

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 48 of 2014**

Kailash Dhakate S/o Lt Shyamadas Dhakate Aged About 39 Years R/o
Galpeth Chowk, Ward No.4, Sausar, PS And Post Sausar, Civil And
Revenue District Chhindwada, Madhya Pradesh

---- **Petitioner****Versus**

1. State Of Chhattisgarh And Anr S/o Through Principal Secretary, Water Resources Department, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, District Raipur, CG, Chhattisgarh
2. Superintending Engineer (Administration), Office Of Engineer-In-Chief Water Resources Department, Sinhawa Bhawan, Raipur, District Raipur, CG, District : Raipur, Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Sudeep Verma, Dy. GA

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/02/2021

1. The challenge in the present writ petition is to the three orders Annexure P-1 dated 31.07.2013, Annexure P-2 dated 29.06.2013 & Annexure P-3 dated 27.08.2008.
2. Annexure P-1 is an order whereby the application for review of the order of removal moved by the petitioner has been rejected. Annexure P-2 is an order which was earlier passed again rejecting the review application moved by the petitioner calling for review of the removal order stood rejected and Annexure P-3 is the original order of removal passed as early as on 27.08.2008. Present writ petition was filed on 02.01.2014.

3. Brief facts for adjudication of the present writ petition is that petitioner claiming himself to be the member of the Halba community which falls under the Scheduled Tribe category obtained employment on the post of Research Assistant on 17.07.1995 under the erstwhile State of Madhya Pradesh. On creation of the State of Chhattisgarh by virtue of the Madhya Pradesh Reorganization Act of 2000, the services of the petitioner stood allocated to the State of Chhattisgarh vide order dated 24.10.2002.
4. While the petitioner was discharging his duties in the erstwhile State of M.P. the State level High powered Caste Scrutiny Committee in the State of M.P. had initiated an enquiry so far as Caste certificate of the petitioner is concerned and M.P. High Powered Caste Scrutiny Committee vide its order dated 25.04.2005 held that the petitioner does not belong to the Scheduled Tribe Category in as much as he does not fall under the Halba Community and his certificate was not proper. Pursuant to the order of High Powered Caste Scrutiny Committee the services of the petitioner was terminated by an order of the removal Annexure P-3 dated 27.08.2008 which is under challenge in the present writ petition.
5. Meanwhile, as regards the order of M.P. High Powered Caste Scrutiny Committee dated 25.04.2005 is concerned, the petitioner had challenged the same before the M.P. High Court vide WP No.14059/2006(S). The said writ petition was connected with a bunch of writ petitions of identical nature and all of this bunch of writ petitions came up for hearing on 29.04.2008 whereafter the High Court of M.P. dismissed the writ petition vide judgment dated 29.04.2008. The judgment of the Single Bench of the M.P. High Court was subjected to challenge in a Writ Appeal i.e. WA No. 644/2008 and writ appeal also stood rejected on 11.07.2008. The order of the writ appeal was not further challenged and in due course of time has attained finality and as such the order passed by the High Powered Caste Scrutiny Committee so also the order of removal and order of single bench also

attained finality. The fact which all the more needs consideration at this juncture is that the petitioner in fact in the said writ petition had also claimed for protection of his employment in the light of the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Milind & Others, (2001) 1 SCC 4** which again was turned down by the Single Bench and which has been affirmed by the Division Bench.

6. The petitioner herein had not challenged the order of removal from services dated 27.08.2008 Annexure P-3 for a considerable period of time and with no justification for not challenging it promptly. It appears that a near relative of petitioner namely (Sanjay Kumar Dhakate) has also faced a similar prosecution and whose case also there was an order passed by the High Powered Caste Scrutiny Committee holding that his certificate was not proper as a consequence services of the said person also stood removed as happened in the case of the petitioner. Subsequently the said Sanjay Kumar Dhakate is said to have approached the State Authorities in the light of the circular of the State Government dated 01.10.2011 whereby the State Government in the light of the Judgment of the Supreme Court in the case of Milind(Supra) had issued a general instruction granting protection of employment to all those employees who have obtained employment on the basis of the improper certificate prior to the cut off date of 28.11.2000. Based upon the request made by the Sanjay Kumar Dhakate the State Government has reconsidered its decision so far as removal of Sanjay Kumar Dhakate is concerned and whose removal was recalled and he was taken back in employment vide order dated 07.01.2012. It is here that the petitioner woke up from slumber and then made a representation seeking review of the order of removal in the case of petitioner dated 27.08.2008 vide his application dated 25.08.2012 which was initially rejected by the respondents on 29.06.2013 and was followed by another order dated 31.07.2013 Annexure P-2 and Annexure P-1

respectively and it is thereafter that petitioner has now filed the present writ petition challenging the three impugned orders.

7. What needs to be appreciated is the fact that down the line the order passed by the High Powered Caste Scrutiny Committee has attained finality to the extent of Caste certificate which was in possession of the petitioner being improper and that he does not belong to the Halba Community so as to get the benefit of being a reserved category candidate under the Scheduled Tribe category. Another fact which needs consideration is the fact that order of removal also since it was not challenged by the petitioner promptly before any Court of law the same has also attained finality by the efflux of time and the very relationship that of an employer and employee itself get detached between the petitioner and the respondents. Since the services of the petitioner stood removed on 27.08.2008 the respondents could not have thereafter accepted to have reconsidered the order of removal in the light of the circular of the State Government dated 01.10.2011 where the Government had as a policy decision decided to protect the employees who have obtained employment on the basis of certificate which subsequently stands declared as improper. Another fact which needs consideration is that the circular dated 01.10.2011 does not reflect it to have been given a retrospective effect and unless specifically ordered it has to be presumed that effect of the circular dated 01.10.2011 would only be prospective. In the instant case the order of termination in the case of the petitioner had already been passed about 3 years prior to the issuance of the said circular, the order of removal from the service had not been questioned by the petitioner till that time and by efflux of time that has also attained finality.
8. Only on the ground of State government having entertained an application in respect of the similarly placed person which in the instant case happens to be the relative of the petitioner by itself cannot be a ground for quashing

of an order of removal which is being challenged after more than 6 years particular in the light of the two judgments of the M.P. High Court wherein request of the petitioners for grant of protection in the light of the judgment of the Supreme Court in the case of Milind(Supra) had been turned down and which has not been further challenged by the petitioner.

9. Given the aforesaid factual matrix of the case, this Court finds it difficult at this juncture to entertain the writ petition and to hold that decision of the respondents so far as issuance of the order dated 31.07.2013, order dated 29.06.2013 and order of removal dated 27.08.2008 to be in any manner bad in law. The writ petition being devoid of merits deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit