

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3912 of 2007**

- Smt. Saraswati Bargotya, W/o R.P. Bargotya, aged about 54 years, R/o G-6, Government Quarter, Near Kedarpur School, Ambikapur, Surguja, District Surguja (CG)

---- **Petitioner****Versus**

1. State of Chhattisgarh, Through: Secretary, Tribal Welfare Department, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. Director, Tribal Welfare Department, Raipur, District Raipur (C.G)
3. Collector, Tribal Welfare, Surguja, District. Surguja (C.G)

---- **Respondents**

For Petitioner	:	Shri Manoj Paranjpe, Advocate
For Respondent/State	:	Shri Shashank Thakur, Government Advocate and Shri AV Shridhar, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****20/04/2015**

Heard learned counsel for the parties.

1. Petitioner has assailed the legality and validity of the order passed by the State Government on 12.06.2007 (Annexure-P-18) imposing the punishments of cancellation of promotion; recovery of entire monetary benefits earned by the petitioner on account of illegal promotion from the post of Lecturer to the Principal, Higher Secondary School; deletion of entry of "Berwa Scheduled Tribe" from her service book; and stoppage of two annual increment with cumulative effect.
2. At the outset, Shri Manoj Paranjpe, learned counsel for the petitioner, would

submit that the impugned order concerning cancellation of promotion, deletion of entry of caste status has been rendered infructuous, as the petitioner has retired from service on 31.03.2011, on attaining the age of superannuation. Similarly with respect to the punishment of stoppage of two annual increments cumulatively, Shri Paranjpe would submit that he has instructions not to press this writ petition on this count.

3. Shri Paranjpe would also submit that the petitioner is not getting pension because of pendency of this writ petition and retiral benefits have also not been paid to her.
4. For the remaining part of the writ petition concerning recovery of monetary benefits which the petitioner has earned while working on the promoted post of Principal, Higher Secondary School, it has been argued by Shri Paranjpe that the present is not a case of commission of fraud, it is a case of *bona fide* assertion of petitioner's right of being a member of 'Berwa' Scheduled Tribe because the petitioner, although a non-tribe, was under assumption that on account of her marriage with a person belonging to 'Berwa' Scheduled Tribe Community, she became a member of said community and, as such, is entitled for all the benefits admissible to a Scheduled Tribe candidate of 'Berwa' Community. He would further submit that as a matter of fact, the competent authority issued a caste status certificate in favour of petitioner on 07.01.1982 and the said certificate was never cancelled by any competent authority.
5. It appears, the petitioner was promoted from the post of Lecturer to the post of Principal, Higher Secondary School vide order dated 30.07.1990. This promotion order was issued in her favour, as if, she belongs to a reserved category, Scheduled Tribe candidate. When it came to the notice of the

department that the original caste of the petitioner is not 'Berwa', but she is a general category candidate, a preliminary enquiry was constituted, wherein, it was, *prima facie*, established that she is claiming benefit of 'Berwa' Scheduled Tribe status on account of her marriage with her husband Shri R.P. Bargoutya, who is a member of 'Berwa' Scheduled Tribe Community. A departmental enquiry was constituted against the petitioner by issuing a charge sheet on 11.02.2000. The only charge against the petitioner was that she unauthorizedly obtained the caste certificate and on the basis of said certificate, she obtained promotions on the post of Lecturer and Principal whereas she is not entitled to claim the benefit of the reserved category candidate and thereby has violated Rule 3 of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (for short 'the Rules, 1965').

6. Shri A.V. Shridhar, learned State counsel, would submit that the petitioner being aware of her caste status from the very beginning, availed the benefit of reservation, therefore, she is guilty of availing such benefits for which she was not entitled in law, and as such, the charge has been fully established.
7. On the basis of what has been argued by Shri Paranjpe, there is implied admission on the part of the petitioner because, this writ petition is not pressed to assail the penalty of stoppage of two increments with cumulative effect. If such penalty is not assailed, it will boil down to a situation, wherein the petitioner is not assailing the merits of the findings, but the petitioner is assailing other part of the order, whereby recovery of financial benefits earned by the petitioner has also been directed in the impugned order.
8. This Court in the matter of **Ambikeshwar Yadav Vs. State of Chhattisgarh & others**¹, after placing reliance upon the decision of the Supreme Court rendered in the matter of **State of Bihar Vs. Narasimha Sundram** {1994

¹ WP (S) No.4416/2012, decided on 7-10-2013

Supp (3) Supreme Court Cases 705}, in para 4, held thus:-

“4.....the concerned employee before the Hon'ble Supreme Court was allowed to continue in service beyond the age of retirement, however, the salary for the said extended period was not paid to him by alleging that the employee committed fraud in respect of his age. The High Court directed the State Government to make payment of salary for the said extended period during which the employee remained in service after the age of superannuation because he had worked during the said period and the said order of the High Court has been maintained by the Hon'ble Supreme Court.”

9. Nature of allegation against the petitioner would tend to suggest that the petitioner earned benefit of reservation for which she was not legally entitled. Claiming entitlement on the basis of forged certificate is one thing and claiming entitlement to reservation on the basis of a caste certificate obtained after marriage is another thing.
10. In the considered opinion of this Court, the nature of allegation does not suggest, nor is the facts available in the record would conclude that the petitioner, in fact, tried to commit fraud. It appears, when she married with a tribal gentleman, she was under *bona fide* belief that she also becomes a member of the caste to which her husband belongs.
11. Thus, apart from the fact that ordinarily a person, who has worked on the promoted post and has performed duties attached to the said post should not be made to repay such benefits to the Government in the event promotion is cancelled, the petitioner also does not appear to have played any fraud with the employer. A particular misconduct may amount to fraud, but it is not necessary that every misconduct under the Rules, 1965 would necessarily amount to fraud.
12. Be that as it may, in view of the observation made by the Supreme Court in the matter of Narasimha (*supra*) and for the fact that the petitioner has

already retired and the retiral benefits have not been paid to her because of pendency of this writ petition, this Court is of the considered opinion that the writ petition deserves to be allowed in part in the following terms:-

- The penalty of recovery of the monetary benefits earned by the petitioner during her promotion to the post of Principal, Higher Secondary School, is quashed.
- The remaining part of the impugned order is not interfered.
- Petitioner's pension case be finalized and payment of entire retiral benefits be made, at the earliest, preferably within a period of three months from the date of submission of certified copy of this order.

JUDGE

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