

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Order : 03rd February, 2020.*

+ W.P.(C) 884/2020, C.M.2802/2020
GOVT. OF NCT OF DELHI & ORS. Petitioners

Through: Mr.Naushad Ahmed Khan, ASC,
Civil, GNCTD.

versus

HARSH CHALIHA (TGT) Respondent

Through: Mr.Piyush Sharma and Mr.Suresh
Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. This writ petition is directed against order dated 19.12.2018 passed by the Central Administrative Tribunal (the 'Tribunal') by which O.A. No.100/4152/2014 filed by the respondent has been allowed; as also order dated 03.05.2019 by which the review petition filed by the petitioner has been dismissed.
2. Some necessary facts which are required to be noticed for disposal of this writ petition are that the respondent, a Brahmin by birth, got married on 18.04.1975 to one Mr. T.C. Chaliha, who belongs to the SC category. After the respondent's marriage, she applied for a certificate to record that she belongs to the SC category. A provisional certificate to this effect was issued to the respondent on 30.06.1975 by the Deputy

Commissioner, CCS-II Section, Delhi. Thereafter, a regular certificate was issued to her on 12.09.1975.

3. In the year 1978, the respondent joined a Municipal Corporation of Delhi school as an Assistant Teacher. Thereafter on 12.02.1980, the respondent was appointed as TGT (Hindi) in the Government Girls, Senior Secondary School, Narela against a vacancy reserved for Scheduled Caste. On 15.05.1985, after she joined as Assistant Teacher, an explanation was sought from the respondent regarding her caste status; and on 22.11.1985, another letter was issued by the Vigilance Officer of the Directorate of Education seeking certain information/documents from the respondent regarding her allegedly fraudulent/bogus caste certificate.
4. On 23.06.1989, the respondent was issued a memorandum enlisting the articles of charge under Rule 14 of CCS (CCA) Rules 1965, on the allegation that she had relied upon a fraudulent Scheduled Caste certificate; and had concealed the fact that she belonged to a Brahmin family and had therefore procured the government job by concealment. Enquiry was conducted and the enquiry report was submitted by the Inquiry Officer on 25.05.1990. Thereafter on 14.11.1991, the Disciplinary Authority passed an order, awarding the punishment of reduction in rank to the post of Assistant Teacher in the minimum of pay scale and reverting her to the MCD. The respondent then filed an appeal before the Appellate Authority.
5. The respondent superannuated on 30.06.2014. In the meantime, the respondent also approached the Tribunal by filing O.A.2812/1991,

which was disposed of by an order dated 14.11.1996. The following observations were made by the Tribunal in the said order:

“the disciplinary authority has made a positive finding that “She had made a false statement”, but the point in issue, whether she got it (job) by making a false declaration and that the matter requires further and deeper examination at the hand of the Appellate Authority”

The OA was accordingly disposed of directing the Appellate Authority to examine the matter with specific reference to whether the finding of the Disciplinary Authority is based on evidence.

6. By an order dated 27.06.2014 the Appellate Authority passed an order imposing the punishment of ‘removal from service’ which led to the filing of OA No.4152/2014, in which the Tribunal set-aside the order of the Appellate Authority. Review petition was filed by the petitioner, which was dismissed by the Tribunal; which has led to filing of the present writ petition.
7. It transpires that thereafter by communication dated 24.08.1987 issued by the office of the Deputy Commissioner the caste certificate dated 12.9.1975 issued to the respondent was cancelled and the facilities availed by her were directed to be withdrawn.
8. Mr.Naushad Ahmed Khan, learned counsel for the petitioner submits that the employment granted to the respondent was based on a false certificate, since admittedly, the respondent does not belong to Scheduled Caste category. It is submitted that since the basis of her employment was a false certificate, which could not entitle her to the post, there is no infirmity in the order passed by the Appellate Authority. Even otherwise, Mr.Khan submits that *de-hors* any question of enquiry, if the certificate in question has since been withdrawn, the

respondent would not be entitled to any benefit whatsoever. Mr.Khan places reliance upon the following judgments of the Supreme Court:

- (i) ***Valsamma Paul vs. Chochin University and Ors.***, reported as (1996) 3 SCC 545
- (ii) ***Anjan Kumar vs. Union of India & Ors.***, reported as (2006) 3 SCC 257
- (iii) ***A Swarajyalakshmi vs. Registrar General of India (Census)***, reported as (2001) SCC online AP 105.

9. *Per contra* Mr.Piyush Sharma, learned counsel for the respondent submits that there was no concealment on the part of the respondent. He relies upon the stand taken by the respondent in the statement given before the Inquiry Officer, the relevant portion of which reads as under:

“It may also be mentioned that the only authority which can take a decision on such matters on behalf of the Government is the DC, Delhi who has issued the certificate to me. The DC has not withdrawn or cancelled the certificate because I am fully entitled to it. This fact has also been born out by the evidence of PW11 who represents office of the IC vide his evidence dated 16.2.90 and 8.3.90. Thus validly hold the SC certificate issued by the competent authority and so long as I hold the certificate, no other authority (including Directorate of Education) can challenge my status SC. Directorate of Education is obliged to be guided by the SC certificate issued by have no jurisdiction or power to challenge my status so long as I hold the certificate. Thus the Directorate of Education has neither (i) the jurisdiction to take a decision whether the certificate was issued to me was correct (ii) nor has any power to question my status as SC so long I hold a SC certificate.”

10. Counsel for the respondent further contends that the respondent had taken a bold step as far back as in the year 1975 of marrying outside her caste; and instead of lauding the stand taken by her, she has been

penalized and has been subjected to harassment year-after-year and continues to be harassed even after her superannuation. He submits that it is not the case of the petitioner that the respondent made a false declaration before the certificate issuing authority; or that the certificate relied upon by her is forged or fabricated. Learned counsel contends that the respondent has had an unblemished service record. She served the school with utmost sincerity and dedication. Therefore, at this stage, the petitioner cannot deprive her of retiral benefits and other dues on the basis of the plea taken. He places reliance on a judgment rendered by this Court in the matter of ***Kendriya Vidyalya Sangathan vs. Shanti Acharya Sisingi***: W.P. (C) 4743/2008; and submits that even otherwise, the certificate could not have been cancelled without issuing a show cause notice, holding a proper enquiry and giving an opportunity of hearing.

11. We have heard learned counsel for the parties and have considered their rival contentions.
12. It is not in dispute that the respondent is a Brahmin by caste. It is also not in dispute that way back in the year 1975 she married a gentleman who belonged to a Scheduled Caste. Under a *bona fide* belief, the respondent sought a Scheduled Caste certificate from the concerned authorities, which was granted to her. Based on the said certificate, she applied for the post of Assistant Teacher with MCD, to which post she was appointed.
13. We find force in the submissions made by counsel for the respondent that her caste certificate could not have been cancelled without the concerned authority issuing a show cause notice to her respondent,

holding a proper enquiry and giving to the respondent an opportunity of hearing. In our view, the judgments relied upon by the Mr.Khan do not apply to the peculiar facts of this case.

14. Considering the above, in our view, there is no infirmity in the order passed by the Tribunal. The Tribunal has correctly allowed the OA on the ground that there is no concealment on the part of the respondent. She had rendered the explanation that she was under an impression that having married a person who belongs to a reserved category, the benefits of reservation would automatically accrue to her. There is no allegation against the respondent that the certificate was procured by her through illegal means; or by concealment; or that the certificate is *per se* forged or fabricated. Furthermore, after the matter was remanded back by the Tribunal to the Appellate Authority as far back as on 14.11.1996 and the final order passed only on 27.06.2014, no action was taken against the respondent; and the only explanation rendered by the counsel for the petitioner is that the file had gone missing. This explanation of the learned counsel for the petitioner does not inspire confidence. The respondent was allowed to work throughout and she has since superannuated on 30.06.2014. She is a senior citizen and at this stage, she ought not to be put to harassment by depriving her of all retiral benefits.
15. Resultantly, we do not find any merit in the present writ petition and the same is dismissed. All pending dues of the respondent shall be released within six weeks from today, failing which they would be paid along with interest @ 8% p.a. for the period of delay.

C.M.2802/2020

16. In view of the order passed in the writ petition, the application stands disposed of.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J
FEBRUARY 03, 2020/rb

