

***THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+WRIT PETITION No.5983 OF 2004

% Dated 03.06.2016

Between:

Smt. Janni Ganga

..writ petitioner

And

-

\$ 1. The Govt. of AP

rep. by its Principal Secretary

to Government, Social Welfare

(CV2) Department,

Secretariat,

Hyderabad and another.

.... Respondents

-

! Counsel for the petitioner : Sri M. Kesava Rao

**^ Counsel for respondents : Government Pleader for
Revenue (AP)
Government Pleader for Services-
II (AP)**

< GIST : ---

>HEAD NOTE : ---

-

? Cases referred: :

1. AIR 1995 SC 1506 (1)
2. AIR 2001 SC 393
3. (1994) 6 SCC 241
4. AIR 1958 SC 398
5. (1975) 2 SCC 557
6. AIR 1963 SC 1723
7. (1964) 5 SCR 64
8. AIR 2010 SC 75
9. AIR 2001 SC 393
10. (1996) 3 SCC 545
11. (1998) 9 SC 217
12. AIR 2005 SC 909
13. 2003 (3) ALD 463 (DB)
14. 2003(4) ALD 138
15. AIR 1985 SC 1495
16. (2008) 5 SCC 652

17. (2008) 4 SCC 612

18. 2014 (3) SCJ 144

THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.5983 OF 2004

ORDER:

This petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, setting aside the proceedings in G.O.Ms.No.21 Social Welfare (CV2) Department, dated 28.02.2004 declaring the same as illegal, arbitrary, contrary to the rules, principles of natural justice and to pass consequential orders.

02. The petitioner Smt.Janni Ganga, is the daughter of Sri Janni Gumpa Swamy, who belongs to schedule tribe. In the year 1972 at the age of 10 years, she was admitted in Panchayat Samithi School, Komarada in Vizianagaram District in first class by her father. At that time necessary entries were made in the school records mentioning her caste as '**JATHAPU**' which is a scheduled tribe. By the date of her admission into school, she was only a minor and basing on the information furnished by her father, those entries were made. She prosecuted her studies up to V class in the Panchayat Samithi School and later completed her studies in Z.P. High School, Komarada up to X class and she passed X class in the year 1983. In all the school records, her caste was shown as '**JATHAPU**' which is the scheduled tribe, daughter of Janni Gumpa Swamy. During prosecution of studies, she was a boarder in Tribal Welfare Ashram Girls Hostel, Komarada, enjoyed all the benefits of a student belonging to scheduled tribe. She obtained a community certificate from Mandal Revenue Officer, Komarada on 26.09.1986, who certified that she belongs to scheduled tribe, secured employment in the year 1986 as a Single Teacher in the Integrated Tribal Welfare Development Agency, her name was

sponsored for training in Teacher Training Course by ITDA and after completion of her training, in the year 1988, she joined in employment.

03. While the matter stood thus, in the year 1990 Sub-Collector, Parvathipuram has cancelled her caste/community certificate issued by the Mandal Revenue Officer, Komarada on the complaint of Janni Gumpa Swamy, who is the father of the petitioner, wherein he stated that the petitioner is the daughter of another G.Gumpa Swamy, who belongs to Koppala Velama caste, who managed to substitute the petitioner in the place of Janni Ganga D/o.Janni Gumpa Swamy, who discontinued her studies long back. The reason for such complaint is that the petitioner married one Tangudubilli Satyanarayana who belongs to backward class, against the will of her father. She further contended that her children are enjoying the benefits of backward community obtaining 'BC' caste certificate.

04. Challenging the order passed by the Sub-Collector, Parvathipuram, the petitioner filed W.P.2259 of 1992 which was allowed by this Court on 29.07.1999 setting aside the order of the Sub-Collector on the ground of competency, however permitted to initiate fresh inquiry.

05. Consequent to the order of the Sub-Collector, Parvathipuram, she was terminated from the service by ITDA, Parvathipuram, and the same was questioned before the A.P. Administrative Tribunal in O.A. No.2101/1992, the same was set aside by the Tribunal on 03.02.1999 holding that the ITDA failed to follow the CCA rules. In view of the orders passed by the High Court and Tribunal, she was reinstated by proceedings dated 29.01.2002 by ITDA Parvathipuram, while, placing her under suspension; later, in pursuance of the directions of the High Court in W.P. No.2259 of 1992 dated 29.07.1999, conducted an inquiry by District Level Scrutiny Committee headed by the Joint Collector as Chairman and in the said inquiry, her father Janni Gumpa Swamy appeared and deposed denying the complaint against the petitioner, while stating that the petitioner was not born to him, but he adopted the

petitioner as he had no female child by that time and whereabouts of her natural parents were not known. The petitioner for the first time came to know that she was not born to Janni Gumpa Swamy with whom she was leaving since her childhood. She also appeared before the District Level Scrutiny Committee and testified that she does not know who are her parents till that date and from whom she was brought by Janni Gumpa Swamy, but in all her school records it was recorded that she was the daughter of Janni Gumpa Swamy, and that she never misrepresented any fact before the school authorities, at the time of her employment also she did not make any misrepresentation and she is under bonafide impression that she is the daughter of Janni Gumpa Swamy, but the District Level Scrutiny Committee, unfortunately, concluded that her name was G.Hymavathi and she was substituted in the name of J.Ganga, who discontinued her studies, since the petitioner failed to produce any record in support of her claim.

06. On the basis of the District Level Scrutiny Committee report, the second respondent issued proceedings No.1576/99 C5, dated 13.05.2002 whereby cancelled her caste certificate. Aggrieved by the same she preferred an appeal, but the order of the second respondent was confirmed in the appeal, and issued GOMs.No.21 Social Welfare (CVS) Department, dated 28.02.2004. The action of the respondents passing order in G.O.Ms.No.21 Social Welfare (CVS) Department, dated 28.02.2004 is illegal, highly arbitrary and contrary to the rules and in violation of the principles of natural justice.

07. The specific contention, from the beginning, is that the respondents without appreciation of facts and law declared by the courts, come to such conclusion that her name-G.Hymavathi was substituted in the place of J.Ganga in the school registers and the same is without any basis. She also contended that the copy of the complaint as well as the report of the committee was not furnished to enable to defend her case effectively. Therefore, the order passed by the second

respondent is in violation of principles of natural justice. In fact, the complaint was against Guntreddy Gumpaswamy who is said to be her father, and was not summoned before the committee nor examined. Therefore, GOMs. No.21, Social Welfare (CVS) Department dated 28.02.2004 is illegal and prayed to set aside the same by passing consequential orders.

08. The respondents did not file any counter.

09. During hearing, Sri M.Kesava Rao, learned counsel for the petitioner, did not raise any specific ground to invalidate the order passed by the second respondent canceling her caste certificate, more particularly, pointing out the irregularities in the procedure followed by the District Level Scrutiny Committee or by the second respondent, but contended that she cannot be removed from service after long lapse of time, placing reliance on two Judgments of the Apex Court reported in **DIRECTOR OF TRIBUNAL WELFARE, GOVERNMENT OF ANDHRA PRADESH V. LAVETI GIRI AND ANOTHER**^[1], **STATE OF MAHARASTRA V. MILIND AND OTHERS**^[2] and prayed to permit the petitioner to continue in service till attaining the age of superannuation.

10. Per contra, learned Government Pleader for Revenue (AP) and learned Government Pleader for Services-II (AP) supported the order under challenge in all respects. It is specifically contended that in the absence of violation of any order, rules or statutory provision by the authorities in passing impugned order by the second respondent and G.O.Ms.No.21 Social Welfare (CVS) Department, dated 28.02.2004 passed by the Government, this Court cannot interfere with such administrative orders and prayed to dismiss the writ petition.

11. Considering rival contentions, perusing the material available on record, the point that arise for consideration is,

“Whether the District Level Scrutiny Committee and the respondents followed the prescribed procedure under the

Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules, 1997. If so, whether this Court by exercising the power of judicial review can interfere with such GO MS No.21 Social Welfare (CVS) Department dated 28.02.2004?"

POINT:

12. A bare look at the contents of the affidavit that the petitioner is unaware about her parents but she was living with Janni Gumpa Swamy and she was treated as his daughter from her childhood, admitted in school by Janni Gumpa Swamy mentioning her caste as '**JATHAPU**' which is a scheduled tribe. But the said Janni Gumpa Swamy made a complaint to the respondents that she does not belong to scheduled tribe, obtained Caste/Community certificate as if she belongs to scheduled tribe, though she belongs to Koppelavelama Community, which is a backward class, and after conducting inquiry by the Sub-Collector, Parvathipuram, cancelled her social status certificate (Caste/Community certificate), but the same was set aside by this Court in W.P.No.2259 of 1992 by order dated 29.07.1999 while permitting the respondents to hold inquiry by competent authority.

13. In pursuance of the directions particularly given by this Court, to initiate necessary inquiry, to decide caste or social status of the petitioner, District Level Scrutiny Committee headed by the Joint Collector was taken up the issue and conducted inquiry before whom Janni Gumpa Swamy deposed that the petitioner was adopted by him, as he was not blessed with female child by that time, while denying the complaint and admitted that whereabouts of her natural parents were not known. Thus, according to the evidence of the said Janni Gumpa Swamy, the petitioner was his adopted daughter. The petitioner is unaware about her parents as she was taken into adoption by Janni Gumpa Swamy during her childhood and she was treated as daughter of Janni Gumpa Swamy through out her education and school records disclosed the same. Strangely the petitioner testified before the

Committee that she did not make any misrepresentation either before school authorities at the time of admission or before the Government at the time of securing employment, since she was under the impression that she was the daughter of Janni Gumpa Swamy. But the Committee found that her name was substituted in the school register in the place of J.Ganga, though the petitioner's name is G.Hymavathi, to claim benefits of scheduled tribes including reservation etc. The report of the said Committee is placed on record and the contents of the report shows that Janni Gumpa Swamy belongs to scheduled tribe residing at Sominaidu Valasa Village in Komarada Mandal. He submitted a petition to the Project Officer, ITDA, complaining that the petitioner is the daughter of Guntreddy Gumpaswamy of Gangareguvalasa Village, who belongs to Koppelavelama Community and managed to get his daughter Guntreddy Hymavathi admitted in elementary school, Komarada, in the vacant admission number allotted to Janni Ganga and after completion of X class by producing false social status certificate (caste certificate) as if she belongs to '**JATHAPU**' (Scheduled Tribe) from the Komarada Village secured employment in ITDA. Immediately the complaint was referred to Sub-Collector, Parvathipuram, for necessary action.

14. The Mandal Revenue Officer, Komarada has conducted preliminary inquiry at the village level. During inquiry on 20.09.1988 Sri Janni Gumpuswamy S/o.Kantanna Dora of Sominaidu Valasa Village, appeared and testified that he belongs to Konda Dora community, he was blessed with three sons and one daughter and that he admitted that his daughter Kum.Ganga admitted in elementary school and also in the hostel for one year, but she discontinued her studies on account of the death of his wife, i.e. mother of Ganga, but her name is continued in the school, however, denied the signature on the application being an illiterate, more particularly, deputation of his daughter to any training, therein.

15. The petitioner further testified that Guntreddy Hymavathi is the

third daughter of Guntreddy Gumpa Swamy of Ramabhadrapuram Village and daughter-in-law of Tangudubilli Chaityya of Ramabhadrapuram Village. Unfortunately, the said Janni Gumpa Swamy also testified that the relatives of the petitioner tried to influence Janni Gumpa Swamy, but he did not yield to the influence.

16. During enquiry, one Padala Gumpa Swamy Naidu and one Jagana Simhachalam Naidu and other elders of Gangareguvalasa Village were also examined, in one voice they stated that Janni Gumpa Swamy was blessed with three sons viz., Narayana Rao, Krishna and Chiranjivi and one daughter by name Ganga, W/o. Marri Ram Dasu of Pedakharjala Village and that the petitioner was the daughter of Guntreddy Gumpa Swamy of Ramabhadrapuram Village and that they never heard about adoption of said Hymavathi by Janni Gumpa Swamy. In the process of inquiry the committee obtained the extract of Admission Register of MPP Elementary School, Ramabhadrapuram Village, and the date of birth of the Hyma D/o. Gumpa Swamy was recorded as 12.05.1963, as per admission and withdrawal register of MPP Elementary School, Gangureguvalasa Village the date of birth of the petitioner-Janni Ganga was 01.07.1966 and as per the Admission Register of MPP Elementary School, Komarada, her date of birth was recorded as 19.10.1962. Thus, there is any amount of discrepancy in the date of birth recorded in the school register of Gangureguvalasa and Komarada Villages respectively. In the admission register of MPP elementary school of Komarada, the caste/community of Hymavathi is recorded as Koppelavelama. Thus, initially, in the school register, her social status was mentioned as Koppelavelama which is backward class. Had the petitioner belongs to Jathapu or Konda dora, her caste would have been mentioned as Jathapu or Konda Dora. Thus it is clear from the material on record that the petitioner does not belong to scheduled tribe, she belongs to Koppelavelama community. But the report of Sub-Collector was set aside by this Court in W.P. No.2259 of 1992 vide order dated 25.07.1999, thereupon, a fresh inquiry was held

by the District Level scrutiny Committee in terms of Section 9(1) of the Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules, 1997. In the process of inquiry, the committee issued notice to Smt. Janni Ganga directing her to appear on 18.12.2000, 24.03.2001, 10.04.2001 and 21.05.2001. on 24.03.2001 Smt. Janni Ganga has filed written statement before the District Level scrutiny Committee and deposed on 10.04.2001, specifically stated that she used to live with Janni Gumpa Swamy, she was admitted in school on the information furnished by her father, Janni Gumpa Swamy. She does not know whether she was adopted through a deed and she does not know about the caste elders or community customs of '**JATHAPU**' and recording her caste of '**JATHAPU**' is mere clerical mistake, but she belongs to Konda Dora caste/ community. She married a person belonging to Telukali caste. Janni Gumpa Swamy also appeared before the Scrutiny Committee, but changed his initial stand contending that he adopted Ganga, D/o. Guntreddy Gumpa swamy and Mahalakshmi, who belongs to Koppelavelama community of Gangureguvalasa Village, admitted her in elementary school of Komarada and he used to take care of her. The statement of Janni Gumpa Swamy was not rebutted by producing any evidence by the petitioner, but admitted in her statement dated 25.10.1991 before the Joint Collector that her natural parents were Guntreddy Gumpa swamy and Smt. Mahalakshmi of Gangareguvalasa Village and they used to call her as Hymavathi and she was given in adoption to Janni Gumpa Swamy of Sominaiduvalasa Village, when she was two years old. Thus she was adopted by Janni Gumpa swamy, admitted in school and thus there is any amount of controversy with regard to caste of the petitioner because at one stage, Janni Gumpa swamy admitted that the petitioner was taken in adoption as he was not blessed with female child by the date of adoption and at another stage, he denied the very complaint itself, while admitting admission of the petitioner into elementary school etc.

17. Initially the contention of the petitioner before the Committee was that she was the daughter of Janni Gumpa Swamy and she belongs to **JATHAPU** community which is a Scheduled Tribe, enjoyed all benefits of Scheduled Tribe while prosecuting her studies boarding in tribal welfare hostel and secured employment. But never made any misrepresentation to the authorities concerned in obtaining admission into school, hostel and while securing employment.

18. The Committee, vide Government Memo No.79/SLA & J/RL/C/2001 dated 15.02.2001 and Government Memo No.3149/C1/2000 BC Welfare (C1) Department dated 29.03.2001, issued notice to Janni Ganga, W/o. T.Satyanarayana, calling upon to appear before the District Collector, Vizianagaram on 18.02.2002, through Advocate, she filed written statement, but failed to produce any fresh documentary evidence to prove that she belongs to Scheduled Tribe and after compliance of the procedure submitted a report and on the strength of the same, her caste certificate was cancelled.

19. Even a bare look at the report of the District Level Scrutiny Committee, there is any amount of discrepancy in the stand of the petitioner and initially her stand was that she is the daughter of Janni Gumpa Swamy, later she changed her stand contending that she was taken into adoption by Janni Gumpa Swamy, but her school admission register disclosed otherwise and she changed her date of birth from time to time when she was shifted from one school to other school. Apart from that, her caste was mentioned as Konda Dora and not as **JATHAPU** and she explained that she was mistakenly claiming that she belongs to **JATHAPU** community, which is a scheduled tribe. Therefore, basing on the inconsistent plea of the petitioner, it is difficult to conclude that she belongs to either Konda Dora community or **JATHAPU** community, scheduled tribe.

20. It is evident from the record that the petitioner is uncertain about her caste, she is unable to establish either she belong to

JATHAPU or Konda Dora caste which are scheduled tribe. Similarly she admitted that she was born to Guntreddy Gumpa Swamy and Mahalakshmi (natural parents) but taken into adoption by Janni Gumpa Swamy as he was not blessed with daughter, moreover, the material on record disclosed that Janni Ganga was the daughter of Janni Gumpa Swamy. Therefore, the contention that the petitioner was taken in adoption by Janni Gumpa Swamy is false on the face of record. In such case, the certificate of community is based on spurious caste claim, who does not belong to scheduled tribe and snatched away the benefits of genuine tribal.

21. In **MADHURI PATIL V. COMMISSIONER OF TRIBAL DEVELOPMENT**^[3] while deciding similar issue of spurious caste claims and obtaining of appointments on the basis of false certificate and held that it had the effect of depriving the genuine scheduled castes or scheduled tribes of the benefits conferred on them by the Constitution. It also found that appointment to posts in the States is denied to genuine tribes and that ineligible or spurious candidates who falsely gained entry resorted to dilatory tactics and created hurdles in completion of inquiries by the Scrutiny Committee, regarding their caste status. The Apex Court issued fifteen guidelines for issue of community certificate as step gap arrangements, till passing any legislation for the said purpose. In pursuance of guidelines the State passed the regulations in 1997.

22. The Rules for issue of Community, Nativity and Date of Birth certificate for SC, ST and Backward classes 1997 prescribed procedure for making inquiry, as to the caste. Rule 5 of the said rules deals with procedure for verification on receipt of the application by the Competent Authority or any officer authorized to issue such certificates and the applicant has to furnish complete information contemplated in Form I/II and, then the Competent Authority may further inquire, if necessary and examine school records, birth registers, certificates etc. While

conducting enquiry, the Scrutiny Committee has to verify genuineness or otherwise of the information furnished to it or recorded by it from such persons who have given evidence, both oral and documentary and consider the objections raised by any person during the enquiry by following due process of law. It is not the case of the petitioner that officers of committee violated Rule 5.

23. When the petitioner claiming that she belongs to scheduled tribe, the burden of proof is on the applicant and it is the responsibility of the applicant to produce necessary evidence/ documents while applying in Form I/II to the Competent Authority and Review Committee at the State Level/ District Collector/ Scrutiny Committees at the District Level/ Government, from time to time, while enquiring into the claims for the issue of Community, Nativity and Date of Birth.

24. Thus, it is clear from Rule 6 that the burden heavily lies upon the petitioner to produce evidence in support of her contention. Here, the petitioner herself admitted in the writ affidavit in paragraph 7 that she came to know for the first time that she was born to Janni Gumpa Swamy with whom she was living and she does not know who are her parents, but from the childhood she is living with Janni Gumpu Swamy as a member of his family and she was brought up. Thus, it is evident from paragraph 7 of the affidavit she is not aware about her natural parents, but she was brought up by Janni Gumpa Swamy and admitted in school etc., who belongs to scheduled tribe. On the other hand there is any amount of discrepancy in the school admission register regarding her date of birth and caste. Strangely when she gave statement before the District Collector that she was the daughter of Guntreddi Gumpa swamy and Mahalakshmi, but she was adopted by Janni Gumpa swamy. Thus she is changing her version from time to time to suit her case to claim the benefits of scheduled tribe.

25. Rule 8 of the Rules referred above deals with Scrutiny Committee (District Level) and members of it, procedure to be followed.

In the entire affidavit filed along with the writ petition, the petitioner did not complain violation of any statutory procedure under the Act or Rules except questioning the findings recorded by the committee. Therefore, in the absence of violation of any statutory rule or provision, the findings arrived by the Committee cannot be interfered, since, the power of judicial review under Article 226 in the Administrative Orders is limited as held by the Apex Court in **NAGENDRANATH BORA AND ANOTHER VS. THE COMMISSIONER OF HILLS DIVISION AND APPEALS, ASSAM AND OTHERS**^[4]. Similarly when the Administrative Order is irrational and not in accordance with law, such order can be interfered by the Court while exercising the power of judicial review under Article 226 of the constitution of India.

26. In **STATE OF A.P. V. CHITRA VENKATA RAO**^[5] the Apex Court considered the scope of judicial review in dealing with the departmental inquiries and held that the scope of Article 226 in dealing with departmental inquiry has come up before this court. Two propositions were laid down by this Court in **STATE OF ANDHRA PRADESH V. S. SREE RAMA RAO**^[6]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him. The rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal of Inquiry, the High Court in a petition under Article-226 of the Constitution is not competent to declare the order of the authorities holding a departmental inquiry as invalid. The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities

entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The same principle can be applied even to the administrative orders.

27. The jurisdiction to issue a writ of certiorari under [Article 226](#) is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not to be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of facts however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be

drawn from the said finding are within the exclusive jurisdiction of the Tribunal as held by the Apex Court in **SYED YAKOOB V. K.S. RADHAKRISHNAN**^[7]

28. Thus the principle laid down in the above Judgment relates to the order passed by Tribunals and inquiry authorities and the same principle can be applied to the present facts of the case and in Halsbury's Laws of England, Reissue, Volume 1(1), pages 144 and 145, Para 78, stated as follows:

"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."

29. In **CHAIRMAN-CUM-MANAGING DIRECTOR, COAL INDIA LIMITED AND ANOTHER VS. MUKUL KUMAR CHOUDHURI AND OTHERS**^[8], the Apex Court further held as follows in Para 21:

"21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".

30. In view of Law declared by the Apex Court, if the courts find that the administrative action is irrational, it is always subject to judicial review. If there is illegality or irrationality, in view of the principles

referred above, the power of the court to interfere with the administrative decisions is limited.

31. Learned counsel for the petitioner, during arguments, did not point out any irrationality or illegality, or any violation of any statutory rules or provisions, warranting interference of this Court. Therefore, in the absence of any irrationality or illegality or violation of principles of natural justice or statutory Rule this court while exercising the power of judicial review cannot interfere with the administrative order under challenge in this writ petition.

32. Rule 9 deals with fraudulent claims and procedure to be followed and the learned counsel for the petitioner did not point out non compliance of any of the provisions of the Act. In the absence of any violation of statutory rules and provisions, the fact finding arrived by the respondents that the petitioner does not belong to scheduled tribe cannot be found fault. Hence, it is difficult for me to interfere with the fact finding recorded by the respondents in cancellation of caste or social status certificate of the petitioner.

33. Learned counsel for the petitioner, at last, made an attempt to convince this court that she cannot be deprived of her employment at the fag end of her service placing reliance on a Judgment of the Apex Court in **LAVETI GIRI AND ANOTHER¹** at paragraph 8 of the Judgment the Apex Court issued the following directions.

“8. By orders of the High Court the respondent had already completed his engineering course, though he played fraud on the Constitution depriving the real tribe of the benefit of the education as an engineer. He was minor at the relevant time. So nothing can be done except declaring that he is not a tribe and that he is not entitled to any employment or any other advantage on the basis of his false status as Scheduled Tribe, namely, Kondakapu. His father did not appear before the Director and he is not before this Court to direct the Govt. to lay prosecution. Accordingly, the appeal is allowed with costs quantified at Rs.25,000/- to defray the amount spent on the respondent.”

34. In **STATE OF MAHARASHTRA V. MILIND AND OTHERS**^[9]

at paragraph 37 the Apex Court held as follows:

"37. Respondent No.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 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 No.1. If any action is taken against respondent No.1, it may lead 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, including interim orders passed by this Court in SLP (C) No.16372/85 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this Judgment."

35. In both the above Judgments, the candidates prosecuted their studies both in engineering and medical respectively on the basis of their false social status certificate, but the courts consistently held that the candidates, who joined in engineering and medical, are not entitled to claim any benefits as scheduled tribe and their degrees cannot be cancelled. Such principle has no application to the present facts since the petitioner secured employment as a teacher on the basis of false claim. However, the claim of the petitioner in the writ petition is only to set aside the Government Order.

36. It is the case of the petitioner at one stage that she was the daughter of Guntreddy Gumpa Swamy and at another stage Janni Gumpa Swamy and the petitioner stated before the Committee and

Collector that the petitioner was taken into adoption during her childhood. In such case though she was transplanted by adoption, by virtue of adoption, she is not entitled to claim benefits as scheduled tribe.

37. When a member is transplanted into SC, ST or OBC's, he/ she must also, of necessity, have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle him/ her to avail the facility of reservation. Therefore, a candidate for a post who had advantageous start in life, being born in Forward Caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Art.15(4) or 16(4), as the case may be. Acquisition of status of Scheduled Caste etc., by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) as held in **VALASAMMA PAUL v. COCHIN UNIVERSITY**^[10] so also in **STATE OF TRIPURA v. NAMITA MAJUMDAR**^[11], **SANDHYA THAKUR v. VIMBA DEVI KUSHWAH**^[12].

38. The principle laid down in the above Judgment is straight away applicable to the present facts of the case. Even the alleged adoption of Janni Ganga is accepted and by virtue of adoption, the petitioner adopted by Janni Gumpa swamy, she is not entitled to claim benefits of reservation either under Articles 15(4) or 16(4) of the Constitution.

39. A similar question came up before this Court reported in **DEPUTY GENERAL MANAGER, CANARA BANK, CIRCLE OFFICE, HYDERABAD AND ANOTHER v. A. RAMA RAO**^[13] wherein this court held that when a bank employment was secured by filing false certificates that he belongs to scheduled tribe, such person is not

entitled to claim any relief in the writ petition.

40. In **DUKKU LABUDU BARIKI V. SOBHA HYMAVATHI DEVI AND OTHERS**^[14] question came up before this Court was that whether the respondent is entitled to claim reservation under Articles 15(4), 16(4) and 330 of Constitution, when she married her mother's brother who belongs to Bhagata caste, and this Court held that respondent can claim a right of reservation as a Scheduled Tribe woman on the basis of her marriage with Appala Raju only when she is able to establish that she has suffered all the handicaps, disadvantages and restrictions of a Scheduled Tribe woman and had been recognized as a Scheduled Tribe woman by the society. So it has to be seen if the evidence on record establishes that first respondent suffered the handicaps, disadvantages of a Scheduled Tribe and was recognized as a member of Scheduled Tribe by the society in which she lived, she is entitled to claim benefits of Tribes.

41. Similarly in **K.C. VASANTH KUMAR AND ANOTHER, V. STATE OF KARNATAKA**^[15] the Apex Court issued certain guidelines for continuation of reservation to scheduled tribes. But guidelines laid down in the above Judgment have no application to the present issue in controversy.

42. In **YOGESH RAMCHANDRA NAIKWADI V. STATE OF MAHARASHTRA AND OTHERS**^[16] the question of admission based on reservation by securing invalid caste/ tribe certificate and Degree obtained on the basis of such invalid certificate was came up for consideration and the Apex Court by following the principle in **MILIND** case referred supra held that,

“the appellant's admission or degree is to be annulled, it is to nobody's benefit as his seat cannot be offered to someone else. There is also no allegation that the appellant forged or faked the caste certificate. His admission to engineering course was nearly thirteen years back and he secured the degree more than four years back. Therefore, we are of the

view that the appellant herein should be permitted to retain the benefit of the degree but subject to terms. The first is that he shall not claim or seek any further benefit by claiming to belong to a Scheduled Tribe. The second is that if the State has spent or incurred any expenditure on the appellant's professional degree education by extending the benefit of exemption from payment of fee or award of scholarship or by extending the benefit of concession in fee (that is less than what is charged to general category students) by treating him as a Scheduled Tribe candidate, the appellant cannot retain such financial benefits. The third respondent may, on behalf of the State Government, take appropriate steps to enquire and assess the amount, if any spent on the appellant either towards fee, scholarship or by way of concession in fee and make a demand on the appellant for payment thereof. If the appellant fails to pay the amount so found due within six months of the demand by the third respondent, the third respondent may take steps for recalling the degree granted to the appellant. If no amount is found to be due or if the amount determined and demanded is paid by the appellant, he may be permitted to retain the degree obtained by him."

43. In the above decision the Apex Court, further widened the scope of recovery of amount spent on the person who obtained a degree by false claim that he belongs to scheduled tribe.

44. In **UNION OF INDIA V. DATTATRAY S/O.NAMDEO MENDHEKAR AND OTHERS**^[17] the question of appointment and its cancellation on the ground of production of fake caste or tribe certificate came up for consideration and the Apex Court held that when a person secures employment by making a false claim regarding caste/tribe, he deprives a legitimate candidate belonging to scheduled caste/tribe, of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of the false certificate so that the post may be filled up by a candidate who is entitled to the benefit of reservation.

45. Therefore, the principle laid down in **MILIND** case cannot be applied to wrongful appointment since such appointment is based on invalid certificate or false certificate, would deprive genuine tribal from

enjoying the benefit of the reservation provided in the Constitution.

46. Similarly in **SHALINI V. NEW ENGLISH HIGH SCHOOL ASSOCIATION AND OTHERS**^[18] the Apex Court considered the justifiability of termination from services of the petitioner on the ground that she secured employment by producing false caste certificate and the facts in the above Judgment are that Scrutiny Committee after a passage of several decades, found her disentitled to claim the benefits ensuring to Halbas, but she was in service on 06.11.1981 on the strength of her claim of consanguinity to 'Halba Scheduled Tribe' duly predicted on a Certificate dated 8.7.1974 issued by the Competent Authority. Avowedly she was appointed in a vacancy earmarked against the Scheduled Tribe category. She was confirmed as Assistant Teacher with effect from 1.1.1984. Respondents 1 and 2, by order dated 17.9.1989, appointed the Appellant as Assistant Head Mistress. Thereafter on 28.4.1994 she was promoted as Head Mistress by an order of even date, subject to production of Caste Validity Certificate. It is not clear when the certificate produced by the Appellant was referred to the Caste Scrutiny Committee, Nagpur for verification, but the said Committee by Order dated 20.8.2003 held it to be invalid. The learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench granted protection in service on the basis of Government Resolution dated 15.6.1995 by his order dated 2.9.2003 in Writ Petition No.3500 of 2003. The litigation was protracted for sufficiently long time and she filed another writ petition in which the learned Single Judge set aside the reinstatement order passed by the School Tribunal, Nagpur which came to be affirmed by the Division Bench. The impugned order is challenged in the Apex Court since she secured employment based on the false certificate and such direction cannot be extended to the appointment, wherein the Apex Court held as follows:

“Having come to that conclusion, the Division Bench did not think it necessary to consider the plethora of precedents, albeit of Two-Judge Benches where protection

had in fact been granted. Be that as it may, we think that since there was no falsity in the claim of the Appellant and therefore that she cannot be viewed as having filed a 'false' Caste Certificate, the rigours of Section 10 of the 2000 Act would not apply to her case. A perusal of the Order of the Scheduled Tribe Caste Certificate Committee, Nagpur shows that the Committee was satisfied that her claim to the caste of 'Gadwal Koshti' was correct but she did not belong to 'Halba' Scheduled Tribe. Government Resolution dated 15.6.1995 specifically declares that the following were basically backward in social, economic and educational viewpoint and were therefore "special backward class". Accordingly, reinstatement of the appellant in service was directed, but without any back wages. With the passage of time it is possible that there may be another incumbent as Head Mistress of the respondent No.1-school and it would not be equitable to remove such person. However, if this post falls vacant before the Appellant reaches the age of retirement or superannuation she shall be re-appointed to that post but with no further promotion as a Scheduled Tribe candidate unless she is otherwise entitled as a special backward class candidate. The Apex Court based on the principle laid down in **R.VISHWANATHA PILLAI v. STATE OF KERALA** {(2004)2 SCC 105} concluded that the appellant therein is to be reinstated based on the resolution of the Government, State of Maharashtra.

47. But no such resolution passed by the Government of Andhra Pradesh is brought to my notice to apply the same principle to the case of the petitioner.

48. However, in the earlier Judgment in **DATTATRAY** case is by a larger Bench consisting of three Judges, but, whereas the Judgment in **NEW ENGLISH HIGH SCHOOL ASSOCIATION AND OTHERS** is by two Judges. Therefore in view of the larger Bench Judgment, it is difficult to accept the contention of the petitioner.

49. Viewed from any angle, the question before this court is only illegality of the G.O.Ms.No.21 Social Welfare (CV2) Department, dated 28.02.2004. Therefore, this court need not examine the reinstatement of the petitioner revoking her suspension, but in view of the request made by the learned counsel for the petitioner, to protect her services, this

court is compelled to discuss about the scope of securing employment by false caste certificate.

50. In view of my discussion, the petitioner miserably failed to establish the alleged violation of statutory rule or provision in administrative order passed by the Government in G.O.Ms.No.21 Social Welfare (CV2) Department, dated 28.02.2004, but a fact finding recorded by this court was based in view of the principles referred above cannot be interfered with. In the absence of any violation of statutory rules or provisions, the Court cannot exercise power of judicial review in the administrative order. However when the order is irrational or illegal, the court may interfere with the order, but no such illegality or irrationality is brought to my notice in the report of District Level Scrutiny Committee in passing the alleged Government Order and therefore, I find no grounds warranting interference of this court by exercising the power of judicial review under Article 226 of the Constitution of India with the order in G.O.Ms.No.21 Social Welfare (CV2) Department, dated 28.02.2004 passed by the Government. It is made clear that, incidentally, law declared by the Apex Court regarding reinstatement of the petitioner after revoking suspension is only an incidental observation. It will have no effect on the order passed by the Government.

51. Therefore, the writ petition is deserves to be dismissed. Accordingly the point is answered.

52. In the result the writ petition is dismissed but without costs.

53. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

03-06-2016
BV

Note: LR copy to be marked.

Yes/No

[1] AIR 1995 SC 1506(1)

[2] AIR 2001 SC 393

[3] (1994) 6 SCC 241

[4] AIR 1958 SC 398

[5] (1975) 2 SCC 557

[6] AIR 1963 SC 1723

[7] (1964) 5 SCR 64

[8] AIR 2010 SC 75

[9] AIR 2001 SC 393

[10] (1996) 3 SCC 545

[11] (1998) 9 SCC 217

[12] AIR 2005 SC 909

[13] 2003(3) ALD 463 (DB)

[14] 2003(4) ALD 138

[15] AIR 1985 SC 1495

[16] (2008) 5 SCC 652

[17] (2008) 4 SCC 612

[18] 2014(3) SCJ 144