

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16401 of 2019

1. Chief Commissioner of Customs, Kolkata Customs Zone, Custom House, 15/1, Stand Road, Kolkata 700001.
2. Commissioner of Customs (Airport and Administration), Custom House, 15/1, Stand Road, Kolkata 700001.

... .. Petitioner/s

Versus

Binod Kumar S/o Shri Paramhansh Singh Ex- Preventive Officer, Custom House, Kolkata, Government of India, Resident of Village and P.O. Mohania, P.S. Mohania, District- Kaimur at Bhabhua (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ram Kinker Choubey, Adv.
For the Respondent/s	:	Mr. Munna Pd Dixit, Adv.
		Mr. S. K. Dixit, Adv.
		Mr. Sanjay Kumar Choubey, Adv.
		Mrs. Swastika, Adv.
		Mr. Shailendra Kumar, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-08-2019

Heard learned counsel for the petitioner.

2. The 1st objection taken to the impugned judgement is that the claim petition filed by the respondent was incompetent as it had been instituted without impleading proper and necessary



parties, namely, the District Level and the State Level Committees constituted for the purpose of scrutiny of caste.

3. It is further submitted that the Tribunal committed an error in ignoring the fact of the filing of an appeal against the decree of the Civil Court on which reliance was placed by the respondent and, therefore, extending the benefit of the said decree to the respondent vitiates the impugned order.

4. Thirdly, it is submitted that, as a matter of fact, it was established from the Caste Scrutiny Committee reports that the respondent belonged to the extremely backward community and not to the Scheduled Tribe community and, consequently, had obtained employment in the petitioner Department on the basis of a false declaration of caste.

5. The dispute, in short, is as to whether the caste which the respondent claims to be belonging to is a proclaimed scheduled tribe caste or not and as to whether the certificate on the basis of which he sought employment was in conformity with the law relating to issuance of caste certificate.

6. The caste certificate which was made the basis for claim of employment is dated 6th of July, 1993. The respondent was employed with the petitioner Department on the said



proclamation that he was a Scheduled Tribe, belonging to “Kharwar” caste.

7. It appears that the Delhi High Court had issued certain directions in C.W.J.C. No.5976 of 2003 for scrutinizing and verifying the caste certificates based on which the employment had been obtained. It is in pursuance of the said directions that the verification was conducted in respect of the caste certificate of the respondent. It is evident that this exercise began after almost ten years of the service of the respondent.

8. The exercise, ultimately, ended up in conflicting reports that have been discussed in the impugned order of the Tribunal, but it is on the strength of such reports that, admittedly, the respondent was sought to be removed from service after disciplinary proceedings were initiated in the year 2010. The enquiry officer was appointed and the respondent was placed under suspension. The said enquiry proceedings culminated in the removal of the respondent in the year 2015. But, in between, the respondent had approached this Court by filing C.W.J.C. No.6820 of 2010 that was disposed of on 31st March, 2011 observing that the order of the District Magistrate passed earlier on 27th June, 2008 had lost its efficacy and a fresh decision had to be taken in respect thereof.



9. It is in this background that the District Magistrate instituted proceedings with regard to scrutiny of the caste certificate in the year 2011 and the District Magistrate, on the basis of the reports of the Scrutiny Committee, construed the caste of the respondent as “Kahar”, which is an extremely backward category caste, and conveyed the said decision.

10. The respondent filed a second writ petition, namely, C.W.J.C. No.3158 of 2014 challenging the said report.

11. In between, the enquiry in the disciplinary proceedings had concluded to which a reply had been submitted by the respondent.

12. The above mentioned writ petition filed by the respondent was ultimately disposed of on 13th July, 2015 with a direction that since this declaration of caste and the status of caste as claimed by the respondent involved leading of evidence, the same cannot be scrutinized under Article 226 of the Constitution of India and, consequently, left it open to the respondent to prefer a title suit for declaration of his rights, including his status of caste.

13. The respondent instituted Title Suit No.697 of 2015 before the learned Civil Judge, Sr. Division, Kaimur. During the pendency of the said suit, as indicated above, the



respondent had been removed from service in 2015. The title suit was decreed on 13th of April, 2018.

14. Upon having obtained the decree, the respondent moved an application praying for consideration of his representation and, in effect, calling upon the petitioners to reinstate the respondent and allow him to continue to discharge his duties.

15. He also approached the Tribunal seeking a relief for an appropriate direction to that effect. The said claim was considered by the Tribunal vide order dated 10th of May, 2018 and a miscellaneous application filed for compliance thereof was also disposed of on 4th of July, 2018 directing the authorities to pass an appropriate order. The original application remained pending.

16. The Tribunal, after having heard the parties, on 12th of December, 2018 allowed the original application and issued a directions to reinstate the applicant after quashing the removal orders dated 16th of July, 2015 and 14th of June, 2016, passed by the disciplinary authority and the appellate authority respectively.

17. It is challenging the order of the Tribunal that the Department came up in this writ petition contending that the



impugned order of reinstatement is vitiated with a further request that the said order should be stayed during the pendency of the writ petition as an appeal against the original decree in the title suit has already been filed and is pending consideration before the learned District Judge, Kaimur.

18. We have considered the submissions raised and we have heard Shri Dixit for the respondent. From the above, two facts deserve to be taken notice of, the first is that the proceedings for verification of the caste certificate was instituted upon a direction that was issued by the Delhi High Court after almost ten years of the service of the respondent. The second fact is that the respondent-applicant approached the High Court at Patna twice and he was called upon to institute a title suit keeping in view the nature of relief sought pertaining to the declaration of his caste. The respondent-applicant complied with the same and instituted a title suit which has been admittedly decreed.

19. In the aforesaid background, as on date the caste certificate which was issued to the respondent-applicant in the year 1993 holds good so long as the decree of the Civil Court stands. In this background, we are of the considered opinion that the Tribunal has not committed any error in proceeding to issue



a direction to reinstate the respondent-applicant who had already served for ten years when the verification began and he came to be suspended in the year 2010, i.e. almost after 17 years of his service. His dismissal came only in the year 2015. It is this dismissal order which was challenged before the Tribunal and the claim of the respondent-applicant has been allowed taking into consideration the entire facts on record, but mainly basing its finding on the strength of the decree of the Civil Court. We do not find any error in the approach of the Tribunal in doing so, inasmuch as, so long as the decree holds valid, the respondent-applicant was entitled for the relief that was prayed for.

20. Coming to the issue of an appeal having been filed against the judgement and decree of the trial court, we do not propose to comment upon the same, inasmuch as it is open to the petitioner Department to pursue its remedy of appeal against the decree of the trial court declaring the status of caste of the respondent is concerned. In the event the decree is reversed or a finding contrary to the same is recorded by the trial court or by the higher forum, it will be open for the petitioner to take recourse to an appropriate remedy in accordance with law, but so long as the decree of the Civil Court stands, we see no reason



to entertain this petition which is, accordingly, rejected, subject to the observations made above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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