

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 495 of 2015**

Smt. Anjali Guna Wife of Yashwant Ram Guna, aged about 48 years,
Occupation Service, Posted as Headmistress, Primary School, Bhandaripara,
Kanker, Tahsil and District Kanker, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, through The Secretary, Department of Scheduled Caste and Scheduled Tribe Welfare, Mantralaya, New Raipur, PS Rakhi, District Raipur, Chhattisgarh.
2. The President, Chhattisgarh State Scheduled Tribe Commission, 61, Jalvihar Colony, Raipur, Chhattisgarh.
3. The Collector, Kanker, District North Bastar Kanker, Chhattisgarh.
4. The Sub Divisional Officer (Revenue) Kanker, District North Bastar, Kanker, Chhattisgarh.
5. The Assistant Commissioner, Tribal Development, Kanker, District North Bastar, Kanker, Chhattisgarh.
6. The Superintendent of Police, District North Bastar, Kanker Chhattisgarh.

---- Respondents

For Appellant : Shri D.N.Prajapati, Advocate.
For Respondent/State : Shri UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.
Judgment on Board

Per Navin Sinha, Chief Justice**05/04/2016**

1. The present appeal arises from order dated 15.9.2015 disposing Writ Petition (C) No. 1651 of 2015 with the option to the Appellant for availing appropriate remedy as may be available if an offence is registered against the Appellant pursuant to the recommendation made by the Chhattisgarh State Scheduled Tribe Commission (hereinafter called 'the Commission').
2. Despite four adjournments granted for the purpose, Learned Counsel for the State regrets that despite repeated requests he has received no instructions. In the limited nature of the controversy involved we are not persuaded to adjourn the matter any further at the request of the State Counsel. Applying the principles of non traverse by way of counter-affidavit, we proceed to dispose the matter on basis of materials on record.

3. Learned Counsel for the Appellant submits that she belongs to the Gond Scheduled Tribe. A caste certificate was issued in his favour on 14.7.1986. In January, 1987, he was appointed as Assistant Teacher in the Scheduled Tribe category. Belatedly, on 11.6.2011 a complaint was submitted before the Commission, general in nature that some persons were claiming to be belonging to Gond Tribe and wrongly taking undue advantage of the reserved status. The Commission did not have jurisdiction to hold enquiry in the matter. Nonetheless it did so and made a recommendation dated 14.8.2015 to the Superintendent of Police, Kanker for lodging a First Information Report *inter alia* naming the Appellant also. The lodging of an FIR against a person is a serious matter. The caste status of the Appellant could only be examined by the Caste Scrutiny Committee in accordance with law. The Commission has no jurisdiction to direct lodging of an FIR. A recommendation also cannot be acted upon without independent application of mind.

4. Learned Counsel for the State submits that the writ petition came to be disposed without a counter affidavit.

5. We have heard Learned Counsel for the parties.

6. In absence of any pleadings in the writ petition that the caste certificate of the Appellant so granted on 14.7.1986 has not been cancelled till date, we are unable to pass any positive orders except for observing that even if the Commission had made a recommendation, it ipso facto cannot be acted upon except in accordance with law by first an independent and proper determination of the caste status in the manner prescribed by the Caste Scrutiny Committee unless of course the caste certificate of the Appellant has itself been cancelled but in accordance with law when matters may be entirely different.

7. The appeal is disposed in the aforesaid terms.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE