

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14822 of 2008

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Ashok Kumar, Son of Late Sita Ram, resident of Kumarpur Katahara, P.S.
Sultanganj, District Bhagalpur

.... Petitioner

Versus

1. The Union of India through the Chairman & Managing Director, National Thermal Power Corporation Ltd, Lodi Road, New Delhi.
2. The G. M. cum Disciplinary Authority, National Thermal Power Corporation Ltd., Kahalgaon Super Thermal Power Project, Kahalgaon, Bhagalpur, District Bhagalpur.
3. The State of Bihar through the Principal Secretary, Personnel and Administrative Reforms Department, Government of Bihar.
4. The District Magistrate, Bhagalpur, District Bhagalpur

.... Respondents

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Appearance :

For the Petitioner	: Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate
For Respondent-NTPC	: Mr. Anil Kumar Sinha Mr. Ashish Sinha, Mr. Akash Keshav, Advocates
For the State	: Mr. M.N.H. Khan, SC 1 Mrs. Babita Kumari, AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-08-2017

The prayers in the writ petition and in I.A. No. 1217 of 2017
are as follows --

“(i) To quash the order of dismissal of service dated 02.06.2007 passed by the respondent no. 2 (as contained in Annexure-2 to the writ petition);

(ii) To grant any other relief or reliefs for which the petitioner is entitled for;

(iii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 09.01.2009 passed by Regional ED (E-1), NTPC, and Appellate Authority whereby the penalty of dismissal from the service imposed to the petitioner vide order



dated 02.06.2007 has been approved by the Appellate Authority without considering the fact that the memorandum dated 01.03.2007 by which the service of the petitioner has been cancelled is a nullity in the eyes of law and the District Magistrate lacks the jurisdiction of issuing such orders and also the petitioner belongs to a scheduled caste (Dushad) and not 'Kanu' and has not violated or given false information at the time of his appointment;

(iv) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 01.03.2007 issued under the signature of District Magistrate Bhagalpur whereunder the caste certificate issued to the petitioner has been cancelled by the District Magistrate in violation of the conditions laid down by the Hon'ble Apex Court and accordingly the order dated 01.03.2007 is nullity in the eyes of law as no opportunity or show cause has been issued to the petitioner before cancelling his caste certificate nor even a Three-Man Committee has been constituted as per the direction of the Hon'ble Apex Court."

2. The short facts of the case according to the petitioner are that he was working on the post of Operator, Grade III (O&M) and Employee No. 090701, National Thermal Power Corporation Limited, (for short, 'the Corporation') Kahalgaon Unit since 04.07.1992 and served for more than 15 years as an efficient employee. The caste certificate of the petitioner showing him to be of 'Dusadh' caste was investigated and verified and he was found to belong to 'Kanu' caste



not recognized as scheduled caste category and hence, the petitioner was dismissed from service by the impugned order dated 02.06.2007 passed by the General Manager and the Disciplinary Authority and an appeal against the said order remained unsuccessful and was rejected in terms of the impugned order dated 09.01.2009 (Annexure-5 to the interlocutory application).

3. Learned senior counsel for the petitioner submits that the order of dismissal as well as the appellate order are wholly illegal and unsustainable in law and so also, the order of the District Magistrate, Bhagalpur dated 01.03.2007 by which the caste certificate issued to the petitioner has been cancelled. It is submitted that the District Magistrate was not the competent authority to cancel the caste certificate of the petitioner in view of the authoritative decision of the Apex Court reported in (1994) 6 SCC 241 (*Kumari Madhuri Patil and anr. vs. Additional Commissioner, Tribal Development & others*), apart from the fact that such cancellation of caste certificate was done without grant of opportunity of hearing to the petitioner. It is further submitted that the petitioner has been dismissed on the basis of reports of the different authorities to the effect that he belonged to 'Kanu' caste and not to 'Dusadh' caste but however, without considering the Notification No. 99 dated 03.03.1978 of the Personnel and Administrative Reforms Department, Government of Bihar by dint of which he was entitled to claim the benefit of scheduled caste. The



Appellate Authority has noticed the submission of the petitioner in this regard but has however not applied his mind to this aspect and has rejected the appeal without any finding in this regard.

4. Learned counsel for the respondent-Corporation submits that the petitioner has rightly been dismissed as he belonged to 'Kanu' caste and he had given false information regarding his caste at the time of his appointment. The order of dismissal was based on the reports of the various authorities such as Panchayat Supervisor, Sultanganj; Circle Officer, Sultanganj; Sub-Divisional Officer, Sadar Bhagalpur and the District Magistrate, Bhagalpur to the effect that the petitioner belonged to 'Kanu' caste for which he is not entitled to claim the benefits available to the scheduled caste category.

5. None appeared on behalf of the State yesterday despite repeated calls but today learned Standing Counsel has appeared after dictation of the judgment has commenced. Despite time having been granted to learned Standing Counsel vide order dated 18.04.2017, no detailed counter affidavit has been filed.

6. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds considerable force in the submissions of the learned counsel for the petitioner.

7. As regards cancellation of the caste certificate by the District Magistrate, Bhagalpur, the same is not in accordance with law



in view of 15 guidelines enumerated in paragraph 13 of the judgment in *Kumari Madhuri Patil and anr. vs. Additional Commissioner, Tribal Development & others* (supra), (1994) 6 SCC 241 relied upon by the petitioner. The relevant guidelines in para 13 of the said judgment are being extracted hereunder for ready reference –

“3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social



status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it would be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the



admission/ appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.”

8. It may be relevant to note here that subsequently some modification was made in the constitution of the Committee referred to above as reported in (1997) 5 SCC 437 (*Kumari Madhuri Patil and anr. Vs. Additional Commissioner, Tribal Development & others*).

9. In the above view of the matter, it becomes apparent that the District Magistrate was not the competent authority to cancel the caste certificate of the petitioner rather it was the Scrutiny Committee constituted by the State Government which was empowered to do so. In these circumstances, the order passed by the District Magistrate, Bhagalpur dated 01.03.2007 (Annexure-6) is hereby set aside. It shall be open to the respondent-Corporation or the District Magistrate to approach the Scrutiny Committee for consideration of the caste certificate of the petitioner and cancellation thereof. It may be noted here that such Scrutiny Committee has been constituted by the State Government as evident from perusal of paragraph 11 of the judgment of this Court reported in 2014 (3) BBCJ 631 (*Farzana Sabaff vs. The State of Bihar & Ors.*).

10. As regards the contention of the petitioner for claiming to be of 'Dusadh' caste and hence eligible for the benefits available to the scheduled caste category, the petitioner has relied upon the



Government's notification dated 03.03.1978, the relevant part whereof is extracted hereunder --

“fo'k; % lo.kZ fgUnq firk vkSj vuqlwfpr tkfr dh ekrk ls mRiUu lUrku dh tkfr dk fu/kkZj.kA
mi;qZDr fo'k; ds lEcU/k esa dguk gS fd lo.kZ fgUnw firk vkSj vuqlwfpr tkfr dh ekrk ls mRiUu lUrku dh tkfr ds fu/kkZj.k ds iz”u ij fopkjksijkUr ;g fu.kZ; fy;k x;k gS fd oSls firk vkSj ekrk ls mRiUu lUrku dks vuqlwfpr tkfr dh Js.kh esa “kqHkkj fd;k tk;sxA”

11. The said notification clearly has a bearing on the claim of the petitioner and the same ought to have been considered by the authorities. As a matter of fact, this issue was specifically raised by the petitioner in his memorandum of appeal and has even been noticed by the appellate authority only to be ignored and the appeal has been rejected without any discussion or finding on this issue. In such circumstances, the appellate order cannot be held to be a speaking order and thus incapable of being sustained. Similarly, the order of punishment dated 02.06.2007 has been passed on the basis of report of the enquiry authority dated 30.07.1999 which in turn was based on the report of the Collector Bhagalpur stating that the petitioner belonged to 'Kanu' caste, all of whom have however failed to take note of the notification dated 03.03.1978.

12. Apart from this, the order dated 01.03.2007 (Annexure-6) passed by the District Magistrate, Bhagalpur cancelling the petitioner's caste certificate has already been set aside hereinabove and hence the



same stands restored as of now, according to which he belongs to the 'Dusadh' caste and hence entitled for the benefits available to the Scheduled caste category.

13. In such circumstances, the order of dismissal dated 02.06.2007 (Annexure-2) as well as the appellate order dated 09.01.2009 (Annexure-5) are hereby quashed with the direction that the petitioner shall be reinstated in service forthwith.

14. At this stage learned counsel for the petitioner makes an oral prayer for a direction to the respondents for granting back wages and all consequential benefits. It is noted that no such prayer has been made in the writ petition, nor any averment has been made with regard to whether or not the petitioner had earned any income during the period of his dismissal. In this view of the matter, this Court refrains from giving any direction in this regard but grants liberty to the petitioner to claim such benefits by filing an appropriate representation before the respondents for consideration and disposal in accordance with law.

15. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	05.09.2017
Transmission Date	N.A.



