

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment Reserved on 13.12.2019****Judgment Delivered on 05.02.2020****Writ Appeal No.432 of 2018**

*(Arising out of order dated 01.03.2017 passed in Writ Petition (S)
No.3277 of 2016 by the learned Single Judge)*

Nikhil Kumar Sushmakar W/o Late Shri Raman Lal
Sushmakar, aged about 36 years, R/o Shanti Nagar, Ward
No.10, Rajnandgaon, District Rajnandgaon, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh through the Principal Secretary, Law and Legislative Affairs, Ministry Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission, through Controller of Exam, Shankar Nagar, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellant	: Shri Anoop Majumdar, Advocate
For Respondent/State	: Shri Ghanshyam Patel, Govt. Advocate
For Respondent/CGPSC	: Shri Sudeep Agrawal, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Judgment****Per Parth Prateem Sahu, Judge**

1. The appellant has questioned the correctness of order dated 01.03.2017 passed by learned Single Judge in Writ Petition (S) No.3277 of 2016 whereby the writ petition filed by the appellant was allowed with certain directions to the respondents to verify eligibility

of the appellant for participation in the selection process as unreserved category candidate, if would have not been a member of reserved category.

2. The facts of the case, in nutshell are that, appellant submitted his application form for appointment of Civil Judge, Class-II (Entry Level) in pursuance to the advertisement dated 22.02.2014 as a candidate belonging to scheduled caste category. Final select list was published and the petitioner secured 10th position in merit list and was considered for appointment under unreserved category as per his ranking. After issuance of final select list, respondent No.1 issued a letter to the appellant on 02.05.2015 intimating him that he is being selected for the post of Civil Judge, Class-II (Entry Level) and in the process of recruitment, he should appear along with all his educational testimonials, residential certificate and caste certificate (issued by High Level Caste Scrutiny Committee) etc. The appellant submitted his caste certificate before the District Level Caste Scrutiny Committee, but he could not able to produce the relevant documents and materials as asked by the District Level Caste Scrutiny Committee for verifying the caste of the appellant. He was granted an opportunity to produce relevant documents, but after couple of dates fixed for submission of documents by the District Level Caste Scrutiny Committee, appellant stated that he is unable to produce relevant documents asked by the Committee. Based on submission made by appellant, District Level Caste Scrutiny Committee has forwarded the case of the appellant to High Level Caste Scrutiny Committee. As the caste certificate issued by the

High Level Caste Scrutiny Committee could not be produced by the appellant, his appointment was kept in abeyance and the other candidates who were ranked above and below the appellant were given appointment on the post of Civil Judge, Class-II (Entry Level).

3. Aggrieved by non-issuance of appointment order in favour of the appellant, he approached this Court by filing Writ Petition (S) No.3277 of 2016 with following reliefs :

“10.1 That, this Hon'ble Court may kindly be pleased to direct the respondent to issue the appointment order for the petitioner on the posts of Civil Judge, Class-2 (Entry Level) and grant him appointment along with seniority as granted to his counter parts along with all the consequential benefits.

10.2 That any other relief, which this Hon'ble Court may deem fit and proper together with the cost of the petition.”

4. The reliefs sought for by the appellant were resisted by the respondents herein on the grounds mentioned in the reply filed by them to the writ petition.

5. The learned Single Judge based on the pleadings and submissions made by learned counsel for the respective parties while deciding the writ petition, formulated two questions for consideration, which are as under :

(1) Whether the order or appointment can be issued in favour of the Petitioner pending the verification of his social status before the High Level Caste Scrutiny Committee ?

(2) Whether the Petitioner is entitled for being appointed as a general candidate in absence of a duly verified social status certificate on account of the Petitioner qualifying in merit though he has filed his application as a reserve candidate ?

6. Learned Single Judge after considering the facts and circumstances of the case, pleadings, documents and submissions made by learned counsel for the respective parties, allowed the writ petition and directed the respondents to issue order of appointment in favour of the appellant/petitioner looking to his rank in the merit list i.e. 10th rank on fulfilling all eligibility criteria as prescribed for unreserved category candidate. Learned Single Judge also directed the respondent authorities to verify as to whether appellant would still be eligible for participation in selection process, if he would have not being a member of reserved category.

7. Shri Anoop Majumdar, learned counsel appearing for the appellant submitted that though the learned Single Judge has directed for issuance of appointment order in favour of the appellant treating him to be a candidate belonging to unreserved category, but he is aggrieved with further direction of learned Single Judge wherein it has been directed to verify eligibility of the appellant for participation in the selection process, if he would not being a member of a reserved category. He further submitted that though the appellant submitted his application form as a candidate belonging to reserved category i.e. scheduled caste community, but he secured 10th position in overall merit, therefore, he is entitled to be appointed

as an unreserved category candidate in the final select list looking to his ranking in overall merit, he has been shown to be selected for appointment as unreserved category candidate, but even then, respondent authorities by way of letter has asked him to submit all his testimonials including caste certificate verified by High Level Caste Scrutiny Committee, which is not required at all as he being selected as unreserved category candidate. He further submitted that action on the part of the State in insisting the appellant to produce caste certificate issued/verified by the High Level Caste Scrutiny Committee even when the caste certificate submitted by him is issued by a competent authority i.e. Sub Divisional Officer (Revenue). It is further contended that when there is no complaint against the appellant by any person that the appellant do not belong to the caste as mentioned in the caste certificate or caste certificate produced is a forged and fabricated document, respondent authorities could not have asked and insisted the appellant to produced caste certificate issued/verified by the High Level Caste Scrutiny Committee. He also submitted that in “The Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status), 2013”, nowhere prescribes mandatory requirement for verification of caste certificate from the State Level Caste Scrutiny Committee prior to issuance of appointment order. He placed reliance on the judgments passed by the Hon'ble Supreme Court in the matters of **Andhra Pradesh Public Service Commission v. Baloji Badhavath and Others**¹, **Ravindra Singh v.**

¹ (2009) 5 SCC 1

State of Chhattisgarh and Others², Ajithkumar P. and Others v. Remin K.R. and Others³, Vikas Sankhala and Others v. Vikas Kumar Agarwal and Others⁴ and Government (NCT of Delhi) and Others v. Pradeep Kumar and Others⁵ to buttress his submission.

8. Per contra, Shri Ghanshyam Patel, learned Government Advocate appearing for the State submitted that appellant has submitted his application form as a reserved category candidate being a member belonging to scheduled caste community and availed benefits as applicable to the reserved category candidate, therefore, appellant is required to submit authentic caste certificate admissible to the authorities. He further submitted that even if, appellant has been selected finally on a seat marked for unreserved candidate, but as he has submitted his application form as a reserved category candidate, then he is required to submit document issued/verified by competent Caste Scrutiny Committee as mentioned in Annexure P/3 i.e. High Level Caste Scrutiny Committee. As per intimation dated 02.05.2015 (Annexure P/3), the appellant has to submit an application before the District Level Caste Scrutiny Committee, but even after granting number of dates for production of relevant documents, the appellant could not able to submit those documents, therefore, District Level Caste Scrutiny Committee has forwarded the case of the appellant to the High Level Caste Scrutiny Committee. It is further contended that document Annexure P/4 annexed with the writ petition mentions that

² (2014) 2 SCC 232

³ (2015) 16 SCC 778

⁴ (2017) 1 SCC 350

⁵ (2019) 10 SCC 120

prior to 1950, father/ancestral of the appellant was found to be resident of Village Sarkatola, Tahsil Aamgaon, District Gondiya, Maharashtra. In an enquiry, appellant was asked to submit relevant material and documents before the Director, Tribal Research and Training Centre, Raipur, Chhattisgarh, if he claims to be the scheduled caste community 'Mahar' of State of Chhattisgarh. But appellant failed to produce any such document. The Circular relied upon by the learned counsel for the appellant dated 24.09.2013 is with respect to the Government employees already working with the State Government, therefore, the said Circular is not applicable in the facts and circumstances of the present case. He also submitted that verified caste certificate could not be issued to the appellant as he himself is not cooperating/participating in the proceedings fixed by the Committee and producing materials asked by them to be produced for enquiry.

9. Shri Sudeep Agrawal, learned counsel appearing for the CGPSC while adopting the arguments raised by learned counsel for the State, submitted that, looking to the facts and circumstances of the case and particularly, taking into consideration the initial application filed by the appellant for participating in selection process of Civil Judge, Class-II (Entry Level) as a reserved category candidate taken the benefits of reserved category candidate is required to submit the documents as asked for by the State. The appellant has stated before the District Level Caste Scrutiny Committee that he is not having any document of the year 1950 whereas the person residing in the Chhattisgarh prior to 1950 i.e.

date on which, Presidential notification was issued mentioning castes of the scheduled caste and scheduled tribe. The castes of scheduled caste and scheduled tribe mentioned in Government notification for the State, are only to be given benefits of reserved category within that particular State. It is a mandatory requirement that the persons claiming themselves to be a scheduled caste or scheduled tribe community, to submit documents prior to 1950 or other document specified in the Act of 2013. He also submitted that filing of writ appeal challenging the observation made by learned Single Judge in paragraph-18 of the impugned order itself shows that the appellant was not successful in all the selection process as out and out a candidate belonging to unreserved category. If at any stage of selection process appellant took benefit of a reserved category candidate then he is required to produce the required caste certificate asked by the authority.

10. We have heard the learned counsel appearing for the respective parties and perused the record.

11. There is no dispute that the appellant participated in the recruitment process of appointment of Civil Judge, Class-II (Entry Level) as a candidate belonging to a reserved category candidate (scheduled caste community). Annexure P/2 which is a final select list shows that the appellant was selected for the seat belonging to unreserved category as he has been shown at Sl.No.10 in the select list. Looking to the fact that though in the final select list, appellant has been shown to be selected for unreserved seat on his merit, but submitted his application form as a member of reserved category

candidate.

12. The Scheme of examination for recruitment on the post of Civil Judge, Class-II (Entry Level) is based on preliminary examination, mains examination followed by interview. In preliminary examination, fifteen laws have been included in the syllabus whereas in the mains examination, there is framing of issues and judgment writings. For evaluating overall knowledge and aptitude of candidate appearing in the recruitment process of Civil Judge, Class-II (Entry Level) post, preliminary examination is also having very important bearing because in the preliminary examination, questions from all 15 important laws including Central and State laws is put to test the knowledge of the candidates. For this reason also the submission made by learned counsel for appellant is not sustainable.

13. We put specific question to the learned counsel for the appellant that whether appellant had successfully passed preliminary examination also as an unreserved category candidate. To the above question put by this Court, learned counsel for the appellant answered that in preliminary examination, appellant became successful as a candidate belonging to scheduled caste community (reserved category candidate). He submitted that in preliminary examination, appellant secured 84 marks out of 100 marks, whereas cut-off mark for unreserved category candidates was 86. He further pointed out that in main examination, appellant has secured 64 marks out of 100 marks whereas cut-off mark for unreserved category candidates was 60. He secured 11 marks out of 15 in interview thereby securing 75 marks out of 150 marks and

ranked in final select list at Sl.No.10 as an unreserved category candidate.

14. From the aforementioned fair and categorical submission made by learned counsel for the appellant, it is clear that the appellant submitted his application as a reserved category candidate and he crossed barrier of passing of preliminary examination as a reserved category candidate, thereby he has availed the benefit to pass one of the examinations out of two as reserved category candidate.

15. Now, in view of the aforementioned facts and circumstances of the case as well as arguments advanced by the learned counsel for the appellant, the question arises for consideration before this Court is whether the appellant being finally selected against unreserved seat, he is required to submit caste certificate as sought for by the State or there is no requirement of production of caste certificate as the appellant has been selected against unreserved seat on his merit.

16. Here, it is not a case that appellant though submitted his application form as a reserved category candidate, but throughout passed examinations of both levels securing more marks than the last cut-off marks secured by unreserved category candidate. But, here is a case where, in the preliminary examination, appellant became successful only as a candidate belonging to reserved category as per marks secured by him as narrated by learned counsel for the appellant and mentioned in preceding paragraph.

The submission of learned counsel for the appellant that even though benefit has been availed by the appellant as reserved category candidate at the time of filing of application form as also crossing of barrier of preliminary examination as a reserved category candidate, the concession or relaxation granted in the preliminary examination is not having any relevancy in determining the merit of a candidate. Marks of preliminary examination is not added in final result for preparing final merit/select list, therefore it is to be seen in the facts of the case that the appellant became successful in the final examination by securing 10th position in merit list making him eligible to get appointment under unreserved seat. There is no requirement to submit caste certificate verified by the High Level Caste Scrutiny Committee for any purpose as he being selected for the seat of quota of unreserved category candidate. In support of his submission, he placed reliance in the matter of **Ajithkumar P.** (supra).

17. The facts of the case of **Ajithkumar P.** (supra) are that the Service Commission conducted the examination for appointment of Sub-Inspector (Trainee) and the appellants who were belonging to reserved categories were given appointment against open category vacancies, but in the screening test (preliminary examination), they crossed the barrier of examination as a candidate belonging to reserved category candidates. Their appointments in the open category vacancies (unreserved) were challenged by way of filing Original Application before the Administrative Tribunal with following reliefs as mentioned in paragraph-11 of the judgment, which is

reproduced herein-below for ready reference :

“(a) Declare that the inclusion of the candidate, who secured less than 49 marks in the preliminary examination, in the main list of Annexure A-6 is illegal.

(b) Direct the third respondent to remove the candidates who secured less than 49 marks in the preliminary examination from the main list of Annexure A-6.

(c) Direct the third respondent not to advise and Respondents 1 and 2 not to appoint any candidate who secured less than 49 marks in the preliminary examination against the vacancies available for open competition candidates”.

18. The Administrative Tribunal as well as the High Court have held that as the candidates have crossed/passed one of the examinations i.e. preliminary examination as a reserved category candidate, therefore, even if they became successful in mains examination and got their ranking in the merit list above the last candidate of unreserved category then also they are not having any right to be selected against open category candidate and they are entitled to compete for the post, which are reserved in favour of the respective class to which each of the appellants belong. It is in the said circumstances, the Hon'ble Supreme Court has held that when relaxation or concession is given at the preliminary stage, which has no impact on the final ranking, the relaxation so given cannot have any relevance in so far as the final ranking is concerned. Meaning thereby that if in the final select list, candidate belonging to reserved

category ranked in the list above the unreserved category candidate, then he is entitled for appointment for the seat/post of open category candidate/unreserved category candidate.

19. The case of **Ajithkumar P.** (supra) relied upon by the learned counsel for the appellant, in the opinion of this Court, is not of any benefit to the appellant because the pronouncement made by Hon'ble Supreme Court is on different facts and issue came to be considered by the Hon'ble Supreme Court.

20. There is no doubt in the law enunciated by the Hon'ble Supreme Court in the aforementioned judgment. In fact, the benefit of the case law relied upon by the appellant has been extended to him by placing him in unreserved category in select list. But in the facts of the case at hand, it is to be seen that whether the State is justified in asking for the caste certificate from the appellant. In the case at hand, appellant has submitted an application form as a reserved category candidate took benefit of fees relaxation, passed preliminary examination as a reserved category candidate and thereby took benefit available to reserved category candidate. If the appellant would not have availed the benefit available to reserved category candidate he could not have succeeded in preliminary examination. This being the position even though appellant has been selected for the seat of unreserved category candidate on the basis of his merit, then also, it will not bring the appellant in zone of consideration of an unreserved category candidate exclusively.

21. In view of above, the State is justified in asking for submission

of verified caste certificate along with all educational testimonials and documents at the time of scrutiny of documents before issuing order of appointment. The appellant cannot say that as he has been appointed as open category candidate (unreserved), therefore, there is no requirement of asking and submitting of the caste certificate by him for its scrutiny.

22. For the foregoing discussions and undisputed facts emerging from record, it reveals that the appellant has applied as candidate belonging to reserved category, passed preliminary examination by availing benefits available to a candidate belonging to reserved category, therefore, in the opinion of this Court, though the appellant has been shown to be selected on unreserved seat, he is required to submit valid caste certificate as demanded by the State.

23. In view of the above discussions, we do not find any tenable ground calling interference in the order impugned, the appeal being devoid of any substance, which is liable to be and is hereby dismissed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge