

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2960 of 2016**

Smt. Sandhya Rani Singh D/o Shri Ramsharan Singh , Aged About 47 Years
 R/o Village Tikarkala Jyotipur, Block Gourella Pendra Road, Distt. Bilaspur
 Chhattisgarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Water Resources Department,
 Mahanadi Bhawan, Naya Mantralaya, New Raipur, Distt. Raipur
 Chhattisgarh, Chhattisgarh
2. Superintendent Engineer, Minimata Bango Dam Circle, Machadoli, Distt.
 Korba Chhattisgarh, District : Korba, Chhattisgarh
3. Chief Engineer, Hasdeo Kachhar, Water Resources Department, Bilaspur,
 Distt. Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
4. Commissioner, Adivasi Vikas, Bilaspur, Distt. Bilaspur Chhattisgarh, District :
 Bilaspur, Chhattisgarh
5. High Power Caste Scrutiny Committee Through Its President Pandit Dindyal
 Upadhyay Nagar, Sector- 4, Raipur, Distt. Raipur Chhattisgarh, District :
 Raipur, Chhattisgarh
6. Tehsildar, Pendra Road, Distt. Bilaspur Chhattisgarh, District : Bilaspur,
 Chhattisgarh

---- Respondents

For Petitioner	:	Shri S. P. Kale, Advocate.
For State	:	Mr. Aditya Tiwari, PL

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

24.11.2021

1. Aggrieved by the order Annexure P-8 dated 31.03.2016 and order passed by the respondent no.5 dated 01.03.2000 and also the earlier order dated 07.10.1998 passed by the Tehsildar-respondent no.6, the present writ petition has been filed.
2. Present is the third round of litigation on behalf of the petitioner. The earlier two being WP 1497/1999 decided on 31.03.2000 and other being the WP 3976/2005 which stood allowed on 30.09.2013 and thereafter the present writ petition, which was filed in the year 2016.
3. Brief facts of the case is that the petitioner was appointed as a Lower Division Clerk. Subsequently reclassified as Assistant Grade-III under the respondent no.2 & 3. The petitioner got appointed on 02.11.1989. At the time of the appointment the petitioner had produced a certificate issued from the office of the Tehsildar, Pendra Road declaring him to be the member of Uraon Caste under the Scheduled Tribe category. However, after about 8-9 years of service, some complaint was lodged as regards the social status of the petitioner and Tehsildar, Pendra Road vide order dated 07.10.1998 Annexure P-2 canceled the caste status issued earlier. Based upon the said cancellation of his caste certificate, the service of the petitioner stood terminated on 01.03.2000. The order of the Tehsildar dated 07.10.1998 was subjected to challenge in a writ petition i.e. WP 1497/1999. The said writ petition stood allowed on 31.03.2000 holding that in so far as the order dated 07.10.1998 by the Tehsildar to be illegal in the light of the judgment of the Supreme Court in the case of **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Welfare Department and others**

reported in **(1994) 6 SCC 241**. The High Court was of the view that the Tehsildar was not the competent authority to verify the caste status of the petitioner and which could have been only done by the High Powered Caste Scrutiny Committee to established by each of the State Governments. Subsequently, the complaint of the petitioner was referred to the State level High Powered Caste Scrutiny Committee and on which the Committee subsequently vide Annexure P-5 again passed an order holding that petitioner does not belong to the Uraon caste nor does he belong to the Scheduled Tribe Category and therefore the certificate which the petitioner possesses claiming himself to be that of Uraon caste deserves to be canceled.

4. The said order of High Powered Caste Scrutiny Committee dated 24.05.2005 was again subjected to challenge by way of a writ petition i.e. WP 3976/2005. The said writ petition again stood allowed on 30.09.2013 and in the said order, this Court had specifically held that the proceedings drawn by the Committee was not proper and that the petitioner have been deprived of cross examining the witnesses and also to lead evidence on his behalf. Then the matter stood remitted back to the Committee for a fresh consideration of the social status of the petitioner in accordance with law. Court below while allowing the writ petition had also gone to the extent of permitting either of the parties to lead fresh evidences. The Committee thereafter is said to have again got seized of the matter and proceeded to decide the same and vide the impugned order Annexure P-8 dated 31.03.2016, the Committee again reached to the conclusion that petitioner does not belong to the Uraon Community and certificate which the petitioner possesses claiming herself to be the member of Uraon Community was

ordered to be canceled. It is this order which is under challenge in this case along with the prayer for quashment of the order of termination and for consequential benefits.

5. Counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of **Rameshbhai Dabhai Naika v. State of Gujarat and others, 2012 3 SCC 400.**
6. State counsel on the other hand submits that it is case where the petitioner was given ample opportunity to prove the fact that she belongs to a particular caste or category/tribe by holding cogent and reasonable evidences in support of her claim. Learned State counsel also submits that it is case where in spite of ample opportunity the petitioner has failed to avail the opportunity which was given to her by leading strong proof of the petitioner belonging to a particular caste or tribe. State counsel further submits that perusal of the impugned order would also reflect that the matter was seized by the Vigilance Cell of the said High Powered Caste Scrutiny Committee and report was given on conducting an enquiry and decision has been taken only thereafter. Thus, for all the aforesaid reasons, the counsel for the State prays for rejection of the writ petition.
7. Having heard the contentions put forth on either side and on perusal of records, what has to be seen in the given facts of the present case is that admittedly the petitioner was given appointment by the respondent on 02.11.1989. The petitioner was given appointment under Reserved Category wherein the petitioner had produced a document declaring herself to be the member of Uraon Community which is a Scheduled Category based upon the caste certificate that the petitioner had.

Subsequently, on a complaint received in respect of social status of the petitioner, the Tehsildar finally vide Annexure P-2 dated 07.10.1998 canceled the caste certificate of the petitioner which has led to the filing of the two previous litigations in the form of writ petition i.e. WP 1497/1999 and WP 3976/2005. Both of which stood allowed in favour of the petitioner. In spite of the petitions being allowed on two occasions and on both the occasions the order getting interfered with on technical ground, the respondents ought to have, when the matter was remitted back to them again vide Annexure P-8 dated 30.09.2013 conducted a thorough enquiry before reaching to a particular conclusion.

8. Another aspect which is worth mentioning at this juncture is that the Committee while passing Annexure P-8 dated 30.09.2018 on couple of occasions referred to the Rules under which the impugned order has been passed i.e. the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013.
9. Given the said facts, It is apparent that Committee while deciding the matter was well aware of the statutory provisions as is otherwise envisaged in the aforementioned Act of 2013. Rule 8 of the said Act of 2013 deals with the manner in which the enquiry is conducted. For ready reference Rule 8 is reproduced hereinunder :-

“8. Inquiry- (1) The Inquiry Officer, shall inquire about the residence, permanent address, revenue records, immovable property, occupation of applicant's family, name in voter list and other evidence, which are relevant to prove the permanent residence on the Date of the Presidential Notification or Notification Date relating to Other Backward Classes, as the case may be, and shall verify the social status claimed by the Applicant.

(2) The Competent Authority may, apart from documents mentioned in sub-rule (3) of Rule 3 inquire into documents of local bodies, for

example, of Gram Panchayat, Janpad Panchayat, Zila Panchayat, Nagar Panchayat, Municipality and Municipal Corporation also.

(3) Inquiry Officer may also record oral statements, as evidence, of Village Kotwar, village Sarpanch, Halka Patwari, local ward member, other public representatives of the area, gazetted Officers residing in the locality, other local members of that caste already having Certificate and knowing the applicant property.

(4) Inquiry Officer, where he is not a Competent Officer, after inquiry shall furnish his written Report having clear outcome along with documentary evidence and recorded oral statements to the Competent Authority, within fifteen days of receiving inquiry orders.”

10. Likewise, again the said rules provides for a method and procedure of an enquiry, in case, it is being conducted through the Vigilance Cell of the said Committee. For ready reference Rule 20 also is being reproduced hereinunder :-

“20. Inquiry of the Case through Vigilance Cell.- (1) The Scrutiny Committee shall forward the Certificate and copies of all relevant documents in cases referred to it by Verification Committee or by the State Government or any other authority in Form-6A to the Vigilance Cell constituted under Deputy Superintendent of Police;

(2) The Deputy Superintendent of Police through subordinate Police Inspector shall inquire into the case and inform Scrutiny Committee accordingly;

(3) Police Inspector of vigilance Cell shall –

(a) search places of local residence, domicile and general residence of Applicant or the city, town or village of his origin before migration;

(b) ascertain the truth regarding the Social Status as claimed by the Applicant or his parents or his Guardian, as the case may be, on the basis of public documents;

(c) verify the information stated in the application submitted to Verification Committee by the Applicant on the basis of relevant public documents and reliable private documents;

(d) obtain information from Village Kotwar, Village Sarpanch, Halka Patwari, Local Ward Member, other Public Representatives, Local Gazetted Officers, such local members already having a Certificate and who are knowing well the Applicant and if any of them agrees to record his oral statement then he shall record his statement accordingly or shall request important witnesses to give their statement on oath and in case they agree. shall obtain the affidavit accordingly and give a copy of the same to the witness concerned;

(e) give an opportunity to the Applicant himself and parents of the Applicant and shall record the statement of witnesses indicated by them or shall obtain their affidavits;

(f) if during the examination it is found that the Applicant or any other person has maliciously forged the document, after getting the photocopy of the relevant pages, seize the document with the help of local police and shall seal and send the document to Deputy Superintendent of Police of Vigilance Cell and shall a receipt and copy of the sent to the authorities having custody of the documents;

(g) submit his report along with all documents to the Deputy Superintendent of Police after completing the investigation.

(4) Deputy Superintendent of Police, after obtaining necessary mission of the Scrutiny Committee shall send the document seized by the Police Inspector ; forensic test and to handwriting expert along with appropriate noting.

(5) The Deputy Superintendent of Police shall submit the Inquiry Report containing his clear opinion regarding social status of the Applicant, along with documents received from Police Inspector I and conclusions of forensic and handwriting expert to the Scrutiny Committee.

(6) The Scrutiny Committee shall examine such report and in case it finds any deficiency in the report shall revert the same to the Vigilance Cell after indicating such deficiency and may direct for inquiry on specific issues.

(7) Police Inspector and Deputy Superintendent of Police shall maintain details of above mentioned investigation of the cases in Form-5H."

11. On perusal of the aforesaid requirement of law as is envisaged under Rule 8 and Rule 20, if we thereafter compare the impugned order to verify and test as to whether the requirement of law as is otherwise envisaged under the Rule 8 & Rule 20 have been adopted or followed by the respondents, there can be no agitation in reaching to the conclusion that such requirement have not been met by the respondents before passing of the Annexure P-8 dated 31.03.2016.

12. It is further necessary to mention the judgment of the Hon'ble Supreme Court in the past in the case of **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Welfare Department and others, (1994) 6 SCC 241**. In the said judgment of the Hon'ble Supreme Court in paragraphs 5 & 6 streamlining the procedure for certification for the caste certificate in possession of a Government Employee has held as under :-

"5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all 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 been adopted and followed by the Supreme Court again in the case of **Director of Tribal Welfare Department, Government of A.P. Vs. Laveti Giri and another reported in (1995) 4 SCC 32**. Hon'ble Supreme Court again in the case of **Collector, Bilaspur Vs. Ajit P. K. Jogi and others, (2011) 10 SCC 357** in Paragraph 18 has 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."

14. Now in the instant case, the State Government themselves has in the year 2013 framed a Rule Governing the field of certification of social status which is known as Chhattisgarh Scheduled Caste Scheduled Tribe another backward Classes (Regulation of Social Status

Certification) Act of 2013. Now, it is in this Act that procedure which needs to be followed for the purpose of certification of a social status has been prescribed by the State Authorities. Once, when the State Governments themselves had laid down procedure through the statutes, there is no reason why the said procedure has to be given a go by for concluding the matter. It goes without saying that those matter which is subjected to enquiry by the High Powered Caste Scrutiny Committee, the method of enquiry, the procedure to be adopted in the course of enquiry has to be as is envisaged under the aforesaid Act of 2013 and Rules framed therein. Though, the impugned order finds a reflection of the aforesaid Act and Rules framed therein but the Authorities concerned are silent so far as whether the procedure to be followed as is the requirement of the Act has been followed or not?

15. From the plain reading of the impugned order, it clearly reflects that neither Rule 8 nor Rule 20 have been adhered to in the course of verification and scrutiny of the social status of the petitioner. In the absence of non adherence of the statutory requirements as is provided under Rule 8 and Rule 20, the finding arrived at by the High Powered Caste Scrutiny Committee vide Annexure P-8 cannot be said to be proper, legal or justified and the same therefore deserves to be and is accordingly set aside.

16. In view of the impugned order Annexure P-8 getting setting aside, this Court is further inclined to grant the consequential benefit to the petitioner. Accordingly as a consequence, the impugned order of termination dated 01.03.2000 Annexure P-3 also would be not sustainable and same also deserves to be and is accordingly set aside.

Respondents are directed to immediately take back the petitioner in service. The petitioner would be entitled for reinstatement in service with all other benefits to be provided notionally including any promotion which the petitioner would have otherwise got, as if she had not been terminated. The actual monetary benefits would be given to the petitioner right from the date she has filed the present writ petition i.e. 04.07.2016 onwards.

17. Needless to mention that liberty would still be open for the respondents, in the event, if they want to verify the social status of the petitioner strictly in accordance with the statutory provisions governing the field, particularly the Act and Rules of 2013 framed by the State of Chhattisgarh. With the aforesaid directions and liberty the order of reinstatement is ordered to be complied with within a period of 60 days.
18. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-

P. Sam Koshy
Judge

Rohit