**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (S) No. 3277 of 2016**

Nikhil Kumar Sushmakar S/o Late Shri Raman Lal Sushmakar, aged about 36 years, R/o Shanti Nagar, Ward No 10, Rajnandgaon, District Raipur (C.G.)

**... Petitioner**

**Versus**

**1.** State of Chhattisgarh, through the Principal Secretary, Law and Legislative Affairs Ministry, Mahanadi Bhawan, New Raipur District Raipur (C.G.)
**2.** Chhattisgarh Public Service Commission, Through Controller of Exam, Shankar Nagar Raipur, District Raipur (C.G.)

**... Respondents**

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| For Petitioner | : | Mr. Anup Majumdar, Advocate. |
| For Respondent No.1 | : | Mr. S.P. Kale, Dy. Advocate General. |
| For Respondent No.2 | : | Mr. Sudeep Agrawal, Advocate. |

**Hon'ble Shri Justice P.Sam Koshy**

**C A V ORDER**

**Reserved on : 07.02.2017**

**Delivered on : 01.03.2017**

**1.** The points of issue involved in the instant case are:

(1) Whether the order of appointment can be issued in favour of the Petitioner pending the verification of his social status before the High Level Caste Scrutiny Committee?

(2) Whether the Petitioner is entitled for being appointed as a general candidate in absence of a duly verified social status certificate on account of the Petitioner qualifying in merit though he has filed is application as a reserve candidate?

**2.** The brief facts relevant for the adjudication of the present dispute are, that an advertisement was published for filling up of the post of Civil Judge, Class-II (Entry Level) on 22.2.2014. The total post advertised was 53 out of which, post under Unreserved Category was 17. The Petitioner in the instant case claims to be a candidate belonging to Scheduled Caste category. The final select list was published on 23.3.2015, and the Petitioner came out in merit and his position in the order of merit was 10th. He was considered for

the post under Unreserved Category by virtue of his coming in the 10th rank in merit.

**3.** Respondent No.1 vide order dated 5.5.2015 (Annexure P-3) issued a letter to the Petitioner intimating him about his selection for the post and asked him to report for verification of the documents along with originals of the complete educational qualifications, Domicile Certificate, Caste Certificate from the High Level Caste Scrutiny Committee etc. The Petitioner in support of his being candidate of the Scheduled Caste category had submitted caste certificate issued in his favour from the Sub Divisional Officer, Rajnandgaon issued in the year 2007-08, the original of which also is said to have been submitted before the authorities concerned. Meanwhile the Petitioner is said to have moved for verification of the social status before the High Level Caste Scrutiny Committee, which is still in process for investigation/verification, therefore, the Petitioner has not been issued with an order of appointment. That, vide Annexure P-4, dated 7.4.2016, the High Level Caste Scrutiny Committee issued a letter to the Petitioner for submitting documents, which would show that his ancestors were residents of the State of Chhattisgarh prior to 10.8.1950.

**4.** Learned Counsel for the Petitioner at this juncture submits that first of all the necessity of the Petitioner to get the Caste Certificate issued from the High Level Caste Scrutiny Committee itself is bad in law. He further submits that now since the Petitioner has been qualified in merit and has been shown to have been selected against the unreserved vacancy, he may be issued with an order of appointment subject to the verification of the Caste Certificate. It was also contended by the Counsel for the Petitioner that even

if the High Level Caste Scrutiny Committee finds the Petitioner not belonging to the category of which he has claimed to be a member, even then since the Petitioner is a meritorious candidate selected against the unreserved vacancy, his appointment as unreserved category cannot be denied to him.

**5.** Counsel for the Petitioner at the first instance submits that the State Government on 24.9.2013 has issued guidelines in respect of the issuance and cancellation of the Scheduled Castes, Scheduled Tribes and Other Backward Community certificate to the candidates belonging to the respective categories. That, Clause 19.2.2 makes it very clear that the said verification before issuance of the order of the appointment is not required and that the verification would be done only in the event of a complaint being made against the said candidate or the certificate of the said candidate or in the event of doubt being created in the mind of the respondent authorities on the certificate submitted.

**6.** According to the Counsel for the Petitioner, he has duly obtained Caste Certificate from the office of the Sub Divisional Officer, Rajnandgaon, almost 10 years back and there is no doubt or complaint, on the basis of which it can be said that the said document is a fake or fabricated document, neither has the Respondents received any sort of complaint in respect of the said certificate. In absence of which, applying the aforementioned guideline, i.e., guideline No. 19.2.2, the Petitioner should have been granted order of appointment and rest of the verification and other aspects should have been done in due course of time. According to the Counsel for the Petitioner, denial of appointment to the Petitioner only on this backdrop, is violation of Articles 14, 16 and 21 of the Constitution of India.

**7.** It was secondly argued by the Counsel for the Petitioner that, indisputably the Petitioner in the instant case has been selected on merits and his selection has been done in unreserved category. If for any reason the High Level Caste Scrutiny Committee does not find the Petitioner to have established his caste, the natural consequence would be that the Petitioner would not be accepted as a reserved category candidate but that does not mean the Petitioner would be denied being considered as a general category candidate, for the reason that in absence of duly verified Caste Scrutiny Certificate from the High Level Caste Scrutiny Committee for all practical purposes status of the Petitioner would be that of a general candidate. Therefore, his claim for issuance of order of appointment as general candidate could not and cannot be withheld by the Respondents and withholding of the same for this reason alone is totally unconstitutional, illegal and bad in law and thus he prays for appropriate direction to the Respondents in this regard.

**8.** Counsel for the State as well as the Counsel for the Chhattisgarh Public Service Commission both opposing the petition, submits that the Petitioner in the instant case has applied as a reserved category candidate and therefore his claim of being a reserved category candidate requires to be verified from the Caste Scrutiny Committee constituted by the State Government in this regard. In the absence of which, the Petitioner cannot claim relief of being appointed in the post for which he has applied and selected. The Respondents drew the attention of this Court towards an order dated 13.5.2015 in respect of the candidates who were found to be selected in the advertisement for which the Petitioner had also applied, wherein it was

categorically taken a decision that the order of the appointment would be issued to the candidate only after due verification of their documents they have enclosed in support of their candidature. The Counsels further submitted that the documents which have been enclosed with the petition as also the reply which has been filed by the State Government as well as the Chhattisgarh Public Service Commission, would clearly reflect that the case of the Petitioner in fact is under consideration before the High Level Caste Scrutiny Committee. Unless the verification of the same is completed, the Petitioner would not be entitled for issuance of order of appointment and thus they prayed for the rejection of the petition.

**9.** Having heard the rival contentions put forth on either side and on perusal of the record, some of the undisputed facts of the instant case are that the Petitioner had applied for his candidature for the appointment to the post of Civil Judge Class-II (Entry Level) on the advertisement issued on 22.2.2014. The Petitioner cleared all the eligibility criterias and the examinations conducted in respect of the same. That he stood 10$^{th}$ in the overall rank on merits in the select list published on 23.2.2015. The Petitioner was considered to be selected against unreserved category. Undisputedly, the Petitioner had claimed for appointment claiming himself to be a candidate belonging to the reserved category and the verification in respect of the status of the Petitioner whether he belongs to the caste to which he has claimed, is under investigation before the High Level Caste Scrutiny Committee constituted by the State.

**10.** What is relevant to be considered in the present case is that, whether any right would accrue in favour of the Petitioner or not, by virtue of the

Petitioner being meritorious in the selection process, coupled with the fact that the Petitioner has been considered for grant of appointment against the unreserved category. The Petitioner undisputedly had also submitted a caste certificate issued by the Sub Divisional Officer, Rajnandgaon.

**11.** If we visualise the facts of the case and analyse the same, what would clearly appear is the fact that the Petitioner is a meritorious candidate and even if the Petitioner would not have claimed himself to be a reserved category candidate he would still be entitled for appointment by virtue of his merit. The only rider or a caution which has to be ensured is that, whether in the course of the Petitioner applying for the said post he has obtained any benefit/relaxation/concession in respect of his being a candidate belonging to the reserved category. What would also be essentially required to be seen is, whether the Petitioner, if he would not have claimed to be a reserved category candidate, would have been eligible to participate in the recruitment process or, in other words, whether it was only because of his being a reserved category candidate alone he was permitted to participate in the selection process or else he would had been disqualified or disentitled.

**12.** If the answer to the aforesaid factual position is in the affirmative holding that firstly the Petitioner having not availed any benefit or relaxation or concession of being a reserved category and at the same time there was no disqualification on the part of the Petitioner from applying for the said post, under the said circumstances, this Court has no hesitation in reaching to the conclusion that pending the verification of his status, the Petitioner can still be considered for appointment as a general category candidate. The opinion of this Court is on the basis of the fact that the Petitioner cannot be

denied appointment if he is otherwise qualified, eligible and meritorious without the aid of any relaxation or benefit of belonging to the reserved category.

**13.** Recently, a Division Bench of the Gujrat High Court in Letters Patent Appeal No. 1480 of 2013 (Gujrat Public Service Commission Vs. Parmar Nilesh Rajendra Kumar & Others), decided on 11.9.2015, had set aside the order of the Single Bench whereby the Single Bench had allowed a petition ordering that the meritorious reserved category candidate should be provided appointment against open category. But the Division Bench setting aside the said judgment held that in the event of any of the candidates accepting any benefit, relaxation or concession for the purpose of participation in the selection process they would not be entitled for appointment against general category. The view of the Division Bench of Gujrat High Court is that, if any candidate concerned has availed any relaxation benefit or concession mentioned in the advertisement for the purpose of participating in the selection process then in that case such candidates can be adjusted only against the reserved category as they would have been ineligible for participating in the selection process, in the event of they having not claimed themselves to be a candidate of a particular reserved category.

**14.** At this juncture, it would be relevant to refer to the decision of the Supreme Court rendered in the case of *R.K. Sabharwal & Others* v. *State of Punjab & Others* [1995 (2) SCC 745] whereby it was held that the candidate concerned if gets selected on merit then in that case he has to be adjusted against the open category and not against the reserved category. However, subsequently, the Government of India had taken a policy decision holding

that if a candidate has availed any of the benefits viz., (i) relaxation of age limit (ii) experience and qualification (iii) permitted number of chances in the written examination and (iv) extended zone of consideration larger than what is provided for a general category candidate, such candidates would not be entitled for appointment against the open category even if they come in merit.

**15.** If we consider the facts of the present case, what we need to appreciate at this juncture is that the Petitioner in the instant case bonafidely has obtained the caste certificate from Sub Divisional Officer, Rajnandgaon. The said certificate was issued on the basis of the caste of his parents and ancestors. Minus the caste certificate the Petitioner was eligible and entitled to participate in the recruitment process as a general category candidate. From the submissions made by the Counsel for the Petitioner which has not been rebutted by the Counsel for the Respondents, it does not appear that the Petitioner has availed any of the relaxation/concession/benefit of his being of the reserved category for the purpose of participating in the recruitment process. The Petitioner has come out in the merit, establishes the fact that he is an eligible meritorious candidate and persons who have come lower in the order of merit in the same select list have already been considered for appointment, and refusing the grant of appointment to the Petitioner pending the verification of the caste certificate would amount to a clear violation of Article 14 of the Constitution of India.

**16.** The migration of the meritorious reserved category candidates to the reserved category and vis-a-vis have also been considered by the Supreme Court in the case of *Union of India* v. *Ramesh Ram and Others* [2010 (7)

SCC 234]. Though the said judgment was under a different rule itself but the discussions and the ratio of law laid down in the said judgment also clearly reflect that there is no embargo as such for consideration of a meritorious candidate belonging to a reserved category to be appointed against the vacancy in the unserved category. Under the said circumstances, in the instant case also, if the Petitioner was otherwise eligible for participating in the selection process without the aid of, the benefits, relaxations and concessions which are given to a reserved category candidate, for all practical purposes, till the certificate of the social status of the Petitioner is under verification before the High Level Caste Scrutiny Committee, the appointment of the Petitioner should not be withheld only on that count. Even otherwise, minus the caste certificate the Petitioner would be eligible for being considered as a general category candidate. That if he is unable to obtain a certificate establishing his social status to which he claims his status would be that of a general unerserved category. Since the Petitioner has come in merit and the candidates who have come lower in rank than the Petitioner in the general category have been considered for issuance of appointment order, this Court does not find any good reason as to why the Petitioner should not be given the said benefit.

**17.** In view of the same, without venturing into the second issue of the Petitioner, whether the verification of the caste certificate of the Petitioner was at all necessary without a complaint or a doubt created in the mind of the Respondents, the present petition is being allowed and disposed of, on the submission of the Counsel for the Petitioner that the Petitioner has not availed any relaxation or benefit of being a reserved category candidate and

the fact that he has stood 10th rank in the order of merit. If the Petitioner fulfills the eligibility criteria prescribed for a general category candidate, let the order of appointment be issued to the Petitioner and he be placed along with the other selected candidates of the said selection process. It is observed that ultimately if the High Level Caste Scrutiny Committee passes an order in favour of the Petitioner, he would be entitled to the benefits of a reserved category candidate or else his status would remain that of a general candidate.

**18.** However, it is made clear that the Respondents before issuance of any order of appointment shall still verify, as to whether the Petitioner would have still been eligible for participation in the selection process if he would have not been a member of reserved category.

**19.** With the aforesaid observations, the present writ petition stands allowed. Subject to the observations made in the preceding paragraphs, the Respondents shall issue an order of appointment in favour of the Petitioner.

Sd/-
**(P. Sam Koshy)**
**JUDGE**

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