

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.2794 of 2009

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Certiorari calling for records relating to the orders of the third respondent in Ref.No.Hy/HR/M&S/08/1881132, dated 22.11.2008 imposing the penalty of dismissal from service of the company, and also the order of the first respondent in Ref.No.Hy/Appeal/1881132 dated 22.01.2009, confirming the said order of the third respondent, as illegal and arbitrary.

2) The facts in issue are as under:-

The petitioner herein was appointed as Engineer (Trainee) by the second respondent in 1985, after a regular process of selection, whose probation was declared by the second respondent on 28.09.1987, in the post of Engineer (Electrical) Township Administration with effect from 19.09.1987. Later he was promoted as Senior Engineer, Electronics (MS) by the third respondent through proceedings dated 26.12.1990. The case of the petitioner is that he belongs to "Bentho Oriya" caste which is a Scheduled Tribe. According to him, their ancestors hail from a tribal area in Srikakulam and later migrated to West Godavari, Krishna and Guntur Districts, in search of their livelihood. It is said that his father was working in Revenue

department. An enquiry was held with regard to the caste certificate and basing on the report of the Joint Collector, the then District Collector, Krishna cancelled the caste certificates issued to his father and brothers. Challenging the same, the petitioner and his brothers filed O.S.No.2806 of 1992 on the file of X Assistant Judge, City Civil Court, Hyderabad, seeking a declaration that they belong to "Bentho Oriya" community. The said suit was dismissed on 29.01.1996. Pending the said suit, a show-cause notice was issued to the petitioner calling for his explanation as to why the caste certificate issued to him should not be cancelled. An explanation came to be submitted. Meanwhile, the petitioner preferred A.S.No.54 of 1996 on the file of II Addl. Chief Judge, City Civil Court, Hyderabad, against the orders passed in O.S.2806 of 1992, which was allowed on 21.03.1997. In the said suit not only the Joint Collectors of Krishna and West Godavari Districts, but also the respondent herein was a party to the proceedings. It is to be noted here that pending suit, there was interim injunction in I.A.No.932 of 1992 restraining the respondents from implementing the order of the District Collector, Krishna dated 09.12.1991 and the proceedings dated 03.06.1992 of the Joint Collector, Krishna. During appeal also there was a stay, and ultimately the said appeal was allowed. Though there was an interim order in favour of the petitioner pending suit, as well as in appeal, and though the petitioner was successful in the appeal, the impugned order came to be passed by the Joint collector on 21.01.1997 cancelling the caste

certificate issued in favour of the petitioner. Basing on the said order, the third respondent passed an order dismissing the petitioner from the service. Challenging the said order, the present Writ Petition came to be filed.

3) No interim order came to be passed while admitting the Writ Petition.

4) Learned counsel for the petitioner mainly submits that in view of the orders passed by the civil court, which has become final, and since the Second Appeal filed by the Government was also dismissed, the order passed by the Joint Collector canceling the caste certificate issued to the petitioner is illegal, improper and incorrect. Apart from that he further submits that the injunction order was in force as on the date of cancellation and that the Joint Collector has no authority to do the same, more so, when the Joint Collectors of the two districts were parties to the civil proceedings.

5) A counter came to be filed, disputing the averments made in the affidavit filed in support of the Writ Petition. According to them, the suit filed by the petitioner itself is not maintainable in view of the judgment of the Supreme Court in **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others**¹. It is urged that the petitioner should have approached the District Committee constituted by the State Government and

¹ (1994)6 Supreme court Cases 241

challenge the order passed by the Joint Collector canceling the caste certificate. He further submits that no disciplinary proceedings have been initiated in view of the *status quo* order granted against the authorities. The Counter also states that in compliance of the directions of this Court in W.P.No.17256 of 1996, which was filed by the petitioner herein seeking for promotion, the Additional General Manager (SM) was appointed as an Inquiry Officer vide order dated 19.05.2008 and after complying with the requirements of law, submitted a report holding that the Charged Officer is not having a valid caste certificate, as the caste certificate submitted by him at the time of joining, was cancelled on 21.01.1997. He further submits that the petitioner is not entitled for any relief as he fails to produce the report, as demanded by the Corporation, having regard to the complaints received on the certificate produced at the time of entering into service. It is to be noted here that basing on the caste certificate, which was cancelled on 21.01.1997, the petitioner joined in the respondent/corporation and was later promoted. After the cancellation of caste certificate, issued to the father of the petitioner, the petitioner and his brother filed O.S.No.2806 of 1992 to declare them as belonging to "Bentho Oriya" caste. The said suit was dismissed, but however, the appeal was allowed. Pursuant to the orders passed by the civil court, the Joint Collector passed an order canceling the caste certificate issued to the petitioner on 21.01.1997. It is not in dispute that on the date of passing of the order, there

was an injunction restraining the authorities from passing any order on the caste certificate issued to the petitioner. It is also not in dispute that the Joint Collector, who passed the order canceling the caste certificate, was a party to the civil proceedings.

6) But the issue, now is; "Whether the order canceling the caste certificate of the petitioner can be set-aside in this Writ Petition in view of the orders passed by the civil court?"

7) It is to be noted here that neither the Joint Collector nor the Government of Andhra Pradesh was made as a party to the Writ Petition. What all the respondent/Corporation wants is that a certificate issued by an appropriate authority showing the petitioner, as belonging to "Bentho Oriya" community and if it is found to be genuine they will reinstate him with all consequential benefits.

8) As seen from the record, the caste certificate issued to the father of the petitioner was cancelled. The same has become final, as it was not challenged before any authority and no orders are placed before me to show that the said order was set-aside. But, at the same time, the civil court in A.S.No.54 of 1996 held that the petitioner belongs to "Bentho Oriya" community. The said order has become final since Appeal S.R. No.72163 of 1997 filed by the Joint collector, Krishna District and Joint Collector, East Godavari was dismissed on 16.06.2016. By relying upon the judgment of the Apex Court reported in Kumari Madhuri's case (one supra), the learned

counsel for the respondent would submit that the petitioner ought to have approached the District Court committee against an order of Joint Collector but no material has been placed before the Court to show as to whether, there was a District Committee as on that day. Infact the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993, which is sought to be relied upon by the learned counsel for the respondent, came into force on 15.05.1997, i.e., much after the order of the Joint Collector. Therefore, the argument of the learned counsel for the respondent that the remedy available under the said Act was not availed of by the petitioner, cannot also be accepted. It is also to be noted here that the Joint Collector, East Godavari District, passed the order dated 21.01.1997 canceling the caste certificate issued to the petitioner. The relevant portion of the order is as under:-

"FINDING -2: Sri G.V.Subrahmanyeswararao is a native/resident of Nandigama of Krishna District but not Kakinada town. It is also mentioned clearly in the caste certificate issued to him by the Mandal Revenue Officer, KDA. It is therefore clear that the Caste Certificate issued to him by MRO, Kakinada was issued without proper verifications and also without jurisdiction and as such it is a bogus certificate.

In the above circumstances and in exercise of the powers conferred as per Sec.5(1) of the A.P. (SCs/STs/BCs) Regulation of Issue of Community Certificate Act, 1993, the Caste Certificate obtained by Sri G.V.Subrahmanyeswararao S/o. Parthasaradhi from the MRO, Kakinada on 06.07.1985 is hereby cancelled and declared as false community certificate.

An appeal lies to the Government against this Order within 30 days from the publication of this order in the A.P. Gazette as per Sec.7(3) of the A.P. (SCs/STs/BCs) Regulation of issue of Community Certificate Act, 1993."

9) It is to be noted here that the relief which is sought for in the Writ Petition, is against the orders passed by the third respondent and the second respondent dated 22.11.2008 and 22.01.2009 respectively. Both these orders came to be passed in view of the orders passed by the Joint Collector. Strangely, the petitioner herein never questioned the order of the Joint Collector in this Writ Petition. Though the basis for passing the impugned order by the third respondent/Corporation, is the order passed by the Joint Collector, but for the reasons best known, the petitioner has not sought for quashing of the said order passed by the Joint Collector. As against the order of the civil court there is an order passed by the Joint collector. The order of the civil court has become final and no material has been placed to show that order of Joint Collector, has been stayed by any court or authority.

10) As observed earlier, the present Writ Petition came to be filed challenging the order of the second and third respondents only and the order of the Joint Collector was never challenged in the Writ Petition. Therefore, it may not be proper for this Court to comment as to the legality or otherwise of the order passed by the Joint Collector. Learned counsel for the respondents would submit

that if the petitioner produces a genuine caste certificate, they would definitely consider his case with all consequential benefits.

11) Since the order of the Joint Collector is not subject matter of challenge in the Writ Petition and as the prayer refers only to the orders passed by the second and third respondents, the present Writ Petition is disposed of, directing the petitioner to produce the genuine caste certificate issued by the appropriate authority within a period of six months from today, in which event the respondent/Corporation shall deal with the same in accordance with law.

12) With the above direction, the Writ Petition is disposed of. No costs. Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

Dt:30.08.2017

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