

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

THE HON'BLE MR.JUSTICE B.A.PATIL

AND

THE HON'BLE MR.JUSTICE BELLUNKE A.S.

WRIT PETITION NO.101462/2018 (S-KAT) DATED:11-12-2018

SMT.JAYASHREE, D/ O. SHRIMANT CHOUDHARI VS. THE DIRECTOR COLLEGIATE EDUCATION OFFICE OF THE COMMISSIONER COLLEGIATE EDUCATION, BENGALURU.

ORDER

The present writ petition has been filed by the petitioner challenging the order passed by Karnataka State Administrative Tribunal, Bengaluru (hereinafter referred to as ' KAT ', for short) in application No.6072/2014 dated 11.12.2017.

2. We have heard the learned counsel Sri. S. B. Hebballi for the petitioner and Sri. C. Jagadish Patil, learned Special Counsel for the respondent-State.

The brief facts of the case are that, petitioner was .Co appointed as the Second Grade Typist by order dated 16.01.1996.It s the case of the petitioner that she belongs to, 'Tokare Koli ' caste recognized as Scheduled Tribe and she has been appointed against the reservation for the Scheduled Tribe candidates. Thereafter petitioner was directed to get the Caste Certificate verified from the Caste Verification Committee, Belagavi and accordingly proceedings were initiated before the Caste Verification Committee and the Deputy Commissioner, Belagavi. The said Committee by order dated 29.10.2001 held that the petitioner does not belong to Tokare Koli ' caste and she belongs to Talwar caste and ultimately held that the Caste Certificate issued was invalid.

Against the said order, petitioner filed an appeal before the Appellate Authority. The Appellate Authority has also confirmed the order of the Caste 2 Verification Committee. On the basis of the said order, Tahasildar cancelled the Caste Certificate of the petitioner by order dated 31.05.2008.

It is the further case of the petitioner that a criminal case was also initiated and in the said criminal case, she was exonerated from all the charges. It is the further case of the petitioner that, after cancellation of the Caste Certificate, service of the petitioner came to to be terminated by the respondent and the petitioner challenged the same before the KAT and the KAT dismissed the application as not maintainable granting liberty to the petitioner to challenge the Caste Verification Certificate before the competent authority. Assailing the same, the petitioner is before this Court.

4. It is the specific contention of the learned counsel for the petitioner that the surname of the petitioner is Talwar, but she belongs to Tokare Koli ' community which is categorized as Scheduled Tribe as per the orders of the Government of India. Without considering and appreciating the said fact, the said Authority has held that the said caste does not belong to ST community and petitioner also does not belongs to the said caste. He further submitted that the Appellate Tribunal without giving any opportunity of hearing the matter in detail, at a threshold dismissed the petition. He further submitted that all the school records and college records clearly go to show that the petitioner belongs to Tokare Koli ' community and the said fact has not been properly considered and appreciated by the KAT and without examining *** the matters, passed the impugned order. Further, by referring to the Government Order No.SWD 713 SAD 93, Bangalore, dated 11.03.2002, the learned counsel submitted that, if a person has been wrongly got admitted on the basis of a wrong Caste Certificate issued by the competent authority and if the candidate has already put in a longer service, then under such circumstances, as per the said order, the candidate cannot be terminated from the service, but he may be deprived of all further benefits on the basis of the said certificate. KAT has not looked into the said aspect and has erroneously passed the impugned order.It is further submitted that, the said circular is applicable to the present case on hand and even the Hon'ble Supreme Court in the case of Punjab National Bank and another Vs. Vilas S/o. Govindrac Bokade & Anr. reported in Civil Appeal No.1548/2007, by referring to the Constitutional Bench decision in the case of State of Maharashtra Vs. Milind & Others reported in AIR 2001 SC 393, has given the same benefit and the said benefit ought to have been given to the petitioner. It is further submitted that the KAT without application of mind has dismissed the petition. Termination of the service is nothing but it is major penalty. It is also submitted that the petitioner has put in service more than 15 years and she served the institution at various places. Now the respondent has passed an order for recovery of the said amount which is not correct in the eyes of law. On these grounds, he prayed to allow the petition and to set aside the impugned order of the KAT.

In support of his contention, the learned counsel for the petitioner has relied upon the decision in the case of Smt. Shoba Lakshmi Vs. Divisional Commissioner, Bengaluru Division, reported in 2007 (3) AIR (Kar) (R)181. He also relied upon the decision of the Hon'ble Supreme Court in the case of Panjab National Bank and Another Vs. Vilas, S/o. Govindrao Bokade & Anr. passed in Civil Appeal No.1547/2007.

5. Per contra, the learned counsel appearing on behalf of the respondent - State vehemently argued and submitted that, after coming to know that the petitioner has obtained a fake Caste Certificate and fraud has been played by getting the appointment, under such circumstances, the sa benefit of the circular issued by the Government dated 11.03.2002 cannot be extended. If the services are continued, it will amount nothing but allowing a thief to retain the stolen property. For the said proposition of law he relied upon the decision in the case of Chairman and Managing Director, FCI and Others Vs. Jagadish Balaram Bahira and Others reported in AIR 2017 SC 3271.

He further submitted that the act of the petitioner is nothing but it is fraud on the Constitution. When the petitioner knew that she is not* belonging to the said caste and category she got appointed in the said category by producing the false certificate. He further submitted that the scrutiny committee came to know that the petitioner did not belong to the Tokare Koli ' community which is coming within the Scheduled Tribe. Then the very basis of the appointment of the petitioner was taken away and the appointment of the petitioner is no appointment in the eyes of law and as such, she cannot claim a right to the post as she had usurped the post meant for reserved candidate by playing a fraud. He further submitted that the appointment was void from its inception. In order to substantiate his contention he relied upon the decision of this Court in the case of Sri. J. Madegowda S/o. late Javaregowda. Vs. The Addl. Director, CRE Cell, in Writ Appeal No.16698/2011 dated 29.11.2012. It is his further submission that the Caste Verification Committee has come to the conclusion that the petitioner does not belong to Tokare Koli ' community and thereafter the Tahasildar has cancelled the Caste Certificate and the said order has not been challenged and the said order has attained finality. Under such circumstances, the petitioner cannot file a writ petition challenging the order of the KAT.

6. By relying upon Rule 7B of the Karnataka SC/CT & Other BC (Reservation and Appointments, Etc.) Rules, 1992 (hereinafter referred to as the ' Rules, 1992), he further submitted that, if a false certificate has been produced and an appointment has been obtained, the financial benefit which has been taken by the candidates can be recovered. He further submitted that Rule 7- A of the said Rules gives power to check the validation certificate and get the validation certificate. On these grounds he prays to dismiss the petition.

7. We have given our thoughtful consideration to the submissions made by the learned counsel appearing for the parties and also perused the records.

8. Before going to consider the issues in controversy, there are some admitted facts. It is not in dispute that the petitioner got appointed as a Second Grade Typist on 16.01.1996 under the category Tokare Koli ' caste recognized as Scheduled Tribe. It is also not in dispute that on the basis of the said Caste Certificate she took appointment to the said post in reserved quota under Scheduled Tribe. It is also not in dispute that the Caste Verification Committee verified the same and came to the conclusion that petitioner does not belong to Tokare Koli ' caste and against the said order she also preferred an appeal before the Appellate Authority and the Appellate Authority confirmed the order of the Caste Verification Committee. On the basis of such order, Tahasildar cancelled the earlier Caste Certificate and even against the said order no appeal has been preferred by the petitioner.

9. Though it is the contention of the learned counsel for the petitioner that, without giving any opportunity of hearing, she has been dismissed from the service and Talwar is the surname of the family and it does not belong to any caste, but as could be seen from the records produced by the Spl. Govt. Advocate, Talwar is also a caste in the list recognized and approved by the Government. When the petitioner has taken the certificate that she belongs to Tokare Koli ' caste which is recognized as a Scheduled Tribe, then she has to establish that she belongs to the said caste and it belongs to the recognized Scheduled Tribe. Though all the proceedings

were held before the Caste Verification Committee and thereafter before the Appellate Authority and thereafter the said Caste Certificate issued in favour of the petitioner was cancelled, if really she was belonging to the said caste, she could have preferred any appeal. But admittedly no appeal has been preferred by the petitioner and the said issue has been finalized. The fact remains that she does not belong to Tokare Koli ' caste recognized as Scheduled Tribe.

10. The learned counsel for the petitioner further submitted that, even if there was discrepancy in the Caste Certificate produced by the petitioner, in terms of the Government Order, the petitioner ought to have been treated as belonging to General Category and the appointment of the petitioner could not have been terminated. It is his further submission that as per the government order No.SWD 713 SAD 93 Bangalore, dated 11.03.2002, the appointment which has become final may not be disturbed and only the future benefits on the said certificate may be deprived. But the Hon'ble Supreme Court in the case of R. Vishwanatha Pillai Vs. State of Kerala reported in 2004 (2) SCC 105, has observed as under:

" 13. We do not find any substance in this submission. The misconduct against the appellant is that he entered the service against reserved post meant for a Scheduled Caste/Scheduled Tribe on the basis of a false caste certificate. While appointing the appellant as Deputy Superintendent of Police in the year 1977, he was considered as belonging to the Scheduled Caste was found to be wrong and his appointment is to be treated as cancelled. This action has been taken not for any misconduct of the appellant during his tenure as civil servant but on the finding that he does not belong to the Scheduled Caste as claimed by him before his appointment to the post. As to whether the certificate produced by him was genuine or not was examined in detail by KIRTADS and the Scrutiny Committee constituted under the orders of this Court. The appellant was given due opportunity to defend himself. The order passed by the Scrutiny Committee was upheld by the High Court and later on by this Court. On close scrutiny of facts, we find that the safeguard provided in Article 311 of the Constitution that the government servant should not be dismissed or removed or reduced in rank without holding an inquiry in which he has been given an opportunity to defend himself, stands complied with. Instead of departmental inquiry, the inquiry has been conducted by the Scrutiny Committee consisting of three officers, namely:(1) an Additional or Joint Secretary Director or concerned any officer higher than the rank of of, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, the case may be and (III) in the case of Scheduled Castes, an another or officer having intimate knowledge in the verification and issuance of the social status certificates, who work better equipped to examine the question regarding the validity or otherwise of the caste certificate. Due opportunity was given to the appellant to put forth his point of view and defend himself. The issuance of a fresh notice under the Rules for proving the same misconduct which has already been examined by an independent body constituted under the direction of this Court, the decision of which has already been upheld up to this Court would be repetitive as well as futile. The second safeguard in Article 311 that the order of dismissal, removal and reduction in rank should not be passed by an authority subordinate to that by which he was appointed has also been met with. The impugned order terminating the services of the appellant has been passed by his appointing authority.

15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Schedule Caste then the 9, very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all. "

11. On going through the aforesaid paragraph it is clear that, when a person obtains an appointment on the basis of the Caste Certificate that he belongs to Scheduled Caste and Scheduled Tribe and subsequently after caste verification, if it is found that he does not belong to the said community, then the very basis of his appointment is taken away. His appointment is no appointment in the eyes of law and he cannot claim a right to the post as he has usurped the post meant for reserved candidate by playing a fraud and producing a false Caste Certificate. When a person obtains an appointment on the basis of such false Caste Certificate, he cannot be considered to be a person who holds the civil post within the meaning of Article 311 of the Constitution of India. Even the protection under Article 311 of the Constitution also cannot be extended. Though it is the contention of the learned counsel for the petitioner that by the Government Order dated 11.03.2002, the benefit ought to have been given, but the said facts and circumstances are not applicable to the present facts of the case on hand.

12. Even in the decision in the case of Chairman and Managing Director FCI and others quoted supra, the Hon'ble Apex Court has observed, the protection granted in Milind's case would not be available where any fraud or any fabrication or any misrepresentation is made with a view to obtain an undeserved benefit in the matter of appointment. If there is no accusation that the certificate was false, fabricated or manipulated by concealment or otherwise, the refusal of the benefit may be justified. Even it has been further observed in the said decision at para No.55 which reads as under:

" 55. This aspect has been considered in a recent judgment rendered by one of us in *Nidhi Nina Kaim and Another V. State of Madhya Pradesh And Others*, wherein, speaking for a Bench of three Judges in a case of systemic fraud in relation to medical admissions in the State of Madhya Pradesh. It was observed as follows follows::

" 92.We are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms for, gaining admission to the MBBS course, would amount to espousing the cause of " the unfair ". It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course would cause people to question the credibility of the justice-delivery system itself. The exercise of jurisdiction in the manner AU suggested on behalf of the appellants would surely depict the Court's support in favour of the sacrilegious. It would also compromise the integrity of the academic community. We are of the view that in the name of doing complete justice it is not possible for this Court to support the vitiated actions of the appellants through which they gained admission to the MBBS course. "

Explaining the matter further, this Court held that:

" 99 Besides the consideration recorded by Uus in the foregoing paragraphs, we may confess, that we felt persuaded for taking the view that we have, for a very important reason national character. There is a saying when wealth is lost, nothing is lost; when health is lost, something is lost; but when character is lost, everything is lost. The issue in hand has an infinitely vast dimension. If we were to keep in mind immediate social or societal gains, the perspective of consideration would be different. The submission canvassed needs to be considered in the proper perspective. We shall venture to drive home AU the point by an illustration. We may well not have won our freedom, if freedom fighters had not languished in jails and if valuable lives had not been sacrificed. Depending on the situation, even civil liberty or life itself may be too trivial a sacrifice, when national interest is involved. It all depends on the desired goal. The Preamble of the Indian Constitution rests on the She foundation of governance on touchstone of justice. The basic fundamental right of equality before law and equal protection of the laws is extended to citizens and 1zens alike through Article 14 of the Constitution on the fountainhead of fairness. The actions of the appellants are founded on unacceptable behaviour and in complete breach of the Rule of Law. Their actions constitute acts of deceit invading into a righteous social order. National character, in our considered view, cannot be sacrificed for benefits individual or societal. If we desire to build a nation on the touchstone of ethics and character and if our determined goal is to build a nation where only the Rule of Law prevails, then we cannot accept the claim of the appellants for the suggested societal gains. Viewed in the aforesaid perspective, we have no difficulty whatsoever in concluding in favour of the Rule of Law. Such being the position, it is not possible for us to extend to the appellants any benefit under Article 142 of the Constitution. "

We are in respectful agreement with the above principle and statement of the legal position. "

13. On going through the above said paragraph, AUDIO therein it has been specifically observed that, if a person obtains a false certificate and gets an appointment, it would be like allowing a their to retain the stolen property. In that light also the contention taken up by the learned counsel for the petitioner does not hold any water. When the petitioner has taken the benefit on a false certificate, then it cannot be held that the said candidate is fit to hold the post which is reserved for the said category. Even the cancellation of the Caste Certificate has attained finality and even the said order has not been challenged. Under the said facts and circumstances, the contention of the petitioner that she ought not to have been terminated and the benefit of the circular or an order of the appointment could have been given is not acceptable.

14. It is the contention of learned counsel for the petitioner that the order recovering the benefits is not correct and such order ought not to have been passed. Per contra, learned Special Government Advocate by referring to Rule 7- 1 A and 7- B of the Rules submitted that as per the said Rules the benefits which has been given can be recovered. For the purpose of brevity we quote Rules 7- A and 7- B of the Rules, 1992 which reads as under:

" 7- A. Prosecution for obtaining false caste certificate -- (1) The Caste Verification Committee or the Caste und Income Verification Committee, as the case may be and the Divisional Commissioner, shall send a copy of the order rejecting claim of the applicant for grant of Validity Certificate or, as the case may be, a Copy of the order in appeal rejecting such claim, to the Directorate of Civil Rights Enforcement.(2) The Directorate of Civil Rights Enforcement shall take steps to prosecute such claimant who has obtained a false Caste Certificate.7- B. Monetary benefits secured on the basis of false caste certificate to be withdrawn.– Any amount pain to any person by the Government or any other agency by way of scholarship, grant, allowances or other financial benefits on the basis of a false Caste Certificate shall without prejudice to any other action, be liable to be recovered from such person. "

15. As could be seen from Rule 7- B of the Rules, 1992, it makes it very clear that, if any amount has been paid to any person by the Government, on the basis of the caste, and if the certificate was considered to be a false Caste Certificate, without prejudice to any other action, the said benefit is liable to be recovered from such person.

16. Be that as it may. Though during the course of arguments the learned counsel for the petitioner prayed to *** extend the benefit by seeking the equity, but a party that seeks equity must come to the court with clean hands. He who comes to the court with false claim cannot plead equity nor the court would be justified to exercise equity jurisdiction in favour of such person. In that light the equity cannot be given to the petitioner. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Kumari Madhuri Patil Vs. Addl.Commissioner, Tribal Development reported in AIR 1995 SC 94 at para No.16, which is extracted hereunder:

" 16. We have seen that Miss. Suchita rightly made an application before the competent officer within whose jurisdiction her father lives in Muland and when he refused to give the certificate, she filed an appeal; approached the High Court and obtained direction and gained admission. It is not in dispute that the Addl. Commissioner was delaying it; he did not decide as directed by the High Court, instead directed the Tahsildar to issue the certificate. Thus she secured a false social status certificate and orders of the Court are used to gain admission. The judicial process is made use of to secure admission. She continued her studies thereafter pending scrutiny of her status certificate. No doubt there was a delay on the part of the Scrutiny Committee in the disposal of the claims and we do not find any record to scan the reasons for the delay. Suffice to state that her parents have put her under a cloud as to her social status. But as seen from the facts a course of conduct was adopted by her parents to gain admission on the claim which is now found to be false. Parents misconduct visits the children also many a times. However, she has now completed the course of study except to appear for the final year as contended by her and nothing more is to be done in the situation for her to complete her course of study.

We direct the Principal to permit her to sit for the final year examination, if she has completed the course of study as represented to us but not with the social status as a Scheduled Tribe which was claimed fraudulently and made her admission with the aid of the Court's order and continue her studies. The delay in disposal facilitated her continuance in study of M.B.B.S. Course. "

17. On going through the above said paragraphs, the Hon'ble Apex Court has clearly held that where a case is based on fraud no sympathy or equity can come to the rescue of the petitioner. In that light also the contention of the petitioner is not acceptable.

18. I have carefully and cautiously gone through the decision cited by learned counsel for the petitioner. In view of the decisions quoted supra, the principles laid down therein are not applicable to the present facts of the on hand.

19. It the further contention of the petitioner that the KAT has not applied its mind and at a threshold the application has been dismissed. On perusal of the said order it would go to show that, though the detailed order has not been passed, but after considering the fact situation the said order has been passed. Even after reconsidering the said contention and respondent-appreciation of the submission, as discussed above by us, the contention taken up by the learned counsel for the petitioner is not acceptable. We have reconsidered all the submissions made by the learned counsel for the petitioner and the petitioner has not made out any good grounds so as to interfere with the order of the Tribunal. The writ petition is devoid of any merits.

Hence the writ petition is dismissed.