

Court No. - 6

A.F.R.

Case :- WRIT - C No. - 2214 of 2024

Petitioner :- Hem Kant

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Social Welfare Lko. And 6 Others

Counsel for Petitioner :- Vipul Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Vipul Shukla, learned counsel for the petitioner as well as learned Standing counsel on behalf of the respondents.
2. It has been submitted by learned counsel for the petitioner that the petitioner is a B.Sc. graduate and after his graduation applied for his caste certificate through online portal vide application No.211470030073241 before the Tehsildar, Tehsil Sadar, Firozabad on 21.5.2021. It has been submitted that the said application was rejected by means of order dated 25.5.2021.
3. Being aggrieved by the order of the Tehsildar the petitioner filed an application before District Level Caste Scrutiny Verification Committee on 16.6.2021. It is stated that the said application was filed in terms of the Government Order dated 28.2.2011 where it is provided that the said verification of the caste be done within fifteen days. The petitioner waited for fifteen days and on expiry of the said period as the application was not decided he approached the Divisional Level Caste Verification Committee vide application dated 21.7.2021. It is submitted that as per the Government Order dated 27.1.2011 clause 5 provides for thirty days' time to decide the application preferred against the order of District Level Caste Verification Committee but it is stated that despite expiry of a period of one month the application was not decided by Divisional Level committee. After waiting for two months the petitioner approached the State Level Caste Verification Committee by filing application on 30.9.2021. It is submitted that as per the Government Order dated 5.1.1996 under sub clause 5 of of clause 6 two months' time has been provided to the State Level to decide application. It is further submitted that even after expiry of two months' time no order was passed by the State Level Caste Verification and in these circumstances the petitioner has approached this Court by filing writ petition bearing Writ A No.875 of 2024 which was disposed of vide order dated 6.2.2024 directing the State Level Caste Verification Committee to decide the application of the

petitioner within a period of ten days from the date a certified copy of the is submitted to them. It is in compliance of the order of this Court passed in Writ A No.875 of 2024 that the State Level Committee has rejected the appeal of the petitioner on the ground that the said appeal is not in accordance with the rules in as much as there is no decision taken by the District Level Committee against which the application has been filed and, therefore, held that such an application was not maintainable.

4. Learned counsel for the petitioner while assailing the impugned order dated 14.2.2024 has submitted that the time period prescribed in various government orders which have been passed in pursuance of the judgment and order of Supreme Court in the case of ***Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (1994) 6 SCC 241*** is mandatory and once the time period has expired and no decision is passed on the application preferred by the aggrieved person then he will have the right of approaching higher forum and accordingly submits that the State Level Committee should have dealt with the case of the petitioner on merits. It has been submitted by learned counsel for the petitioner that during pendency of the appeal before the State Level Committee a vigilance report was also obtained as per the direction of the judgment of Supreme Court in the case of Madhuri Patil (supra) and the said report was submitted on 28.4.2022. It is further submitted that once Vigilance Cell report was brought on record the matter ought to have been decided on merits and accordingly remanding the matter back to the District Level Committee by means of the impugned order is illegal and arbitrary and requires interference.

5. Learned Standing counsel, on the other hand, has opposed the writ petition. It has been submitted that the appeal preferred by the petitioner has neither been decided by the District Level Committee nor by the Divisional Level Committee and without waiting for the decision of the authorities the petitioner has rushed and filed his appeal before the State Level Committee. He submits that appeals can be considered only once there is an order in existence which can be affirmed or set aside by the appellate authority and in absence of any order by the District Level Committee or by the Divisional Level Committee the appeal preferred by the petitioner before State Level Committee was a mere empty formality. It is further stated that though time period has been prescribed by various Government Orders for completion of the proceedings of the application/appeal before the District Level Committee or Divisional Level Committee as well as State Level Committee is directory. He submits that there is no explanation provided in the said Government Order as to whether on expiry of the said time period prescribed for

deciding the said appeal an aggrieved person should wait or directly approach higher forum without waiting for the decision of the appeal.

6. It is further submitted that by the State Level Committee a Vigilance Cell report was obtained but when the matter of the petitioner was examined on merits it was found that orders have yet not been passed by the District Level or Divisional Level Committees and in the facts and circumstances of the case the appeal preferred before the State Level Committee was not maintainable and it has rightly been rejected. Before the District Level and Divisional Committees the appeal of the petitioner is still pending.

7. Learned counsel for the petitioner does not dispute the objection raised by counsel for the respondents on facts but on the other hand submits that the petitioner has applied for the post of Revenue Lekhpal conducted by U.P. Subordinate Services Selection Commission, Lucknow and as the petitioner claims to be belonging to reserved category he has to upload caste certificate it is necessary for him to obtain caste certificate and upload the same within the time prescribed so that his case can be considered against reserved quota of post. He submits that the petitioner has already cleared both the stages of examination and has got provisional selection in the final merit list /result which was declared on 30.12.2023 by U.P. S.S.S. Commission and now the petitioner has been directed to appear before the Selection Commission on 7.2.2024 for verification of academic and other related documents.

8. Learned counsel for the petitioner submits that it was, therefore, necessary for the petitioner to produce his certificate with regard to his caste before the Selection Commission and before the said date and if he is unable to produce the said certificate he will have no option except to give up the post. He further submits that there is no fault of the petitioner but merely on account of delay in deciding the appeal of the petitioner he will be made to suffer.

9. In these circumstances, this Court has also considered the observations of Supreme Court in the case of Kumari Madhuri Patil (Supra) on the aspect of delay in deciding the applications/appeals by the various Caste Scrutiny Committees wherein in para 13 (10) it has been held as under:-

"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."

10. Merely on account of the delay by the State in taking decision the opportunity which has come to the petitioner in the form of selection for the post of Revenue Lekhpal should not be lost and accordingly the petitioner is at liberty to move application before Uttar Pradesh State Services Selection Commission in light of the observations made by the Supreme Court provided for in para 10 of the said judgment.

11. The next issue which arises for consideration is the maintainability of applications/appeals before the next higher forums in case the application/appeal is not decided within the time prescribed in various Government Orders. Here, it would be pertinent to refer to the case of **C. Bright v. Distt. Collector, (2021) 2 SCC 392**, where Hon'ble Supreme Court has observed as under:

"9. The question as to whether, a time-limit fixed for a public officer to perform a public duty is directory or mandatory has been examined earlier by the courts as well. A question arose before the Privy Council in respect of irregularities in the preliminary proceedings for constituting a jury panel. The Municipality was expected to revise the list of qualified persons but the jury was drawn from the old list as the Sheriff neglected to revise the same. It was in these circumstances, the decision of the jury drawn from the old list became the subject-matter of consideration by the Privy Council. It was thus held that it would cause greater public inconvenience if it were held that neglecting to observe the provisions of the statute made the verdicts of all juries taken from the list ipso facto null and void so that no jury trials could be held until a duly revised list had been prepared [Montreal Street Railway Co. v. Normandin, 1917 SCC OnLine PC 3 : AIR 1917 PC 142].

10. The Constitution Bench of this Court held that when the provisions of a statute relate to the performance of a public duty and the case is such that to hold acts done in neglect of this duty as null and void, would cause serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, the practice of the courts should be to hold such provisions as directory [Dattatraya Moreshwar Pangarkar v. State of Bombay, (1952) 1 SCC 372 : AIR 1952 SC 181 : 1952 Cri LJ 955]. In a seven-Bench judgment, this Court was considering as to whether the power of the Returning Officer to reject ballot papers is mandatory or directory. The Court examined well-recognised rules of construction to observe that a statute should be construed as directory if it relates to the performance of public duties, or if the conditions prescribed therein have to be performed by persons other than those on whom the right is conferred [Hari Vishnu Kamath v. Syed Ahmad Ishaque, AIR 1955 SC 233].

11. In a judgment reported as *Remington Rand of India Ltd. v. Workmen* [*Remington Rand of India Ltd. v. Workmen*, AIR 1968 SC 224] , Section 17 of the Industrial Disputes Act, 1947 came up for consideration. The argument raised was that the time-limit of 30 days of publication of award by the Labour Court is mandatory. This Court held that though Section 17 is mandatory, the time-limit to publish the award within 30 days is directory *inter alia* for the reason that the non-publication of the award within the period of thirty days does not entail any penalty.

12. In *T.V. Usman v. Food Inspector, Tellicherry Municipality* [*T.V. Usman v. Food Inspector, Tellicherry Municipality*, (1994) 1 SCC 754 : 1994 SCC (Cri) 187] , the time period during which report of the analysis of a sample under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 was to be given, was held to be directory as there was no time-limit prescribed within which the prosecution had to be instituted. When there was no such limit prescribed then there was no valid reason for holding the period of 45 days as mandatory. Of course, that does not mean that the Public Analyst can ignore the time-limit prescribed under the Rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and, on that basis, to hold that even prosecution cannot be launched.

13. This Court distinguished between failure of an individual to act in a given time-frame and the time-frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that it is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified [*Nasiruddin v. Sita Ram Agarwal*, (2003) 2 SCC 577] .

14. In *P.T. Rajan v. T.P.M. Sahir* [*P.T. Rajan v. T.P.M. Sahir*, (2003) 8 SCC 498] , this Court examined the effect of non-publication of final electoral rolls before the time of acceptance of nomination papers. The Court held as under : (SCC p. 516, para 48)

“48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be

mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. District Magistrate [Shiveshwar Prasad Sinha v. District Magistrate, 1965 SCC OnLine Pat 43 : AIR 1966 Pat 144 : ILR 45 Pat 436] , Nomita Chowdhury v. State of W.B. [Nomita Chowdhury v. State of W.B., 1999 SCC OnLine Cal 235 : (1999) 2 Cal LJ 21] and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana [Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana, 1996 SCC OnLine Cal 209 : (1997) 1 CHN 189] .)”

12. A perusal of the above renditions of the Hon'ble Supreme Court would put the issue out of the ambit of any confusion, that where a public functionary is required to perform a public function within a time frame, the same will be held to be directory unless the consequences are specified. The relevant Government Orders do not provide for any consequences in case the applications/appeals are not decided within the time frame. In these circumstances, this Court is of the considered opinion that the time provided in various government orders constituting District Level, Divisional Level and State Level Committees is merely directory and in case appeal is not decided within the prescribed time the petitioner has remedy of approaching High Court by filing a writ petition for obtaining suitable direction to the concerned committee to decide the matter expeditiously but merely because the appeal is not decided within the time prescribed no further appeal can be preferred to the higher authority as has been done in the present case. An appeal would only be maintainable against a decision of a committee and in absence of any decision no further application/appeal can be preferred. An appeal is a challenge to an order and in absence of any order the appeal would be an empty formality and even otherwise the appellate authority does not decide any issue on merits at the first instance but merely looks into validity of the order passed by the subordinate authority.

13. In light of the above, this Court does not find any infirmity in the impugned order.

14. Considering the fact that the matter has been referred to the District Level Committee, it is expected that the District Level Committee shall consider and decide the same expeditiously and while deciding the application of the petitioner it shall take due note of the Vigilance Cell report which has been obtained

by State Level Committee and will consider the case of the petitioner.

15. It is also noticed that the observations of Supreme Court has already been incorporated in Government Order dated 5.1.1996 where opportunity has been given to the applicants to move appropriate application before the Selection Commission in case there is any delay in taking decision taken by the Committees.

16. Considering that the appeal preferred by the petitioner is pending for substantially long length of time, the District Level Committee shall make all endeavour to conclude the proceedings within a period of three weeks from the date a certified copy of this order is produced before him in accordance with law and communicate the decision to the petitioner.

17. With aforesaid observations and directions the petition stands **disposed of**.

(Alok Mathur, J.)

Order Date :- 12.3.2024
RKM.