SRI JUSTICE S.V. BHATT

W.P.Nos.22910, 22912, 22913, 22925, 22935, 22946, 22960, 22963, 27094, 27116, 37722, 37723 AND 37728 OF 2014

COMMON ORDER:

Heard Mr.J.Nagaraja Rao for petitioners and Mr.B.S.Prasad, learned Government Pleader for Social Welfare for respondents.

The petitioners in the instant batch of writ petitions challenge the proceedings of 1st respondent cancelling certificate of proof of Local Scheduled Tribe Community issued by the Tahsildar. The learned counsel appearing for the parties have made their submissions by referring to the averments in W.P. No.22910 of 2014. The counsel have stated that with minor changes in the dates and averments, rest of the writ petitions are substantially same and similar, hence by referring to the averments in one case the entire batch of writ petitions can be disposed of. The statement is placed on record.

W.P.No.22910 of 2014:

The petitioner prays for Mandamus declaring the proceedings C3/5308/2012-23 dated 18.06.2014 and the notification of 1st respondent as illegal, unconstitutional and contrary to the order of this Court dated 20.09.2013 in W.P. No.27351 of 2013 read with order dated 27.12.2013 in Review WPMP No.45648 of 2013. The petitioner prays for consequential direction of appointment as Hindi Pandit Grade-II with all consequential benefits.

The case of petitioner is that the petitioner belongs to Scheduled Tribe and resident of Hasnapur Village, Utnoor Mandal,

Adilabad District. The petitioner applied for a comprehensive certificate of community, nativity and date of birth before the Mandal Revenue Officer, Utnoor. The Mandal Revenue Officer, Utnoor vide Certificate No.SSID: 1926-0002-2006-5009 dated 20.05.2004 confirmed that the petitioner belongs to 'Lambada' Community/ST and he is a resident of Hasnapur Village, Utnoor Mandal, Adilabad District. The petitioner alleges to possess the qualification for appointment as Hindi Pandit Grade-II. Notification was issued for appointment of Hindi Pandit Grade-II in the year 2012. The petitioner applied for the post and the petitioner was selected by the Selection Committee. At the time of verification of certificates for issuing appointment order, the issue on the petitioner's entitlement to apply for the post of Hindi Pandit Grade-II under G.O.Ms.No.3, Social Welfare (TW.EDN.11) Department dated 10.01.2000 was examined by the District Collector/ respondent No.1. At this stage, it is relevant to refer to the additional requirement of being a Local Scheduled Tribe Candidate as stipulated in G.O. which reads thus:

> " In exercise of the powers conferred by sub paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India and in Supersession of the notification issued in G.O.Ms.No.275, Social Welfare Department, dated the 5th November,1986, as subsequently amended in G.O.Ms.No.73, Social Welfare Department, dated the 25th April,1988, the Governor of Andhra Pradesh hereby directs that Sections 78 and 79 of the Andhra Pradesh Education Act, 1982 (Act 1 of 1982) and Sections 169, 195 and 268 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994) and rule 4(a) of the Andhra Pradesh School Educational Subordinate Service Rules issued in G.O.Ms.No.538

Education (Ser.II) Department, dated the 20th November,1998 and rule 22 and 22A of the Andhra Pradesh State and Subordinate Service Rules, 1996 and any other rules made in this regard shall apply to the appointment of posts of teachers in schools situated in the Scheduled Areas in the State subject to the modification that all the posts of teachers in the Schools situated in Scheduled Areas in the State of Andhra Pradesh shall be filled in by the local Scheduled Tribe candidates only out of whom 33 1/3% shall be women;

EXPLANATION; For the purpose of this notification, the 'Local Scheduled Tribe Candidate' means, the candidate belonging to the Scheduled Tribes notified as such under article 342 of the Constitution of India and the candidates themselves or their parents have been continuously residing in the scheduled areas of the Districts in which they are residents till to date since the 26th January,1950."

The 1st respondent through proceedings No.C3/5308/2012-23 dated 18.06.2014 on the petitioner's entitlement to apply as Local Schedule Tribe Candidate held as follows:

"Hence, the Agency Area certificate issued to the candidate from the Tahsildar's office Utnoor vide Rc.No.E/344/2009, Dt.23.01.2009 is not genuine and recommended for cancellation.

In view of the above circumstances and in exercise of powers conferred under Rule 2, G.O.Ms.No.58 SW (J) Dept. Dt.12.05.1997 read with (5) 1 of AP SCs,. ST and BCs Regulation of Issue of Community Certificate Act, 16/93, the false Local Scheduled Tribe Area Certificate issued by the Tahsildar's office Utnoor vide Rc.No.E/344/2009, Dt.23.01.2009 to Sri Chowhan Parameshwar S/o.Peeeraji R/o.Hasnapur (vg) of Utnoor Mandal is hereby cancelled and hereby declare that Sri Chowhan Parameshwar S/o.Peeraji R/o.Hasnapur (vg) of Utnoor Mandal does not belong to Agency Area."

In view of the above finding, the petitioner though selected is denied appointment as Hindi Pandit Grade-II. Hence, the writ petition.

The petitioner in addition to the independent grounds, challenges the proceedings dated 18.06.2014 by referring to the order of this Court dated 20.09.2013 in W.P. No.27351 of 2013, order dated 19.06.2017 in W.P.No.27118 of 2014 and order dated 06.03.2018 in W.P.No.22931 of 2014 and batch. The petitioner also refers to the order of the Apex Court in Special Leave Petition No.8206/2014 filed against the revision order dated 27.12.2013 in review WPMP No.45648 of 2013 in W.P. No.27351 of 2013 dated 20.09.2013. The petitioner relies on the following portions in each one of the orders referred to above.

W.P.No.27351 of 2013:

> "The 2nd respondent proceeded as though the certificate, dated 03.02.2006 was issued under the Act and the Rules and accordingly adopted the procedure prescribed thereunder. The matter was referred to the committee and on the basis of the report submitted by the committee, the order, dated 01.09.2013 was passed cancelling the said certificate. The Tribunal took the view that the petitioner has to avail the remedy of appeal under the Act and the Rules.
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> It is no doubt true that in case, the certificate is issued under the Act and the Rules and the same is cancelled by the District Collector, after following the procedure prescribed, the only remedy for the aggrieved party is to prefer an appeal. It has already been mentioned that the only certificate that can be traced to the Act and the Rules is the one, dated 28.05.2001. No one has expressed any doubt about the genuinely of that certificate. The doubt was expressed only about the certificate, dated 03.02.2006, which did nothing more

than reflecting a small facet of what is already contained in the certificate, dated 28.05.2001. There was no basis or justification for the 2nd respondent in referring the matter to the committee, when the certificate, dated 03.02.2006 was not at all referable to the Act and the Rules. The whole exercise was arbitrary and a genuine Scheduled Tribe was unlawfully denied the opportunity of being appointed.

Therefore, the writ petition is allowed and the order, dated 12.09.2013 passed by the Tribunal in O.A. No. 4057 of 2013 is set aside. Further, the proceedings, dated 01.09.2013 issued by the 2nd respondent are set aside and the resultant notification is cancelled. The DSC and the appointing authority therein shall consider the case of the petitioner by treating him as Scheduled Tribe and native of Utnoor village and Mandal and finalise the matter within a period of four weeks from the date of receipt of a copy of this order. In case, the petitioner is issued orders of appointment, his appointment shall date back from the date on which others have been appointed, for the purpose of seniority but not for emoluments."

W.P.No.27118 of 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... "

W.P.No.22931 of 2014 & batch:

"When the matters are taken up, it is submitted by the learned counsel for the petitioner that the issue involved in all these writ petitions is squarely covered by the order of this court in W.P.No.22951 of 2014, dated 27.04.2017. A copy of the said order is placed on record. The said statement is not disputed by the learned Government Pleaders for Social Welfare and Medical and Health. The operative portion of the said order reads as under:

" 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 14.01.2014 in Rc.No.C3/4580/2012-3 and cancelling the resultant notification. Further, the appointing authority shall consider the case of the petitioner, by treating him 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, this appointment shall date back from the date of which others were appointed, for the purpose of seniority, but not for the emoluments. No costs."

Following the above said order, these writ petitions are also allowed in terms thereof. Registry is directed to enclose a copy of the above said order along with this

order. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed."

Therefore, prays for setting aside the proceedings impugned in the writ petition.

The learned Government Pleader Mr.B.S.Prasad does not dispute the orders relied on by petitioner to set aside the impugned proceedings, but tries to distinguish the orders referred to above by contending that the premise on which these orders were passed is on the ground that there is no guideline or that the nativity certificate issued is also still in force. Therefore, according to him, once the jurisdiction of 1st respondent is accepted in implementing the objective for which Local Scheduled Tribe Candidate requirement is insisted the direction in favour of a non-local ST ought not to be given. Admittedly, petitioner failed to satisfy the requirement of residence with effect from 26.01.1950. Therefore, the proceedings ought not to be interfered with as a matter of course and set aside. He alternatively contends that the Government, if desires to provide for recruitment only to the candidates satisfying the Local Tribe requirement, liberty may be left open for framing rules or regulations as is deemed fit.

This Court to avoid repetition of a few reasons which weighed for setting aside similar proceedings impugned in the writ petition does not prefer to reiterate these reasons once again. Challenge to similar proceedings was laid in several writ petitions. Firstly in most of the proceedings which were impugned in the writ petitions, the reasoning is substantially same and similar and also the conclusions

i.e. setting aside the Local Scheduled Tribe Certificate issued by the Tahasildar. The certificate issued by the Tahsildar, even if set aside through impugned proceedings still the comprehensive certificate on community, nativity, date of birth etc. issued in favour of respective candidates is in force. The certificate since is in force and the respondents cannot refuse to treat the petitioner as not satisfying Local Scheduled Tribe Candidate requirement. In addition to the reasons already excerpted, this Court is not convinced to draw distinction sought to be made by the learned Government Pleader. Hence, this Court by following the orders referred to above, orders the writ petition as follows:

The writ petition is ordered in terms of the order of the Division Bench. The DSC and the appointing authority shall consider the case of the petitioner by treating him as Scheduled Tribe and native of Hasnapur Village and Utnoor Mandal, finalise the appointment within four weeks from the date of receipt of a copy of this order. The appointment shall be given effect from the date on which others under the same DSC have been appointed for the purpose of seniority alone and not for emoluments and other attendant benefits.

In view of the above, rest of the writ petitions are also ordered on the same terms and conditions. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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S.V.BHATT, J

Date: 04.04.2018
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