

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No.424 of 2016**

Sanjay Somawar S/o Late Shri Bhalchand Somawar, Aged About 59 Years Presently Posted as Tehsildar, R/o Behind Ganga Nursing Home, Jagatpur, Raigarh, Tehsil and District Raigarh, Chhattisgarh.

----**Petitioner**

Versus

1. State of Chhattisgarh Through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur (Chhattisgarh)
2. Under Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur (Chhattisgarh)
3. High Powered Caste Scrutiny Committee, Through its Secretary, Ravi Shankar Vishwavidyalaya Parisar, Raipur, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Shri Amrito Das, Advocate.
For respondents/State	:	Shri B. Gopa Kumar, Deputy Advocate General.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

30.10.2017.

1. The challenge in the present writ petition is to the order dated 22.01.2016 (Annexure P/1) passed by the respondent No.2 whereby the petitioner has been removed from service.
2. The petitioner at the time of passing of impugned order was working as Tehsildar with the respondents. He got employment in the year 1979 against the sanctioned vacant post in the category of Scheduled Tribe (in short, ST). The claim of the petitioner was that he belonged to a member of "Chhatri" which is a notified Scheduled Tribe under the Constitution (Scheduled Tribe) order 1950 for the State of

Chhattisgarh and the entry is found at serial number 20. However, in the caste certificate of the petitioner which he had in his favour issued by the SDM, Saja, dated 05.09.1998, bore the name of his caste to which he belonged to as "Chatr"i (ST) as is evident from Annexure P/2.

3. This certificate issued by the SDM, Saja was subjected to scrutiny by the High Powered Caste Scrutiny Committee (in short, the Committee) constituted by the State of Chhattisgarh and which has given a report on 04.06.2015 (Annexure P/9). In the report it has been categorically found by the Committee that the petitioner belongs to ST category and that the caste to which he belongs is that of Chhatri (N=h), but the caste mentioned in the certificate Annexure P/2 issued by the SDM, Saja as "Chatr"i was not correct and the same was said to be invalid and ordered to be cancelled.
4. The petitioner subsequently moved a fresh application before the Tehsildar, Bilaspur, as per provisions of the new law and the Tehsildar, Bilaspur has subsequently issued temporary certificate (Annexure P/13) whereby it has been categorically stated that the petitioner belongs to Chhatri (छत्री) under the ST category and that the entry is found at serial number 20 in the presidential order for the State of Chhattisgarh.
5. According to petitioner, once when the finding of the Committee is that the petitioner belongs to Chhatri community under the ST category, there was no occasion for the State Govt. to have issued an order of removal from service. Further, a perusal of findings of the committee

would also reflect that there is no finding of the petitioner obtaining employment by playing fraud or mischief or by producing forged and fabricated certificate and therefore also, there was no occasion for the State to have issued the impugned order of removal from service. Thus, prayed for setting aside of the impugned removal order.

6. The State counsel opposing the petition submits that it is a case where the order of the Committee is not under challenge and that the finding of the Committee is that certificate produced by the petitioner in his service record issued by the SDM, Saja was found to be improper and since there is an order of cancellation of the same, the impugned order of removal from service has rightly been issued by the State since the petitioner does not belong to a category which is reflected in the caste certificate which he had produced to his employer and thus, prayed for rejection of the petition.
7. Having heard the rival contentions put forth on either side and on perusal of records what is relevant at this juncture is the subsequent developments which the petitioner has brought on record. First is the certificate issued by the same committee in favour of Shri Raman B. Somawar vide order dated 16.06.2017 and another similar order issued by the same Committee on the same day in favour of Shri Srikant Somawar. Both these persons are the real brothers of the present petitioner and in the certificate issued in favour of these two persons there is a categorical finding of the committee of the two persons belonging to "Chhatri" community under the ST category.
8. Similarly, another aspect which is also pertinent to take note of is the

case of the sister of the petitioner i.e. Annexure P/12 wherein again the same Committee has given a report accepting that Smt. Pratibha Somawar (Shrivastava), the real sister of the present petitioner also belongs to "Chhatri" community of ST category and that the report in her favour issued by the Tehsildar reflected the caste as "Chatri" instead of "Chhatri". Similarly, from the order of the Committee also it reflects that the petitioner had produced copy of judgment dated 26.06.2012 passed by the MP High Court in Writ Petition No.14147/2011 wherein the learned Single Judge has allowed the petition in favour of Smt. Yogita Somawar (Thawait) i.e. another first cousin of the petitioner. The said order of learned single Judge was subsequently affirmed by the Division Bench of MP High Court vide order dated 21.07.2014 in Writ Appeal No.1248/2012. Subsequently, the State Govt. had also challenged both these orders before the Supreme Court vide SLP (C)No.35799/2015 which was dismissed by the Supreme Court vide order dated 09.10.2015.

9. From the aforesaid given factual matrix of the case, this court has no hesitation in reaching to the conclusion that from the report of the Committee it is evidently clear that term Chhatri (छत्री) seems to have been wrongly typed as Chatri (चत्री) whereas, particularly when there is no dispute by any of the authorities so far as the category to which the petitioner belongs except for the pronunciation or the spelling of the term Chatri written in a different manner in the order passed by the SDM, Saja. Another aspect which cannot be lost sight of is the fact that the said certificate was issued in the year, 1998 whereas, the

petitioner had got employment way back in the year, 1979 against the post which was sanctioned for ST category.

10. It is not the case of the State that the petitioner is not of the ST category or has obtained employment on the basis of a false caste certificate or he did not belong to the category against which his employment stands. From the document brought on record including the return of the State Govt., what is not in dispute is that there is no caste by the name "Chatri" and therefore, the only presumption which can be drawn is that the term "Chhatri" has been wrongly spelt in the caste certificate issued by the SDM, Saja, where inadvertently for "Chhatri", "Chatri" got typed. The State Govt. nor the Committee found the petitioner not belonging to the ST category.
11. In the given set of facts, this court does not find any strong case made out by the State Govt. for issuance of the order of removal from service as even if the caste certificate issued by the SDM, Saja, stands cancelled by the committee, but there is a finding of the Committee in the same report of the petitioner belonging to the ST category and to the "Chhatri" community.
12. In view of the same, the impugned order dated 22.01.2016 (Annexure P/1) does not have any force to sustain, the same deserves to be and is hereby set aside. The petitioner is ordered to be reinstated in employment with all consequential benefits.
13. The petition stands allowed and disposed off. No order as to costs.

Sd/-
(P.Sam Koshy)
Judge