

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6422 of 2014**

- Kanhaiyyalal Bareth, aged about 46 years, S/o Late Shri Tanagu Ram Bareth (Tambu), Caste Dhobi (Bareth) Upper Division Teacher, Govt. Middle School Malda Block Development Pondiuproda, Tahsil, District Korba, Cg

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Principal Secretary School Education Department, Govt. Of C.G. Secretariate, Mahanadi Bhawan, Naya Raipur, Raipur – 492 001, Tah. & Distt. Raipur (CG)
2. Director Public Instructions State Of Chhattisgarh, Pension Bada, Raipur, – 492 001, Tah. & Distt. Raipur (CG)
3. Collector, District Korba, Korba – 495677, Tah & Distt – Korba (CG)
4. Shri D.K.Tiwari The Then Nayab Tahsildar, Janjgir At Present Posted At Jarhagaon, Bilaspur, (CG) Pin 495001

---- Respondent

For Petitioner : Shri VG Tamaskar, Advocate.
 For Respondent/State : Shri PK Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed on** :12/10/2015

1. Challenge in this petition under Article 226 of the Constitution of India has been thrown to the order dated 29.11.2014 passed by the Collector (Tribal Development) Korba terminating the petitioner's services as Upper Division Teacher.

2. Facts necessary to be referred for adjudication are that vide order dated 29.6.1993, the Collector, Bilaspur appointed the petitioner on the post of Assistant Teacher in Scheduled Caste category. The petitioner was issued a show cause notice on 19.4.1999 for verification of his caste certificate, failing which departmental enquiry was to be constituted. Similar notices were issued on 16.11.1999, 27.10.2007 and 4.12.2007. The notices were challenged by the petitioner in WPS No.713/2008 on the ground that the caste status is to be scrutinized by the State Level Caste Scrutiny Committee and not by the employer. The writ petition was allowed on 4.2.2008 with a direction that the petitioner's caste dispute be disposed of by the State Level Caste Scrutiny Committee as expeditiously as possible, within a period of 3 months and in the meanwhile, he shall be allowed to continue. Liberty was also reserved in favour of the respondents to take appropriate action on the basis of report/recommendation of the Scrutiny Committee. The petitioner was thereafter promoted on 15.2.2010 on the post of Upper Division Teacher by mentioning his caste status as OBC.
3. The Caste Scrutiny Committee thereafter issued notice to the petitioner and eventually passed an order on 21.1.2014 holding that the petitioner does not belong to Scheduled Caste category because 'Bareth' caste is not included in the list of OBC in the State of Chhattisgarh. It was also observed that even in the Unified State of Madhya Pradesh, 'Bareth' caste was included in the list of SC category only for the districts of Bhopal, Raisen and Sehore. Since

the petitioner does not belong to the aforesaid 3 districts but is permanent resident of Korba district in the present State of Chhattisgarh, he was found to be an OBC category candidate. Based on the said recommendation, the concerned Collector issued show cause notice to the petitioner and recorded his statement. By the impugned order, the petitioner has been terminated from service.

4. It is urged by learned counsel for the petitioner that in similar matters i.e. WPS No.1195/2012 {Chandra Shekhar Kotriwar Vs. State of Chhattisgarh & Others} & WPS No.1533/2012 {Anurag Lal Vs. State of Chhattisgarh & Others}, decided by a common order on 8.4.2013, this Court allowed the writ petitions in favour of the petitioners who had put in long service on the basis of Caste Status Certificate which was later on found to be incorrect or forged. Learned counsel would also refer to the circular issued by the State Government on 1.10.2011 to urge that such candidates whose caste status certificates were found to be forged but the appointment has become final prior to 21.11.2000, shall not be affected but they shall not be allowed to obtain the benefit of reserved category candidates belonging to Halba Koshti/Koshti. Therefore, the petitioner is also entitled for similar treatment.
5. Learned State Counsel would submit that the petitioner has obtained appointment by producing incorrect or forged certificate, therefore, he is not entitled to continue in service. It is also argued that the petitioner having not challenged the legality and validity of the order passed by the Caste Scrutiny Committee, prayer for setting aside the order of termination is not maintainable.

6. Having heard learned counsel for the parties and on perusal of the record, it would appear that the petitioner was issued a caste status certificate in the year 1992 wherein the Constitution (Scheduled Caste) Order (Amendment) Act, 1990 has been referred by the concerned Naib Tehsildar. It is not a case where the concerned Naib Tehsildar has not at all issued any certificate and the document is forged in the sense that it is a fabricated document.
7. In view of the statement made by learned counsel for the petitioner that the petitioner is not willing to obtain the benefit of Scheduled Caste status, therefore, there is no need for him to assail the order of Caste Scrutiny Committee, this Court proceeded to consider the matter on the basis of material available on record and the law applicable thereto.
8. In the matter of **State of Maharashtra Vs. Milind and Others**¹, the Supreme Court, while considering the cases of candidates who had obtained appointment on the basis of false social status certificate, observed thus in para-38:-

“38. Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this length of time it is for nobody’s benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this

¹ (2001) 1 SCC 4

judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.”

9. In **Milind** (Supra), it was directed that the petitioner's result be declared and he be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in further either in obtaining service or for any other benefits flowing from the caste certificate obtained by him.
10. The aforesaid question came up for consideration before the Supreme Court in **Dattu, S/o Namdev Thakur Vs. State of Maharashtra and Others**² wherein it was held that the benefits, which have already been availed would continue, but the candidate would not be entitled to any further benefits under the caste certificate issued, on the basis of which the petitioner has obtained employment following the judgment of the Supreme Court in **Swati Vs. State of Maharashtra**³.
11. In **Kavita Solunke Vs. State of Maharashtra and Others**⁴, relying on the decision of the Constitution Bench in **Milind** (Supra), it was held that the employees should not be ousted from service and shall be reinstated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained

² (2012) 1 SCC 549

³ Civil Appeal No.7411/2010, order dated 6.9.2010 (SC)

⁴ (2012) 8 SCC 430

before a long period of 10 years.

12. In **R. Unnikrishnan and Another Vs. V.K. Mahanudevan and Others**⁵, the Supreme Court, while dealing with similar matter, followed **Milind, Kavita Solunke**, (Supra), **Sandeep Subhash Parate Vs. State of Maharashtra**⁶, **State of Maharashtra Vs. Sanjay K. Nimje**⁷, to conclude in paragraph-43 thus:-

“**43.** In the result these appeals fail and are, hereby, dismissed. We, however, make it clear that while the benefit granted to the respondent V.K. Mahanudevan as a Scheduled Caste candidate till 30-8-2007 shall remain undisturbed, any advantage in terms of promotion or otherwise which the respondent may have been granted after the said date solely on the basis of his being treated as a Scheduled Caste candidate may if so advised be withdrawn by the competent authority. It is axiomatic that the respondent V.K. Mahanudevan shall not be entitled to claim any benefit in the future as a Scheduled Caste candidate but no benefit admissible to him as an OBC candidate shall be denied. Parties are directed to bear their own costs.”

13. In the case at hand also, there is no evidence of lack of bona fide on the part of the petitioner. He has been found to be not belonging to the Scheduled Caste Category but the appointment has become final. His promotion on the post of UDT was made by treating him as OBC category candidate. Moreover, the DOPT, Government of India, has issued a circular on 29.3.2007 based on which the State of Chhattisgarh has issued a circular on 1.10.2011 for not canceling the appointments of Halba Koshti/Koshti candidates which has become final prior to 28.11.2000.

5 (2014) 4 SCC 434

6 (2006) 7 SCC 501

7 (2007) 14 SCC 481

14. Considering the entire fact situation of the case, since the petitioner is not willing to obtain the benefits of Scheduled Caste category candidate and his appointment on the post of Assistant Teacher has not only become final but subsequently he has been promoted on the post of UDT as OBC candidate, this Court is of the considered opinion that the writ petition deserves to be allowed.
15. Accordingly, the impugned order dated 29.11.2014 (Annexure-P/6) is quashed with an observation that the petitioner shall not be entitled to obtain the benefits of Scheduled Caste Category in future.
16. The Writ Petition is allowed in the above-stated terms.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve