

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18033 of 2017(O&M)

Reserved on:22.03.2023

Pronounced on:17.05.2023

Abid Ali

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.S. Bains, Senior Advocate with
Mr. Mohan Singh Chauhan, Advocate
Mr. Saurabh Bedi, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. A.S. Virk, Advocate
for respondent No.2.

Mr. Mohit Garg, Advocate and
Mr. Mohit Saini, Advocate
for the applicant in C.M. No.18233 of 2017.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking quashing of order dated 28.07.2017 (Annexure P-1) vide which the petitioner, who was working as Assistant Professor under the Self-Financing Scheme (hereinafter referred to as SFS), has been removed from service of the respondent No.2-University.

2. In brief, facts, which led to the filing of the instant writ petition, are that in the year 2006, the petitioner namely Abid Ali started working as contractual Teaching Associate in respondent No.2-University. In the same year i.e. 2006, respondent No.2-University issued an advertisement for filling up 5 posts of Lecturers in the Department of Journalism & Mass Communication under SFS.

Out of said 5 posts under SFS, one post was reserved for SC category and

remaining four were unreserved. One post of Lecturer reserved for SC category was also published on temporary basis in the Department of Journalism & Mass Communication. The petitioner applied for appointment under both categories of posts i.e. budgeted and SFS. After participating in the selection process, petitioner was selected and appointed as Lecturer under both the schemes i.e. budgeted as well as SFS. In the appointment letter issued for budgeted post of Lecturer on 02.07.2007, the subject was mentioned as appointment to the post of Lecturer (SC) on temporary basis, whereas in the appointment letter issued under SFS, it was mentioned as appointment to the post of Lecturer (under SFS), meaning thereby, no category was mentioned in the said appointment letter. The petitioner joined as Lecturer under SFS on 02.07.2007 under Department of Journalism and Mass Communication. On 11.02.2010, an agreement of service was also entered between the petitioner and respondent No.2-University. On 23.05.2012, a complaint was made by one Krishan Kumar against the petitioner alleging therein that the petitioner obtained job while claiming himself to be an SC candidate, as belonged to Julaha community, whereas he cannot be selected under SC category, being a Muslim. On the basis of said complaint, Assistant Registrar of the respondent-University wrote a letter dated 05.07.2012 to the Deputy Commissioner, Karnal for verification of the caste certificate of the petitioner, which was replied to by the Deputy Commissioner, Karnal on 30.10.2012 stating that there is no entry in the name of Abid Ali regarding issuance of SC Certificate at Sr. No.2348 dated 12.09.2000. Thereafter, on 12.04.2013, Registrar of the respondent-University issued a memorandum of charges based on the verification of caste certificate from Deputy Commissioner to the petitioner, and that it was proposed by the competent authority to take action against him as per Agreement of Service. 15 days' time was granted to the petitioner to submit his defence qua

the said charge. After receipt of aforesaid memorandum, petitioner sought information under the Right to Information Act, 2005 and came to know that on 12.09.2000, not only serial number of caste certificate of the petitioner was wrongly mentioned but also there were some other persons whose dispatch numbers of certificates were also entered wrongly in the record register. On 16.05.2013, petitioner made an application to the City Magistrate, Karnal requesting him to correct the relevant record. The City Magistrate, Karnal on the very same day i.e. 16.05.2013 informed the petitioner that after examining the record, it had been found that SC certificate entered at Sr. No.2348 was issued in the name of Sanjeev son of Chandri Ram whereas the SC certificate issued to the father of the petitioner was given Sr. No.2299 dated 12.09.2000. On 21.05.2013, petitioner submitted his reply to the memorandum dated 12.04.2013 stating that he had verified the caste certificate from the office of City Magistrate, Karnal and the caste certificate issued to the petitioner was issued vide Sr. No.2299 instead of 2348 dated 12.09.2000.

3. Thereafter, the Vice Chancellor, Kurukshetra University, Kurukshetra constituted a committee to examine the reply dated 21.05.2013 and upon examining the same, the committee gave a finding that it was difficult to ascertain whether the petitioner had applied against reserved post or general category post and therefore, it was difficult to ascertain whether there was any misrepresentation on behalf of the petitioner or not. On 14.07.2014, respondent No.2-University issued a show cause notice to the petitioner on the ground that the Deputy Commissioner, Karnal was requested by the respondent-University to verify the authenticity of the SC certificate issued to the petitioner and the Deputy Commissioner, Karnal vide its letter dated 30.12.2012 informed that the petitioner belonged to Julaha caste and Muslim religion and therefore, SC

certificate cannot be issued to a Muslim. It was further stated that there was no entry in the name of petitioner at SR. No.2348 dated 12.09.2000. The petitioner filed reply to the said show cause notice on 04.08.2014 submitting therein that he had applied for the post of Lecturer under SFS as general category candidate. The certificate of the petitioner was not fake and due to clerical mistake, serial number of the said certificate has been mentioned wrongly as 2348 instead of 2298. In fact, petitioner pointed out instances of several other persons whose certificates were issued on the same date with wrong serial numbers. Again on 09.03.2016, Senior Administrative Officer on behalf of the Registrar of the respondent-University issued a letter to the City Magistrate, Karnal for verification of the SC certificate of the petitioner, which was responded by the City Magistrate, Karnal vide letter dated 04.04.2016 that as per record, certificate at Sr. No.2299 dated 12.09.2000 had been issued to one Nizamudeen son of Ismail, resident of Gharaunda, Caste Julaha. Despite aforesaid communication dated 04.04.2016, Registrar of the respondent-University again written letters on 23.12.2016 and 18.01.2017 to the City Magistrate, Karnal requesting him to again verify the caste certificate of the petitioner. Vide letter dated 20.01.2017, Deputy Commissioner, Karnal stated that as per report of Tehsildar, Karnal, it had been found that petitioner had not been issued SC certificate bearing No.2348 dated 12.09.2000. Thereafter, another Committee was constituted by Executive Council to consider the recommendation of the Committee earlier constituted and to suggest action to be taken against the petitioner in the light of report received from the Deputy Commissioner, Karnal. The said Committee vide its report dated 21.07.2017 proposed certain major penalties against the petitioner. Thereafter, a decision was taken in the meeting of the Executive Council held on 28.07.2017 for removal of the petitioner from service, which shall not be

disqualification for future employment. The petitioner received order dated 28.07.2017 on 03.08.2017 through registered post. Aggrieved against order dated 28.07.2017 whereby the petitioner has been removed from service, he approached this Court by way of instant writ petition.

4. Mr. R.S. Bains, learned Senior Advocate assisted by Mr. Mohan Singh Chauhan and Mr. Saurabh Bedi, Advocates, appearing for the petitioner would contend that the petitioner had not sought any benefit of reservation as he had been appointed under the general category as the appointment letter did not mention his category as SC, whereas in the appointment offered to him for the budgeted post of Lecturer, the SC category was mentioned. It was argued that the SC certificate issued to the petitioner was assigned a wrong dispatch number and the similar mistake had occurred in the SC certificates issued to other candidates on 12.09.2000. For illustration, against Sr. No.2348, which was mentioned on the SC certificate of the petitioner, in fact, name of Sanjeev Kumar was mentioned in the record of the issuing authority whereas against Sr. No.2299, name of father of petitioner i.e. Nizamudeen son of Sh. Ismail, resident of Gharaunda was found mentioned. Admittedly, the petitioner belongs to Julaha caste. Father of the petitioner applied for SC certificate to be issued in the name of the petitioner and after due verification of the material placed before the issuing authority i.e. City Magistrate, Karnal, Caste Certificate had been issued, though with a wrong Serial Number, which fault cannot be attributed to the petitioner or his father. There was no misrepresentation on behalf of the petitioner while seeking issuance of the caste certificate and therefore, removal of the petitioner from service on the ground that he secured appointment on the basis of forged caste certificate is wholly erroneous. In fact, minutes of the meeting of the Committee constituted by the Vice Chancellor to examine the reply dated 21.05.2023 submitted by the

petitioner to the charge sheet served upon him vide letter dated 12.04.2013 also concluded that it was difficult to ascertain whether the petitioner had applied against reserved post or general post. Moreover, after selection at the time of issue of appointment letter, it was not clarified that the petitioner had been appointed against the post meant for SC category and therefore, it seemed to be a procedural lapse and it was difficult to ascertain whether there was any misrepresentation by the applicant or not. It was further argued that the petitioner joined as Lecturer under SFS in the year 2007 whereas the respondent authorities initiated disciplinary proceedings against the petitioner in the year 2012, after lapse of 5 years and that too on a complaint submitted by one Krishan Kumar, who remained unsuccessful in the selection process. It was further argued that there were total 5 posts advertised under SFS, out of which 1 post was reserved for SC category. Only 4 posts were filled up and therefore, as per settled position of law, first General Category posts were to be filled up and since there were 4 posts of General Category and the petitioner was appointed as 4th candidate, therefore, for all intents and purposes, petitioner was appointed against General Category post. In support of his arguments, counsel for the petitioner, relied upon the judgment rendered by the Hon'ble Supreme Court in ***Rajesh Kumar Daria Vs. Rajasthan Public Service AIR 2007 SC 3127.***

5. It was further argued by learned Senior Advocate for the petitioner that the petitioner was not given copy of the enquiry report prior to the notice of the punishment and therefore, the proceedings are vitiated. In support of his argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in ***Managing Director Vs. Karunakar AIR 1994 SC 1074.***

6. Per contra, learned counsel appearing on behalf of the respondent No.2- University would contend that in the application form submitted by the petitioner

for the post of Lecturer under SFS in the department of Journalism and Mass Communication, petitioner against the column '*whether you belong to SC/ST/BC/ESM*', had mentioned as *SC (A)*', meaning thereby, the petitioner had applied for 1 post of SC, out of total 5 posts. Even in the list of candidates, who have been called for interview, name of the petitioner was mentioned at Sr. No.2 and category of petitioner was mentioned as SC. Moreover, the Committee, which took interview of the candidates, in the report of its meeting held on 17.04.2007, recommended the name of the petitioner for appointment to the post of Lecturer in SC category along with four other candidates, whose names were recommended under General Category. Therefore, it is clearly evident that the petitioner was offered appointment on the post of Lecturer being a SC candidate and therefore, issuance of appointment letter to him without mentioning the category is irrelevant. The Caste Certificate furnished by the petitioner was issued to him with Sr. No.2348 on 12.09.2000, however, on verification it came forth that against Sr. No.2348, the caste certificate was issued to one Sanjeev Kumar and not the petitioner. Therefore, petitioner had secured job by furnishing a forged document, as a person belonging to Muslim community cannot be issued an SC certificate. The Deputy Commissioner, Karnal vide letter dated 30.10.2012 duly verified that as per their office record, there is no entry at Sr. No.2348 dated 12.09.2000 in favour of petitioner-Abid Ali. It was argued that there are instructions dated 20.03.2007 issued by the Union Government, which have been adopted by the Haryana Government, according to which if a person secures government job on the basis of false information or produce a false certificate in order to secure appointment, he should not be retained in service. After receipt of complaint against the petitioner, the respondent No.2-University duly verified the caste certificate furnished by the petitioner from the issuing

authority i.e. City Magistrate, Karnal and after giving sufficient opportunity to present defence by the petitioner, the enquiry committee after obtaining legal advice from the office of Advocate General, Haryana came to the conclusion that petitioner is guilty of charge and therefore, dismissed from service. In support of his arguments, learned counsel appearing for respondent No.2 relied upon the judgment rendered by the Hon'ble Supreme Court in ***Punjabrao Vs. Dr. D.P. Meshram and others AIR 1965 2 (SC) 1179*** to contend that for treating person as belonging to Scheduled Caste, he must be one who professes either Hindu or Sikh religion. In ***M. Chandra Vs. M. Thangamuthu and another (2010) 9 SCC 712***, the Hon'ble Supreme Court has held that "Scheduled Castes" means such castes, races or tribes or part of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of the Constitution. If a person belongs to caste, which is notified in the Schedule to the Presidential Order, he/she would have the status of a Scheduled Caste, provided he/she professes Hinduism or one of the other religions specified in para 3 of the Order. It was argued that one must have to profess Hinduism or any other religions specified in para 3 of the Presidential Order to have the status of Scheduled Caste and since the petitioner belongs to non-Hindu community i.e. Muslim Committee, he cannot have the status of Scheduled Caste.

7. I have heard learned counsel for the parties and have perused the paper book as well as the case laws cited by the parties with their able assistance. The twofold question posed for consideration before this Court is: whether i) the SC certificate is forged or obtained by misrepresentation and ii) whether the petitioner has benefitted from the certificate and if he has, can he be allowed to continue in service?

8. Admittedly, the petitioner while applying for the post of Lecturer both under budgeted and SFS categories had mentioned his category as 'SC (A)'. In fact the SC certificate as issued was also attached. The selection proceedings placed on record qua selection process to the post of Lecturer under SFS whereupon the petitioner had joined, would show that in the list of candidates, who had been called for interview, name of the petitioner was reflected at serial no 2 and against his name it was mentioned that he belonged to SC category. In fact, 30 persons were called for the interview and only 26 were present, out of which there was a candidate of Backward Class category, one from Scheduled Tribe, 3 from Scheduled Caste and the rest were from the unreserved category. A further perusal of the record would reflect that 7 candidates were shortlisted under the General Category and the name of the petitioner does not find mention therein. Throughout the selection process, the petitioner was treated as a candidate under SC category. Therefore, the argument of the petitioner that he contested for the post under General Category is of no help to the petitioner. Had the case been so, he ought not to have mentioned his category of reservation in the said column. In the absence of any column in the application form seeking information whether a candidate is applying under General Category or reserved category, mentioning of category of reservation in the application form itself is an indication that the candidate is seeking benefit of the reservation.

9. Even if it is assumed for the sake of argument that there is no misrepresentation or fraud on behalf of the petitioner as it is apparent from the name of petitioner and his father's name that the petitioner belonged to Muslim community and despite that fact, Scheduled Caste certificate was issued in his favour, but the settled position of law is that a person to have the status of Scheduled Caste must profess Hinduism or any other religion as specified in para

3 of the Constitution (Scheduled Castes) Order, 1950 (hereinafter referred to as Presidential Order), as issued by the President in exercise of the power conferred upon him under Article 341 of the Constitution of India. Para 3 of the Presidential Order is reproduced as under:-

“3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste.”

In the absence of any material available before this Court that petitioner herein is professing Hinduism or any other religion as specified in para 3 of the Presidential Order, this Court is of the opinion that petitioner was not entitled to be issued an SC certificate, being a person belonged to Muslim Community. The Hon’ble Supreme Court in ***Punjabrao’s case*** (supra) has held that for treating a person as belonging to Scheduled Caste, he must be one who presses either Hindu or Sikh Religion. In the said case, a person belonging to Scheduled Caste had converted to Bhuddism and therefore, was held ineligible to be a candidate for election from a constituency reserved for members of Scheduled Caste.

10. The argument of learned Senior Advocate appearing for the petitioner that there were other candidates as well, serial numbers of whose certificates were different than the number of dispatch register and therefore, there is a probability of clerical mistake on the part of official maintaining the register also pales into significance on account of the fact that the petitioner, being a Muslim, at the very first instance is not entitled to get a Scheduled Caste Certificate.

11. Another argument raised by learned Senior Advocate appearing for the petitioner is that out of 5 posts of Lecturer under SFS, 4 posts were earmarked for General Category and 1 post was reserved for SC category and since only four posts were filled up by the respondent-University, therefore, the petitioner was appointed on 4th post of General Category and not on the post meant for reserved

category. The said argument has also no merit, as against the four posts of General Category persons namely (i) Roma; (ii) Madhu; (iii) Ashok Kumar and (iv) Nancy Devinder Kaur were appointed. In fact, Nancy Devinder Kaur did not join the post offered to her and therefore, the said post remained vacant. It was never the case as projected by the petitioner that petitioner was appointed on the 4th post of General category. The petitioner herein had a case if he could prove that he had obtained more marks than the last selected candidate of General Category and therefore, applying the principle of horizontal reservation, he was to be given appointment against the post of General Category to grant benefit of reservation to next Scheduled Caste candidate. This Court is unable to give the benefit of horizontal reservation in terms of the judgement rendered in *Rajesh Kumar Daria* case (supra) as the recommendations made by the interview committee did not provide marks of persons so selected to determine whether or not the petitioner ought to have been offered appointment against General category post. As per the recommendation of the interview committee, the petitioner was recommended for appointment under SC category and therefore, argument of the petitioner that he was given appointment against 4th post of General category is devoid of merit.

12. No doubt, complaint against the petitioner was made by another unsuccessful candidate competing under SC category after a period of five years, complaining that the petitioner being a Muslim cannot be issued Scheduled Caste certificate, on the basis of which departmental proceedings continued, which culminated into order of removal of the petitioner from his services as a Lecturer. The petitioner was appointed in the year 2007 and till today, he has rendered 16 years of service as he was granted stay on operation of impugned order dated 28.07.2017 vide order dated 16.08.2017 passed by a Coordinate Bench. Learned

Senior Advocate appearing for the petitioner had also argued that length of service of the petitioner ought to have been taken into consideration while passing the impugned order. This Court is of the opinion that since the appointment of the petitioner based on the Scheduled Caste certificate to which he was not entitled to, is *void ab initio*, he cannot get the benefit of length of service for which he was not eligible at the first instance. The Hon'ble Supreme Court of India in the judgment rendered in Civil Appeal No.4990 of 2021 titled as ***The Chief Executive Officer, Bhilai Steel Plant, Bhilai Vs. Mahesh Kumar Gonnade and others*** decided on 11.07.2022 has held that when a person secured appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment. In the aforesaid case, respondent No.1 got appointment on the basis of a caste certificate showing him to be 'Halba' Scheduled Tribe. On scrutiny of said certificate, it was found that respondent No.1 belonged to Halba/Koshti community, which was recognized as OBC in the State of Chhatisgarh and therefore, his appointment on the post against ST category was discontinued. In ***Satish Chandra Gupta Vs. Steel Authority of India Limited, Managing Director, Bokaro Steel Plant and Chairman, Steel Authority of India Limited 2010 (7) SCT 776***, the Jharkhand High Court had rejected the plea of petitioner therein that his services could not be terminated after a period of 15 years on the ground that as he had obtained his appointment on the basis of misrepresentation of material facts, advantage is obtained by him in violation of constitutional scheme and therefore, appointment granted to petitioner is an illegal appointment and therefore, deemed to be *void ab initio*.

13. In view of the aforesaid facts and circumstances, this Court is of the opinion that even though the petitioner may not have misrepresented at the time of obtaining an SC certificates or obtained the same fraudulently, but since he

claimed and was given benefit under the said certificate to which he was definitely not entitled to, he cannot be allowed to continue in service. Consequence of the same to follow, however, the salary and other emoluments paid to the petitioner shall not be recovered. The government accommodation, if retained by the petitioner as on today, is to be vacated by him within a period of two months from today.

- 14. Consequently, the instant petition stands dismissed.
- 15. The application (CM-18233-2017) filed by Krishan Kumar would render infructuous with the dismissal of the writ petition and is disposed of accordingly.

(JAISHREE THAKUR)
JUDGE

May 17, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No