

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION No. 25050 OF 2006**

**ORDER:**

Questioning the order dated 29.08.2006 passed by the respondent South Central Railway, by which the petitioner was dismissed from service on the ground that the caste certificate produced by him was not genuine, this Writ Petition was filed.

The facts of the case, precisely, are as follows:

The petitioner claims that he belongs to 'PYDI' caste, which falls under the 'Scheduled Castes' community. According to him, he was appointed as a Constable in Railway Protection Special Force on 16.10.1987 under the quota meant for 'Scheduled Castes' community, based on the certificate dated 07.07.1984 issued by the Tahsildar, Tekkali, vouching the fact that he belongs to 'Scheduled Castes'. While so, the petitioner was dismissed from service *vide* order impugned, in the light of the report of the District Collector, *Srikakulam* dated 30.06.2006 to the effect that the caste certificate produced by him was a forged one. The further case of the petitioner is that his father also got employment in Indian Railways, claiming to be a member belonging to Scheduled Castes community, hence, it cannot now be said that he (petitioner) does not belong to Scheduled Castes.

The Senior Divisional Security Commissioner, South Central Railway, *Secunderabad* filed the counter-affidavit denying the averments made in the affidavit filed in support of the Writ Petition. It is his case that the petitioner belongs to 'Pattusali' caste which comes under BC-B category. The Mandal Revenue

Officer, Tekkali has not issued the certificate dated 07.07.1984, as is evident from the records and hence, the certificate produced by the petitioner can be said to be a forged one.

Sri K. Gopal Krishna Murthy, learned counsel for the petitioner submits that no inquiry whatsoever, giving an opportunity to the petitioner to put-forward his case, as mandated under the provisions of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 and Rules, 1997 has been conducted at any point of time. Hence, the learned counsel vehemently submits that in the absence of the material to justify the order dated 30.06.2006 of the District Collector as to the genuinity of the certificate produced by the petitioner, the punishment meted out to him is highly exorbitant and disproportionate.

Sri A. Ravinder Reddy, learned Standing Counsel for the Railways submits that the petitioner has produced a fake caste certificate, as per the letter dated 30.06.2006 of the District Collector, hence, the impugned action has been taken against him. He further submits that the petitioner belongs to 'Pattusali' community which falls under BC-B category. Hence, he asserts that the order impugned does not warrant any interference at the hands of this Court.

After going through the rival submissions, obviously, the issue that requires consideration is *'whether the order dated 29.08.2006 passed by the respondent dismissing the petitioner from*

*service based on the communication of the Collector dated 30.06.2006 is sustainable in law or not’.*

Issue and cancellation of certificates is regulated by the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 and the Rules made thereunder. In this factual scenario, it is appropriate to excerpt Section 5 of the Act, which reads as under:

**“5. Cancellation of the False Community**

**Certificate:** 1) Where before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false community certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either *suo motu* or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation:-

Provided that where the enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

2) The powers of the nature referred to in sub-section (1) may also be exercised by the government.”

Section 5 of the above-said Act clearly envisages that the District Collector may cancel the certificate after giving the person concerned an opportunity of hearing. In other words, before cancelling the caste certificate, the procedure as contemplated

under Section 5 of the 1993 Act read with Rule 5 of the 1997 Rules has to be followed strictly. In the present case, no whisper has been made to that effect.

In those circumstances, the very communication of the District Collector merely based on the local enquiry made by the Tahsildar that the petitioner belongs to Backward Classes community cannot be accepted, as the certificate issued in favour of the petitioner was neither cancelled nor suspended by following the due process. Hence, it can safely be said that the impugned order passed by the respondent dismissing the petitioner from service is unsustainable.

In the circumstances, the Writ Petition is allowed, setting aside the order dated 29.08.2006. While issuing *rule nisi*, on 01.12.2006, this Court suspended the order of dismissal dated 29.08.2006, consequent to which, the petitioner has been continuing in service. However, since the petitioner was not bestowed with any service benefits, as is entitled to, it is needless to say, the respondent authorities shall consider restoration of the benefits, which the petitioner would have earned in normal course, in view of the well-settled principles laid down in the judgment rendered by the Apex Court in ***Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh***<sup>1</sup>.

It is made clear that the order now passed will not preclude the respondent from conducting a proper enquiry in accordance with Section 5 of the Act. No costs.

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<sup>1</sup> AIR 1962 Supreme Court 1334

Consequently, the miscellaneous Applications, if any shall stand disposed of.

02<sup>nd</sup> January 2017

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**CHALLA KODANDA RAM, J**

