

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.32998 of 2018
Date of decision: 27.02.2020**

Sanjay Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Keshav Gupta, Advocate,
for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the order dated 18.10.2017 (Annexure P-7), report of the Tehsildar dated 15.05.2018 (Annexure P-9), report of the committee dated 31.05.2018 (Annexure P-10) and the charge sheet dated 08.10.2018 (Annexure P-11).

Father of the petitioner was issued a Scheduled Caste certificate on 29.10.1985 and elder brother of the petitioner was issued the same certificate on 26.07.1986 (Annexure P-3). Petitioner was issued the certificate of Kabir Panthi (Sadh) by the competent authority on 06.08.1987 (Annexure P-4). Even the younger brother of petitioner was also issued a Scheduled Caste certificate on 11.09.1996 (Annexure P-4A). On the strength of the above said certificate, petitioner applied for the post of Clerk in the Haryana Civil Secretariat, Chandigarh and after selection, he joined on the said post on 01.08.1997. Subsequently, the petitioner was promoted as Assistant on 30.01.2009.

On 06.03.2017, a complaint (Annexure P-5) was made by the real uncle (*Chacha*) of the petitioner and the matter was referred for

investigation to the Vigilance Commission. As per report (Annexure P-6) of the Vigilance Commission, petitioner belongs to Kabir Pandhi (Sadh) caste. Thereafter, vide order dated 18.10.2017 (Annexure P-7), the Chief Secretary constituted a committee to look into the genuineness of the caste certificate. Veracity of the petitioner's certificate was inquired by the Nambardar and a report was given by the Patwari, which was endorsed by the Tehsildar on 17.01.2018 (Annexure P-8) stating therein that petitioner belonged to a Scheduled Caste. Thereafter, a fresh report dated 15.05.2018 (Annexure P-9) was given by the same Tehsildar by taking a U-Turn. As per this report, Kabir Panthi (Sadh) has not been mentioned anywhere as a Scheduled Caste. It is further stated in the report that Kabir Panthi (Sadh) is equitable to Swami Sadh and since Swami Sadh comes within Bakward Class category, the certificate of the petitioner was not correct. Thereafter, vide decision dated 31.05.2018 (Annexure P-10), later report of the Tehsildar was accepted by the Committee and a charge sheet was issued to the petitioner on 08.10.2018 (Annexure P-11).

On 17.12.2018, notice of motion was issued in this case and proceedings pursuant to the charge sheet dated 08.10.2018 (Annexure P-11) were stayed.

Upon notice, reply dated 18.10.2019 on behalf of respondent Nos. 1 and 2 has been filed. Stand taken by the respondents is that on 06.03.2017, real uncle (*Chacha*) of the petitioner namely Naresh Kumar, resident of V.P.O. Beri, District Jhajjar, made a complaint (Annexure P-5) against the petitioner to the Chief Secretary to Government of Haryana, stating that Sanjay Kumar-petitioner has got job by submitting forged certificate of Scheduled Caste. It was alleged that the petitioner has

defrauded the Government by submitting a false SC certificate for getting job. After receiving this complaint, the Chief Secretary to Government of Haryana, vide order dated 18.10.2017 (Annexure P-7), constituted a committee consisting of the following officers:-

- (i) Director, Welfare of SCs & BCs Department.
- (ii) Under Secretary, General Administration.
- (iii) Superintendent Vigilance.

During the enquiry, Tehsildar, Jhajjar, vide report dated 15.05.2018 (Annexure P-9), stated that there was no record in the Tehsil Office, Beri, on the basis of which, it could be ascertained as to who had issued the caste certificate because the said certificate was not issued by Tehsil Beri. Thereafter, the committee, so constituted, gave its report dated 31.05.2018 (Annexure P-10) stating that the Scheduled Caste certificate issued in favour of petitioner on 06.08.1987, was not in accordance with the Government instructions, wherein the Kabir Panthi, Julaha is indicated at Sr. No.19 and the word 'Sadh' is not mentioned in it. There is no mention regarding Kabir Panthi (Sadh) and in the notification dated 15.07.2014 issued by the State Government, Swami Sadh is written, which falls under the Backward Class (A) category. Certificate dated 06.08.1987 (Annexure P-4) issued by the Sub Divisional Officer (C), Jhajjar, is not as per the notification issued by the Government of India in the month of April, 1975, wherein Kabir Panthi, Julaha is indicated at serial No.19 and the word 'Sadh' is not mentioned therein. It is further stated that petitioner factually belongs to Backward Class (A) caste namely Baragi, Bairagi, Swami Sadh as per notification date 15.07.2014 issued by the State of Haryana and the charge sheet dated 08.10.2018 (Annexure P-11) has been rightly issued in

accordance with the Government rules.

Learned counsel for the petitioner has argued that the caste certificates dated 23.10.1950 & 26.07.1986 (Annexure P-3) were issued to the father and elder brother of the petitioner by mentioning that they belonged to Kabir Panthi and Kabir Panthi (Sadh) caste, which is recognized as a Scheduled Caste under the Constitution. The alleged complaint dated 03.06.2017 (Annexure P-5) was made by real uncle of the petitioner with *mala fide* intention. Learned counsel while referring to the notification dated 10.08.1950 (Annexure P-1), stated that Kabir Panthi is reflected as Scheduled Caste category at serial No.16 in State of Punjab. Thereafter, vide notification dated 20.09.1976 (Annexure P-2), amendment was made in the notification dated 10.08.1950 (Annexure P-1) with respect to the SC and ST categories. Even in this notification, at serial No.19, with respect to the State of Haryana, Kabirpanthi, Julaha is reflected as SC category. As per these two notifications, SC certificates have been rightly granted to the petitioner and his family members. Learned counsel for the petitioner further argued that the petitioner belongs to Kabir Panthi caste and by mentioning word 'Sadh' at the end, his category cannot be changed to BC category. The caste would remain as Kabir Panthi and it cannot be taken as Swami (Sadh), which falls under the BC category. In support of his arguments, learned counsel for the petitioner has referred to the judgments passed in **Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and others**, (1994) 6 Supreme Court Cases 241, **Baswant vs. State of Maharashtra and others**, (2007) 12 Supreme Court Cases 800 and **State of Maharashtra vs. Milind and others**, (2001) 1 Supreme Court Cases 4, on the proposition that categories of persons are

declared as SCs/STs under Constitution (SC/ST) Order, as amended by SCs/STs Amendment Act, 1976 and no addition and alteration can be made therein by issuing social status certificate.

Mr. Randhir Singh, Addl. A.G., Haryana, has vehemently argued that on a complaint (Annexure P-5) made by uncle (*chacha*) of the petitioner on 06.03.2017, a committee was constituted. As per decision dated 31.05.2018 (Annexure P-10), SC certificate issued in favour of the petitioner on 06.08.1987 was not in accordance with the instructions of the Government. He further argued that the petitioner factually belongs to Backward Class (A) caste namely Bairagi, Swami Sadh as per notification dated 15.07.2014 issued by the State of Haryana and hence, charge sheet dated 08.10.2018 (Annexure P-11) has been rightly issued in accordance with the Government rules.

After hearing learned counsel for the parties, this petition deserves to be allowed. The caste certificates dated 23.10.1950 and 26.07.1986 (Annexure P-3) have been issued in favour of father and elder brother of the petitioner by mentioning that they belong to Kabir Panthi and Kabir Panthi (Sadh) caste, which was recognized as Scheduled Caste under the Constitution. Even as per notification dated 10.08.1950 (Annexure P-1), at serial No.19 with respect to State of Haryana, Kabir Panthi, Julaha is mentioned as SC category. Hence, the petitioner belongs to Kabir Panthi caste and merely by mentioning word 'Sadh' at the end, his caste cannot be changed to BC category. Moreover, the caste of father as well as brother of the petitioner has been accepted to be a Scheduled Caste (SC) as per certificates dated 23.10.1950 and 26.07.1986 (Annexure P-3). The petitioner should have been held to be belonging to SC category as per

notification dated 10.08.1950 (Annexure P-1) and its amendment vide notification dated 20.09.1976 (Annexure P-2). Hon'ble the Supreme Court in **Kumari Madhuri Patil's** case (supra), while examining the issue of change of category, held that no addition or alteration can be allowed while issuing social status certificate, even if any amendment is made by the SC/ST Amendment Act, 1976. The caste is acquired by birth.

In the facts of the present case, the caste certificates dated 23.10.1950 and 26.07.1986 (Annexure P-3) in favour of father and brother of the petitioner show that they belong to Kabir Panthi, which is a Scheduled caste. The petitioner has a right to claim benefit of the SC certificate dated 06.08.1987 (Annexure P-4) issued to him. Hon'ble the Supreme Court in **Milind's** case (supra), has held that the object of Articles 341 and 342 was to provide additional protection to members of the SC and ST having regard to their long-standing social and educational backwardness and to keep away disputes in determining, whether a caste/tribe is or is not a SC/ST for the purpose of the Constitution. Under Article 342 (1) of the Constitution of India, a notification specifying Scheduled Caste/Schedule Tribes can be amended by following due procedure by Parliament and it cannot be amended by the State Government, Courts and the Tribunals. Under the Constitution (Schedule Tribes) Order 1950, a tribe, sub-tribe, part of or group of any tribe or tribal community, if not specifically mentioned therein, cannot be held to be synonymous to one mentioned therein.

In the facts of the present case, petitioner was rightly issued the certificate of Kabir Panthi (Sadh) by a competent authority on 06.08.1987 (Annexure P-4). This certificate had been issued to him keeping in view the

SC certificates dated 23.10.1950 and 26.07.1986 (Annexure P-3) issued to his father and elder brother that they belong to Kabir Panthi caste, which was recognized as SC under the Constitution. After the said certificate was issued to the petitioner, even his younger brother was issued the SC certificate on 11.09.1996 (Annexure P-4A). On the basis of above certificate, petitioner joined as Clerk in the Haryana Civil Secretariat, Chandigarh on 01.08.1997. He was, thereafter, promoted as Assistant on 30.01.2009. Thereafter, a complaint dated 06.03.2017 (Annexure P-5) was made by real uncle (*chacha*) of the petitioner, whereupon a committee was constituted and a report was given that the petitioner belongs to Swami Sadh caste, which falls within the BC-A category. Keeping in view the ratio of the judgments passed by Hon'ble the Supreme Court in **Kumari Madhuri Patil** and **Milind's** cases (supra), petitioner was rightly issued the certificate of SC category as he acquired the caste at the time of his birth from his father. By merely mentioning word 'Sadh' at the end will not change his category to BC-A as his father and brothers have also been issued SC certificates (Annexure P-3 and P-4A). Moreover, no complaint has been made by his uncle against issuing of those certificates.

In view of the above discussion, order dated 18.10.2017 (Annexure P-7), report of the Tehsildar dated 15.05.2018 (Annexure P-9), report of the committee dated 31.05.2018 (Annexure P-10) and the charge sheet dated 08.10.2018 (Annexure P-11) are quashed.

Allowed accordingly.

27.02.2020
ajp

(RITU BAHRI)
JUDGE