

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION NO. 684 OF 2003

Surajnath Nag, aged about 41 years, S/o Late Gokul Nath Nag, Head Constable (Dismissed), R/o Post & Village Barsur, Tahsil & District Dantewada (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Home, D.K.S. Bhawan, Raipur (C.G.)
2. Director General of Police, State of Chhattisgarh, Civil Lines, Raipur (C.G.)
3. Commissioner, Bastar Division, Jagdalpur (C.G.)
4. Superintendent of Police, District Dantewada (C.G.)
5. Collector, Dantewada (C.G.)
6. Sub Divisional Officer (Revenue), Dantewada (C.G.)

... Respondents

For Petitioner	: Mr. Jitendra Pali, Advocate.
For Respondent-State	: Mr. Ramakant Mishra, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/07/2015

1. The Petitioner through the instant writ petition has challenged the order dated 29.1.2003 passed by Superintendent of Police, Dantewada, whereby the services of the Petitioner was dismissed on account of his not possessing proper caste certificate in respect of the caste to which he claims to be of.
2. The facts relevant for the disposal of the petition are that the Petitioner is a tribal and claims to be from "Halba" community. That on 12.4.1986, the Petitioner was appointed as a Constable in the erstwhile State of Madhya Pradesh, wherefor order of appointment was issued by the then Superintendent of Police, Bastar. The

Petitioner since then had been continuously working with the Respondents and in due course of time he was also promoted to the post of Head Constable. Subsequently, an anonymous complaint in respect of the Petitioner obtaining employment on false caste certificate was received at the office of the Commissioner, Bastar. The Commissioner in turn had forwarded the same to the office of the concerned Superintendent of Police. Accordingly, the Superintendent of Police ordered for an enquiry in respect of the caste of the Petitioner, vide Annexure P-8, dated 12.5.2000. After the preliminary enquiry, the Superintendent of Police issued a charge-sheet to the Petitioner on 6.4.2002 and subsequently a departmental enquiry was also ordered to be conducted and a report by the enquiry officer was also submitted on 23.9.2002 on the basis of which the punishment of removal from service was imposed vide order dated 29.1.2003.

3. Learned Counsel for the Petitioner submits that the dispute in the instant petition is no longer *res integra* as it has been decided by a catena of decisions of the Supreme Court as well as by almost all the High Courts that so far as the issue of caste certificate of an employee is concerned, the same can only be verified by a High Power Caste Scrutiny Committee constituted by the respective State Government. That any doubt in respect of the veracity of the caste certificate or the genuineness of the caste of an employee or the social status of the employee can only be looked into by the said Committee constituted for this purpose by the State Government. According to the Petitioner, in the instant case instead of getting the matter inquired by the Caste Scrutiny Committee constituted by the State of Chhattisgarh, the

Respondent - Superintendent of Police had himself initiated an enquiry which is otherwise impermissible under the law. Counsel for the Petitioner relies on *Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and other* (AIR 1995 SC 94) and other subsequent decisions and prays for setting aside the impugned order.

4. Learned Counsel for the State however opposing the petition submits that a perusal of the documents enclosed with the petition as well as the reply of the Respondents would reveal by itself that the Superintendent of Police before passing of the impugned order of termination had himself conducted a detailed enquiry and both during the course of enquiry and subsequent to the enquiry report being submitted, the Petitioner was granted ample opportunity to justify and disprove the charges leveled against him and as such the impugned order does not call for any interference as it is in accordance with the disciplinary procedure prescribed under the law.

5. Having considered the rival contentions put forth by the Counsel for the parties, this Court has no hesitation in holding that the law in this regard by now is well settled right from *Kumar Madhuri Patil* (supra) and the High Court of Chhattisgarh also in a catena of decisions held that whether the caste certificate of an employee is genuine, proper or false can only be looked into by the High Level Caste Scrutiny Committee alone and not by any other authority of the State Government. That it is only on the report of the Caste Scrutiny Committee the competent authority could have initiated further actions.

6. High Court of Chhattisgarh in a couple of decisions has reiterated the principles laid down in the case of *Kumari Madhuri Patil* (supra) and has held that if there is a complaint with regard to authenticity of a caste

certificate issued by the competent authority, the Caste Scrutiny Committee alone is competent to determine the dispute in accordance with the procedure laid down by the Supreme Court in the case Kumari Madhuri Patil (supra).

7. In 2004 (9) SCC 481 (Sudhakar Vithal Kumbhare v. State of Maharashtra and others), the Supreme Court has, in somewhat similar circumstances, in a very categorical terms, held that in a situation where the employer doubted the social status of an employee, the employer was required to refer the dispute to the High Level Caste Scrutiny Committee constituted in terms of the judgement of Kumari Madhuri Patil (supra) and only on the basis of the report of the said Committee could the employer have taken an appropriate decision. A judgement of the Chhattisgarh High Court in this regard is in the case of *Anil Prasad v. The State of Chhattisgarh & Ors.*, in Writ Petition No. 1517 of 2004 decided on 7.8.2008. A similar decision again has been taken in Writ Petition No. 1515 of 2007 in the case of *Suresh Kumar Koshti v. The State Government of Chhattisgarh & Others*, decided on 10.12.2009. Further, again in the case of *Birendra Kumar Devangan v. State of Chhattisgarh and others* in Writ Petition (C) No. 2344 of 2007 decided on 26.4.2007, this High Court followed the decision rendered in the case of Kumari Madhuri Patil (supra) and in the case of Sudhakar Vithal Kumbhare (supra) and held that if there was any dispute with regard to caste of an employee, the matter ought to have been referred to the Caste Scrutiny Committee and before receiving a report from the Caste Scrutiny Committee, any action of the Government detrimental to the service conditions of an employee was not proper, legal and justified.

8. Recently, the High Court of Chhattisgarh again in the matter of Sudhakar Nandanwar v. Dena Bank & Others, decided on 15.11.2010 in Writ Petition No. 4017 of 1995 and in the case of Vidyadhar Aghariya v. State of Chhattisgarh & Others, decided on 10.4.2015 in Writ Petition No. 275 of 2003 has reiterated the position holding that the determination of social status of a person or the genuinity of the caste of which the employee has taken advantage can be inquired into only by the High Level Caste Scrutiny Committee as per the directions given by the Supreme Court in the case of Kumar Madhuri Patil (supra).

9. In the instant case, since the enquiry by the Caste Scrutiny Committee has not been conducted, the order passed by the Superintendent of Police, dated 29.1.2003 is not sustainable in the eyes of law and is accordingly set aside.

10. For the foregoing reasons, the writ petition stands allowed reserving the right of the Respondents to proceed further in accordance with law.

11. Needless to mention that pursuant to the impugned order of termination being set aside, the consequential relief shall flow till the Respondents, if they so desire, initiate fresh proceeding and take a final decision.

Sd/-
(P. Sam Koshy)
Judge