

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 768 of 2016**

Order Reserved On : 09/02/2017

Order Passed On : 09/05/2017

- Ku. Yogita D/o Chhotelal, Aged About 24 Years R/o Jamul, Bhilai, Tahsil And District Durg Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Revenue, Mahandi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Sub Divisional Officer, Revenue, Durg, District Durg Chhattisgarh
3. Additional Tahsildar, Sub Tahsil Bhilai, District Durg Chhattisgarh

---- Respondent

For Petitioner : Shri H.R. Yadav, Advocate.

For Respondents/State : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. The petitioner would assail the legality and validity of the order passed by the Sub Divisional Officer (Revenue) Durg, on 18.1.2016 (Annexure-P/1) affirming the order passed by the Tehsildar, Durg whereby her application for grant of Caste Status Certificate has been rejected on the ground that the petitioner's forefather being a resident of District Balaghat (M.P.), Tehsildar, Durg is not competent to issue such

certificate.

2. Referring to the various circulars of the State Government and the order passed by the High Level Caste Scrutiny Committee, Chhattisgarh in the matter of one Harshwardhan Chourase, the petitioner's counsel would submit that her father having migrated to the State of Chhattisgarh in 1982, her application was maintainable before Tehsildar, Durg. It is argued that for want of certificate, the petitioner is not able to obtain the benefit of reservation as SC candidate, therefore, the petitioner is put to irreparable harm by the act of the respondents.
3. Admittedly, the petitioner's father was not a Government servant. He was resident of village Athari, Post Khairlanji, Tehsil and District Balaghat (MP). He migrated to Durg in the year 1982 on his own and not by way of transfer being a Central Government Employee or on allocation to the present State of Chhattisgarh at the time of creation of the new State on 1.11.2000.
4. In the background of above admitted facts, the authorities have applied the instructions in the Government of India (GOI) Notification dated 22.3.1977 to hold that the petitioner should move application before the competent authority of Balaghat where the family resided on the date of issuance of Presidential notification i.e. on 10.8.1959.
5. In the matters of **Marri Chandra Shekhar Rao Vs. Dean, Seth G.S.**

Medical College and Others¹ and Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India and Another², the Constitution Benches of the Supreme Court have held that in view of the GOI notification dated 22.3.1977, a SC/ST person who migrates from the State of his origin to another State in search of employment or for educational purpose or the like, cannot be treated as person belonging to SC/ST of the State to which he migrates and hence he cannot claim the benefit as such in the latter State. Repelling the challenge to this GOI notification, the Supreme Court (In Action Committee) held thus in para-16:-

“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State “for the purposes of this Constitution”. This is an aspect which has to be kept in

1 (1990) 3 SCC 130

2 (1994) 5 SCC 244

mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....”

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.”

6. In the latter decision in the matter of **Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and Another**³, the Supreme Court has issued directions to streamline the procedure for grant of Caste Status Certificate. Guidelines in Point No.2 of para-6 read thus:-

³ AIR 1995 SC 1506

“2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts of groups of tribes or tribal communities, **the place from which he originally hails from** and other particulars as may be prescribed by the Directorate concerned.”

7. It is thus the mandate of law that the application for issuance of Caste Status Certificate is required to be moved before the competent authority of the place from where a candidate originally hails which necessarily means the place to which the candidate's family belong on the date of issuance of Presidential Notification which in the present case is 10.8.1959. The petitioner should thus move application for issuance of Caste Status Certificate before the competent authority at Balaghat and not in District Durg which has no jurisdiction to issue Caste Status Certificate in favour of the petitioner.
8. For the foregoing, the Writ Petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

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