

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.643 of 2021

In

Civil Writ Jurisdiction Case No.24171 of 2018

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Rajive Nandan Mourya Son of Late Thakur Prasad, H/o Sri Ashok Kumar Ranjan, Near Ram Kutir, (Opposite Telephone Exchange, Anishabad) New Bye Pass Road, Anishabad, P.S.-Gardanibagh, Anchal-Sadar, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Under Secretary, Water Resources Department, Government of Bihar, Patna.
6. The Additional Secretary, Water Resources Department, Government of Bihar, Patna cum Enquiry Officer.
7. The Executive Engineer, Planning and Monitoring Division No. 5, Water Resources Department, Government of Bihar, Patna-cum Presenting Officer.
8. The Secretary, The Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Indu Bhushan, Advocate
For the Respondent/s : Mr. Anjani Kumar (Aag4)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-10-2024

In pursuance to our earlier order, Mr. Santosh Kumar Mall, Principal Secretary, Water Resources Department, Government of Bihar and Mr. Sanjiv Kumar Sinha, Additional Secretary, Water Resources Department, Government of Bihar,



Patna have appeared in person.

2. In the instant appeal, the appellant has assailed the order of the learned Single Judge dated 08.10.2021, passed in C.W.J.C. No. 24171 of 2018.

3. The appellant had joined the services of State of Bihar as an Assistant Engineer on 23.06.1987 pursuant to Advertisement No. 93/85 through the Bihar Public Service Commission. He had claimed his candidature under Scheduled Caste category with reference to the fact that he belongs to '*Chamar*' Caste. His father was a resident of Uttar Pradesh and he was in the Indian Railways and had been posted in the State of Bihar. He has married a resident of Saran District (now Siwan). In this background, the petitioner had obtained residential certificate dated 03.09.2014 and Scheduled Caste Certificate dated 04.09.2014 in the State of Bihar to claim certain service benefits including monetary benefits and the same was granted. In the year 2017, the official respondents noticed that Domicile Certificate dated 03.09.2014 and Scheduled Caste Certificate dated 04.09.2014 are not in accordance with law with reference to the fact that he was not a permanent resident of State of Bihar. It is to be noted that domicile certificate is in order, for the reasons that he is a



resident of State of Bihar at least from the year 1987, the date on which he was selected and appointed on the Post of Assistant Engineer, Water Resources Department, Government of Bihar. Insofar as Scheduled Caste Certificate dated 04.09.2014 is concerned, the disciplinary proceedings have been initiated on both the counts, that he had obtained false certificate of Domicile as well as Scheduled Caste Certificate. In the departmental inquiry, the Inquiring Authority stated to have found that he had obtained false certificates. For the purpose of Caste Certificate, the State Government has enacted a law called The Bihar Reservation of Vacancies in Posts & Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act 1991. Perusal of the Act, there is no provision for cancellation of Caste Certificate obtained by the Government Servant while misrepresenting. Be that as it may, Section 15 empowers for framing of Rules and it reads as under:-

“15. Power to make rules (1) The State Government may make rules for carrying out the purposes of this ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters, namely -

(a) Maximum age-limit for first recruitment to any service or post.

(b) The minimum qualifying marks for direct recruitment to any service or post.



(c) Form in which every establishment shall submit annual report to the department of Personnel and Administrative Reforms regarding number of persons recruited in such establishment.

(d) Any other matter which has to be made or any other matter connected with or for the purpose of carrying out the provisions of this ordinance.

Provided that every rule made under this Section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before expiry of the session in which it is so laid or the session immediately following, both the house agree in making any modification in the rule or both the Houses agree that the rule should be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.”

Underline supplied

4. The respondents have not framed any Rules insofar as constitution of a committee to verify the certificate issued by the competent authority insofar as SC/ST/OBC. In other words, there is no cancellation of Domicile Certificate dated 03.09.2014 and Scheduled Caste Certificate dated 04.09.2014 under the relevant provisions of law. In the absence of cancellation of Caste Certificate and Domicile Certificate, the respondents have resorted to disciplinary proceedings and



proceeded to impose a penalty of dismissal from service. Even to this day, both the certificates have not been cancelled in the manner known to the law and in terms of decision passed in ***Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others*** reported in (1994) 6 SCC 241. Admittedly, the respondents have stated that insofar as the Caste Certificate verification of the petitioner dated 04.09.2014 is still pending consideration before the concerned authority and it is stated that State Government is in receipt of report and further action to be taken.

5. It is to be noted that, the State Government has issued a Resolution dated 08th November 2007 and it was notified in the Gazettee on the 19th October 2015. For issuance of aforementioned Resolution and Gazettee notification, *prima facie*, there is no source of power for the reasons that State Government has failed to frame the Rules under Section 15 of the Act, 1991. Learned counsel for the respondents submitted that the aforementioned Resolution and Gazette notification is in terms of the Hon'ble Supreme Court decision in the case of ***Kumari Madhuri Patel & Ors.*** (cited *supra*). The aforementioned decision for issuance of resolution and notifying in the Gazzette is contrary to the Act, 1991. When the Act 1991,



in particularly, Section 15 authorising the State Government to issue Rules, the same has not been undertaken as on this day. This issue stands left open to the petitioner as well as to the respondents to take note of in pending cancellation of caste certificate. Analysing the facts of the case that in the absence of cancellation of Caste Certificate dated 03.09.2014, imposing penalty of dismissal from service would be premature, the same has not been examined by the learned Single Judge. In fact, learned Single Judge has failed to take note of the Act, 1991 read with the Section 15. After framing Rules under Section 15, the State Government was required to identify the competent authority to cancel the alleged Caste Certificate. Reading of number of Supreme Court decisions insofar as cancellation of Caste Certificate is concerned the Hon'ble Supreme Court has observed that in respect of any alleged Caste Certificate is required to be cancelled, in that event respective State Government is required to constitute verification and cancellation of Caste Certificate Committee, normally, it is headed by District Magistrate of the concerned District. These are the lapses which have not been taken note of before the initiation of departmental proceedings against the appellant on 07.07.2017. In other words, initially they should have resorted



to cancel the Caste Certificate as well as Domicile Certificate to the extent that appellant has mislead/misrepresented in obtaining the aforementioned certificate. On cancellation of such Caste Certificate it is only a question of misconduct alleged to have been committed by the Government Servant could be examined and proceed to impose any one of the penalties which are mentioned in the Bihar C.C.A. Rules, 2005. These issues have not been taken note of by the learned Single Judge.

6. In the light of Co-ordinate Bench order dated 06.02.2023, second supplementary counter affidavit has been filed on behalf of the respondent No. 3. In paragraph Nos. 7 to 10, it is contended as under:

“7. That it is stated that the answering respondents sought instructions from the General Administration Department, Bihar with regard to queries made by the Hon’ble Court vide the aforesaid order since the said department is concerned with verification/determination of caste certificate of a Govt. employee.

8. That it is stated further that the General Administration Department sent its instruction vide letter no. 3057 dated 13.02.2023 With regard to first query made by the Hon’ble Court, it has been informed that the Inspector General of Police, Weaker Sections, CID, Bihar, Patna has been requested vide letter no. 4648 dated 07.04.2021 for verification/determination



of caste certificate of the appellant. Reminders have also been sent to the said authority vide letter no. 19297 dated 28.10.2022 and letter no. 21115 dated 28.11.2022. But verification report is still awaited.

9. That with regard to second query of the Hon'ble Court, it was informed vide the aforesaid letter that in compliance of order passed by the Hon'ble Supreme Court in Civil Appeal No. 5854/1994 (Kumari Madhuri Patil and others vs. Additional Commissioner, Tribes Development and others), State Level Scrutiny Committee has been constituted in General Administration Department of the State Govt, for verification and determination of castes. The said Committee has been authorized to make enquiry into complaints of forged caste certificates and submit enquiry report.

10. That with regard to third query of the Hon'ble Court, it was informed that no rules have been framed yet under Section 15 of the Bihar Act-3, 1992 but instructions issued by the General Administration Department vide resolution no. 3887 dated 08.11.2007 and resolution no. 1567 dated 05.02.2014 may be treated as provisions made under Section 15 of the Bihar Act-3, 1992."

Underline Supplied

In terms of the aforementioned averments made, it is crystal clear that as on this day issue relating to cancellation of caste certificate is still pending consideration before stated to be identified authority in the light of Resolution dated 8th November, 2007. It was notified in the Gazette on 19.10.2015 vide Annexure C series, therefore, resorting to disciplinary



proceedings and concluding the same while imposing the penalty of dismissal from service is clearly premature. On this score also, order of the dismissal as well as order of the learned Single Judge are set aside.

7. It is necessary to take note of few judicial pronouncements insofar as cancellation of caste certificate followed by consequential actions like termination/dismissal from service and other actions, if any. Earliest judgement is in the case of ***Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others*** reported in **(1994) 6 SCC 241**, paragraph No. 13 is relevant for the purpose of examination to proceed with cancellation of false caste certificate produced by the government servant in order to have certain service benefits. This judgement has been subsequently referred in number of judgements like in the case of ***Superintendent Of Post Offices and Ors. vs R. Valasina Babu*** reported in **2006 SCC Online SC 1412**. In this case caste certificate was issued on 27.12.1980 and it was cancelled on 28.11.1990 followed by dismissal on 30.09.1992, therefore, one has to draw inference that before dismissal of a government servant for production of alleged false caste certificate, it is mandatory for cancellation of caste certificate in the light of



principles laid down in *Kumari Madhuri Patil's* case (cited *supra*). In yet another decision of the Hon'ble Supreme Court in the case of *Bhubaneswar Development Authority vs. Madhumita Das and Others* reported in **2023 SCC Online SC 977**, first respondent therein was appointed on 17.10.1998 to the post of Junior Assistant under Scheduled Castes category. Her Scheduled Castes certificate was cancelled on 16.08.2011, thereafter, she was subjected to disciplinary proceedings under CCA Rules and proceeded to dismiss her from service on 13.03.2012. Even on perusal of this decision, it is evident that before imposing of penalty of dismissal from service on the alleged allegations relating to production of false caste certificate one of the requirement is to cancel the caste certificate at the first instance. In the present case, as is evident from second supplementary counter affidavit filed on behalf of the third respondent, it is crystal clear that for cancellation of caste certificate matter is still pending consideration before the committee. The committee is stated to have submitted report. Pursuant to such report, further action is required to be taken by the disciplinary authority or competent authority.

8. Overall analysis of the aforementioned decisions in respect of production of false caste certificate and



consequentially canceling the caste certificate and further taking action of imposing penalty of dismissal/termination, following are the key points *namely* :

(a) Intent is immaterial.

The Court has ruled that it does not matter, if the certificate was submitted fraudulently or due to a mistake.

(b) Protecting is harmful to good governance.

The Court said that protecting ineligible people can harm good governance by allowing them to scarce resources and violate rights of eligible people.

(c) Scrutiny Committee's order is final.

The Scrutiny Committee's order to cancel and confiscate a false caste certificate is final and can only be challenged in the High Court

(d) Communicate to educational institution or appointing authority.

The Scrutiny Committee should immediately communicate the cancellation of false certificate to the educational institutions or appointing authority. The institution or authority should then cancel the admission or appointment without further notice to the candidate.



(e) Verification of Certificate.

The government has instructed the appointing authorities to verify the authenticity of Scheduled Castes and Scheduled Tribes Certificates / OBC certificates through the competent authority and the certificate holder's permanent residence. If the verification reveals that the claim is false the candidate's service should be terminated.

Underline Supplied

In the light of the aforementioned culled out points, in the present case, as long as caste certificate is not cancelled or confiscated a false caste certificate by the Caste Scrutiny Committee, the appointing authority cannot resort to disciplinary proceedings and to impose penalty, therefore, the impugned decision of the respondent insofar as imposing the penalty of dismissal from service on the appellant is technically premature in the light of principles laid down by the judicial pronouncements cited *supra*.

9. In the light of the above analysis, the appellant has made out a case so as to interfere with the impugned order of the State Government dated 30.07.2018 and order of the learned Single Judge dated 08.10.2021 passed in C.W.J.C. No. 24171 of 2018.



10. Accordingly, they are set aside. The L.P.A. is allowed.

11. At this stage, it is to be noted that if the appellant was in service, he would have attained the age of superannuation and retired from his service on 31st July, 2021.

12. Be that as it may, the concerned authorities are hereby directed to take a fresh action for cancellation of both the certificates in accordance with law within a period of 6 months from the date of receipt of this order, failing which any action to be taken against the petitioner insofar as alleged false Caste Certificate and Domicile Certificate stands terminated. The concerned respondents are hereby directed to settle all his monetary and service benefits which are due to him on account of his retirement including pay fixation and other service benefits. The above exercise shall be completed within a period of three months from the lapse of six months from today.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Prabhakar/
Gaurav

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

