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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 942 of 2008

Smt. Pramila Vastrakar aged about 34 years W/o Shri Surseh Kumar Vastrakar, Caste-Mahara, Scheduled Caste, occupation Service, Rural Agriculture Extention Officer, Baikunthpur, District Korea (CG).
Original Resident: Village & Post Khurkhuridadar, Police Station Karanjiya, Tahsil Dindori, District Mandala (Now District-Dindori) (State of Madhya Pradesh).

---- Petitioner(s)

Versus

1. State of Chhattisgarh through the Secretary, Department of Schedule Caste and Schedule Tribe, Dau Kalyan Singh Bhawan, Raipur (CG).
2. The Chairman Anusuchit Jati Praman Patra Uchch Stariya Chhanbin Samiti, Aadim Jati Anusandhan Evam Prashikshan Sansthan, Pandit Ravi Shankar Shukla University Premises, Raipur C.G.
3. The Secretary State of Chhattisgarh, Department of Agriculture, Dau Kalyan Singh Bhawan, Raipur C.G.
4. The Director Director, Directorate Agriculture, Department of Agriculture, Raipur C.G.
5. The Collector District - Korea C.G.
6. The Senior Agriculture Development Office - Manendragarh, Distt. Korea CG.
7. The Union of India Through The Secretary (State Reorganization - Cell) Department of Home, Khan Market, New Delhi – 01.
8. The State of Madhya Pradesh Through The Secretary, Department of G.A.D., Vallabh Bhawan, Bhopal MP.
9. The Chairman High Power Caste Scrutiny Committee - Madhya Pradesh Bhopal MP.

---Respondents

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Writ Petition (S) No. 5528 of 2008

Smt. Pramila Vastrakar aged about 34 years W/o Shri Surseh Kumar Vastrakar, Caste-Mahara, Scheduled Caste, occupation Service, Rural Agriculture Extention Officer, Baikunthpur, District Korea (CG).
Original Resident: Village & Post Khurkhuridadar, Police Station Karanjiya, Tahsil Dindori, District Mandala (Now District-Dindori) (State of Madhya Pradesh).

---- Petitioner(s)

Versus

1. State of Chhattisgarh through the Secretary, Department of Agriculture, Dau Kalyan Singh Bhawan, Raipur (CG).
2. The Director, Department of Agriculture Directorate, Lawandeeh, Raipur C.G.
3. The Joint Director (Agriculture) Distt. Bilaspur Division, Bilaspur (CG).

---Respondents

For Petitioner	:	Shri Parag Kotecha, Advocate.
For Respondent-UOI	:	Shri Raj Kumar Gupta, Advocate.
For State	:	Shri Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

09.08.2019

1. Since two writ petitions have been filed by the same petitioner and in one writ petition the order under challenge is the order passed by the High Power Caste Scrutiny (in short, the Committee) and in the second writ petition the challenge is to the order of termination from service as a consequence of the order passed by the Committee, this court proceeds to decide both the petitions by this common order, leading case of which is WPS No.942 of 2008.
2. Challenge in WPS No.942 of 2008 is to the order dated 26.11.2007 communicated to the petitioner vide covering memo dated 11.01.2008. The impugned order has been passed by the respondent No.2-the Committee cancelling the caste certificate that the petitioner has and has also directed the employer, the respondents-State to take appropriate steps in the light of the caste certificate getting cancelled.
3. So far as in WPS No.5528 of 2008 is concerned, the order under challenge in the said writ petition is the consequential order passed by the State Govt. terminating the services of the petitioner on 20.07.2008 issued by the respondent No.3 in the light of the order passed by the Committee dated 26.11.2007, by which the Committee had cancelled the caste certificate which was issued in favour of the petitioner in the year 1996.
4. The facts of the case is that, the petitioner born on 30.08.1973 in Mandala district which falls under the territories of the State of MP underwent her primary school education from Mandala district and thereafter because of the fact that her father was working in the then Korba District under the State of MP underwent her subsequent studies at Korba district. The petitioner got caste certificate in her favour on 22.11.1996 issued by the

Naib Tehsildar, Manendragarh, Chirmiri, District Surguja (as it then was).

The caste certificate issued showed the petitioner belong to Mahara caste which falls under the Schedule Caste category. Mahara caste also finds place in the Presidential Order of the list of Schedule Caste and it is reflected at Serial No.36 in the order for the State of MP.

- 5.** Based on the caste certificate, the petitioner participated in the recruitment process for the post of Rural Agriculture Extension Officer in a recruitment drive conducted in the year, 1997 for filling up of the backlog vacancies of SC & ST category. The petitioner got appointed under the erstwhile State of MP vide Annexure P/3 dated 30.03.1999. By virtue of creation of new State of Chhattisgarh by way of Madhya Pradesh Reorganization Act, 2000 the services of the petitioner stood allocated to the State of Chhattisgarh. While working in the State of Chhattisgarh, the caste certificate which the petitioner had, was subjected to enquiry before the respondent No.2-Committee of the State. The Committee on due verification have passed the impugned order dated 26.11.2007 ordering that the certificate which the petitioner had and which was issued in the year, 1996 stands cancelled and a covering memo in this regard was also sent to the department where the petitioner was working to take appropriate action in the light of the order dated 26.11.2007.
- 6.** The petitioner initially filed the present writ petition and obtained interim order on 27.02.2008 to the extent of stay of the effect and operation of the order dated 11.01.2008 (Annexure P/1).
- 7.** The ground of challenge of the petitioner to the impugned order is that the respondent-Committee does not seem to have conducted an enquiry properly and have only given a superfluous report based on the school records of the father of the petitioner where the caste of the father of the petitioner has been reflected as "Vastrakar". The contention of the

petitioner further is that, the respondent authorities ought to have conducted an independent investigation/enquiry in respect of ancestors and forefathers of the petitioner, their deity, order of worship, culture and festivals which the petitioner's father and forefathers celebrated before reaching to the conclusion, in the absence of which, the order of the Committee would not be sustainable.

8. The contention of the petitioner further is that, admittedly the petitioner was born within the territories of the erstwhile State of MP and the certificate also was obtained before creation of the State of CG by the authorities under the State of MP. Therefore, the said certificate cannot be said to be, in any manner, bad or without jurisdiction. What is further contended by the petitioner is that, the impugned order itself would show that during the course of investigation it was reflected from the Misul Records and the name of the forefathers of the petitioner were reflected as Mahara. Given the said facts, an enquiry ought to have been conducted whether the said Mahara caste would fall within the Schedule Caste category or not. Whether the ancestors and forefathers of the petitioner were of Mahara caste or not. Such an enquiry does not seem to have been undertaken by either the Superintendent of Police who were entrusted with the enquiry part or by the Vigilance Cell of the respondent No.2-Committee.
9. The counsel appearing for the respondents, on the other hand, opposing the petition submits that the impugned order is by itself self explanatory and would go to show that the petitioner was granted sufficient opportunity of hearing to defend her case and that the petitioner was granted sufficient opportunity to produce the records by which it can be established that the petitioner does belong to the caste which is reflected in the caste certificate issued in her favour in the year, 1996. Moreover, the counsel for

the State submits that the fact stands undisputed that the school records of the father of the petitioner reflects the caste as “Vastrakar” and not as “Mahara” and there is no rebuttal to those findings either oral or documentary and therefore the impugned order cannot be said to be, in any manner, erroneous or perverse in its finding. Therefore, the writ petition deserves to be rejected.

- 10.** It is also worthwhile to take note of the fact that in the year, 1976, by way of Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976, the category to which the petitioner belonged i.e. Mahara has been brought as Scheduled Caste category under Part-IX of the said Schedule for the State of MP. Hence, after the year, 1976, the said Mahara caste stands notified as Scheduled Caste in the State of MP. The certificate which was issued to the petitioner also was under the erstwhile State of MP.
- 11.** The petitioner undoubtedly is born within the State of Madhya Pradesh and is not one of those persons who have been migrated from a neighboring State into the State of MP. This aspect has also not been either taken note of nor dealt with by the Committee so as to decide what would be the effect of said Amendment Act, 1976 bringing Mahara caste under SC category in the State of MP. Moreover, the committee, in the course of deciding the issue also, while reaching to the conclusion that the petitioner does not belong to Mahara caste, should have given a finding as to which community she belongs to and on what basis. In the absence of which finding also, the impugned order would not be sustainable and the same deserves to be set aside.
- 12.** At this juncture, it would be relevant to refer to the judgment of the Supreme Court in the case of Kumari Madhuri Patil (supra) which is the leading case on the issue involved in the present case. After considering

the entire factual matrix of the case while streamlining the procedure for issuance of social status certificate, the Supreme Court in very categorical term has laid down certain procedure which should be adopted by the State Govt. after consideration of the High Power Caste Scrutiny Committee. Relevant portion of the said judgment is reproduced hereinunder:

“5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed.

The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.”

- 13.** The same analogy has further been reiterated by the Supreme Court in the case of Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and another reported in (1995) 4 SCC 32 wherein the Supreme Court has reproduced the entire paragraph-13 of the said judgment holding it to be taken as guidelines for the purpose of an enquiry to be conducted by the High Power Committee in each of the States.
- 14.** In furtherance to the aforesaid principle of law laid down by the Supreme Court so far as the procedural aspect is concerned, it would be relevant to refer to a judgment of the Supreme Court in the case of Collector, Bilaspur Vs. Ajit P.K. Jogi and others reported in (2011) 10 SCC 357 wherein paragraph-18 it has been held as under:

“This Court thus formulated a scheme for verification of tribal status and held that any application for verification of tribal status as a Scheduled Tribe should be carried out by such

Committees. The verification of the validity of caste certificates and determination of the caste status should therefore be done by the Scrutiny Committees constituted as per the directions in Madhuri Patil or in terms of any statute made by the appropriate Government in that behalf.”

- 15.** Taking into consideration the aforesaid legal position as it stands and if we go into the procedure that has been adopted by the respondent No.2-Committee, it appears that though there is a reference of the case having been inquired by the Superintendent of Police, Baikunthpur, District Korea, but the findings arrived at by the respondent No.2 seem to be based on the said report submitted by the SP, Baikunthpur, District Korea.
- 16.** All the aforesaid facts compel this court to reach to the conclusion that the order dated 26.11.2007 passed by the respondent No.2 is not as per the directives that has been given by the Supreme Court in case of Madhuri Patil (Supra) and also which has been further re-iterated in case of Laveti Giri (Supra).
- 17.** In view of the same, the impugned order dated 26.11.2007 being unsustainable deserves to be and is accordingly set aside/quashed, so also Annexure P/1 dated 11.01.2008 issued by the respondent No.2 to the respondent No.4 directing to take appropriate steps against the petitioner.
- 18.** However, the right of the respondent No.2 stands reserved, if they wish, to proceed further with the matter ordering an enquiry in the light of the procedure as has been envisaged in the judgment of Supreme Court in case of Madhuri Patil (Supra).
- 19.** Another fact which now needs to be considered is that, in the year, 2013 the State of Chhattisgarh has enacted a statutory law in this regard so far as determination of the caste status which is known as Chhattisgarh

Scheduled Caste, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 (in short, the Act, 2013) which specifically provide for the manner in which the enquiry is to be conducted. The respondents would also be free to adopt the procedure as provided in the said Act, 2013.

- 20.** So far as WPS No.5528 of 2008 is concerned, since this court has already set aside/quashed the order dated 26.11.2007 and the covering memo dated 11.01.2008 in WPS No.942 of 2008, the basis on which the order dated 30.07.2008, Annexure P/1 under challenge in WPS No.5528 of 2008 was passed also does not exist any further. In the absence of the basis itself, the order of termination would not be sustainable.
- 21.** This court while entertaining WPS No.942 of 2008 at the first instance on 27.02.2008 had granted interim protection to the petitioner and by virtue of which the petitioner is still continuing in service, in spite of order of termination having been passed and now that the impugned order dated 30.07.2008 being unsustainable in the light of the order dated 26.11.2007 getting quashed, the order of termination also has to be declared to be bad in law and is therefore set aside/quashed with consequence to follow.
- 22.** Accordingly, both the writ petitions i.e. WPS Nos. 942 of 2008 and 5528 of 2008 stand allowed.

Sd/-
(P. Sam Koshy)
Judge

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