

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1142 of 2008

Purshottam Patwar, S/o Shri M.P. Patwar, Aged about 36 years,
Presently working as Steno/Typist, O/o Secretary, Department of
Public Health Engineering, Mantralaya, D.K.S. Bhawan, Raipur (C.G.),
R/o Sector-1, H/19, Kashiram Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, General Administration
Department, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. State of Chhattisgarh, Through its Secretary, Department of Public
Health Engineering, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
3. The State Level Caste Certificate Scrutiny Committee, Chhattisgarh,
Raipur (C.G.)
4. The Commissioner, Scheduled Tribe, Scheduled Caste, Other
Backward Classes & Minority Development Department, Raipur (C.G.)
5. The Collector, Tribal Welfare, Koriya, District Koriya (C.G.)

---- Respondents

ANDWrit Petition (S) No.4971 of 2008

Purshottam Patwar, S/o Shri M.P. Patwar, Aged about 36 years,
Steno/Typist, Office of Secretary, Department of Public Health
Engineering, Mantralaya, D.K.S. Bhawan, Raipur (C.G.), R/o Sector-1,
H/19, Kashiram Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, General Administration
Department, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. State of Chhattisgarh, Through its Secretary, Department of Public
Health Engineering, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Aman Pandey, Advocate.
For Respondents/State: Mr. Animesh Tiwari, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/06/2021

1. Since common question of law and fact is involved in both the writ petitions, they were clubbed together and heard together and are being disposed of by this common order.
2. The petitioner was issued caste certificate by the District Coordinator in Scheduled Tribe (ST) category on 18-1-1993 and thereafter, he was appointed as Steno-Typist under the ST category on 9-12-1997. Thereafter, the Caste Scrutiny Committee verified the caste of the petitioner and on 9-4-2002, after issuing notice to the petitioner held that the petitioner is Kevat by caste and he does not belong to ST category and accordingly annulled the caste certificate granted in favour of the petitioner. Subsequently, on the basis of that order, the Additional Collector, Distt. Koriya, on 26-10-2004, also cancelled the caste certificate dated 18-1-1993 issued in favour of the petitioner. Challenging legality, validity and correctness of the order declaring him to be non-ST category, the petitioner filed W.P.(S)No.1142/2008 and thereafter, his services have been terminated by order dated 23-8-2008 which has been challenged in W.P.(S)No.4971/2008.
3. Mr. Aman Pandey, learned counsel appearing for the petitioner in both the writ petitions, would submit that the caste scrutiny committee did not grant proper opportunity to the petitioner to adduce oral evidence in terms of the decision of the Supreme Court in the matter of Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others¹ and also the Caste Scrutiny Committee did not consider the notification of the State Government dated 7-9-1998 in which the State of M.P. has clearly directed that coercive action should not be taken against the persons who belong to Majhi caste and caste

1 (1994) 6 SCC 241

certificate has been issued in their favour. Even the notice issued to the petitioner by the Caste Scrutiny Committee was not in accordance with the decision of the Supreme Court in Kumari Madhuri Patil (supra) which has been followed by the Supreme Court in the matter of State of Maharashtra and others v. Ravi Prakash Babulalsing Parmar and another². As such, the impugned order declaring the petitioner not belonging to ST category and the order dated 26-10-2004 cancelling the caste certificate deserve to be set aside and consequently, the order of termination of the petitioner dated 23-8-2008 also deserves to be set aside.

4. Mr. Animesh Tiwari, learned State counsel, would submit that the order of the Caste Scrutiny Committee as well as the order cancelling the caste certificate, dated 26-10-2004 was questioned by the petitioner before this Court in W.P.No.4347/2004 and this Court has dismissed the said petition filed by the petitioner on 16-12-2004 declaring him not belonging to ST category and thus, cancellation of his caste certificate has been found to be in accordance with law and therefore the petitioner is bound by that order. As such, these writ petitions are barred by the principle of res judicata / constructive res judicata and the petitioner cannot be allowed to raise the point again which has already been concluded by the earlier decision of this Court. Accordingly, both the writ petitions deserve to be dismissed on that ground only.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
6. It is not in dispute that the petitioner was issued caste certificate on

18-1-1993 that he belongs to ST category and he was appointed on the post of Steno-Typist under the ST category. The Caste Scrutiny Committee thereafter declared that the petitioner does not belong to ST category and further on the basis of the said recommendation of the committee, on 26-10-2004, his caste certificate has also been revoked by the competent authority and on the basis of revocation of caste certificate, his services have also been terminated on 23-8-2008 which has been challenged in W.P.(S)No.4971/2008.

7. It is also not in dispute that earlier, the petitioner herein filed a substantive writ petition namely, W.P.No.4347/2004 before this Court questioning the order of the Caste Scrutiny Committee / the order of the Additional Collector dated 26-10-2004 cancelling his caste certificate on the basis of the order of the Caste Scrutiny Committee. A copy of the order dated 16-12-2004 passed by this Court in W.P. No.4347/2004 has been placed on record in both the present writ petitions {Annexure P-13 at page 53 in W.P.(S)No.1142/2008 and Annexure P-14 at page 55 in W.P.(S)No.4971/2008}, which states as under: -

“16/12/2004

Shri C.S. Kanoje, Counsel for the petitioner.

Smt. Fouzia Mirza, Panel Lawyer for the State.

Heard on admission as well as on M.W.P. No.4700/2004.

Petitioner in the year 1993 obtained a Caste Certificate from the District Organizer Tribal Welfare, Ambikapur wherein his caste was mentioned as “Manzhi”. Thereafter, the said certificate on the application of the petitioner himself was enquired and in that enquiry show cause notice was issued and in reply to that notice, the petitioner admitted that in all the records the caste of his father has been mentioned as “Kewat” and that is also

correct. He simply advanced that Kewat also includes "Manzhi". On the basis of decision of High Power Committee, Additional Collector, Dist. Korea, cancelled the caste certificate obtained by the petitioner in the year 1993 vide his order dated 26/10/2004. Petitioner has challenged that order.

Whether any person belongs to Scheduled Caste or Scheduled Tribe that can be determined only in accordance with the Articles 341 and 342 of the Constitution of India and if any caste has not been included therein to be listed as Scheduled Caste or Scheduled Tribe, that whatever the arguments may be, cannot be accepted as Scheduled Caste or Tribe.

Admittedly, when the petitioner himself admits that his father has been recorded as "Kewat". In that case, prima facie, the caste of the petitioner will be treated as "Kewat" and the Commission coming to the conclusion neither erred nor the Additional Collector on the basis of the report of Commission, cancelling the caste certificate vide impugned order violates his jurisdiction or committed any error or passed any order causing any miscarriage of justice.

In my opinion, there is no material to invoke the writ jurisdiction, therefore, petition filed by the petitioner is liable to be dismissed and is accordingly dismissed summarily. Consequently, M.W.P.No.4700/2004 and I.A. No.8799/2004 stand disposed of."

8. A careful perusal of the aforesaid order would show that this Court has clearly held that the order of the Caste Scrutiny Committee declaring the petitioner not belonging to Scheduled Tribe as well as that of the competent authority cancelling his caste certificate has been held to be valid and finding no merit in the writ petition, the writ petition has been dismissed summarily. It is stated at the Bar that the order passed in the writ petition has attained finality as it has not been questioned further by availing further remedy available under the law. Since the order of the Caste Scrutiny Committee and the order cancelling the caste certificate of the petitioner, both, have been affirmed by this Court in a duly constituted proceeding, that will

operate as res judicata for the petitioner in subsequent proceeding and raising further argument / additional argument is also barred by the principle of constructive res judicata and accordingly, W.P.(S) No.1142/2008 deserves to be dismissed on that sole ground alone.

W.P.(S)No.4971/2008

9. It is the contention of the petitioner that merely because he has not been found to be member belonging to Scheduled Tribe category and his caste certificate has been cancelled, he could not have been terminated from service. This submission is no longer available to the petitioner in view of the authoritative judgment rendered by the Supreme Court in the matter of Chairman and Managing Director Food Corporation of India and others v. Jagdish Balaram Bahira and others³ in which their Lordships of the Supreme Court have clearly held that if a person had been appointed to a reserved post on the basis of caste certificate granted in his or her favour and thereafter the caste certificate is annulled, as a necessary consequence, his / her service is liable to be terminated. In paragraph 48 of the report, it has been observed as under: -

“48. The regime postulated in the judgment of this Court in *Madhuri Patil* (supra) took effect from 2-9-1994, which was the date of the judgment. Eventually in the State of Maharashtra, these directions received legislative recognition upon the enactment of the Maharashtra Act 23 of 2001 which came into force in the State on 18-10-2001. However, it is important to notice that even before the State Legislature stepped in to confer a statutory form to the directions which were issued by this Court in *Madhuri Patil* (supra) the regime, as it then obtained prior to the enactment of the law, also envisaged consequences upon a caste or tribe claim being found to be false upon a verification by the Scrutiny Committee. The cancellation of a certificate would, as a necessary consequence, involve the invalidation of the appointment to a post or admission

to an educational institution. Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained. The same principle would apply where a candidate secures admission to an educational institution on the basis of a false claim to belong to a reserved category. A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter, a detriment is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is intended. This was the position under the regime which prevailed following the decision in *Madhuri Patil* (supra)."

10. The aforesaid decision has been followed by the Supreme Court subsequently in the matter of Chief Regional Officer, Oriental

Insurance Company Limited v. Pradip and another⁴.

11. In the light of the aforesaid decisions of the Supreme Court, the argument that the petitioner's services could not have been terminated on the basis of annulling of caste certificate, deserves to be rejected.
12. As a fallout and consequence of the aforesaid discussion, both the writ petitions deserve to be and are accordingly dismissed, leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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