

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 2380 of 2008****Order reserved on 15/07/2021****Order delivered on 15/09/2021**

Premchand Mandal S/o Tuken Mandal, Aged about 31 years, R/o Village Birnadabar, P.S. Chamua, Distt. Giridih (Jharkhand).

Present Address – Mining Sardar, South Eastern Coal Fields Ltd. Johila Area, Raigarh, Distt. Raigarh, Chhattisgarh.

---Petitioner**Versus**

1. South Eastern Coal Fields Limited, Through Chief Managing Director, Seepat Road, Bilaspur, Chhattisgarh.
2. General Manager (P & A), South Eastern Coal Fields Ltd. (SECL) Seepat Road, Bilaspur, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. J.K. Shastri and
Mrs. Meena Shastri, Advocates

For Respondents No. 1 & 2 :-
Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. By way of this writ petition, the petitioner herein calls in question the impugned order dated 25/06/2007 (Annexure P-5) passed by

respondent No. 1 whereby his service from the post of 'Mining Sirdar' has been terminated and further relief has been sought that he may be allowed to continue on the post which he was earlier holding.

2. It is the case of the petitioner that he was issued caste certificate by the Block Development Officer, Jamua on 03/10/2001 (Annexure P-2) as he belonged to Scheduled Tribe category and thereafter, he was appointed by respondent No. 2 on the post of 'Mining Sirdar' on 28/08/2002. He joined his service and also completed the period of probation, but abruptly by order dated 25/06/2007 (Annexure P-5), he was terminated by respondent No. 1 on the basis of some report holding his caste certificate to be false without affording him an opportunity of hearing and without holding departmental enquiry in terms of the applicable Standing Orders, which is absolutely unsustainable and bad in law and the order of termination deserves to be set aside.

3. Return has been filed on behalf of respondents No. 1 and 2 opposing the writ petition stating inter alia that during the period of probation,

petitioner's caste certificate was verified and it was informed by the Block Development Officer vide his letter dated 23/05/2007 (Annexure R/3) that the caste certificate produced by the petitioner is false and forged and on that basis, petitioner's service has been terminated which is strictly in accordance with law.

4. Mr. J.K. Shastri, learned counsel for the petitioner, would submit that petitioner belongs to Scheduled Tribe category which has also been stated by him in the documents which he has filed along with the caste certificate which goes to show that petitioner really is a member of Scheduled Tribe and his service has been terminated from the post of 'Mining Sirdar' without even affording him an opportunity of hearing and without holding an enquiry in terms of the applicable Standing Orders, which runs contrary to the Standing order of S.E.C.L. as well as the judgment passed by the Orissa High Court in the matter of Ritlal Prasad Mandal v. Chief General Manager, Mahanadi Coalfield Limited¹, as such, the impugned order deserves to be set aside.

¹ WPC No. 20594/2009 decided on 22/07/2015

5. Mr. Vinod Deshmukh, learned counsel for respondents No. 1 and 2, would submit that petitioner's caste certificate was verified and since he did not belong to Scheduled Tribe category and the caste certificate was found to be false and forged upon verification, therefore, in terms of the appointment letter, his order of termination has been passed which is in accordance with law. He would rely upon the decision rendered by this Court in the matter of **Chairman-Cum-Managing Director, SECL & Ors. v. Naval Kishore Mishra & Anr.**².

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

7. True it is that petitioner was appointed on the post of 'Mining Sardar' on 28/08/2002 on the pay-scale of Rs. 3998-135-5079-145-6528/- under the Scheduled Tribe category. Paragraphs 2 and 3 of his appointment letter (Annexure P/1) state as under :-

“02) प्रारंभ में आपकी नियुक्ति की परीक्षा अवधि 01 वर्ष की होगी | इस अवधि में आपकी सेवाएं बिना कोई सूचना दिए या

छतिपूर्ति का भुगतान किए या कोई कारण बताए समाप्त की जा सकती है या आपकी परीक्षा अवधि बढ़ाई जा सकती है |

Your appointment will be on probation for a period of one year in the first instance during which period, your services will be liable to be terminated/extended without any notice or compensation or without assigning any reasons therefor.

03) आपकी परीक्षा अवधि सफलतापूर्वक समाप्त होने और आपकी पूर्ववृत्त के विषय में संतोषजनक प्रतिवेदन प्राप्त करने के बाद सक्षम प्राधिकारी द्वारा लिखित रूप से आपकी सेवा की पुष्टि की जाएगी |

After successful completion of your probation period and on receipt of a satisfactory report about your antecedents and performance, your services may be confirmed in writing by the competent authority."

8. A careful perusal of the aforesaid conditions prescribed in petitioner's appointment order would show that petitioner was appointed on the post of 'Mining Sardar' on probation for a period of one year in the first instance and after successful completion of his probation period only on receipt of a satisfactory report about his performance, his services may be confirmed in writing by the competent authority. It appears from the record that no order of confirmation was ever passed after completion of one year and thus, the petitioner continued to be on probation. In the meanwhile, his caste certificate was verified from the Block Development Officer as to whether such certificate has been issued or not and it was

found in the report that the caste certificate issued to the petitioner on 03/10/2001 (Annexure P-2) by the Block Development Officer, Jamua, was not found to have been issued by the Block Development Officer and accordingly, in terms of paragraphs 2 and 3 of his appointment letter, his service has been terminated by order dated 25/06/2007 (Annexure P-5).

9. Petitioner was terminated from service on 25/06/2007. Though he was initially appointed on probation for a period of one year, an order of confirmation was required to be issued in writing by the competent officer finding petitioner's work performance to be satisfactory. In the matter of **Sukhbans Singh v. State of Punjab**³, the Supreme Court has clearly held that a probationer cannot automatically acquire the status of a permanent member of the service unless the rules under which he is appointed expressly provide for such a result. In the matter of **Registrar, High Court of Gujarat and Another v. C.G. Sharma**⁴, it has been held by the Supreme Court that even if the period of probation expires and the probationer

3 AIR 1962 SC 1711

4 (2005) 1 SCC 132

is allowed to continue after that period, automatic confirmation cannot be claimed as a matter of right because the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory, which are the prerequisites or preconditions for confirmation. The probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. The same has further been held by the Supreme Court in the matter of Kazia Mohammed Muzzammil v. State of Karnataka and Another⁵. In the matter of Mohd. Salman v. Committee of Management and Others⁶ Their Lordships of the Supreme Court have held that where a person is appointed as a probationer and a period of probation is specified, it does not follow that at the end of the said period of probation he obtains confirmation automatically unless specifically provided for in the terms of appointment/specified service Rule.

10. Reverting to the facts of the instant case, the appointment order of the petitioner (Annexure P-1) clearly provides that his initial appointment was for one year during which his

5 (2010) 8 SCC 155

6 (2011) 12 SCC 308

service can be terminated/extended without any notice/compensation or without assigning any reason and on completion of probation period only on receipt of satisfactory report of his conduct and work performance, his service is liable to be confirmed in writing by the competent authority, but no order of confirmation has been placed on record by the petitioner except stating that he is deemed to have been confirmed after completion of one year and he has acquired the status of permanent employee of respondent SECL, as such, the procedure prescribed in Clause 28 of the Standing Order would apply. The fact remains that petitioner was a pure and simple probationer and though his period of probation was not extended by any order, but no order of his confirmation was either passed in writing, as such, even after the expiration of his probation period of one year, he continued to be a probationer and would still be a probationer on the date on which his service was terminated, in absence of any specific order of confirmation.

11. At this stage, it would be appropriate to notice conditions 12 and 13 of petitioner's appointment order, which state as under :-

“12) यह नियुक्ति आदेश अस्थायी है और इस शर्त पर है कि अनुसूचित जाती / जनजाति प्रमाण पत्र उचित माध्यम द्वारा जाँच किया जायेगा तथा यदि जाँच में यह पता चलता है कि अनुसूचित जाती/जनजाति, जैसा भी मामला हो, होने का दावा गलत है तो सेवायें बिना कोई कारण बताये और बिना पूर्वाग्रह के समाप्त कर दी जायेगी या गलत प्रमाण प्रस्तुत करने हेतु भारतीय दण्ड संहिता के प्रावधान के अनुसार इसी तरह की अन्य कार्यवाही की जायेगी |

The appointment is provisional and is subject to the caste/tribe certificate being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste/Scheduled Tribe, as the case may be, if false your services will be terminated forthwith without assigning any further reason and without prejudice to such further action as may be taken under the provision of the Indian Penal Code for production of false certificate.

13) यदि आपके द्वारा कोई भी प्रमाण पत्र गलत या असत्य पाया गया तो आपकी सेवायें बिना कोई सूचना दिये समाप्त कर दी जायेगी |

Any of the certificates, if found incorrect, your services will be terminated without giving any notice.”

12. The aforesaid conditions 12 and 13 of petitioner's appointment letter would show that it has clearly been held that petitioner's appointment is provisional and is subject to verification of caste certificate and upon verification, if the caste certificate is found false or it is found that petitioner does not belong to Scheduled Tribe category, then in such a case, his services will be terminated without

assigning any reason and without giving any notice and without prejudice to such further action as may be taken under the provision of the Indian Penal Code for production of false certificate.

13. In the instant case, respondent No. 1/SECL sought information regarding verification of petitioner's caste certificate and upon inquiry, it has been found by the competent authority that the caste certificate dated 03/10/2001 (Annexure P-2) by which petitioner claimed that he belongs to Scheduled Tribe category is false and it has not really been issued from the Office of the Block Development Officer, Jamua and in that view, respondent No. 2 has clearly recorded in petitioner's termination order dated 25/06/2007 (Annexure P-5) that since his caste certificate has been found to be false, therefore, petitioner's services are terminated in accordance with conditions 05, 12 and 13 laid down in the appointment letter (Annexure P-1).

14. Now, considering the contention raised by learned counsel for the petitioner that the petitioner ought to have been afforded an opportunity of hearing before passing of the

order of termination so that he could have explained his case and in absence of any opportunity of hearing provided to the petitioner and for verification of his caste-status (if any) the matter could have been referred to the Caste Scrutiny Committee and in absence thereof, the impugned order terminating petitioner from service is absolutely bad.

15. In order to adjudicate this issue, it would be appropriate to notice the pertinent judgments in this regard. The Supreme Court in the matter of Madhuri Patil v. Commissioner, Tribal Development⁷ formulated the 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 committee and issued direction for issuance of social caste certificate. The directions issued are as under :-

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined I the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to

7 (1994) 6 SCC 241

office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following :

(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."

16. Quite recently following the principles laid down in Madhuri Patil (supra), in the matter of Collector, Bilaspur v. Ajit P.K. Jogi and others⁸, the Supreme Court has held that the verification of validity of the caste certificates and the determination of the caste status should 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.

17. In the matter of Sudhakar Vithal Kumbhare v. State of Maharashtra and Others⁹, 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) and held as under :-

“6. Here we find that the Maharashtra State Electricity Board acting upon the direction of State Government has reverted the appellant without referring the matter to the Scrutiny Committee which was not the correct way to deal with the appellant's case. In fact, in such a situation the employer was required to refer the question before the Scrutiny Committee, which

8 (2011) 10 SCC 357

9 (2004) 9 SCC 481

admittedly had been constituted and established for coming to the matter."

18. The Supreme Court in the matter of Chairman and Managing Director, Food Corporation of India v. Jagdish Balaram Bahira and Others¹⁰ affirmed the principle of law laid down in Madhuri Patil (supra) and held as under :-

"69.2. Since the decision of this Court in *Madhuri Patil* which was rendered on 2-9-1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for :

- (a) the issuance of caste certificates;
- (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;
- (c) the procedure for the conduct of investigation into the authenticity of the claim;
- (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;
- (e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and
- (f) Prosecution for a criminal offence."

19. Reverting to the facts of the instant case in light of the decision rendered by the Supreme Court in the matter of Madhuri Patil (supra) followed in the matter of Ajit Jogi (supra) and in Chairman and M.D. F.C.I. (supra), it is quite

vivid that in the instant case, the petitioner was earlier granted caste certificate on 03/10/2001 by the Block Development Officer, Jamua showing that he belongs to Scheduled Tribe category and on the basis of that, he was appointed by respondent No. 2 on the post of 'Mining Sirdar' on 28/08/2002 and he continued on the said post till the date of termination. The petitioner's appointment was cancelled holding that his caste certificate was verified by the Deputy Commissioner, Jharkhand and upon receiving the first verification report dated 23/05/2007 it was found that petitioner's caste certificate has not been issued from his office and as such, petitioner has been removed from service as per Clauses 5, 12 and 13 of the conditions of appointment order dated 28/08/2002. It is the case of the respondents that petitioner's caste certificate was not genuine and as per the report which was submitted, he does not belong to ST category rather he belongs to OBC category. The report dated 23/05/2007 (Annexure R/3) states as under :-

जाँच प्रतिवेदन

क्र.	नाम	पिता का नाम	क्रमांक/दिनांक	अभियुक्त
1.	X	X	X	कार्यालय में जाती प्रमाण पत्र पंजी उपलब्ध नहीं रहने के कारण जांच नहीं किया जा सका परन्तु स्थानीय जांच एवं प्रस्तुत प्रमाण पत्र के अवलोकन से यह स्पष्ट है की क्रमांक 1 से १६ तक था प्रमाण पत्र फर्जी है यह सभी पिछड़ी जाती के अंतर्गत आते हैं इनके द्वारा प्रस्तुत जाती प्रमाण पत्र में अंकित अनु. जाती एवं अनु. जनजाति का जाती प्रमाण पत्र गलत है जाती का जाती प्रमाण पात्र संलग्न है
2.	X	X	X	
3.	X	X	X	
4.	X	X	X	
5.	X	X	X	
6.	X	X	X	
7.	X	X	X	
8.	X	X	X	
9.	X	X	X	
10.	प्रेमचंद मंडल	टुकन मंडल	320/3.10.2001	
11.	X	X	X	
12.	X	X	X	
13.	X	X	X	
14.	X	X	X	
15.	X	X	X	
16.	X	X	X	

सही/-
23/05/07
प्रखंड विकास पदाधिकारी
जमुआ (गिरिडीह)

20. As such, in the report dated 23/05/2007 (Annexure R/3), the Block Development Officer not only held petitioner's caste certificate to be forged, but also held that he belongs to OBC and he does not belong to Scheduled Tribe category. Since petitioner was appointed on the

reserved post for ST category and his caste certificate was verified by SECL wherein his certificate is not only found to have been forged, but also he has been held to be a member of OBC category, but it could have been done only by the Caste Scrutiny Committee or the Competent Authority in terms of the judgment rendered by the Supreme Court in the matter of Madhuri Patil (supra) followed in Ajit Jogi (supra) and Chairman and M.D. F.C.I. (supra). The Supreme Court has categorically held that verification of validity of caste certificate and determination of caste status should be done by the Caste Scrutiny Committee in terms of Madhuri Patil (supra), therefore, validity of the caste certificate issued to the petitioner could have been verified only by the Caste Scrutiny Committee and not by the Authority issuing the said certificate, as the only authority having such jurisdiction as per the decision of the Supreme Court is the Caste Scrutiny Committee and therefore, the procedure adopted by the respondent SECL to send petitioner's caste certificate to the Authority/Block Development Officer who has

issued the said certificate and after getting information that the said certificate has not been issued by the said Authority and also getting information from that Authority that the petitioner belongs to OBC category and thereafter, terminating the services on that basis is contrary to law.

21. The Supreme Court in the matter of **Ex. Sig. Man Kanhaiya Kumar v. Union of India and Others**¹¹

held that where the appellant himself has admitted that relationship certificate produced by him is fake; the procedure laid down in Section 20(3) of the Army Act, 1950, would be a formality and termination was held to be justified.

22. Thus, in absence of admission and specific finding that the caste certificate submitted by the petitioner is forged mainly on the basis of certificate issued by the Block Development Officer without holding any sort of inquiry and without referring the matter to the Caste Scrutiny Committee for verification, it could not have been held by the respondent SECL that petitioner's caste certificate is a forged

11 (2018) 14 SCC 279

document. As such, in the considered opinion of this Court, once the petitioner has submitted the caste certificate which has been acted upon by the respondent SECL and on the basis of which, petitioner has been appointed on the post of 'Mining Sirdar' for which he also worked for very long time and thereafter, it is brought to the notice of official respondents that petitioner does not belong to the ST category and belongs to the OBC category and his caste certificate is denied, the only course open to the respondent SECL was to get the document verified by the appropriate Caste Scrutiny Committee in terms of decision rendered by the Supreme Court in the matter of Madhuri Patil (supra) followed in the matter of Ajit Jogi (supra) and Chairman and M.D. F.C.I. (supra), wherein it has clearly been held that verification of the validity of the caste certificate and determination of the caste status both should be done by the Scrutiny Committee constituted as per the direction in Madhuri Patil (supra) or in terms of the statute made by the appropriate Government in this behalf and more particularly, the issue of caste

certificate and determination of caste-status cannot be gone into in a departmental enquiry by respondent SECL as held by the Supreme Court in the matter of Sudhakar Vithal Kumbhare (supra) followed by this Court in the matter of Virodhan Ram v. State of Chhattisgarh and Others¹², therefore, the order of dismissal from service passed by respondent No. 1 is absolutely without jurisdiction and without authority of law as the only course open was to refer the matter to the appropriate Caste Scrutiny Committee. In view of this finding, the judgment relied upon by learned counsel for the respondents in the matter of Naval Kishore (supra) is clearly inapplicable.

23. Accordingly, the impugned order dated 25/06/2007 (Annexure P/5) passed by respondent No. 1 terminating the services of petitioner is hereby quashed. The petitioner is directed to be reinstated forthwith with all consequential benefits except backwages. The question of backwages shall be considered by competent authority within a period of 45 days from the date of receipt of a copy of this order in accordance with applicable Rules/

Regulations/Standing orders and petitioner will also be allowed to make representation for the same. The official respondents are directed to refer the matter to the appropriate Caste Scrutiny Committee constituted by the appropriate State Government to verify the validity of the caste certificate and also for determination of the caste status of the petitioner as per direction of the Supreme Court in the matter of Madhuri Patil (supra) followed in the matter of Ajit Jogi (supra) and Chairman and M.D. F.C.I. (supra) within four weeks and upon receipt of the report from the Caste Scrutiny Committee, the respondents are at liberty to proceed in accordance with law.

24. The writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet