

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2388 of 2009.

Virendra Singh S/o Munshi Singh, aged about 36 years, R/o Azizabad, P.O. Pahaso, District Bulandshahar (U.P.).

---- Petitioner

Versus

1. Union of India, through Secretary (Home), New Delhi.
2. Deputy Inspector General, C.R.P.F. East Zone, Agartala (Tripura).
3. Commandant, 188 Battalion C.R.P.F. Rajnandgaon, Chhattisgarh.
4. Director General C.R.P.F., New Delhi.

---- Respondents

For Petitioner	:	Shri P. K. Bhaduri, Advocate.
For Resp. No.1	:	Shri Rajkumar Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/01/2019

1. The challenge in the instant Writ Petition is to the order dated 22/09/2008 whereby the petitioner was inflicted with an order of removal from service and the petitioner also challenges an order dated 02/02/2009 whereby the appeal preferred by the petitioner against the removal from service also stood rejected.
2. The brief facts relevant for adjudication of the instant Writ Petition are that, the petitioner herein was selected as a constable with the Central Reserve Police Force in the year 1990. At the relevant point of time, the petitioner was posted at 188 Battalion of C.R.P.F. post in Rajnandgaon, Chhattisgarh. The petitioner had obtained appointment with the C.R.P.F. against the Scheduled Caste

candidate based on a caste certificate issued from the State of Rajnandgaon (C.G.).

3. In due course of time, while he was serving C.R.P.F., the respondents on verification of his credentials doubted on the caste status of the petitioner and later on a chargesheet was issued on 24/03/2008 alleging that the petitioner had submitted a false caste certificate at the time of enrollment and obtained appointment on the basis of said false certificate.
4. Thereafter, a departmental enquiry was initiated wherein the petitioner had clearly mentioned the factual matrix of the case in as much as the petitioner's parents had migrated to Rajasthan and it was there the petitioner had undertaken his school education and it was at that time that the petitioner had got the caste certificate issued in his favour declaring him to be belonging to the Meena Caste which is a notified Scheduled Caste in the State of Rajasthan.
5. However, the Enquiry Officer not satisfied with the explanation and defence submitted by the petitioner submitted its report to the disciplinary authority giving a finding that the charges stand proved and the disciplinary authority vide Annexure-P/2 dated 22/09/2008 inflicted the petitioner with the "order of removal from service".
6. The petitioner thereafter preferred an appeal before the D.I.G., East Zone, C.R.P.F. as per rules and the appellate authority dismissed the appeal affirming the order of Disciplinary Authority.
7. The solitary ground which the counsel for the petitioner has raised while challenging the two impugned orders was that the issue of caste status could not have been examined by the department,

rather it ought to have been examined by the State Level, High Power Caste Scrutiny Committee constituted in each of the States as per the directives of the Hon'ble Supreme Court in the case of Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors. [AIR 95 SC 94].

8. According to the counsel for the petitioner, after the judgment of the Supreme Court in the case of Madhuri Patil (Supra), each of the States have constituted the High Power Caste Scrutiny Committee and it is the responsibility of the said Committee to examine the veracity of the caste status of a candidate. That after the formation of Caste Scrutiny Committee in each of the States, the power to examine the caste status has been left only with the Committee and not with any other body or agency including the employer. Therefore, the impugned order to that effect is bad in law and the same deserves to be set-aside.
9. Per contra, the counsel appearing for the respondent/department vehemently opposing the petition stating that it is a case where the appointment obtained by the petitioner itself was on the basis of false documents and as such the appointment of the petitioner was an illegal appointment for which the employer has a right for examining the illegal appointment. In the instant case also it has been found by the authorities that the appointment of the petitioner was by adopting illegal means.
10. According to the respondents, since the petitioner was found to have obtained appointment on the basis of false certificates, the department thought it fit for conducting a departmental enquiry.

11. According to the respondents, in the course of departmental enquiry also, the petitioner could not adduce satisfactory defense or evidence to disprove the allegation of having obtained employment on the basis of false certificate and thus prayed for dismissal of the Writ Petition.

12. Having heard the contentions put forth on either side and on perusal of record what clearly culls out is that, the sole issue for consideration in the instant Writ Petition is whether the caste status of the petitioner could have been examined by the department by way of a departmental enquiry. In other words, whether the department could have by itself examined the veracity of the caste certificate which the petitioner had produced without getting it examined before the High Power Caste Scrutiny Committee constituted by each of the States.

13. In the case of Madhuri Patil (Supra) the Supreme Court has discussed the issue of caste status and held that it is the Caste Scrutiny Committee which is competent to verify the caste status and the Supreme Court for the first time vide the said judgment laid down a scheme for verification of the caste status of a candidate.

14. It would be relevant at this juncture to refer to the relevant paragraph of the said judgment in the case of Madhuri Patil (Supra):-

“13. ... (1) The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the officer, taluk or mandal level.

* * *

(4) All the State Governments shall constitute a Committee of three officers, namely, (i) an Additional or Joint Secretary or any officer higher in rank of the Director of the Department concerned, (ii) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (iii) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

(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, deities, 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 a show-cause notice supplying a copy of the report of the Vigilance Officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. ...

* * *

(9) The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.”

15.This High Court also in WPC No. 3414/2009 in its judgment dated 21/07/2010 considering the similar issue has categorically held that the department/employer does not have a jurisdiction to conduct an enquiry in respect of the verification of an employee.

16.Relying upon the judgment passed in the case of Madhuri Patil (Supra) and the subsequent decisions on the subject, this Court in paragraphs No. 11 & 12 has held as under”-

“11. Quite recently following the principles laid down in Madhuri Patil (supra), in the matter of Collector, Bilaspur v. Ajit P.K. Jogi and others [2011 10 SCC

357], the Supreme Court has held that the verification of validity of the caste certificate and the determination of the caste status should therefore be done only by scrutiny committee constituted as per direction in Madhuri Patil (supra) or in terms of any statute made by appropriate Government in that behalf.

12. In the matter of Sudhakar Vithal Kumbhare v. State of Maharashtra and others [2004 9 SCC 481], Their Lordships of the Supreme Court have held that issue of caste status cannot be gone into in a departmental enquiry and this matter can be examined only by the Caste Scrutiny Committee constituted under the direction of the Supreme Court in the case of Kumari Madhuri Patil (supra).”

17. At this juncture it would also be relevant to refer to the decision of the Supreme Court in the case of Collector, Bilaspur v. Ajit P. K. Jogi & Ors. [(2011) 10 SCC 357] wherein in paragraph-18 the Supreme Court relying upon its earlier decision in the case of Madhuri Patil (supra) in paragraph-18 concluded 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.”

18. Recently there was another decision rendered by this Court in WPS No. 5491/11 in the case of Virodhan Ram Vs. State of Chhattisgarh and others wherein also this Court again reiterated the same stand as has been held by the Supreme Court in the cases of Madhuri Patil and Ajit P. K. Jogi and very specifically held that as far as the verification of the validity of caste certificate is concerned, the same can be done only by the High Powered Caste Scrutiny Committee

constituted by the State Govt. As per the direction of the Supreme Court in the case of Madhuri Patil (supra) this Court in the case of Virodhan Ram (supra) in paragraphs 12 & 13 held as under:

“12. In the matter of Sudhakar Vithal Kumbhare v. State of Maharashtra and others,(2004) 9 SCC 481, Their Lordships of the Supreme Court have held that issue of caste status cannot be gone into in a departmental enquiry and this matter can be examined only by the Caste Scrutiny Committee constituted under the direction of the Supreme Court in the case of Kumari Madhuri Patil (supra).

13. In view of the crystallized legal position, as on date, the respondent SECL cannot be allowed to hold departmental enquiry on the allegation that the petitioners do not belong to ST category as claimed by them. Proper course of action would have been to refer the case of the petitioners to the Caste Scrutiny Committee and thereafter, to proceed in accordance with law after the result of the report submitted by the Caste Scrutiny Committee as such, charge-sheet issued by the respondent SECL is without jurisdiction and without authority of law. Such a jurisdiction exclusively vests with the Caste Scrutiny Committee as held by Their Lordships of the Supreme Court in Kumari Madhuri Patil (supra) and Ajit P.K. Jogi's case (supra).”

19. In view of the aforegiven legal position as it stands when we compare the facts of the present case, it clearly reflects that the services of the petitioner have been terminated only on the ground that the petitioner does not belong to the caste against which he has obtained employment on the basis of an alleged false certificate. Taking into consideration the afore-rendered judicial pronouncements and the principles of law laid down in those cases what clearly reflects is that as far as the verification of the caste status of the petitioner is concerned, the same could not have been inquired by the Department in a departmental enquiry after the judgment of the Supreme Court in the case of Madhuri Patil (supra). The fact that subsequently all the States have constituted a Committee so far as the caste status is concerned, this Court has no

hesitation in reaching to the conclusion that the same could not have been examined by the Department and should have been left it for the High Powered Committee to submit a report and thereafter appropriate decision should have been taken.

20. Therefore, the impugned order dated 22.09.2008 i.e. the order of removal from service and the order dated 02.02.2009 i.e. the order of rejection of appeal, both deserve to be and are accordingly set aside/quashed only on this ground, reserving the right of the respondents to proceed further in accordance with the aforequoted judgments of the Supreme Court as well as this Court and to pass an appropriate order thereafter.

21. The writ petition accordingly stands allowed with the aforesaid observations and directions.

Sd/-
(P. Sam Koshy)
Judge