

**28.02.2024**  
**sayandeep**  
**Sl. No. 01**  
**Ct. No. 25**

**WPA 14680 of 2006**

With  
CAN 2 of 2008 (Old CAN 2819 of 2008), CAN 3 of 2008 (Old CAN  
9317 of 2008), CAN 5 of 2018 (Old CAN 2338 of 2018)

Monoj Kr. Thakur & ors.  
-Versus-  
Union of India & ors.

Mr. Shambhunath Ray  
Ms. Amrita Tewari  
Ms. Tuhina Parvin

..... for the petitioners

Ms. Aparna Banerjee

..... for the respondents

The present writ petition is filed challenging the order of suspension and/or set aside and or withdraw and or revoke and /or rescind the show cause notice as well as the charge-sheet and not to proceed with the disciplinary proceedings initiated on the basis of the charge-sheet issued by Senior Scrutiny Committee, RPF, Howrah.

It is a case of the petitioner that he belongs to Hajang Community which is the Scheduled tribe community. He applied for the post of cook -mate to the respondents for his appointment. After the procedure being followed including medical examination and police verification, the petitioner was offered for appointment as cook-mate in the post reserved for ST category. At the time of appointment, the petitioner produced a Community Certificate dated 10.01.1986 issued by Executive Magistrate, Alipore. He was

appointed on 17<sup>th</sup> September, 1998. While he was working, the petitioner was transferred from one place to another and the petitioner followed all the directions and orders issued by the superiors. While so, the Chief Security Commissioner, RPF, Eastern Railway, Kolkata issued a direction to the authority concerned on 24.08.2005 to verify the Scheduled Tribe certificate by forming a team of inspectors. Based on the said direction, the inspecting team enquired the Sub-Divisional Officer, Barasat to verify the ST certificate produced by the petitioner. The Sub-Divisional Officer, Alipore intimated the Senior Security Commissioner, RPF, Eastern Railway that the ST certificate produced by the petitioner was not issued from their office. In the said letter, the Sub-Divisional Officer has not stated that certificate produced by the petitioner is not genuine or fake one. In view of the said letter issued by the Sub-Divisional Officer, Senior Security Commissioner, RPF, Eastern Railway issued a show-cause notice dated 31<sup>st</sup> January, 2006. The petitioner submitted his reply on 10.02.2006 denying the same. Subsequently, the authority initiated disciplinary proceedings against the petitioner by issuing a charge memo dated 09.05.2006 alleging that the Community certificate produced by the petitioner for appointment as cook-mate is fake and not issued by the Sub-divisional Office, Alipore.

The petitioner filed the present writ petition challenging the show-cause notice as well as charge-sheet issued by the respondent authority.

Learned counsel appearing for the petitioner submits that petitioner at the time of appointment produced community certificate issued by the Executive Magistrate, Alipore who is a competent authority to issue Scheduled Tribe community certificate. The respondent instead of verifying Executive Magistrate, Alipore verified with Sub-Divisional Officer who informed the respondents that the certificate produced by the petitioner was not issued by the Sub-Division Office, Alipore. Learned counsel for the petitioner further submits that without any enquiry and giving opportunity to the petitioner to prove the genuineness of the certificate produced by the petitioner, the respondent issued charge-sheet dated 09.05.2006 only based on the letter issued by the Sub-Divisional Officer, Alipore. Learned counsel for the petitioner referred to the interim order granted by this Court dated 10.07.2006 passed by this Court restraining the respondents from proceeding with charge-sheet. According to the counsel for the petitioner, in spite of said interim order, the respondent proceeded further and dismissed the petitioner from service by the order dated 27<sup>th</sup> October, 2008. In the contempt petition filed by the petitioner, this Court ordered reinstatement of the petitioner and prayed for setting aside the show-

cause notice, charge-sheet and order of dismissal dated 27<sup>th</sup> October, 2008.

Learned counsel appearing for the respondent submits that the petitioner at the time of appointment, produced community certificate dated 10.01.1986 and on verifying the same it was found that the said certificate produced by the petitioner was a fake one. The respondents have made proper enquiry and it was found that community certificate produced by the petitioner was not issued by Sub-Divisional Officer, Alipore and there is no post of Executive Magistrate in Alipore. There is no serial number in the community certificate produced by the petitioner which itself shows that the certificate produced by the petitioner is a fake one. Only when the interim order was not extended and expired, the respondents proceeded enquiry further with regard to charge-sheet issued to the petitioner and based on the materials, petitioner was found guilty and respondents passed order dismissing the petitioner from service on 10.01.2008. The petitioner produced fake community certificate and obtained appointment for Scheduled Tribe people and petitioner was rightly dismissed from service. The petitioner also produced another certificate dated 12<sup>th</sup> November, 1998 which is filed in the supplementary affidavit-in-opposition also found that it was not issued by the Sub-Divisional Officer, Barrackpore.

Again, the petitioner in the year 2015 produced another certificate dated 20<sup>th</sup> September, 2015 and the said certificate is found genuine. In any event, at the time of appointment, the petitioner produced fake certificate and hence petitioner is not entitled for appointment and after enquiry, petitioner was rightly dismissed from service. Petitioner is not entitled for any relief and prayed for dismissal of the writ petition.

Learned counsel appearing for the respondents also relied on the order dated 18<sup>th</sup> January, 2023 passed in **WPO1303 of 2007** in the case of **Shri Durgesh vs. Chief Security Commissioner, RPF & ors.** in support of her submission.

Learned counsel appearing for the petitioner in reply submitted that the petitioner filed CAN 9317 of 2008 challenging the order of dismissal dated 27.10.2008 and this Court allowed the said application but did not pass any order regarding joining of the petitioner in the service of the respondent. In view of the same, petitioner is out of service and prayed for reinstatement.

Heard the learned counsel appearing for the petitioner and respondents and perused the materials on record.

From the materials on record, it is seen that the petitioner was appointed as cook-mate in the post reserved for Scheduled Tribe category. He produced community certificate issued by the Executive

Magistrate to the effect that he belongs to Hajang Community which is Scheduled Tribe Community.

According to the respondents, the said certificate is fake one and , therefore, the respondent authority decided to verify the genuineness of community certificate and a team of the inspectors were appointed for the that purpose. On enquiry and verification of their team with Sub-Divisional Officer, Alipore and Barrackpore, it was found that the certificate produced by the petitioner was not issued by the said office. Enquiries and verifications done by team of inspectors with regard to status of community certificate with the Sub-Divisional Officer is invalid and void. It is the case of the petitioner that community certificate was issued by Executive Magistrate, Alipore. The respondents have not stated that community certificate produced by the petitioner was referred to the scrutiny committee and respondents also not produced any material to show that community certificate produced by the petitioner was not issued by the office of the Executive Magistrate, Alipore. The contention of the learned counsel appearing for the respondents that there is no post of Executive Magistrate is without merits and is not acceptable in view of the interim order dated 10<sup>th</sup> July, 2006 granted by this Court wherein the Hon'ble Judge has categorically stated that instead of District Magistrate by typographical error it has been mentioned as Executive Magistrate. The same is not

disputed by the respondents. In as much as all the respondents have not made enquiry and not verified the community certificate by referring the same to the Scrutiny Committee to show that the community certificate produced by the petitioner is fake one, the petitioner is entitled for relief sought for in the writ petition.

Further, it is repeatedly held by Hon'ble Apex Court as well as various High Courts that genuineness of SC/ST community certificate produced by an employee can be verified only by Scrutiny Committee consisting of specialized persons who will make enquiry as contemplated. Starting from **Kumari Madhuri Patil and Anr. S. Addl. Commissioner, Tribal Development and ors.** reported in **(1994)6 SCC 241** , number of cases regarding genuineness of Scheduled Caste and Scheduled Tribe certificates were considered and decided by the Hon'ble Apex Court and various High Courts. All the Courts have consistently held that only Caste Scrutiny Committee appointed by concerned State government have jurisdiction and power to verify the genuineness of community certificate produced by an employee. Only persons having through knowledge of the Scheduled Caste and Scheduled Tribe communities are appointed as member of the committee. The committee also has an Anthropologist as one of its members. Elaborate procedure is contemplated to verify the genuineness of community

certificate. A vigilance enquiry is ordered and enquiry is made in the locality where the employee resides and /or his native place. The relatives of the employee are enquired and statements are recorded. The employee is given opportunity to dispute the enquiry report and to produce the documents especially community certificates of his parents, brothers, sisters and close relatives. Only after following the procedure contemplated, the Scrutiny Committee decides based on the materials placed before it whether Scheduled Caste/Scheduled Tribe certificate produced by the employee is genuine or a forged one and whether the employee belongs to the Scheduled Caste or Scheduled Tribe community as claimed by him. The employer/employee has right to challenge the decision by way of writ petition if aggrieved.

It is useful to refer the Judgment reported in **(2013)16 SCC 536** in the case of **Shalini vs. New English High School Association** held in paragraph 15 as follows:

*“15. It is requires specialized bodies such as Caste Scrutiny Committees, specialized lawyers, seasoned bureaucrats, etc. To decipher which category a relatively backward, or ostracized or tribal person falls in. Can it therefore seriously be contended that a person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later*

*on found not to belong to an envisaged Scheduled Tribe but to a special backward class be visited with termination of her employment? We think that that is not the intent of the law, and certainly was not that the three-Judge Bench was confronted with in Dattatray. In our opinion, therefore, the appellant should have been debarred from any further advantage that would ensure to persons belonging to the “Halba” tribe.”*

In the present case when the certificate produced by the petitioner was alleged to be forged, the respondents ought to have referred the issue to the caste scrutiny committee. Instead, the respondents proceeded to conduct its own enquiry and passed order dismissing the petitioner from service .

In view of the Judgment referred to above and failure on the part of the respondents referring the community certificate produced by the petitioner to scrutiny committee to verify the genuineness of the same, the petitioner is entitled for the relief sought for. Accordingly, the show cause notice, charge-sheet and order of dismissal are set aside.

The respondents are directed to reinstate the petitioner from service immediately. The petitioner will be deemed to be in service from date of dismissal till date of reinstatement. Petitioner is not entitled to any salary for the said period as he was not doing any work. He is entitled to continuity of service. The period from

the date of dismissal till the date of reinstatement will be treated as duty period for calculating terminal benefits including pension.

With the above direction, the writ petition is disposed of.

Urgent photostate certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(V.M. Velumani, J.)**