

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2061 of 2009

- Rakesh Kumar Verma S/o Shri Bhaiya Lal Verma,
Aged about 41 years, In-charge Executive Engineer, Public
Works Department, Champa Division Distt. Jangjir Champa (Cg)

---- Petitioner

Versus

1. State Of Chhattisgarh , Through the Secretary, Public Works
Department, Mantralaya, DKS Bhawan, Raipur (CG)
2. State Of C.G. Through The Secretary, General Administration
Department D.K.S. Bhawan, Mantralaya Raipur (CG)
3. The Engineer -In-Chief, Public Works Department Raipur (CG)
4. Chhattisgarh State Schedule Tribe Commission, Through The
Secretary, 61 Jal Vihar Colony, Raipur (CG)
5. Chhattisgarh State High Power Caste Scrutiny Committee,
Through Its Director, Pt. Deen Dayal Upadhyay Nagar Sector-4
Raipur (CG)
6. Shri P.K. Janwade, Engineer -In-Chief Public Works Department
Raipur (CG)

---- Respondent

For Petitioner	Mr. Varun Sharma and Mr. Arvind Dubey, Advocates
For Respondent /State	Mr. Shashank Thakur, Government Advocate
For Respondent No.4	Ms. Pushpa Diwedi, Advocate on behalf of Mr. A.S. Kachhwaha, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/11/2016

1. Heard.

2. Challenge in this petition under Article 226 of the Constitution of India is to the order passed by the High Level Caste Scrutiny Committee (henceforth "the Committee") on 10.11.2008 cancelling the petitioner's caste status certificate and directing the Collector, Sagar (MP) to proceed against the petitioner in accordance with law.
3. The petitioner is presently working as Superintending Engineer (PWD) in the State of Chhattisgarh. On some complaint being made against the petitioner, questioning his caste status, the matter was examined by the Committee, wherein, the petitioner was afforded opportunity of hearing to prove that he belongs to "Korwa" Scheduled Tribe Community. Proceeding further in the matter, the Committee passed the final order holding that in view of the law laid down by the Supreme Court in the matter of ***Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, AIR 1995 SC 1506***, the burden to prove the caste status was on the petitioner, which he failed to discharge by producing all relevant documents including the land document prior to 06.09.1950, when the Presidential order was issued, in which, "Korwa" was included and notified in the list of Scheduled Tribe. The petitioner further failed to produce any proof of the fact that his ancestors belonged and had enjoyed the tribal status of being members of "Korwa" Tribal Community, therefore, he having failed to prove his tribal status, the certificate issued in his favour deserves to be cancelled.
4. It is argued by Mr. Varun Sharma and Mr. Arvind Dubey, learned

counsel for the petitioner, that the petitioner has not been afforded proper opportunity of hearing and the impugned order has no factual or legal foundation, therefore, it deserves to be set-aside.

5. Per contra, Mr. Shashank Thakur, learned Government Advocate for the State, Ms. Pushpa Dwivedi, Advocate on behalf of Mr. A.S. Kachhwaha, learned counsel for respondent No.4 and Mr. Vijay Tondey, learned counsel for the intervener, would defend the impugned order.
6. A reading of the impugned order would indicate that the petitioner obtained a certificate of being a member of "Korwa" Tribal Community from District Organizer, Tribal Welfare Department, Sagar (MP) on 01.03.1984. However, before the Committee, the petitioner did not produce any document, by which, he can demonstrate that he belongs to "Korwa" Tribal Community. After issuance of notice by the Commission, the petitioner submitted his reply, however, subsequently, he did not appear for personal hearing on 25.08.2008, for which, he was granted another opportunity to appear on 22.09.2008, whereon, he appeared but again failed to produce any clinching evidence to prove that as on the date of issuance of Presidential Notification i.e. 06.09.1950, he or his ancestors were members of "Korwa" Tribal Community. It does not appear that while passing the impugned order, the Committee has violated the principles of natural justice nor it is a case of any perverse or incorrect finding by the Committee in respect of petitioner's caste status.

7. At this stage, learned counsel for the petitioner would submit that in view of the law laid down by the Supreme Court in the matter of ***State of Maharashtra Vs. Milind and others, (2001) 1 SCC 4***, the benefit already conferred on the petitioner may not be withdrawn. Reliance is also placed on the order passed by this Court in the matter of ***Chandra Shekhar Kotriwar Vs. State of Chhattisgarh and others and another connected case, 2013 (3) CGLJ 315***, which has been affirmed by the Division Bench in ***WA No.388 of 2013 vide order dated 26.11.2013 and the order dated 12.10.2015*** passed in ***WPS No. 6422 of 2014 (Kanhaiyyalal Bareth Vs. State of Chhattisgarh and others)***.
8. In the matter of ***Kanhaiyyalal Bareth (supra)***, this Court has held thus in para 8 to 12 :

“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 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,

¹ (2001) 1 SCC 4

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 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

2 (2012) 1 SCC 549

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

4 (2012) 8 SCC 430

5 (2014) 4 SCC 434

6 (2006) 7 SCC 501

7 (2007) 14 SCC 481

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."

9. In the case at hand, there is no finding by the Committee that while obtaining the certificate from the office of District Organizer, Tribal Welfare Department, Sagar (MP), the petitioner has played fraud or has otherwise misled the authorities. The Committee has, therefore, not recommended for taking any criminal action against the petitioner.
10. In view of the above, this Court is of the considered opinion that the petitioner is also entitled to retain the benefit, which he has already availed as a member of Scheduled Tribe Community till the time the certificate was operative and was not cancelled by the Committee. However, since after passing of the impugned order, the petitioner shall not be entitled to any further benefit as a Scheduled Tribe candidate either during his service career or elsewhere. The benefit already accrued to him shall not be taken away from the petitioner.
11. The writ petition stands disposed of in the above stated terms.

Sd/-

Judge

(Prashant Kumar Mishra)