

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.27118 OF 2014

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Social Welfare.

2) The present writ petition came to be filed with the following prayer:

“.... to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned Proc.**C3/4889/2012-14 dt.18-06-2014** including the appended notification of even number and date issued by the District Collector are invalid and unconstitutional, arbitrary, opposed to the principles of natural justice, void abinitio besides violative of Articles 14, 16, 21 of the Constitution of India and also contrary to the Judgment in W.P.No.27351/2013 dt.20.09.2013 as well as Rev.W.P.M.P.No.45648/2013 dt.27-12-2013 and consequently hold that the Agency Area Certificated possessed by the petitioner is perfectly valid and further declare that the petitioner is entitled to be appointed to the post to which she was selected i.e, **SCHOOL ASSISTANT (PHYSICAL SCIENCE) in Special DSC-2012** with all consequential benefits and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

3) The petitioner belongs to Scheduled Tribe-Lambada and native of Kothapalli Village, Sirpur (U) Mandal. Her community, nativity as well as the date of birth were certified by the Mandal Revenue Officer, Sirpur (U), through certificate No.E/803/98, in exercise of power under Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Act (for short 'the Act') and the Rules made thereunder. As the Government issued Special DSC-2012 notification dated 26.03.2012, petitioner applied for Local Scheduled Tribe Community certificate. Basing on certificate

issued by the Tahasildar, Utnoor, the Tahasildar, Sirpur (U) issued 'Certificate of Proof of Local Scheduled Tribe Community' in favour of the petitioner vide Proc.No.D/768/2012 dated 31.05.2012. Pursuant thereto, the petitioner applied for the said post claiming to be eligible and her name was included in the provisional merit/select list. However, at the time of issuing orders of appointment, the certificates submitted by the petitioner were verified and a doubt was expressed about the genuinity of Agency Area Certificate furnished by the petitioner. The Deputy Director (TW), ITDA, referred the matter to the District Collector, who intturn referred the matter to the District Level Scrutiny Committee (for short 'the committee') constituted under the Act and Rules. The Committee issued notice to the petitioner and thereafter submitted a report stating that the certificate dated 31.05.2012 is not a genuine one. Acting upon the same, the impugned order came to be passed cancelling the said certificate. Hence, the present writ petition came to be filed.

4) Sri J.Nagaraja Rao, learned counsel for the petitioner submits that the certificate dated 31.05.2012 is not referable to the Act and Rules and the impugned order is without jurisdiction. According to him, the social status as well as the nativity of the petitioner was certified under the certificate No.E/803/98 and that the same warrants no interference. He placed on record the orders passed by a Division Bench of this Court, the review order and also the judgment of the Apex Court to show that in identical matters the Court has upheld the plea of the petitioner.

5) Learned Government Pleader for Social Welfare submits that once the Collector has passed an order exercising his powers under the Act, the petitioner has to work out his remedies in accordance with law. He submits that in the earlier round of litigation, the Courts did not consider G.O.Ms.No.4 and hence pleads that the issue is not covered by the earlier orders. According to him, if the said G.O. was considered, the Courts would have definitely taken a different view.

6) The special drive initiated by the Government in the year 2012 was to appoint Scheduled Tribe candidates living in the agency areas. It needs to be noted that in none of the Districts in the State, the entire District is notified as agency area. Parts of some Districts are notified as agency areas and remaining parts of such Districts continue to be non-agency areas. The Scheduled Tribes from non-agency areas were getting selected and thereby, the Scheduled Tribes within the agency areas were deprived of the benefit. Therefore, consideration for the appointment to the posts taken up by the DSC was confined to the candidates belonging to the Scheduled Tribes and natives of the agency area. To determine whether or not a candidate can be treated as resident of agency area, guidelines were also issued. They are to the effect that the candidates or their ancestors must be residents of the agency area atleast from the year 1950 onwards.

7) Admittedly in the instant case the petitioner was born and brought up in Kothapalli Village and after verifying the record, the Mandal Revenue Officer, Sirpur (U), issued Caste, Nativity and Date of Birth Certificate vide Certificate No.E/803/98 prescribed

under the Act and Rules. The genuinity or otherwise of the said certificate was never doubted by any of the respondents. As observed earlier, the only certificate that can be pressed to the Act and Rules is one which was issued in the year 1998. A doubt was expressed to the genuineness of certificate dated 31.05.2012, which did nothing more than reflecting a small facet of what is already contained in the certificate No.E/803/98. As observed by the Division Bench, in view of the certificate referred to above, there was no necessity for the petitioner to submit any other certificate in proof of her nativity and there is no jurisdiction to the Collector to refer the matter to the Committee. It appears to be a case where the whole exercise is arbitrary and genuine scheduled tribe member was unlawfully denied the opportunity of being appointed.

8) In order to appreciate the same, it would be useful to refer to the relevant portion of the Division Bench Judgment, review order, the order passed by the Apex Court and G.O.Ms.No.4.

9) It is to be noted that G.O.Ms.No.4 was issued even before the date of filing of writ. No reasons are forthcoming as to why the Government has not brought to the notice of this Court in the earlier round of litigation. It appears that even before the Apex Court, the Government has not produced the said G.O., to show that the order passed by the Division Bench is contrary to the said G.O. But the learned counsel for the petitioner would submit that in the review petition, the G.O.Ms.No.4, dated 09.01.2012 came up for consideration. It is to be noted that this Court in W.P.No.27351 of 2013, while dealing with an identical issue to the case on hand,

allowed the writ petition on 20.09.2013 on the ground that there was no justification in referring the matter to the committee, when the certificate was not at all referable to the Act and the Rules. It was held that the whole exercise was arbitrary and a genuine Scheduled Tribe person was unlawfully denied the opportunity of being appointed. While setting aside the impugned proceedings therein and cancelling the resultant notification, the DSC and the appointing authority therein, were directed to consider the case of the petitioner by treating him as Scheduled Tribe, as native of Utnoor Village and Mandal and finalise the matter within a period of four weeks. It was further directed therein, that in case the petitioner was issued orders of appointment, his appointment shall date back to the date on which others have been appointed, for the purpose of seniority but not for emoluments. Subsequently, the State filed Review petition in WPMP No.45648 of 2013 in W.P.No.27351 of 2013, which was dismissed on 27.12.2013, the relevant portion of order, referring to G.O.Ms.No.4 reads as under:

“Though the writ petition was disposed of at the admission stage, it was only after hearing both the parties, at length, and on considering the relevant provisions of law, that the order under review was passed. The Special Rules, no doubt, were framed through G.O.Ms.No.4, dated 09.01.2012, and one of the salient features thereof is that, it is only a Scheduled Tribe person; who is native of that area, that can be appointed as teacher. It was not the case of the first respondent that he must be considered for appointment, though he is not a native. His nativity was certified in the year 2001, and apart from that, a certificate, that fits into the Rules, was issued, on 03.02.2006. It has been clearly mentioned in the order passed by this Court that the Act and the Rules made thereunder are applicable only in relation to the certificate dated 28.05.2001, and the one, dated 03.02.2006 does not at all attract the said provisions.

Assuming that the Act and the Rules made thereunder apply to the issue of certificate also, the order of cancellation came to be passed only in 2013, that too, after the O.A., was filed, whereas the selection process was over in the year 2012. The Act

and the Rules contain a clear provision to the effect that, till a certificate issued thereunder is cancelled, the social or nativity status of the certificate holder cannot be doubted.

The petitioners are not able to point out that any of the grounds urged before this Court were not considered, or that any patent error of law or fact has crept into the order. We do not find any grounds to review the order passed by us.

The review petition is accordingly dismissed”.

10) Challenging the same, the State has preferred S.L.P. (Civil) No.8206 of 2014, which was also dismissed on 08.08.2014.

11) Further, no basic guidelines/requirements were either framed or formulated by the Government so as to enable the petitioner to show that either herself or her parents were residing in agency area since 1950. In other words, the G.O. is silent as to the documents which are required to be produced. Without prescribing the basic requirements, the action of the authorities in rejecting the request of the petitioner on the ground that no proof is produced showing her residence since 1950 in the same area cannot be accepted. On the other hand, the record shows that documents which were produced to show her stay in the agency area were not considered by the respondents.

12) In the absence of any guidelines being prescribed with regard to the documents to be submitted showing proof of their residence in the agency area since 26th January, 1950 and having regard to the orders passed by the Division Bench of this Court and also in the review petition, the writ petition is allowed setting aside the order dated 18.06.2014 in Rc.No.C3/4889/2012-14 and cancelling the resultant notification. Further, the appointing authority shall consider the case of the petitioner, by treating her

to be from agency area and finalise the matter within a period of four to six weeks from the date of receipt of a copy of this order. In case, the petitioner is issued with orders of appointment, her appointment shall date back from the date on which others were appointed, for the purpose of seniority, but not for the emoluments. No costs.

13) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

20.06.2017
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JUSTICE C. PRAVEEN KUMAR

