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IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. (S) NO. 12 /2010

PETITIONER

/ Vishnu Prasad Dhakate, S/o. Sundarlal Ji Dhakate, aged about 54 years, R/o. Lokanshi Niwas, Sundar Nagar, Daganiya, Vivekanand School Road, Ward No. 59, Raipur, District Raipur (C.G.)

VERSUS

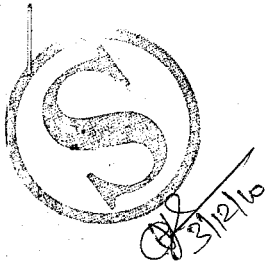
RESPONDENTS

- /1] State of Chhattisgarh, Through: Secretary, Rural Industries (Gramodyog) Handloom Sector, D.K.S. Bhawan, Raipur, District Raipur (C.G.)
- /2] Director, Handloom, Directorate of Handloom, Ring Road No.1, Sonakhan Bhawan, Raipur, District Raipur (C.G.)
- /3] Director, Handloom & Handicraft, Madhya Pradesh, Directorate of Handloom, Shivaji Nagar, Premises of Board of Secondary Education, 2nd Floor, Bhopal, Madhya Pradesh
- /4] Joint Director, Handloom, Madhya Pradesh, Bhopal, Directorate of Handloom, Shivaji Nagar, Premises of Board of Secondary Education, 2nd Floor, Bhopal, Madhya Pradesh

14/2010
11/1/2010
P.A. No. 1007-1008
Dated 11/1/2010



WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA



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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 12 of 2010

PETITIONER : Vishnu Prasad Dhakate

VERSUS

RESPONDENTS : State of Chhattisgarh & Others

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Shri Satish K. Agnihotri, J.

Present: Shri Manoj Paranjape, Advocate for the petitioner
Shri Praveen Das, Deputy Government Advocate for the State.

ORDER (ORAL)

(Passed on 30th day of November, 2010)

1. By this petition, the petitioner seeks quashing of the order dated 29-12-2009 (Annexure P/1) passed by the Secretary, Department of Rural Industries, by which the petitioner has been terminated from the service.
2. The indisputable facts, in nutshell, as projected by the petitioner for adjudication of the case, are that initially the petitioner was appointed on the post of Inspector, Handloom against the general category on 22-02-1983 (Annexure P/2). In the year 1981-82, the competent authority issued the caste certificate in favour of the petitioner treating the petitioner member of *Halba* community i.e. Scheduled Tribe category. Caste certificate is Annexure P/5. For the first time after the appointment on 26-09-1986 (Annexure P/6) the petitioner requested the Director, Handlooms, to enter the caste certificate in his service record. Thereafter, in the year 1990 and 1997, the petitioner was promoted to the posts of Senior Inspector, Handlooms and Assistant Director, Handlooms, respectively on the basis of his caste certificate.
3. According to the petitioner, after formation of the new State of Chhattisgarh, on the basis of option submitted by the petitioner, his services were allocated to the State of Chhattisgarh. The caste certificate of the petitioner was referred to the High Power Caste Scrutiny Committee (for short "the Committee") for verification. The Committee by its order dated 16-03-2007 (Annexure P/11), observed that the petitioner belongs to *Kosti* community and the same does not

comes within the purview of Scheduled Tribe. Thus, the caste certificate submitted by the petitioner was not found genuine.

4. Being aggrieved by the said order, the petitioner preferred a writ petition before the High Court of Madhya Pradesh at Jabalpur being W.P.No.14285/2007 (*Vishnu Prasad Dhakate, S/o Shri Sunder Lal Dhakate v. State of M.P. & Others*). The said writ petition was dismissed by order dated 29-04-2008 (Annexure P/12). Thereagainst, the petitioner preferred a writ appeal before the High Court of Madhya Pradesh at Jabalpur being W.A.No. 643/2008 (*Vishnu Prasad Dhakate v. State of Madhya Pradesh & Others*). The said appeal was also dismissed by order dated 23-07-2008 (Annexure P/13).
5. The respondent authorities issued the show cause notice to the petitioner on 16-06-2008 (Annexure P/16) calling upon the petitioner to offer his explanation within a period of 15 days. Thereafter, on 03-12-2007 (Annexure P/17) again issued the show cause notice to the petitioner. On 16-06-2008, the petitioner submitted his reply and stated that he had not secured the appointment against the reserved category of Scheduled Tribe on the basis of a caste certificate. On receipt of reply, it appears that the petitioner was removed from the service vide order dated 29-12-2009 (Annexure – P/1). Thus, this petition.
6. Shri Paranjape, learned counsel appearing for the petitioner, submits that the impugned order is illegal, arbitrary and against the principles of natural justice, as before passing the impugned order, the opportunity of hearing was not afforded to the petitioner. In fact, the petitioner has not obtained the service against the reserved category i.e. Scheduled Tribe. Even by letter dated 28-02-2009 (Annexure P/23), the Joint Director, Handlooms, Madhya Pradesh, Bhopal, intimated the Director, Handlooms, Chhattisgarh, Raipur, that at the time of filling the application form for appointment, the petitioner has not mentioned his caste and the petitioner has not attached any caste certificate along with the said application form. Thus, the impugned order is illegal and not at all sustainable in the eye of law and the same may be quashed.
7. On the other hand, Shri Das, learned Deputy Government Advocate appearing for the State, submits that after following the due process of law and after affording proper opportunity of hearing to the petitioner, the impugned order was passed. Thus, the petitioner is not entitled to any relief and the petition may be dismissed.
8. Shri Paranjape, learned counsel appearing for the petitioner, in rejoinder, submits that the respondent State itself in para 11 of the return

has admitted that the petitioner has not secured the appointment against the reserved category i.e. Scheduled Tribe community. In para 22 of the return also the State admitted the fact that the petitioner was appointed in open category. The respondents failed to appreciate the law laid down by the Supreme Court as well as this Court in catena of decisions.

9. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.
10. It is indisputable that the petitioner was appointed on the post of Inspector, Handloom, against the general category, not against the reserved Scheduled Tribe category. The promotion, thereafter, to the higher posts, was granted on the basis of Scheduled Tribe social status certificate granted to the petitioner, later on. The said certificate was rejected by the Committee. Thereagainst the writ petition filed in the High Court of Madhya Pradesh was rejected on 29-4-2008 and further writ appeal was also dismissed on 23-7-2008.
11. As a sequel, it appears that the promotion to the higher posts was granted on the basis of Scheduled Tribe social status certificate, which was cancelled subsequently. The petitioner is not entitled to hold the promoted post against the reserved Scheduled Tribe category on the ground that he was promoted against the reserved Scheduled Tribe category. Thus, termination of his initial appointment against the general category is illegal. Since the petitioner was selected and appointed in open category and he has also not represented to the authorities that he belongs to Scheduled Tribe community at the time of initial appointment, the initial appointment cannot be cancelled on any account. Thus, the order dated 29-12-2009 (Annexure – P/1) terminating the services of the petitioner is quashed.
12. So far as promotion to the higher posts is concerned, the petitioner is not entitled to continue on the promotional posts, as the same was granted against the reserved ST category. The authorities are at liberty to take appropriate steps for cancellation of promotion of the petitioner after affording proper opportunity of hearing to the petitioner, if so advised.
13. In *State of Maharashtra v. Milind and Others*¹, Milind joined the medical course against the reserved category, which was later on found false. The Supreme Court held that Milind cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional

¹ (2001) 1 SCC 4

purpose. In view of the fact that he had obtained medical education and huge amount was spent on completion of medical course, he was permitted to continue and the degree obtained by Milind on submission of wrong certificate was not quashed.

14. In *R. Vishwanatha Pillai v. State of Kerala and Others*², in an identical case, where the appointment was obtained on the basis that the petitioner belongs to Scheduled Tribe community was held as void from its inception.
15. In the case on hand, the initial appointment was not obtained on misrepresenting or on the basis that he claimed to be Scheduled Tribe candidate. Thus, the initial appointment of the petitioner cannot be terminated. However, the subsequent promotions on the post of wrong certificate may be quashed, as aforestated.
16. In the result, the writ petition is allowed to the above extent. No order as to costs.

Gowri

**Sd/-
Satish K. Agnihotri
Judge**

² (2004) 2 SCC 105