

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* * * *

WRIT PETITION No.10968 of 2008

Between:

G.N.Ashok

....Petitioner

And

The Collector and District Magistrate,
Anantapur and Others

....Respondents

JUDGMENT PRONOUNCED ON: 17.12.2018

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

T.AMARNATH GOUD, J

* THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

+ WRIT PETITION No.10968 OF 2008

% 17—12—2017

G.N.Ashok

...Petitioner

vs.

\$ The Collector and District Magistrate,
Anantapur and Others

... Respondents

!Counsel for the Petitioner : Sri A.K.Jayaprakash Rao, Counsel
appeared for Sri K.Venkateswarlu

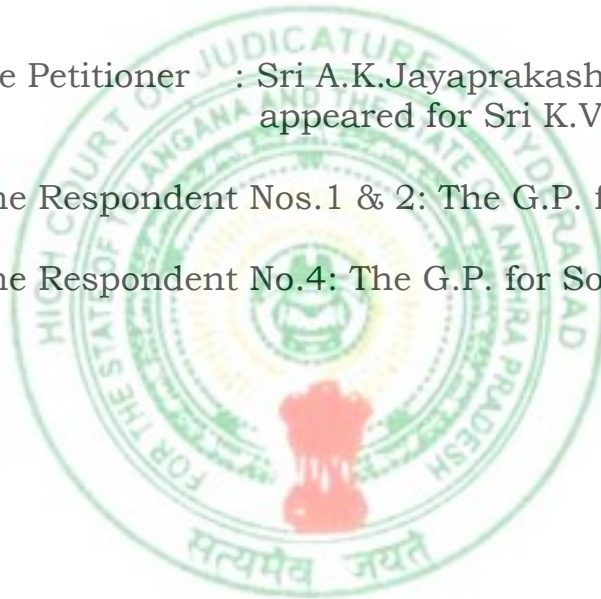
^Counsel for the Respondent Nos.1 & 2: The G.P. for Revenue (A.P)

^Counsel for the Respondent No.4: The G.P. for Social Welfare (A.P)

<Gist :

>Head Note :

? Cases referred



THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**WRIT PETITION NO.10968 OF 2008****ORDER:**

This writ petition is filed challenging the order of the first respondent in Rc.Mc3/982/2001, dated 06.05.2002, subsequent proceedings of the third respondent in reference No.PAC/ZOB/885, dated 18.05.2002 and also G.O.Ms.No.74, dated 19.04.2008, issued by the fourth respondent.

2. It is the case of the petitioner that his father belongs to 'Valmiki', which is a Scheduled Caste community, who obtained caste certificate to that effect from the composite Madras State. His father worked in the Central Excise Department and, in his service register, his caste was shown as 'Valmiki'. Subsequently, the petitioner obtained caste certificate dated 19.06.1968 from the Tahsildar, Anantapur, showing that he belongs to 'Valmiki' of Scheduled Caste community. Basing on the said certificate, the petitioner joined as a Clerk on 02.11.1974 in the third respondent-Bank. While so, the Revenue Divisional Officer, Anantapur, issued a notice dated 14.11.1988, directing the petitioner to appear before him for verification of his caste certificate, but however the enquiry could not take place in spite of several adjournments. Thereafter, the Revenue Divisional Officer, Anantapur, issued another notice dated 16.11.1992, directing to the petitioner to show cause why his caste certificate should not be cancelled and criminal action should not be taken against him. Challenging the same, the petitioner filed W.P.No.909 of 2003 before this Court and this Court disposed

of the same on 03.02.1993, directing the respondents therein to furnish copies of enquiry report to the petitioner and proceed with the enquiry. Subsequently, the first respondent issued proceedings dated 05.02.1993, initiating disciplinary action and launching criminal proceedings against the petitioner. Challenging the same, the petitioner filed W.P.No.19063 of 1993 and this Court, by order dated 22.06.2001, disposed of the same by setting aside the proceedings dated 05.02.1993 of the first respondent and directed the petitioner to file explanation to the show cause notice dated 16.11.1992. Pursuant to the same, the petitioner submitted his explanation and appeared before the District Level Scrutiny Committee on 03.12.2001 and submitted all relevant documents. The District Level Scrutiny Committee, after examining the explanation of the petitioner, submitted its findings to the first respondent recommending for cancellation of the caste certificate of the petitioner. Thereafter, the first respondent, by order dated 06.05.2002, cancelled the caste certificate of the petitioner. Challenging the same, the petitioner filed an appeal and the same was dismissed by the fourth respondent vide G.O.Ms.No.74, Social Welfare (CV.1) Department, dated 19.04.2008, upholding the order of the first respondent dated 06.05.2002. In the meantime, basing on the complaint of the first respondent, Crime No.185/93 was registered for the offences punishable under Sections 177, 471 and 420 IPC, which was taken on file as C.C.No.181/1994 on the file of the Court of Additional Judicial First Class Magistrate, Anantapur (for short, Court below) and the same was ended in acquittal on

18.09.2000. Coming to the departmental action, in pursuance of the order of the first respondent dated 06.05.2002 cancelling the caste certificate of the petitioner, the third respondent-Bank issued proceedings in Reference No.APC/ZQB/885, dated 18.05.2002, cancelling the appointment of the petitioner. In those circumstances, the petitioner was constrained to file the present writ petition.

3. A counter-affidavit is filed on behalf of respondent Nos.1, 2 and 4 stating that G.O.Ms.No.527, dated 09.03.1951, issued by the Government of Madras, was not valid at the time of issuance of caste certificate to the petitioner and that at the time of issuance of caste certificate to the father of the petitioner, 'Valmiki' was listed in the category of Scheduled Caste, but subsequently, it has been listed under Backward Class category. The caste of 'Valmiki' is not found in the list of Scheduled Castes notified in the State of Andhra Pradesh, but the said caste was notified as ST in the agency tracks i.e., East Godavari, West Godavari, Srikakulam and Visakhapatnam Districts, but it is not applicable either to SC or ST in Anantapur District and the petitioner obtained the caste certificate under Scheduled Caste category fraudulently from the then Tahsildar, Anantapur. It is further stated that as per G.O.Ms.No.2590, dated 10.09.1964, the facilities given to Boya's have also been given to Valmiki's in all the districts of Andhra Pradesh as Boyas and Valmikis are one and the same though they called by two names and as per G.O.Ms.No.230, dated 22.05.1974, 'Valmiki Boyas' and 'Valmikis' of Non-scheduled area are one and

the same. It is further stated that the then Tahsildar, Anantapur, has issued Scheduled Caste certificate to the petitioner by oversight not observing the brochure and relevant Government Orders on the list of castes notified under SC/ST and BCs of the Andhra Pradesh State. The District Level Scrutiny Committee, after examining the explanation offered by the petitioner, submitted its findings to the first respondent recommending for cancellation of the caste certificate of the petitioner. Subsequently, the first respondent issued a notice to the petitioner, by supplying the findings of the District Level Scrutiny Committee, directing him to offer his explanation. After considering the explanation of the petitioner, the first respondent issued orders dated 06.05.2002, cancelling the caste certificate of the petitioner.

4. Sri A.K.Jayaprakash Rao, learned counsel appearing for Sri K.Venkateswarlu, learned counsel for the petitioner, submits that in the composite Madras State, the caste 'Valmiki' was shown as Scheduled Caste as per G.O.Ms.No.527, dated 09.03.1951 in Schedule-II at Serial No.76. The said GO is applied to the state of Andhra Pradesh, after its bifurcation. In the service certificate of the father of the petitioner, it was mentioned that he belongs to Scheduled Caste. The concerned Tahsildar, after verifying the claim of the petitioner, issued caste certificate in favour of the petitioner on 19.06.1968 stating that he belongs to Scheduled Caste community. Basing on the same, the petitioner was appointed in the third respondent-Bank in the year 1974 and the petitioner neither played any fraud nor produced any false caste

certificate. He further submitted that the petitioner joined in service in the year 1974 as Clerk and worked as such without any remark of whatsoever in his entire service. Now, at this stage, cancelling the caste certificate and withholding the retirement benefits of the petitioner, is illegal, arbitrary and sought to set aside the order of the first respondent in Rc.Mc3/982/2001, dated 06.05.2002, and proceedings of the third respondent in Reference No.PAC/ZOB/885, dated 18.05.2002 and also the order of the fourth respondent in G.O.Ms.No.74, dated 19.04.2008. He relied on the decisions of Apex Court in **Kavita Solunke Vs. State of Maharashtra¹**, **Chairman and Managing Director FCI Vs. Jagdish Balaram Bahira²**, and also a decision of this Court in **M.Saroja Devi Vs. Syndicate Bank, Manipal and Another³**.

5. Sri A.Krishnam Raju, learned Standing Counsel for the third respondent-Bank, submits that since the petitioner got appointment basing on the Caste Certificate, dated 19.06.1968, issued by the Tahsildar, Anantapur, the same is cancelled by the competent authority i.e., District Collector, Anantapur, and that the third respondent-Bank, relying on the same, withheld the retirement benefits. Since the very appointment of the petitioner itself is *void ab-initio*, the question of granting pensionary benefits in his favour does not arise. He also relied on paras 55, 56 and 64 of the judgment of the Apex Court in **Jagdish Balaram Bahira's** case (2 supra).

¹ (2012) 8 SCC 430

² 2017 SCC OnLine SC 715

³ 2016 (1) ALD 170

6. The learned Assistant Government Pleader for Social Welfare (A.P) submits that the caste 'Valmiki' does not find place in the list of Scheduled Castes, but it has been notified as Scheduled Caste in the agency tracks i.e., East Godavari, West Godavari, Srikakulam and Visakhapatnam Districts, but whereas, the said caste is notified as Backward Class in Anantapur District, but not Scheduled Caste. Therefore, the respondents rightly cancelled the caste certificate of the petitioner and sought to dismiss the writ petition.

7. It is seen that the father of the petitioner obtained caste certificate from the composite state of Madras and, on the weightage of the same, he got employment in the Central Government Service. The petitioner, while seeking caste certificate from the Tahsildar, Anantapur, relied upon his father's caste certificate. The Tahsildar, Anantapur, ignoring the fact that the caste of 'Valmiki' does not fall under the Scheduled Caste in Anantapur District, has issued caste certificate dated 19.06.1968 stating that the petitioner belongs to 'Valmiki' of Scheduled Caste community. Basing on the said certificate, the petitioner joined as a Clerk on 02.11.1974 in the third respondent-Bank.

8. Admittedly, the caste of 'Valmiki' is not included in the category of Scheduled Caste in Anantapur District of State of Andhra Pradesh, but it is listed under Backward Class category. It is to be noted that if a person obtains a caste certificate fraudulently, his act attracts under criminal proceedings and if he

obtains a false caste certificate, his act attracts under civil proceedings. Insofar as the averment in the counter-affidavit that the petitioner obtained caste certificate fraudulently is concerned, basing on the complaint of the first respondent, C.C.No.181/1994 was filed before the Court below and the same was ended in acquittal. The revenue officials categorically deposed before the Court below that by mistake, they have issued the certificate. Hence, it cannot be said that the petitioner obtained caste certificate fraudulently, as the same has not been proved before the competent criminal Court.

9. Insofar as the issue of obtaining false caste certificate is concerned, as the petitioner obtained the appointment in the service on the basis that he belonged to Scheduled Caste community, he has usurped the post which should have gone to a member of the Scheduled Caste. Though the petitioner served in the third respondent-Bank without any stigma till his retirement, it cannot be said that he is entitled for retirement benefits and other benefits, as his very appointment itself is unlawful.

10. The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (for short, the Act) and the Rules framed thereunder deal with the power and procedure of issuance and cancellation of the caste certificate. Section 3 deals with making of an application in the prescribed form for obtaining community certificate, Section 4 deals with issuance of community certificate

by the competent authority and Section 5 deals with the procedure for cancellation of the false community certificate. Rule 9 of The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short, the Rules) deals with fraudulent claims pertaining to the community certificate. The Act came into force from 15.05.1997 vide G.O.Ms.No.57, Social Welfare (J) Department, dated 08.05.1997 and the Rules came into force from 12.05.1997 vide G.O.Ms.No.58, Social Welfare (J) Department, dated 12.05.1997. Rule 21 of the Rules, which is a saving Rule, contemplates that the community certificate issued by the competent authority prior to the commencement of these Rules should be treated as a valid certificate.

11. In the case on hand, the petitioner obtained caste certificate in the year 1968 which in the light of Rule 21 of the Rules can be treated as valid. But, when the 'Valmiki' community is notified as Scheduled Caste in the agency tracks i.e., East Godavari, West Godavari, Srikakulam and Visakhapatnam Districts, and it is notified as Backward Class in Anantapur District, the same cannot be treated as valid and hence, on the weightage of the same, no benefits can be extended to the petitioner.

12. In **Jagdish Balaram Bahira's** case (2 supra), the Apex Court held that by producing a false caste certificate, one cannot have the benefit of it by depriving the lawful right of another person. Once the employment itself was provided on the basis of a false caste

certificate, which is unlawful, the benefits derived out of it are also held to be unlawful. The ratio laid down in the said judgment is against the petitioner.

13. Insofar as the other judgments relied upon by the learned counsel for the petitioner i.e., **Kavita Solunke** (1 supra) and **M.Saroja Devi** (3 supra) are concerned, the facts in the aforesaid cases can easily be distinguished to the facts of the present case.

14. In the light of the above discussion, the writ petition is dismissed. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 17-12-2018

Note: L.R. Copy to be marked.
B/o. TJMR

T.AMARNATH GOUD, J

