

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 14TH DAY OF SEPTEMBER, 2010

PRESENT

THE HON'BLE MR.JUSTICE N KUMAR

AND

THE HON'BLE MR.JUSTICE SUBHASH B.ADI

WRIT PETITION NO.80635/2010

BETWEEN:

1. The State of Karnataka
Represented by its Secretary,
Education Department,
M.S.Building,
Bangalore - 560 001.
2. The Deputy Director of Public
Instructions,
Gulbarga District,
Gulbarga.
3. The Block Education Officer
North Range, Gulbarga.
4. The Block Education Officer
Chittapur, Gulbarga District.
5. The Tahsildar
Gulbarga.

...PETITIONERS

(BY SRI.M.KUMAR, AGA)

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AND:

1. Smt.Kalavathy
W/o Shivalingaiah Tirthnath
Aged about 47 years,
Working as Primary School Teacher
Govt. Higher Primary School,
Kapanur,
R/o: Kapanur,
Taluk & Dist.Gulbarga.
2. Sri.Revanasiddaiah
S/o Gurubasaiah
Aged about 43 years,
Working as Primary School Teacher,
Govt. Higher Primary School,
Ingalagi, Taluk: Chittapur,
Dist: Gulbarga,
R/o. Chittapur,
Dist: Gulbarga.

...RESPONDENTS

(BY SRI.VEERESH B.PATIL, ADV)

THIS WRIT PETITION FILED U/A 226 & 227 PRAYING TO QUASH THE ORDER PASSED BY THE KARNATAKA ADMINISTRATIVE TRIBUNAL ON 06.07.2009 IN APPLICATION NO.451/2003 AND 5386/2008 (ANNEXURE-A TO THE WRIT PETITION)

THIS WRIT PETITION COMING ON FOR FINAL HEARING ON THIS DAY, MR.N.KUMAR J., MADE THE FOLLOWING

ORDER

Respondents were appointed as Assistant teachers under the reserved category of schedule caste on the assumption that they belong to Beda Jangama. In support of their contentions that they belong to schedule caste they

produced a certificate issued by the Assistant Commissioner (Revenue), City Corporation, Gulbarga. After such appointment on 16.12.89, the respondents were directed to produce the caste certificate issued by appropriate authority within 15 days. Thereafter the respondents approached Tahsildar, Gulbarga for issue of caste certificate. However, Tahsildar issued an endorsement to the effect that it is not possible to give verification certificate verifying that the respondents belong to Beda Jangama caste in view of the Government circular. The endorsement was issued on 29.12.1989. It is thereafter, the respondents filed writ petitions in W.P.Nos.12955-12956/90 challenging the said endorsement before this Court. The said writ petition came to be allowed on a submission made by both the parties that, the issue involved in the writ petition is the same as one involved in the case of Kulkarni Geeta M. Vs The State of Karnataka and others reported in ILR 1996 Karnataka 2672. In pursuance to the said order, the respondents appeared before the said scrutinizing committee for appropriate certificate. In the mean while

proceedings were initiated by the petitioners against the respondents and in so far as the first respondent is concerned, the order declaring the probationary period was completed, was withdrawn. Consequently the benefits such as sanction of annual increments etc., were also withdrawn. In so far as the second respondent is concerned, the probationary period not yet been declared, therefore consequential orders came to be passed withdrawing all the benefits in fact, a direction was issued to the first respondent to refund the amounts mentioned in the said order.

2. Aggrieved by the same both the respondents preferred application Nos.451/2003 and 5386/2008 before the Karnataka Administrative Tribunal, Bangalore, contending that till their case is considered by the Verification Committee and till they are found not belonging to the Beda Jangama Committee they are entitled to continue in employment and secondly are entitled to all consequential benefits. The Tribunal on consideration of the aforesaid case of the respondents was ✓

of the view that their case is covered by the Judgment of this Court in the case of Kulkarni Geeta M. Vs State of Karnataka and others and they also relied on the Judgment of the Tribunal in application No.210/2008 and held that, until the decision with regard to the caste certificate produced by them is taken, the petitioners have to be considered as belonging to the reserved category and are entitled to service benefits which are applicable to general merit candidate. Accordingly, the endorsement issued by the petitioners were quashed and direction was issued to grant annual increments and other service benefits available to general merits candidate within three months from the communication of the order and it would be subject to the decision on caste and income verification. Further held that, if the applicants belonging to a reserved category they are entitled to claim such benefits as are admissible as per rules, liberty is reserved for taking further steps after the report of the verification of caste by the competent authority, with due notice of the proposed action. Aggrieved by the said order, the State is before this Court.

3. The learned Government Advocate assailing the impugned order of the Tribunal contends that, none of the judgments relied upon by the Tribunal do apply to the facts of the case. That the respondents do not possess certificate of Tahsildar of Gulbarga declaring that they belong to the Schedule Caste. Only in the event the said certificate being issued it is then the Caste Verification Committee can go into the validity of the said certificate if certificate has been issued subsequent to the Act and if such certificate earlier to the Act it is state level committee appointed by the State can go into the said question. When no such certificate is issued by the Tahsildar the said committee going into the said question does not arise. The certificate issued by the Assistant Commissioner of Gulbarga Municipality is of no value in the eye of law and question of considering the correctness of certificate would not arise. In that view of the matter, the Tribunal was in error in passing the impugned order and directing to await the decision of the Caste Verification Committee and avail the benefits to which the respondents are not entitled.



4. Per contra, the learned counsel for the respondents submitted that the respondents were appointed on the basis of the certificate issued by the Assistant Commissioner (Revenue) Municipality of Gulbarga. When he approached the Tahsildar, he declined to grant a certificate. In view of this, the matter is before Caste Verification Committee. Till that Committee decision, the respondents are entitled to benefits granted by the Tribunal by its impugned order. Therefore no case for interference is made.

5. From the aforesaid facts and circumstances and rival contentions, it is not in dispute that, the respondents were appointed as persons belonging to schedule caste. They were not issued with a certificate by the jurisdictional Tahsildar declaring that they belong to schedule caste. It is in that context the petitioners called upon the respondents to produce the certificate from Tahsildar. Admittedly the Tahsildar did not issue any certificate, on the contrary, he declined to issue certificate



on the ground that there is prohibition from the State Government to grant such certificates. Therefore no certificate issued by the Tahsildar declaring that the respondents belong to the schedule caste exists. The Assistant Commissioner (Revenue) Municipality, Gulbarga is not the authority recognized under law to issue such certificate. If respondents relied on such certificates, it is of no value in the eye of law. The question of respondents appearing before the Caste Verification Committee would not arise. If certificate is issued by the Tahsildar and if correctness of the certificate was in dispute only then the committee would go into the correctness of the certificates. In the absence of any such certificate issued by the Tahsildar, the question of committee verifying the correctness of non-existing certificate would not arise.

6. Under these circumstances we deem it proper to direct the respondents to approach the jurisdictional Tahsildar and thereafter the Tahsildar shall hold an enquiry regarding the status and then pass appropriate orders and in accordance with law. He shall not be

influenced by any circulars issued, directions issued earlier directing the respondents to approach Caste Verification Committee on the ground that the matter is before Verification Committee. Till the Tahsildar issues such Caste certificate and the correctness of the certificate is tested in accordance with law, the respondents are not entitled to any benefits notwithstanding the fact that they manage to continue in employment for more than 20 years, certainly they are not entitled to benefits to which the Tribunal has granted.

Under these circumstances, the order passed by the Tribunal cannot be sustainable. It requires to be set aside. Therefore we pass the following

ORDER

- (i) Writ petition is allowed.
- (ii) The impugned order at Annexure-A, dated 06.07.2009 in Application Nos.451/2003 & 5386/2008 passed by the Karnataka Administrative Tribunal is quashed.



- (iii) The Tahsildar, Gulbarga is directed to hold an enquiry regarding the status of the respondents herein, give them sufficient opportunity to substantiate their case. thereafter, after enquiry, investigation, pass appropriate orders in accordance with law and on merits.
- (iv) Any such order to be passed is subject to appeal and confirmation by the District Caste Verification Committee. Only after the respondents succeed in this exercise they would be entitled to other benefits to which they are entitled to.
- (v) The respondents shall give a written application furnishing all particulars to the Tahsildar on or before 01.10.2010. On receipt of such application and after due intimation to the respondents he shall complete the enquiry on



or before 31.12.2010 and pass appropriate orders.

Ordered accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

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