

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

LPASW No.431/2000 and CMP No.686/2000

Date of decision : March 25, 2009

Umesh Kumar Vs. Union of India and Ors.

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Hon'ble Mr. Justice Virender Singh, Judge
Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

Appearing counsel:

For appellant(s) : Mr. B.S. Salathia, Advocate.
For respondent(s) : Mr. Tashi Rabstan, Addl. CGSC.

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| i) | Whether approved for reporting in Press/Media | : Yes / No |
| ii) | Whether to be reported in Digest/Journal | : Yes / No |
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Appellant/writ petitioner, Umesh Kumar (for short to be referred to as Appellant) hails from Bihar. He got himself registered with Employment Exchange, Jammu. On the requisition of MES authorities, his name was sponsored by the Employment Exchange for an interview against the post of Chowkidar. Ultimately, he was appointed in January, 1998 in MES as Chowkidar as Scheduled Tribe candidate, being from 'Gond caste' which has been declared as Scheduled Tribe by the Government. He possessed a Scheduled Tribe Certificate duly issued in his favour by District Magistrate, Siwan (Bihar).

Certain persons had filed a writ petition in this Court bearing number SWP No.1/1998 titled Sunil Kumar Sharma and others

Versus Union of India, in which it was asserted that some individuals have produced false Caste Certificates and got appointments, which were irregular. On the strength of said writ petition, verifications were done and a report was received from District Magistrate, Siwan that a Scheduled Tribe Certificate issued in favour of the Appellant was cancelled on 05-03-1997. On the basis of the said report, respondent-3 issued a show cause notice to the Appellant to explain his position by tendering any proof/reply, failing which he was to be dismissed from service. Similarly, another notice dated 15th April, 1999 was served upon him to report the Headquarters to justify his case. Aggrieved of the said notice, the Appellant filed SWP No.870/1999 seeking quashing of the Show Cause Notice No.1713/Rectt/1178/EIB (2) dated 15th April, 1999, the communication addressed by District Magistrate, Siwan (Bihar) bearing No.257 dated 19-09-1998 and Order No.11/Nyaya of 12/96 of 35 dated 05-03-1997 cancelling the Scheduled Tribe Certificate of the Appellant. The said writ came to be disposed of with the following directions:

- “i) that what-ever material has been gathered by the respondents would be made available to the petitioner;**
- ii) that in case the petitioner wishes to challenge the correctness of the report given by the District Magistrate he would be at liberty to place any material before the said authority. If the petitioner wishes to challenge the order of the District Magistrate, Siwan then the proper forum would be**

Patna High Court. This Court has no territorial jurisdiction to interfere in the matter.”

Aggrieved of the said judgment, the Appellant has filed the instant Letters Patent Appeal, which was admitted way back on 12-02-2000.

At the very outset, Mr. Salathia submits that the appellant is still continuing with his job on the strength of the interim relief granted to him during the pendency of the instant appeal, as while issuing notice to the respondents in CMP No.86/2002 vide which the appellant had sought interim relief of not being ousted from the job, this Court had given liberty to respondents-1 to 3 to conclude the proceedings initiated by them in response to the show cause notice dated 15-04-1999 (impugned in the main writ petition) but with a rider that they would not pass any final order on conclusion of such proceedings without the permission of the Court. Mr. Salathia submits that till date the appellant has not been called upon with regard to any enquiry by respondents-1 to 3. Mr. Rabstan is not in a position to admit or controvert this factual position.

Mr. Salathia submits that even otherwise a very short controversy has arisen in this case for the consideration of this Court, as the Scheduled Tribe Certificate tendered by the appellant for getting appointment as Chowkidar under Scheduled Tribe category was cancelled on 05-03-1997 vide order No.11/Nyaya of 12/ 96 of 35, as indicated in the communication addressed by

District Magistrate, Siwan (Bihar) vide No.257 dated 19-09-1998.

Admittedly, the said Certificate is neither fake nor forged one.

According to Mr. Salathia, the stand taken by the respondents herein, as reflected in their written statement, is that the Government of Bihar had issued notification that the ‘Gond’ caste has been deleted from the category of Scheduled Tribe. This is what is mentioned in the aforesaid communication of District Magistrate, Siwan dated 19-09-1998. The learned counsel submits that this controversy cropped up in case titled ‘**Dr. Sunil Kumar vs. The State of Bihar and others**’, 1997 (2) PLJR 590 and, ultimately, the High Court of Bihar came to the conclusion that ‘Gond’ is a Scheduled Tribe community within the State of Bihar. Mr. Salathia submits that in another judgment of Hon’ble Supreme Court rendered in ‘**Vashistha Vs. The State of Bihar & Ors.**’ (Civil Appeal No.5411 of 1999 arising out of SLP (Civil) No.19188 of 1998) decided on September 20, 1999, their Lordships have observed that ‘Gond’ community belongs to Scheduled Tribe category.

In order to strike his view point home more effectively, Mr. Salathia relies upon a judgment of Constitutional Bench of Apex Court in case titled ‘**State of Maharashtra vs. Millind and others**’, AIR 2001 SC 393.

Mr. Salathia then submits that the notification of Bihar State deleting Gond caste from the category of Scheduled Tribe, which

otherwise was bad in view of Article 342 of the Constitution of India, and became the subject matter of discussion in **Dr. Sunil Kumar's and 'Vashistha's** cases (supra), was subsequently withdrawn by the State, result thereof is that Gond community now falls within the category of Scheduled Tribe and admittedly the Appellant is Gond by caste. Taking the case of the Appellant from that angle, it can now be comfortably said that the certificate which was produced by him for getting an appointment of Chowkidar with respondent-3 was not fake, forged or bad in any manner. Keeping in view that factual aspect, Mr. Salathia submits that sending the case back to respondent-3 to hold any enquiry at this stage would be a futile exercise and, therefore, he prays that the present appeal may be allowed with a direction to respondents-1 to 3 to allow the Appellant to continue in service on the strength of the Scheduled Tribe Certificate already issued to him, as this would amount to substantial justice to the poor appellant.

Mr. Rabstan very fairly concedes to the submissions made by Mr. Salathia and submits that since respondents-1 to 3 had opposed the claim of the appellant primarily on the communication of the District Magistrate, Siwan (respondent-4) cancelling the earlier Certificate of Scheduled Tribe issued in favour of the Appellant and once the Gond caste has been held to be Scheduled Tribe in State of Bihar, perhaps respondents-1 to 3 will not be in a position to dislodge the Appellant. Mr. Rabstan submits that except for the

present controversy, no other aspect of the matter calls for adjudication in this appeal. He also very fairly admits that any enquiry at this stage, as directed by the learned writ Court with regard to this controversy, would be an exercise in futility, as it has already been held that the Gond caste in Bihar falls in Scheduled Tribe category.

In view of the aforesaid factual backdrop and the settled legal position, and the fact that Mr. Rabstan has also fairly conceded to the claim of the Appellant, we allow the instant Appeal and set aside the impugned judgment of learned writ Court. Resultantly, the writ petition also stands allowed. The appellant/writ petitioner, who is continuing in service till date as stated at the Bar, shall continue except otherwise any adverse decision is taken against him for any other different cause.

CMP No.686/2000 also stands disposed of accordingly.