

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 381 of 2019****Judgment reserved on 19.01.2021****Judgment delivered on 22.02.2021***{Arising out of Order dated 10/01/2019 passed in Writ Petition(S) No. 2388 of 2009 by the learned Single Judge}*

1. Union of India, through Secretary (Home), New Delhi.
2. Deputy Inspector General CRPF, East Zone, Agartala (Tripura)
3. Commandant, 188 Battalion, C.R.P.F. Rajnandgaon Chhattisgarh
4. Director General C.R.P.F. New Delhi

-----Appellants**VERSUS**

- Virendra Singh, S/o Munshi Singh, aged about 46 years, R/o Azizabad, P.O. Pahaso, District Bulandshahar U.P.

-----Respondent/ Petitioner

For Appellants	: Mr. Raj Kumar Gupta, Advocate
For Respondent	: Mr. Prasun Kumar Bhaduri, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C.A.V. Order****Per Parth Prateem Sahu, J.**

1. Correctness and sustainability of the order dated 10.01.2019 passed by learned Single Judge is challenged in this appeal, whereby writ petition filed by Respondent challenging his order of termination from service was allowed. Order of termination as well as the appellate order were set aside with a liberty to the appellants to proceed in accordance with law and, thereafter, to pass appropriate orders.
2. Facts of the case relevant for disposal of this appeal are that Respondent was appointed as Constable in the Central Reserved Police Force, in the year 1990. He was initially posted at 188 Battalion of CRPF, posted in Rajnandgaon, Chhattisgarh. Petitioner was appointed against the seat reserved for Schedule Tribe category candidate. During the course of

enquiry with regard to caste status of respondent and his credentials, appellants doubted with the caste status of respondent. Some enquiry has been made from the Tahsildar, Vair district Bharatpur, Rajasthan and on the basis of report given by Tahsildar, Department Enquiry was initiated. Charge-sheet was issued to respondent on 24.03.2008, levelling charge that respondent submitted false caste certificate at the time of securing appointment. During the course of proceedings, respondent stated that, his entire family migrated to village Azizabad, post- Pahaso, district Bulandshahar (U.P.) from village Nithar, Tahsil Bharatpur, Rajasthan. After conclusion of enquiry, Disciplinary Authority passed an order of removal from services *vide* order dated 22.09.2008. Order of removal was put to challenge in a departmental appeal before DIG, East Zone, CRPF. Appeal filed by respondent also came to be dismissed on 02.02.2009 which made the respondent/ petitioner to file writ petition before the High Court with following reliefs.

“10.1 This Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner from the possession of the respondents for its kind perusal.

10.2 This Hon'ble Court may kindly be pleased to issue a writ in the nature of certiorari quashing and setting aside the impugned order dated 02/02/2009 (annexure P/1) and petitioner may also be granted all consequential benefits accrued thereby.

10.3 Any other relief of relief(s) which this Hon'ble Court may think proper in view of the facts and circumstances of the case may also kindly be granted.”

3. Learned Single Judge, upon hearing both the sides, has allowed the writ petition quashing the order of removal of the respondent as well as order of dismissal of appeal on the ground that the caste verification can be done only by High Power Caste Scrutiny Committee constituted by each State in view of judgment passed by Hon'ble Supreme Court in case of

Madhuri Patil and another v. Additional Commissioner, Tribal Development & Ors. reported in **AIR 1995 SC 94.**

4. Mr. Raj Kumar Gupta, learned counsel for the appellant/ employer submits that the Caste Certificate dated 03.07.1990 submitted by respondent at the time of his appointment has been sent for verification by the Department in view of the direction of High Court of Delhi in CWP No. 5976/2003 as well as DOP&T O.M. No. 230/08/2005-AVD II and directives of department dated 25.05.2005 that all such Caste Certificate in respect of person recruited from the year 01/01/1995 onwards are required to be verified by District Authority. In view of said directives, Caste Certificate of respondent was verified by DIG, Group Center, CRPF, Agartala from Tahsildar, Vair, District Bharatpur, Rajasthan *vide* letter dated 29.09.2007. In reply to the aforesaid letter, Tahsildar, Vair, replied that concerned Caste Certificate was not issued from office of Tahsildar, Vair, District Bharatpur, Rajasthan. On the basis of the said information of Tahsildar, disciplinary action was taken against respondent. Charge-sheet was issued and the respondent participated in the Departmental Enquiry. After conclusion of Departmental Enquiry proceedings, Disciplinary Authority passed an order of removal from services against respondent. He contended that the learned Single Judge has not taken into consideration that before initiating Departmental proceedings, proper verification of Caste Certificate has been done from Tahsildar, Vair. Upon verification of Caste certificate, it has been found that false certificate was filed under Rule-B of CRPF 1995. On the top of verification rules, there is specific mention that if anytime furnishing of false information or suppression of fact comes to the notice would be a disqualification and the said government servant will become unfit for employment. As per the directives issued on 19.05.1993 and Rule 11 of CCS (CCA) Rules, there is specific mention wherever the government servant found to have been furnished false information for

securing appointment would not be retained in service and if the said government servant is a permanent employee, he should be removed or dismissed from service after an enquiry. As per report of Tahsildar, Vair, no person of name of respondent, was residing on the address at village Nithar. The information supplied by respondent has been found to be false. After completion of Departmental Enquiry, impugned order of removal from service has been passed. He also submits that in the identical situation of one another employee of CRPF, Siliguri (W.B.), where upon verification of Caste Certificate, finding it to be not genuine, one Siddharth Das was imposed with the penalty of removal from service which was affirmed by the High Court of Calcutta and the SLP filed against which was also dismissed. He submits that the learned Single Judge has misdirected himself that there was no proper verification of Caste Certificate of respondent before initiating Departmental Enquiry and passing order of removal.

5. Mr. Prasun Bhaduri, learned counsel for respondent submits that from reading of charge as mentioned in Annexure P-2, it is apparent that the Caste Certificate was sent to the Tahsildar, Vair for its verification and not to the High Power Caste Scrutiny Committee. Charge levelled against respondent is with regard to false Caste Certificate submitted by respondent mentioning his caste as *Meena* (Schedule Tribe) whereas the report of Tahsildar, Vair, is that the person, named in the certificate sent for verification, is not residing at Bharatpur in any of the caste. He further contended that amendment has been made in the charge *vide* order dated 20.11.2008, after conclusion of enquiry and passing of order of removal dated 22.09.2008. The charge for which the respondent has been removed, was not there at the time of passing of order of removal. Charge levelled against the respondent was with regard to submission of false Caste Certificate and as per law laid down by hon'ble Supreme Court,

Caste Certificate of any of the employee can be verified only by the High Power Caste Scrutiny Committee constituted in State and not by any other Authority. He submits that if there is dispute with regard to caste then no action can be taken only on the basis of Departmental Enquiry, without there being a caste verification report from the competent authority. He further contended that no record was available in the office of the Tahsildar because all the records have been set on fire by the group of people who were in agitation with regard to reservation of Gurjar caste, as such, all the records have been destroyed, as per information given under Right to Information Act. He contended that until and unless the Caste Certificate submitted by respondent has been verified by the authority constituted in view of law laid down by Supreme Court in case of **Madhuri Patil (supra)**, no action could have been taken against respondent. Order passed by learned Single Judge is strictly in consonance with the judgment passed by the Hon'ble Supreme Court in case of **Madhuri Patil (supra)**, hence, does not call for any interference.

6. We have heard learned counsel for the respective parties and also perused the record with utmost circumspection.
7. From perusal of Annexure P-1 and P-2, would show that the charge levelled against respondent directly relates to the Caste Certificate of respondent. Learned counsel for appellants has not disputed that the action taken against respondent is with regard to submission of alleged false Caste Certificate. In fact, his whole submission is that upon finding the Caste Certificate to be false, Departmental Enquiry was initiated and penalty was imposed against respondent of removal from service. Admittedly, Departmental Enquiry proceedings have been initiated based on the report of Tahsildar, Vair, that no such person of any caste is residing at the address. There is no dispute in any manner that if the competent authority upon verification of Caste Certificate submitted by any employee

for getting benefit, found to be false then the said employee is to be imposed with penalty but the rider is only that the verification of certificate is to be done by competent authority established under law. In case of **Madhuri Patil (supra)**, Supreme Court has considered the procedure for making an application for grant of Caste Certificate and the authority for its verification. In paragraph 12(4), it has been held as under.

“12.4 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 concerned department, (II) the Director, Social Welfare/ Tribal Welfare/ Backward Class Welfare, as the case may, 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.”

8. Procedure as to how the competent authority shall verify the caste has also been mentioned in paragraph 12(6) which is as under

“12.6 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 acknowledgment due or through the head of the concerned educational institution 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/ Addl. 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.”

9. As per Paragraph 12(4) of above judgment, every State Government has to constitute a Committee of three higher officials for verification of caste. After receiving report or an application that the Caste Certificate submitted by any of the employee/ person to be doubtful then the said person/ employee/ student shall be given a notice seeking reply and will be asked whether he wants hearing or not and upon showing his intension that he wants opportunity of hearing then the Committee member has an obligation to give reasonable opportunity to the candidate adducing evidence in their support. Public Notice by beat of drum or any other convenient mode to be published in the village or locality and to make an enquiry and thereafter to pass an order.
10. In the case at hand, report has been called from Tahsildar, Vair, of caste status of respondent by the department itself. Department has not sent any letter/ application to the Committee constituted for the very purpose of verification of caste of any employee or person, if found doubtful. At the time of verification of caste even if by Tahsildar (though not the authority), no opportunity has been given to respondent by the Tahsildar by issuance of notice and to prove the fact or it is not a case that the Tahsildar has initiated the proceedings of verification. Learned Single Judge, in paragraph 13 of the impugned order, has taken note of the ruling of Supreme Court in case of **Madhuri Patil (supra)**, further considered the judgment passed by this Court in WPC No. 3414/2009 dated 21.07.2010, wherein it has been held that the employer does not have a jurisdiction to conduct an enquiry in respect of verification of caste of an employee. Learned Single Judge also relied upon the case of **Collector Bilaspur v.**

Ajit P.K. Jogi and others, [(2011) 10 SCC 357]. Hon'ble Supreme Court

in **Ajit P.K. Jogi (supra)** has held thus:

“22. It is only after recording the said findings, the Commission directed the State Government to verify the genuineness of the ST certificate obtained by the first respondent and initiate action for cancellation of the certificate and also initiate criminal action. All these were unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub-clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false. If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case.

23. The contention that there was sufficient material to reach such a conclusion is not relevant. The scope of the duties of the Commission as noticed above, did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties. The same is the position even under Article 338-A (which was subsequently inserted) providing for a separate Commission for Scheduled Tribes with identical duties. The order of the Commission cannot therefore be sustained. The High Court was justified in setting aside the said order dated 16-10-2001.

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x x x x x x

26. Therefore even though the Commission was not entitled to hold an inquiry and record a finding that the first respondent did not belong to a Scheduled Tribe, having regard to clauses 5(b) and (f) of Article 338, it had the power and authority to require the State Government or the Caste Verification Committee constituted by the State Government, to examine the caste status claimed by the first respondent. The correspondence initiated by the Commission

clearly showed that a request/direction for verification of the caste of the first respondent was made by the Commission and the State Government had responded by stating that the claim of the first respondent that he belonged to a Scheduled Tribe and the validity of social status certificates would be verified by the Scrutiny Committee.”

11. Learned Single Judge has passed impugned order placing reliance on the judgment of the Supreme Court on the issue. The action taken by appellants of passing an order of removal is only on the ground that respondent submitted false Caste Certificate. The said order has been passed without sending the Caste Certificate before the Competent authority ie. High Power Caste Scrutiny Committee but the Departmental Enquiry is based only on report issued by Tahsildar, Vair.
12. In the aforementioned facts and circumstances of the case, we do not find any error in the reasoning and rationale given by the learned Single Judge in the impugned order calling interference of this Court. Appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly. Appellants will be at liberty as granted by the learned Single Judge to proceed further in accordance with law in the light of judgment passed by Hon'ble Supreme Court as well as by this Court and to pass appropriate order in accordance with law.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge