

20.04.2023
Item Nos.10-14
gd/ssd

MAT/674/2023
IA NO: CAN/1/2023
AYAN MAHATO
VS
STATE OF WEST BENGAL AND ORS.

with
MAT/675/2023
IA NO: CAN/1/2023
BARNALI MAHATO
VS
STATE OF WEST BENGAL AND ORS.

with
MAT/676/2023
IA NO: CAN/1/2023
MANDIRA MAHATO
VS
STATE OF WEST BENGAL AND ORS.

with
MAT/677/2023
IA NO: CAN/1/2023
BASUDEB MAHATO
VS
STATE OF WEST BENGAL AND ORS.

with
MAT/678/2023
IA NO: CAN/1/2023
MONINDRA N MAHATO
VS
STATE OF WEST BENGAL AND ORS.

Mr. Bikash Ranjan Bhattacharya,
Mr. Prahlad Chandra Ghosh,
Mr. Subir Hazra,
Ms. Kakali Samajpati
..for the Appellants.

Mr. Amal Kr. Sen,
Mr. Lalmohan Basu
..for the State in
MAT/674/2023.

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata
..for the State in
MAT/675/2023.

Sk. Md. Galib,
Ms. Subhra Nag
..for the State in
MAT/676/2023.

Mr. Debasish Ghosh,
Ms. Piyali Sengupta
..for the State in
MAT/678/2023.

1. These intra court appeals are directed against the order dated 21.03.2023 in WPA 5879 of 2023 as well as against similar orders passed in various writ petitions filed by the appellants. Though the orders are individual orders, the issue involved in all the appeals/writ petitions are identical.

2. The appellants filed the writ petitions as they were aggrieved by the orders passed by the Sub-Divisional Officer cancelling the Caste Certificates issued to the appellants.

3. The learned Single Bench had disposed of the writ petitions by directing the appellants to prefer appeals before the Appellate Authority concerned.

4. Aggrieved by the same, the writ petitioners have preferred the present appeals.

5. We have heard Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate. The first argument of the learned Advocate for the appellants is by placing reliance on an interim order passed by this Court on 13th April, 2023 by which the Court took into consideration the decision of the Hon'ble Supreme Court and observed that the competent authority to enquire into the genuineness of a Scheduled Tribe

Castes Certificate is the State Vigilance Commission and, therefore, order of stay was granted.

6. After elaborately hearing the learned Advocates appearing for the respondents, we find that when the interim order was granted in MAT 574 of 2023, the relevant statutory provisions were not placed before this Court for consideration. In any event, the same being an interim order cannot bind us while we are considering these appeals on merits.

7. In terms of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995, in Rule 7G an appeal has been provided against any cancellation, impounding or revocation of certificate by the certifying authority. In terms of Rule 7G(1)(a) when an order of cancellation has been passed by the Sub-Divisional Officer, appeal lies to the District Magistrate or the Additional District Magistrate. Taking note of the said provision the learned Single Bench had directed the appellants to avail the appeal remedy. That apart, the provisions of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 was amended by Amendment Act, 2022 and after Section 9 in the said 1994 Act, Section 9A was inserted, which is as follows:

“9A. (1) An appeal against any cancellation, impounding or revocation of the certificate under sub-section (1) of section 9 shall lie-

(a) To the District Magistrate, or the Additional District Magistrate authorized by the District Magistrate in this behalf, where the certificate is cancelled or impounded or revoked by the Sub-Divisional Officer, and

(b) To the Commissioner, Presidency Division, where the certificate is cancelled or impounded or revoked by an officer authorized under clause (b) of section 5, as the case may be:

Provided that every such appeal shall be made in such manner and within such time as may be prescribed:

Provided further that every such appeal shall be disposed of within three months from the date on which that appeal has been made:

Provided also that no such appeal shall be disposed of without giving the appellant a reasonable opportunity of being heard.

(2) The decision of the District Magistrate or the Additional District Magistrate or the Commissioner, Presidency Division, as the case may be, on any appeal under sub-section (1) shall be final.”

8. Thus, in terms of the above statutory provision, the appeals lie to the District Magistrate. The appellants have not questioned the validity of the amended provisions of the Act nor the Rules. That

apart, the ground on which the certificate was cancelled is alleging fraud. If that be the case, then the factual position needs to be adjudicated which cannot be done in the writ petition. Therefore, the learned Single Bench was right in relegating the appellants to file an appeal before the appropriate authority and therefore, the order impugned does not call for any interference.

8. The learned Advocate appearing for the appellants submitted that the petitioners apprehend that they will lose their employment as they are working as teachers in the light of Rule 5 of the said Rules. In any event, the certificate having been cancelled, the question of granting an interim order to revive the status quo ante would not arise. However, in the event there is any threat to employment of the appellants, it is an independent cause of action and the appellants would be free to avail the remedies available to them under law.

9. With the above observation, these appeals are dismissed.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)