

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1079 of 1999

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Om Prakash S/o of Late Dr. Raghunath Prasad, resident of Mohalla Kamantola,
P.O. Arrah, District Bhojpur

.... Petitioner

Versus

1. Bank of India, Bihar Zone, Chanakya place, 1st floor, Birchand Patel Marg,
Patna 800001 through its Zonal Manager
2. The Zonal Manager, Bank of India, Bihar (north) Zone, Chanakya place, 1st
floor, Birchand Patel Marg, Patna 800001
3. The Deputy Zonal Manager and Disciplinary Authority, Bank of India,
Bihar (works) Zone, Chanakya place, 1st floor, Birchand Patel Marg, Patna
800001
4. Enquiry Officer, Bank of India, Naubatpur Branch, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Chitranjan Sinha, Sr. Advocate

Ms. Surya Nilambari, Advocate

For the Respondents: Mr. Braj Nandan Kr. Tiwary, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 20-04-2015

Heard Ms. Surya Nilambari, learned counsel appearing
on behalf of the petitioner as well as Mr. Braj Nandan Kumar
Tiwari, learned counsel appearing on behalf of the respondents.

2. The present writ application involves a very short
question to be decided, i.e., the manner in which an enquiry against
an employee working under any organization, which is State
within the meaning of Article 12 of the of the Constitution of
India, is required to be conducted in the background of an
allegation that caste certificate in support of his claim that he
belonged to one of the reserved categories (Scheduled Caste)

submitted by him at the time of his appointment was a forged one. Before coming to this core issue, it would be apt to refer to the facts in brief, which are not in dispute.

3. Pursuant to an advertisement for appointment against the posts of Clerks/ Typists, Agriculture Clerks in various branches in the State of Bihar of the respondent- Bank of India (hereinafter referred to as the Bank), the petitioner had applied as a candidate belonging to Scheduled Caste ("*Pasi*"). The petitioner after undergoing the process of selection was appointed as Clerk through appointment letter dated 04.09.1975 against a post reserved to Scheduled Caste. Before issuance of the appointment letter, the petitioner is said to have submitted his testimonials including the caste certificates issued by the Block Development Officer, Bhojpur, Ara as well as Sub divisional Officer, Bhojpur, Ara. Nearly 14 years after, a memorandum dated 22.02.1990 was issued to the petitioner alleging that he had submitted a forged caste certificate which, according to the Bank, amounted to gross misconduct under Clause 19.5 (m) of the first Bipartite Settlement. The petitioner submitted his reply asserting that he belonged to the caste "*Pasi*", which is a Scheduled Caste, and also asserted that he had performed inter caste marriage with a girl belonging to "*Surhi Baniya*" community which is not Scheduled Caste. A charge sheet was issued on 09.09.1992, with the allegation that petitioner had





secured Bank's employment by deliberately giving false declaration in the application form by submitting a bogus certificate that he belonged to Scheduled Caste category. Such conduct of the petitioner was an act prejudicial to the interest of the Bank in breach of Clause 19.5(j) of the Bipartite Settlement dated 19.10.1966 read with Bipartite Settlement dated 17.09.1984. The conduct was also alleged to be in breach of Clause 19.5(m) of the settlements, as indicated above, as it amounted to knowingly making false statement in a document pertaining to or in connection with employment in the Bank. A departmental enquiry was thereafter held. The petitioner is said to have demanded documents for the purpose of developing his defence. He denied the allegation leveled against him and asserted that he belonged to caste "*Pasi*" which is Scheduled Caste. He further asserted that the certificates submitted by him which were issued by the Block Development Officer, Bhojpur, Ara as well as Sub divisional Officer, Bhojpur, Ara were genuine and duly issued by the officers.

4. The Enquiry Officer submitted his report on 30.06.1993 holding that the charges leveled against the petitioner stood proved in the departmental enquiry. He specifically opined that the petitioner belonged to "*Surhi Baniya*" community. He, accordingly, held that caste certificate No. 560 dated 18.10.1973



produced by him at the time of seeking appointment in the Bank was a bogus certificate and, thus, came to a conclusion that he sought employment in the Bank under reserved category of Scheduled Caste/ Scheduled Tribe by submitting a fake certificate. The Disciplinary Authority communicated to the petitioner the findings of the Enquiry Officer vide his letter dated 25.10.1993 proposing punishment of “dismissal without notice” from the service of the Bank under Clause 19.6(a) of the Bipartite Settlement dated 19.10.1966. The petitioner in response to the second show cause notice dated 25.10.1993 appeared before the Disciplinary Authority on 05.11.1993 and sought some time for submission of detailed explanation. He, subsequently, submitted his response to the second show cause notice on 01.12.1993. The Disciplinary Authority, however, not being satisfied with the petitioner’s reply, came to a finding which reads as follows:-

“As per the Govt. Guidelines, the District Magistrate is the Competent Authority to verify the caste certificate. In your case, the District Magistrate, Bhojpur vide his letter No. 147 dated 21.02.90 advised the Bank that you do not belong to Scheduled Caste category. The District Magistrate vide letter No. 5242 dated 8.11.91 further clarified that a forged document which was never issued by them, ca not be cancelled. As such I do not agree with your contention that the Caste Certificate issued by the B.D.O. is still a valid document.”

5. In his order dated 03.01.1994, imposing punishment of dismissal from service, the Disciplinary Authority also came to

the following finding”-

“The Caste Certificate No. 560 issued by the B. D.O. in your name is not a valid document as the Certificate was never issued by the Competent Authority, which was confirmed by the Competent Authority vide letter No. 5242 dated 08.11.1991. As such it is within the jurisdiction of Disciplinary Authority to initiate Disciplinary Action against you.”

6. I have not referred to other findings recorded by the Disciplinary Authority in his order imposing punishment, as noted above, as I am confining this judgement only to the issue as to whether, on the basis of materials discussed by the Enquiry Officer and the Disciplinary Authority, they could have come to a conclusive finding that the certificates submitted by the petitioner in support of his claim that he belonged to Scheduled Caste were forged and whether they could have arrived at a definite and conclusive finding that the petitioner did not belong to the caste “Pasi” .

7. I must take note of the fact that aggrieved by the order of the Disciplinary Authority dated 03.01.1994, the petitioner had approached this court by filing CWJC No. 11104 of 1993. The writ application was, however, disposed of by an order dated 17.07.1998 in view of an objection being raised on behalf of respondent-Bank that before preferring the writ application, the petitioner had not availed the alternative remedy of appeal. The petitioner was, thus, allowed to withdraw the writ application with

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a liberty to prefer appeal. The petitioner, accordingly, preferred an appeal which came to be dismissed by order dated 04.12.1998. These are the background facts leading to institution of the present writ application under Article 226 of the Constitution of India seeking quashing of order dated 03.01.1994 passed by the Disciplinary Authority, i.e., the Deputy Zonal Manager of the respondent-Bank, imposing punishment of “dismissal without notice” upon the petitioner, and the order of the Appellate Authority dated 04.12.1998 by which the petitioner’s appeal came to be dismissed.

8. Learned counsel appearing on behalf of the petitioner, referring to Annexure-9 to the writ application, which is a communication made by the Block Development Officer, Bhojpur, Ara to Sub divisional Officer, Sadar, Ara dated 08.08.1989 has submitted that in the said communication the Block Development Officer has noted that the old records were not available, on the basis of which, the caste certificates said to have been issued in favour of the petitioner could be verified. The Block Development Officer has, however, mentioned in one sentence that an enquiry was done again in course of which it was found that the petitioner belonged to “*Surhi Baniya*” caste. On the basis of said communication of the Block Development Officer, the Sub divisional Officer informed the respondent-Bank through letter



dated 30.08.1989 that the old records were not available and, therefore, it was not possible to verify the correctness of the caste certificate issued in favour of the petitioner. The Sub divisional Officer also mentioned, on the basis of the said report of the Block Development Officer, that upon enquiry it was found that the petitioner belong to “*Surhi Baniya*” caste. She has submitted that these were the only materials available in course of the departmental enquiry on the basis of which the Disciplinary Authority came to a finding that the caste certificates issued in favour of the petitioner were bogus. She has submitted that such finding is perverse on the face of it inasmuch as neither the Block Development Officer nor the Sub divisional Officer in their communications ever disputed the fact that such certificates were issued by them in favour of the petitioner. She has contended that they simply said in their communications that old registers were not there and, therefore, it was not possible to verify whether such certificates were issued to the petitioner or not. She has contended, thus, that there cannot be any basis to come to a finding that certificates were not issued at all. She has next submitted that the Block Development Officer quite vaguely, just in one sentence, has mentioned that upon enquiry it was found that petitioner belonged to “*Surhi Baniya*” caste. There is no reference to the nature of enquiry conducted by the Block Development Officer

and there is no dispute about the fact that the petitioner was not a part of the said enquiry, said to have been conducted by the Block Development Officer. She has also submitted that if the respondent-Bank intended to place reliance upon the letters of Block Development Officer, Bhojpur, Ara as well as Sub divisional Officer, Bhojpur, Ara they should have been examined as prosecution witnesses before their report on the basis of which the respondent-Bank intended to prove the allegation against the petitioner that the certificates issued in his favour were bogus. She has also drawn my attention to a communication dated 02.11.1991 issued by the District Magistrate, Ara addressed to the Regional Manager, Bank of India, Regional Office, Patna wherein, on the basis of letter dated 10.07.1989 (Annexure-D/7 to the counter affidavit), the District Magistrate has mentioned that caste certificate No.560 dated 18.10.1973 was never issued from his office, therefore, it was clearly a forged document. The District Magistrate, accordingly, refused to cancel the certificate which, according to him, was never issued. She has further contended that if at all any enquiry was done, as regards petitioner's status with respect to his caste, it was done behind his back and there can be no sanctity of the findings of such enquiry in a departmental proceeding, particularly when the persons who are said to be conducted the enquiry were not examined as witnesses.

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9. Learned counsel appearing on behalf of respondent-Bank, on the other hand, has submitted that upon receiving information that the petitioner did not belong to one of the Scheduled Castes, which was the basis for his appointment as Clerk in the Bank, a departmental proceeding was initiated. He has submitted that on the basis of the reports received from Block Development Officer, Bhojpur, Ara, Sub divisional Officer, Bhojpur, Ara, District Magistrate, Ara and from the Headmaster of the school the Enquiry Officer as well as Disciplinary Authority came to a finding that the petitioner did not belong to the cast "*Pasi*" and he in fact belong to "*Surhi Baniya*" which is not a Scheduled Caste. On the basis of this finding, the authorities of district administration, came to a conclusion that the certificates issued in favour of the petitioner, showing him to be a Scheduled Caste, were forged. He has submitted that on the basis of these materials, which were part of the enquiry report, the Enquiry Officer as well as the Disciplinary Authority rightly came to the conclusion that the petitioner did not belong to Scheduled Caste.

10. It is clear from the facts pleaded in the writ application, in the counter affidavit as well as on the basis of rival submissions that only two disputes are involved namely:-(i) whether the certificates, which were submitted by the petitioner at the time of his appointment in the Bank, claiming his status that he

belonged to Scheduled Caste, were in fact ever issued by the Block Development Officer, Bhojpur, Ara as well as Sub divisional Officer, Bhojpur, Ara or not and (ii) whether the petitioner in fact belongs to caste "*Pasi*" as claimed by him so as to claim his status as a member of Scheduled Caste.

11. As regards the first issue, from the records, I find that there was no material before the authorities to come to a conclusive finding that such certificates were never issued. The Block Development Officer in his letter dated 07.07.1989 addressed to Sub divisional Officer has mentioned that it was not possible to verify whether the certificates were ever issued or not as old records were not available. In his subsequent communication dated 10.07.1989, the Block Development Officer, while writing to the Regional Manager, Bank of India, has mentioned that the petitioner belonged to caste "*Surhi Baniya*". He also mentioned in the said letter that caste certificate No. 560 dated 18.11.1973 was not issued from his office. He has not mentioned in the said letter as to whether records in the office were available on the basis of which it could be said that certificates were not issued from his office.

12. Learned counsel for the petitioner appears to be right in her submission that if the Bank intended to rely upon these communications made by the Block Development Officer, the

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Bank ought to have called him as a witness in the departmental proceeding, where the petitioner would have had an opportunity to cross-examine the Block Development Officer. She has submitted that a totally vague finding was recorded by the Block Development Officer, without holding any enquiry in presence of the petitioner, that he belonged to “*Surhi Baniya*” caste. She appears to be right in her submission that the manner in which the enquiry has been conducted before arriving to a conclusion that the certificates issued in favour of the petitioner, showing him to be belonging to “*Surhi Baniya*” community, does not fulfill the basic requirements of principles of natural justice.

13. There is no evidence/ material which has been referred to by the Block Development Officer on the basis of which he came to a conclusion that no such caste certificates were issued. I am, thus, of the view that there is complete lack of evidence as regards the finding that caste certificates were not issued in favour of the petitioner. The finding to this effect is perverse.

14. The other issue is as to whether the petitioner belongs to Scheduled Caste or not. As has been noted above, the Block Development Officer has mentioned that some enquiry was conducted by him. There is no reference as to what kind of enquiry was held by the Block Development Officer and what was the



basis for him to come to a conclusion that the petitioner belonged to “*Surhi Baniya*” caste and not “*Pasi*”. The communication made by the District Magistrate is also based on the communication made by the Block Development Officer containing an observation that petitioner belonged to “*Surhi Baniya*” caste. I am, therefore, of the view that the findings arrived at by the Enquiry Officer as well as by the Disciplinary Authority on the issue as to whether the petitioner belongs to Scheduled Caste or not is based on such communications/ reports which are vague in themselves. I am, therefore, of the view that the decision of the Disciplinary Authority requires to be interfered with. The order of the Disciplinary Authority, imposing punishment upon the petitioner of dismissal from service without notice dated 03.01.1994 is, accordingly, quashed. The order of the Appellate Authority dated 04.12.1998, which is apparently based on the report of the Enquiry Officer and on same materials available in the departmental proceeding, cannot be sustained and is, accordingly, quashed.

15. From the facts noted above, I find that the sole issue, which is involved in the present case, is as to whether the petitioner belongs to Scheduled Caste (“*Pasi*”) or he is “*Surhi Baniya*” which is not a Scheduled Caste. This is a question of fact which needs to be decided by an appropriate authority. If there is conclusive finding by competent authority/body that the petitioner

does not belong to caste “Pasi” on the basis of which he claims status of Scheduled Caste, there would be no requirement of any departmental enquiry as his very appointment as Clerk is based on his claim of being member of Scheduled Caste and in that circumstance his appointment itself will be a nullity in the eye of law.

16. Learned counsel for the petitioner has very fairly submitted, in the facts and circumstances of the case, that the matter may be referred to the Scrutiny Committee constituted under the orders of Supreme Court in the case of ***Kumari Madhuri Patil v. Additional Commissioner, Tribal Development & Ors*** reported in (1994) 6 SCC 241 to come to a conclusion as to whether the petitioner belongs to Scheduled Caste or not. She has submitted that if such Committee, after giving the petitioner due opportunity of being heard, finally comes to a conclusion that the petitioner does not belong to Scheduled Caste, the respondents will be free to take decision on the basis of such finding. She has submitted that, in that circumstance, the petitioner may be given an opportunity of questioning the correctness of finding of such Committee, before appropriate forum if he is so advised.

17. Learned counsel for the petitioner has produced before me a resolution dated 08.11.2007 issued by the Personnel and Administrative Department, Government of Bihar whereby

Scrutiny Committee has been constituted, in terms of the decision of Supreme Court in case of *Kumari Madhuri Patil* (supra) for the purpose of verifying the correctness of claim of caste status of a person. She also submits that at the district level also Scrutiny Committees are there, for such purpose.

18. In view of submission, as above, I direct the District Magistrate, Bhojpur, Ara to get the dispute, as regards the petitioner's status as Scheduled Caste, be scrutinized in terms of the decision of the Supreme Court in case of *Kumari Madhuri Patil* (supra). He will be obliged to refer the matter before such Committee within a period of one month from the date of receipt/production of a copy of this order. Such Committee, to which the petitioner's matter is referred, in turn, after giving the petitioner an opportunity of hearing, following the guidelines issued in this regard, shall record its finding. The Committee must record its finding within a period of two months thereafter. The petitioner's reinstatement or otherwise in the Bank will be dependant upon the finding of the said Scrutiny Committee. Such finding of the Scrutiny Committee will be binding upon the Bank.

19. It is indicated that if the Scrutiny Committee comes to a finding that the petitioner belongs to Scheduled Caste, he will be required to be reinstated with entire backwages for the period during which he remained out of service because of apparent

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illegal decision taken by the respondent-Bank, if he furnishes evidence before the Bank that he was not gainfully employed elsewhere by filing an affidavit. It is also indicated that payment of such backwages to the petitioner can be denied only if the Bank, on the basis of some evidence, comes to a finding that during this period the petitioner was gainfully employed elsewhere.

20. This writ application is allowed but with the observation, as above.

In the facts and circumstances of the case, there shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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