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**Court :** Karnataka

**Decided On :** Aug-07-1995

**Reported in :** ILR1996KAR718; 1996(5)KarLJ400

**Judge :** M.F. Saldanha, J.

**Acts :** Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976

**Appeal No. :** W.P. No. 17328 of 1991

**Appellant :** Anand

**Respondent :** State of Karnataka

**Advocate for Def. :** Chidananda Ullal, Govt. Adv. for R-1, ;Mukund Menon, CGSC for R-2 and ;B.C. Prabhakar, Adv.

**Advocate for Pet/Ap. :** H.S. Jois and H.L. Sridhara Murthy, Adv.

**Disposition :** Petition partly allowed

**Judgement :**

ORDER

**Saldanha, J.**

1. Heard learned Advocates representing different parties. The controversy in this case is limited to one very narrow aspect of the matter. The petitioner is an

employee of the K.E.B. and it is his claim that he belongs to the Scheduled Caste category. In the Caste Certificate issued to him, his caste has been described as 'Vodda'. The petitioner was treated as a member of the reserved category until about the year 1980 when the question of his promotion came up to the post of Accounts Officer. At that stage, the Board raised the contention that 'Vodda' is not a caste that would qualify for categorisation as Scheduled Caste, having regard to the various Entries in the Schedule and the petitioner was therefore directed, if he still proposed to press his claim for promotion in that category to obtain the requisite Certificate. Thereafter the petitioner made various representations to the concerned authorities and at one stage, the Director had pointed out to the State Government that in his opinion the persons belonging to the 'Vodda' community effectively belong to the 'Bhovi' caste and that consequently, the Government should take steps to clarify the position in this regard. The record indicates that the Government did not accept this contention and the petitioner who was representing to the various authorities including the State Government until the year 1989 did not get any favourable response. The petitioner was claiming promotion in the reserved category and did not qualify for promotion at that point of time because of this categorisation. However, the Board took the precaution of informing those of the other candidates who are promoted that their promotion was subject to the claim of the petitioner for being included in the category of Scheduled Caste. Finally, in the year 1991 the petitioner filed the present Petition. As is unfortunately characteristic with many of these Cases in this High Court, we are in the latter half of the year 1995 and the Petition has now come up for consideration at the admission stage.

2. The main contention raised on behalf of the petitioner is that the Government was in error in having refused to issue the necessary Certificate to him that he belonged to the 'Rhovi' community in so far as according to the petitioner 'Vodda' community is a sub categorisation of the 'Bhovi' community. In support of this contention, he has placed reliance on two Cases the first of them reported in : [1965]1SCR316 , B. Basavalingappa v. D. Munichinnappa and Ors., a five Judge Bench of the Supreme Court went into this question which basically concerned the 'Voddar' caste and after considering the matter in some detail held that 'Vodda' and 'Voddar' are synonyms with 'Bhovi'. The Supreme Court had also occasion to

observe that the different spellings applied to these particular words was inconsequential and therefore upheld the claim that the persons belonging to the subcategories come within the scheduled category of 'Bhovi'. This view has been followed in a subsequent Case reported in : ILR 1990 KAR1719 , B. Seshagiriappa v. State of Karnataka, by this Court, after the Decision of the Supreme Court referred to supra. The Petitioner's learned Advocate therefore submits that the Highest Court in the Country having held that the term 'Bhovi' includes 'Vodda', that he is entitled to the grant of the Caste Certificate with all retrospective benefits.

3. On behalf of the Board it is pointed out to me that the controversy is of the year 1979-80. This is a dispute in relation to service namely the aspect of promotion. The petitioner admittedly claims his promotion, only on the basis of this categorisation. He was not eligible for promotion on the basis of merit alone. The respondents therefore point out that if at all an error has been alleged on the part of anybody, that the error ought to have been challenged at the earliest point of time because it is not possible to put the clock back as far as service matters are concerned after a long time gap. The learned Government Advocate has submitted that the Petition was filed in the year 1991, which is virtually 11 years after the controversy first erupted and I need to add to that submission my finding that the litigation has carried on from 1991 to August 1995 at which stage, I find that the Petition has not yet been admitted. This is the pace at which the petitioner has agitated his rights. The learned Advocate who represent the Board submitted that it is well settled law that even if rights are infringed upon the proceedings must be agitated with a sense of diligence and as far as a remedy by way of a Writ Petition is concerned that gross delay is absolutely fatal. On this ground alone, he pointed out that the Petition is liable to be dismissed. The learned Advocate who represent the State Government and the Union of India have also supported this submission apart from having pointed out to me certain submissions with regard to the other aspects of the matter which i shall deal with separately. Petitioner's learned Advocate puts forward the lame plea that the petitioner was representing to the various authorities until 1989 in the hope that one of them might listen to him and when the petitioner got no reply right up to the year 1991, that he finally moved this Court.

4. As far as the aspect of delay is concerned under normal circumstances this Petition ought to have been straight away dismissed on the ground of gross delay and laches compounded by the fact that even after it was filed, it has proceeded virtually at snail's pace. The only ground on which I am inclined not to do this and to grant some relief in this case, is because to my mind, a degree of substantial Justice is required to be done in all such cases. The Decision referred to by the petitioner's learned Advocate is of the Highest Court of the Country and that Decision has not so far been over-ruled. The Decision pertains to a matter which went up in Appeal from the State of Karnataka and in this background it would be extremely difficult to accept the position that the authorities in this State who are dealing with this class of cases were unaware of that Decision. If the authorities were either ignorant or unaware and have acted wrongly, the petitioner ought to have approached the Court for redressal within the prescribed time. In so far as he has come at an extremely late point of time the question arises whether he has to be totally disqualified from any relief or whether the relief be moulded to the extent that the petitioner will have to suffer for his delay and laches, but will not be totally precluded from any relief. To my mind, the essence of doing Justice would require that even in a case of this type some degree of moulding will be necessary and the petitioner therefore cannot be disqualified completely from the relief that has been prayed for.

5. Coming to the merits of the matter, the case is virtually covered by the aforesaid Decision. The learned Government Advocate further points out that the prerogative of listing the castes or community rests with the Government in exercise of the powers that are conferred under the Constitution and that when the Government in exercise of those powers finalises the Schedules which finally receive the assent of the President, that it is not open to any authority to interfere with the Entries in these Schedules. The learned Government Advocate submitted that the Law in regard to this aspect is well settled and it has also been reconsidered by the Supreme Court. The learned Government Advocate is absolutely right with regard to this submission and one does not need to specifically recall the list of Cases in which this view has been expounded. The learned Government Advocate therefore submits that insofar as the Schedule which restricts itself to the term 'Bhovi' and does not specify that there are any

sub-classifications, categories or derivations, that the petitioner would be precluded from a Writ of Mandamus to any authority directing them to issue a Caste Certificate which contradicts with the Entries in the Schedule, Under normal circumstances, this position would hold good. As far as the present case is concerned the Supreme Court had made a certain distinction insofar as it has not added to the list as mentioned in the Schedule but has only clarified that the term 'Bhovi' includes the 'Vodda' community. Having regard to this position, the question of issuing any fresh Certificate to the petitioner by any authority does not arise as this is not necessary. The Certificate already issued to him would hold good insofar as by virtue of the Law enunciated by the Supreme Court which is the Law of the Land the petitioner would qualify automatically for inclusion in the SC category. However, I need to clarify that this would be only from the date of the passing of this order because admittedly the petitioner has virtually slept over his rights up to the present time and therefore to my mind would not qualify for a relief even from the date of filing of this Petition. Had I found the memo of a valid and cogent explanation, explaining for the tardiness in the prosecution of this Petition I would have granted the relief from the date of filing of this Petition but having regard to the fact that four years have elapsed now from the date of filing of this Petition the relief can only be prospective.

6. The learned Advocate who represents the Union of India advanced a submission that even assuming the Supreme Court did issue certain clarifications in the year 1965 that at the highest those clarifications could hold good until the year 1977 because it was at that point of time that the Government of India had occasion to amend and re-publish the Schedule. It is his submission that if after 1977 when the Schedule was reformulated 'Vodda' was not included in 'Bhovi' and if no clarifications were issued, that then the Schedule that was formulated in 1977 would prevail over the earlier one in respect of which the interpretation was given by the Supreme Court. Basically, the submission advanced by the 2 learned Advocates who represent the State Government and the Union of India is that the power to alter or amend the Schedule vests exclusively with the Government and if while exercising that power the Government has not amended the Schedule to include the 'Vodda' caste that the petitioner would still be disqualified. I am unable to accept this submission because as indicated by me earlier the 'Bhovi'

community is in the Schedule and the Supreme Court in its interpretation held that it is an all inclusive definition which takes under its umbrella several categories of persons one of which is those who belong to 'Vodda' community. Under these circumstances, even though admittedly in the year 1977 the Government did not amend the Schedule, the Decision of the Supreme Court would still hold good regarding the relief prayed for in the Petition.

7. Having regard to the aforesaid situation the Petition partially succeeds. It is directed that the respondent Board which is the employer of the petitioner shall hereinafter, treat the petitioner as belonging to Schedule Caste category for all purposes thereof. This direction shall however be prospective and shall not affect any of the actions that have taken place up to the present point of time.

Rule is made partially Absolute. In the circumstances of the case there shall be no order to the costs.

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