZONE
TEZPUR

DEPTT. OF LABOUR and EMPLOYMENT.

4:THE DIST. EMPLOYMENT OFFICER
DHEMAJI

DEPTT. OF LABOUR and EMPLOYMENT.

5:THE DY. COMMISSIONER
DHEMAJI
ASSAM.

6:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF WELFARE OF PLAIN TRIBES and BACKWARD CLASSES

DISPUR
GHY- 6.
7:THE CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE
DEPTT. OF WELFARE OF PLAIN TRIBES and BACKWARD CLASSES
DISPUR
GHY- 6.
8:THE CHAIRMAN
SUB-DIVISIONAL SCHEDULE CASTE DEVELOPMENT BOARD
DHEMAJI.

For the Petitioner(s) : Mr. P. D. Nair, Advocate

For the Respondent(s) : Mr. S. P. Das, Standing Counsel
: Mr. R. M. Das, Standing Counsel
: Mrs. D. Das Barman, Addl. Sr. Government Advocate

Date of Hearing : **18.04.2024**
Date of Judgment : **18.04.2024**

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT AND ORDER (ORAL)

Heard Mr. P. D. Nair, learned counsel for the petitioner. Also heard Mr. S. P. Das, learned Standing counsel for the Labour and Employment Department appearing for the Respondent No.1 and Mr. R. M. Das, learned standing counsel, Director of Employment and Craftsman Training appearing for the respondent Nos. 2, 3 and 4. Also heard Mrs. D. Das Barman, learned Additional Senior Government Advocate appearing on behalf of the Respondent Nos. 5, 6 and 7. None has entered appearance for the respondent No.8.

2. The challenge presented in the present proceedings is to a Speaking Order dated 20.12.2013 issued by the Commissioner and Secretary to the Government

of Assam, WPT & BC Department communicating the conclusions reached by the State Level Scrutiny Committee (SLSC) with regard to the Schedule Caste category status of the Petitioner herein.

3. As projected in the writ petition, the petitioner claims to belong to the "Mala" sub-caste which is recognized as a Schedule Caste within the State of Assam and accordingly, the Sub-Divisional Schedule Caste Development Board, Dhemaji had issued to the Petitioner a caste certificate on 16.07.2005 certifying that the petitioner belongs to the Schedule Caste community. The said certificate was counter signed by the Deputy Commissioner, Dhemaji on 18.07.2005. The respondent No.2 vide an advertisement dated 23.12.2010 invited applications from eligible candidates for filling up of 34 nos. of post of Junior Assistant in different Employment Exchanges under the Directorate of Employment and Craftsmen Training, Assam. The said advertisement also made provision for reservation of posts for candidates belonging to the Schedule Caste community. The Petitioner accordingly being eligible for applying against the post so advertised vide the advertisement dated 23.12.2010, submitted her application and participated in the selection process so held. The petitioner on conclusion of the said selection process came to be selected for appointment as Junior Assistant against the post so reserved for Schedule Caste category candidates. Accordingly, vide an order dated 26.12.2011, the Deputy Director of Employment, Central Assam Zone, Tezpur appointed the petitioner as a Junior Assistant in the establishment of the District Employment Exchange Officer, Dhemaji.

4. As the petitioner was continuing in her services in pursuance to the order of appointment dated 26.12.2011, an FIR came to be lodged against her by one

Deba Kumar Das, General Secretary, All Assam Schedule Caste Students Union alleging that the Schedule Caste certificate was obtained by the petitioner in a fraudulent manner and basing on the same secured an appointment in the Office of the District Employment Exchange, Dhemaji thereby depriving genuine Schedule Caste candidates from being appointed. Basing on the said FIR, a case being Dhemaji Police Station Case No.74/2012 was registered under Section 420/464 of the Indian Penal Code. The Petitioner was placed under arrest in connection with the said case. In view of the arrest of the petitioner in connection with the said case, the petitioner was vide order dated 29.01.2013 placed under suspension.

5. It is the contention of the petitioner that the said criminal case was investigated by the authorities and no incriminating materials having been found against the petitioner, final report came to be submitted on 10.06.2013 before the Court of the jurisdictional Chief Judicial Magistrate. The learned Judicial Magistrate, First Class, Dhemaji on consideration of the said final report proceeded to remand the matter back to the Officer-in-Charge, Dhemaji Police Station for reinvestigation of the case by appointing a different Investigating Officer. Being aggrieved by the order dated 23.07.2013, the petitioner approached this Court by way of instituting Criminal Petition No.603/2013.

6. This Court vide order dated 09.06.2014 gave a final consideration to the said criminal petition by directing the learned Judicial Magistrate, 1st Class, Dhemaji to look into the materials in the case diary and to pass appropriate order regarding acceptance of the final report or directing for further investigation in the matter as the case may be. It is the contention of the petitioner that in pursuance to the directions passed by this Court vide the order

dated 09.06.2014, the learned Trial Court vide an order dated 05.09.2014 on examination of the matter has proceeded to accept the final report as submitted and the case lodged accordingly came to be closed.

7. In the meanwhile, during the pendency of the said criminal proceedings, the case of the petitioner came to be placed before the State Level Scrutiny Committee for verification of her caste status. The State Level Scrutiny Committee on conclusion of the process of such consideration proceeded to hold that the Schedule Caste Certificate as obtained by the petitioner to be not tenable and therefore the same was cancelled. The said decision of the State Level Scrutiny Committee was communicated to all concerned by way of a Speaking Order dated 20.12.2013 issued by the Commissioner and Secretary to the Government of Assam, WPT & BC Department, Dispur. The petitioner being aggrieved by the said Speaking order dated 20.12.2013, containing the decision as arrived in the matter by the State Level Scrutiny Committee has instituted the present proceedings.

8. Mr. P. D. Nair, the learned counsel appearing for the petitioner submits that in the caste certificate as issued by competent authority on 18.07.2005, the petitioner was denoted therein to belong to the Sub-Caste "Mala" community which was stated to be recognized as a Schedule Caste community under the Constitution (Scheduled Caste) Order, 1950 and the Schedule Caste and Schedule Tribes Order (Amendment) Act, 1975. However, the petitioner on being appointed in pursuance to the advertisement dated 23.12.2010, it was contended that the certain persons having vested interest in the matter had leveled false allegation against the petitioner which led to the institution of the criminal case against her, however the same had ended in a final report against

the petitioner.

9. Mr. P. D. Nair, learned counsel by referring to the Speaking Order dated 20.12.2013 has submitted that the exercise as carried out by the State Level Scrutiny Committee for arriving at the conclusions as contained in the said Speaking Order dated 20.12.2013 is in clear violation of the directions as passed by the Hon'ble Supreme Court of India in the case of ***Kumari Madhuri Patil and Another Vs. Addl. Commissioner, Tribal Development and Others reported in (1994) 6 SCC 241***. Mr. Nair has made a specific contention referring to Paragraph 13 of the said judgment that the conclusions as reached by the State Level Scrutiny Committee and as contained in the Speaking Order dated 20.12.2013 has been reached without there being any investigation carried out by the Vigilance Officer as mandated by the Hon'ble Supreme Court in the said case. Mr. Nair by taking this Court through the Speaking Order dated 20.12.2013 has submitted that the conclusions as reached therein clearly are based on surmises and conjectures and no material has been brought on record to justify the conclusion as reached by the State Level Scrutiny Committee in the matter.

10. Mr. Nair has further contended that the State Level Scrutiny Committee has not undertaken an exercise to ascertain the caste status of the petitioner and her family members. Accordingly, Mr. Nair submits that the verification of the caste status of the petitioner as made by the State Level Scrutiny Committee and the conclusions as drawn in the matter, reflected in the Speaking Order dated 20.12.2013 being in clear violation of the directions as passed by Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil (supra)***, the same calls for interference from this Court.

11. The learned Standing counsel appearing for the Directorate of Employment

and Craftsmen Training by referring to the affidavit filed in the matter on behalf of the Respondent No.2 has submitted that on receipt of a complaint with regard to the caste status of the petitioner, the matter was taken up with the competent authority and accordingly, the State Level Scrutiny Committee considered the issue and thereafter the impugned Speaking Order dated 20.12.2013 came to be issued. It is the contention of the Standing counsel for the respondent No.2 that the conclusions as reached by the State Level Scrutiny Committee in the matter would reveal that the caste certificate was so issued to the petitioner without there being a proper enquiry made into the matter by the authorities empowered to issue such caste certificate. Accordingly, it is contended that the conclusions reached by the State Level Scrutiny Committee in the matter does not require any interference from this Court.

12. I have heard the learned counsel for the parties and also considered the materials available on record. The competent authorities in terms of the provisions of Article 341 of the Constitution of India had published a list of castes which have been considered to be Schedule Caste in the State of Assam and therein the caste as assigned to the petitioner in her caste certificate dated 18.07.2005 i.e. "Mala" caste does not find mention. In the said list caste synonymous to the caste of the Petitioner "Jalo", "Malo" and "Jalo Malo" finds mention. In the caste certificate issued to the petitioner, she has been certified to belong to the sub-caste "Mala" community which is stated to be recognized as a Scheduled Caste community in the State of Assam. It is also noted that the father of the petitioner was also issued with a caste certificate wherein it was mentioned that he belongs to the Sub-Caste "Malah".

13. The Hon'ble Supreme Court of India in the case of ***Kumari Madhuri Patil***

(supra) for the purpose of streamlining the process of issuance of social status certificates, their scrutiny and their approval had passed certain directions. The directions as passed in the above connection by the Hon'ble Supreme Court is contained in Paragraph 13 of the said judgment. The said directions being relevant to the issues as arising in the present proceedings is extracted herein 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 scrutinised 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 higher in rank 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 acknowledgement 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-à-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 finalising 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 acknowledgement 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.

14. In terms of the directions passed by the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil (supra)***, all State Governments were required to constitute a committee of three officers namely (i) an Additional or Joint Secretary or any officer higher in rank 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 case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social

status certificates. The said committee was to be known as the State Level Scrutiny Committee. Thereafter, the Hon'ble Supreme Court required that 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. Any issue with regard to the social status claim of any person was required to be processed in terms of the directions passed by the Hon'ble Supreme Court in the said matter. It is contended by the Respondents that the case of the Petitioner was placed before the State Level Scrutiny Committee in terms of the directions as passed by the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil (supra)***.

15. What is striking on a perusal of the Speaking Order dated 20.12.2013 is that the case of the petitioner was not first investigated by the vigilance cell as contemplated in the directions of the Hon'ble Supreme Court. It is stated at the bar that no Rules have been framed in the State following the decision of the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil (supra)*** however, an Office memorandum dated 11.05.2018 was issued as per which two vigilance cells were created in view of the existence of two directorates concerning the subject and the manner in which the investigation is to be done was so laid out therein. Accordingly, the investigation as mandated to be carried out in the matter by the Hon'ble Supreme Court has not been admittedly carried out with caste status of the petitioner was not scrutinized as per the directions of the Hon'ble Supreme Court.

16. The Speaking order dated 20.12.2013 reveals that the onus of proving the caste status of the petitioner was laid on the shoulders of the petitioner and the petitioner was asked to submit documents to prove her claim to be a person

belonging to SC community. The petitioner had only submitted one of the documents that was sought from her in this connection. Thereafter, the State Level Scrutiny Committee had considered the statements made by the Chairman, Scheduled Caste Development Board, Dhemaji who had opined that the Schedule Caste certificate issued to the petitioner should be cancelled due to the fact that there was no caste called "Mala" in the Schedule Caste list of Assam. The Speaking Order dated 20.12.2013 does not reflect that the State Level Scrutiny Committee had examined the family members of the petitioner more particularly her parents, siblings and other relatives for the purpose of ascertaining their respective caste status. The State Level Scrutiny Committee had only perused the caste certificates of the father of the petitioner wherein it was reflected that he belonged to "Malah" sub-caste. Thereafter referring to a purported confessional statement made by the petitioner before the Additional Deputy Commissioner, Dhemaji on 29.10.2013 wherein she was stated to have had contended that she belonged to the sub-caste "Jalo Malo" but her husband contended that that his wife i.e. the petitioner herein belonged to the "Kairi" sub-caste, conclusions came to be drawn holding the petitioner to not belong to the Scheduled Caste community.

17. Basing on the said materials, the State Level Scrutiny Committee had concluded that there were conflicting claims of the sub-caste to which actually the petitioner belonged and there being no mention of "Mala", "Malah", and "Kairi" in the schedule list as prepared for the State of Assam, it was concluded that the caste certificate issued to the petitioner was so issued without proper verification. What is to be noticed herein is that the State Level Scrutiny Committee had not recorded a finding to the effect that the petitioner and/or her father and other family members did not belong to the schedule caste

community rather the conclusion is that in view of the conflicting stands as taken in the matter by the petitioner and her husband as well as by the other members participating in the process, it could not be ascertained as to the actual sub-caste of the petitioner. The said conclusion was not permissible to be drawn by the said Committee, given the fact that the said Committee was so constituted to finally determine the caste status of the person referred to it, without any ambiguity existing in such determination.

18. A perusal of the directions as passed by the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil (supra)*** would reveal that when a scrutiny with regard to the caste status of a person is being undertaken, the Vigilance Officer is required to personally verify and collect all facts of the social status claimed by the candidate or the parents or guardians as the case may be, the said officer is also required to examine the school records, birth registration, if any, and to examine the parents, guardians or the candidate in relation to their caste or such other person who have knowledge of the social caste status of the candidate and then submit a report to the Directorate with all particulars as envisaged in the proforma. It is seen from the materials available on record no such process of verification was undertaken by the State Level Scrutiny Committee for ascertaining the caste status of the petitioner and basing on materials as brought on record by the Additional Deputy Commissioner, Dhemaji, which again has not been reproduced in the Speaking Order, the State Level Scrutiny Committee proceeded to draw its conclusions as is available in the Speaking Order dated 20.12.2013.

19. Considering the manner in which the verification of the caste status of the petitioner was carried out by the State Level Scrutiny Committee and the

process as mandated by the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil (supra)*** having admittedly not being followed with and a report of the Additional Deputy Commissioner having not brought on record materials to conclusively establish the caste status of the petitioner and the same having further required the caste status of the father of the petitioner to be verified for ascertaining the caste status of the petitioner without any doubt, the reliance placed by the State Level Scrutiny Committee on the report of Additional Deputy Commissioner, Dhemaji for the purpose of arriving at its conclusions has vitiated the entire process of verification as carried out in the matter of ascertainment of the caste status of the petitioner herein.

20. Accordingly, the Speaking Order dated 20.12.2013 being not based on materials relevant to the issue and also being in violation of the directions as passed by the Hon'ble Supreme court in the case of ***Kumari Madhuri Patil (supra)*** requires to be interfered with and accordingly this Court is left with no other alternative but to set aside the Speaking Order dated 20.12.2013.

21. Having set aside the Speaking Order dated 20.12.2013, it is to be noted that the dispute with regard to the caste status of the petitioner having not been resolved, this Court now requires the Secretary to the Government of Assam, WPT & BC Department to carry out a fresh process for verification of the caste status of the petitioner strictly in accordance with the decision of the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil (supra)*** as well as the procedure for such scrutiny as put in place vide the Office Memorandum dated 11.05.2018 and/or any other such Office Memorandums issued in this connection. The said exercise including the consideration by the State Level Scrutiny Committee shall be so carried out and concluded within a period of 6

(months) from the date of receipt of certified copy of this order.

22. As noticed hereinabove that no further proceedings has been initiated against her, accordingly, till the fresh process of verification of the caste status of the petitioner is not concluded and decision thereon is not rendered by the State Level Scrutiny Committee, the petitioner shall continue to remain under suspension. Further course of action as may be mandated in the matter shall be so carried out after the opinion of the State Level Scrutiny Committee in the matter is received. In the event, the State Level Scrutiny Committee is of the view that the petitioner had obtained the caste certificate fraudulently, necessary action including the action with regard to termination of the services of the petitioner shall be carried out by the concerned authorities in accordance with a procedure known to law.

23. With above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant