

Sanjay Kumar Singh Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Nov-26-1999

Reported in : 2000(1)AWC406; (2000)1UPLBEC729

Judge : Palok Basu and ;B.K. Sharma, JJ.

Acts : Uttar Pradesh Public Services (Reservation for SCs, STs and OBCs) Act, 1994 - Sections 2, 3, 3(1), 8 and 9; [Constitution of India](#) - Articles 14, 15, 16, 21, 226, 341 and 342

Appeal No. : C.M.W.P. No. 28999 of 1997

Appellant : Sanjay Kumar Singh

Respondent : State of U.P. and Another

Advocate for Def. : Shiv Kumar Singh, Adv. and ;S.C. Rai, Addl. Chief and ;S.C.

Advocate for Pet/Ap. : Shailendra, Adv.

Judgement :

Palok Basu, J.

1. Petitioner SanjayKumar Singh has come to this Court under Article 226 of the Constitution of India with the prayer that the impugned order dated 30.6.1997/1.7.1997 passed by the U.P. Public Service

Commission,Allahabad (for short Commission),copy of which has been filed asAnnexure-XI to this petition.

2. Sanjay Kumar Singh is shuttling between good and bad luck, good for the favourable result in the P.C.S. examination declared in his favour by the Commission, and bad because by the impugned order that result stood cancelled. Again good because by an interim order one post has been kept reserve which continues till date.

3. Petitioner's forefatherbelonged to Old Ngaulaong, VillagePost Office Peren. B.P.O. Tening.District Kohima. Nagaland andbelongs to a sect known as ZemeNaga amongst Naga Tribe citizens.This Naga Tribe is a Scheduled Tribein Tening Nagaland and a certificateto that effect was issued to thepetitioner (Annexure-1). TheAdditional Deputy Commissioner.Peren, Nagaland also issued acertificate dated 27.6.1997 to thateffect. Similarly village councilNagaland also issued a certificate tothat effect on 10.4.1996 (Annexure-111). The petitioner then applied for aScheduled Tribe certificate from theDistrict Magistrate, Allahabad whoissued a certificate dated 18.1.1996based upon the report and certificatefrom Tehsildar, Allahabad indicatingthat he is presently a resident ofAllahabad. It has been pleaded thatthe forefathers of the petitioner hadmigrated to Chhapra from Nagalandand ultimately his father, who was aSubedar Major in the Indian Army,migrated to Allahabad with whom thepetitioner also migrated andcompleted his educational pursuits.

4. On 31.12.1994. the Commission came out with an advertisement for Combined State/Upper Subordinate Service (Preliminary) Examination, 1994.Petitioner applied for the same. Being successful at the preliminary, the petitioner appeared in the main examination with Roll No. 023179 held between 26.6.1996 and 4.7.1996. Being successful in the written examination, the petitioner was called for interview by the Commission on 23.10.1996 through the interview letter dated 2G.6.1996. Having faired well in the interview also, the petitioner's result was declared on 14.11.1996 and he was successful having been shown at serial No. 5 amongst the successful candidates belonging to the Schedule Tribe. It is after this, the impugned order dated 1.7.1997 has been issued, the contents of which,

translated into English, would read as under :

'Sanjay Kumar Singh was taken to be a candidate in the Scheduled Tribe category on the basis of facts stated by him during interview. Sri Sanjay Kumar Singh had disclosed that he was of Schedule Tribe 'Naga'. This Tribe 'Naga' is not one of the tribes enumerated in the list of Scheduled Tribe in the State of Uttar Pradesh by the Government. Therefore, he is not entitled to the aforesaid reservation.

In view of the aforesaid circumstances, the Commission hereby cancels the selection of Sri Sanjay Kumar Singh in the Combined State /Upper Subordinate Examination. 1994.'

5. Sri Shailendra, learned counsel for the petitioner Sri Shiv Kumar Singh. learned counsel for the Commission and S. C. Rai. Additional Chief Standing Counsel for the State have been heard at considerable length for and against this writ petition. Counter-affidavit on behalf of the Commission has been filed by Sri R. Rahman. During the course of arguments on earlier occasions, it was found that an authentic statement from the side of Government should come about the genuineness or otherwise of the claim of the petitioner to be belonging to a Scheduled Tribe of Nagaland. By a detailed order dated 28.7.1998, the District Magistrate, Allahabad, was required to make full fledged enquiry into the allegations of petitioner and to file his own affidavit. It is good that Sri Alok Tandon, I.A.S.. District Magistrate, Allahabad. made comprehensive enquiry not only from the local Tahsildar and other officers but contacted all the relevant officers of Nagaland who had issued several certificates reference of which had already been made above. This affidavit of Sri Alok Tandon states that the certificate which has been issued to the petitioner by the Tahsildar, Allahabad has been issued in pursuance of the provisions contained in various Government orders and further that there was nothing false or wrong in the averment of the petitioner that he belongs to a Scheduled Tribe of Nagaland. Rejoinder affidavit has been filed by the petitioner and as prayed by the learned counsel for the parties, the writ petition is finally disposed of on merits at the admission stage.

6. Sri Shailendra, learned counsel for the petitioner has strongly contended three points in support, of the petition :

(i) There is no dispute that the petitioner belongs to a Scheduled Tribe and there being no bar to accord appointment to Scheduled Tribe candidate of other State as per the provisions contained in U. P. Public Services (Reservation for SC/ST/OBC) Act. 1994, the commission has erred in cancelling the result which was already announced by it declaring petitioner successful.

(ii) Counter-affidavit filed by the commission does not Justify the action because neither the petitioner has committed any default nor has ever submitted a wrong report about his being Scheduled Tribe candidate. Since it is pleaded consistently which has not been denied either by the Commission or by the State that the petitioner's grandfather had migrated to Chhapra and thereafter to Allahabad and the certificates obtained and used by the petitioner are valid in law. the result cannot be cancelled.

(iii) Articles 341 and 342 of the [Constitution of India](#) as interpreted by the Hon'ble Supreme Court, read with the provisions contained in the aforesaid State Act. i.e., U. P. Public Services (Reservation for SC/ST/OBC) Act. 1994. the petitioner cannot be denied appointment on having been declared successful by the Commission.

7. Reliance is being placed on four decisions in Action Committee v. U. O. I.. (1994) 5 SCC 244 ; M. Chandra v. Dean and others. (1990) 3 SCC 130 ; Km. Manju Singh i: Dean and others, AIR 1986 Guj and State of Gujarat v. R. L. Patel, AIR 1992 Gujarat 42. It may be stated here that the last case has no application to the facts of the case. The candidate there was of Scheduled Tribe which was so described in Nagar Haveli as well as in Gujarat. The other 3 decisions required consideration.

8. Sri Shiv Kumar Singh. learned counsel for the Commission also placed reliance on the language of Articles 341 and 342 of the [Constitution of India](#) and further argued that except the State Government, no one can increase the list of either Scheduled Caste/ Scheduled Tribe or Backward Castes and. therefore, the present attempt of the petitioner to include himself in the list of the Scheduled Tribe in State of U. P. just because he happens to belong to a Scheduled Tribe of Assam is an attempt in futility and the Court also could not grant any relief to the

petitioner on that score. He further contended that in so far as the certificate issued by the District Authorities of Allahabad to the petitioner is concerned, it will, at best, come to indicate that the petitioner belongs to a Scheduled Tribe in Assam. That will, according to Sri Shiv Kumar Singh, not entitle the petitioner to claim the privileges of reservation to Scheduled Tribe candidates in U. P.

9. Lastly, he contended that the petitioner is not qualified for thereason that the Tribe which he claims to be Scheduled Tribe in Assam is not included in the recognised list in the State of U. P., and therefore, placing reliance on the aforesaid Supreme Court decisions, he said that the writ petition should be dismissed.

10. Sri S. C. Rai, learned Additional Chief Standing Counsel has said that the petitioner's S. T. certificate has been genuinely issued by the State officials on the basis of the documents which were produced by the petitioner and were available before the officials concerned. He further pointed out that the District Magistrate, Allahabad in his turn has gone to the extreme possible extent to find out whether or not the petitioner belongs to a Scheduled Tribe or not and the findings conveyed through the averments of the affidavit of Shri Alope Tandon, the District Magistrate, Allahabad, indicates that the petitioner belongs to the Scheduled Tribe. Sri Rai, therefore, contended that whether the petitioner rightly applied for appearing at the said examination has to be adjudged on the aforesaid factual position while it is true that the petitioner does not belong to Scheduled Tribe recognised as such by the State Government.

11. In the instant case, no search for the principles behind carving out reservation for Scheduled Casts, Scheduled Tribes or Backward Castes is involved. It is a simple issue of finding out whether or not the petitioner should be extended the benefit of having been successful at the main P. C. S. examination as Scheduled Tribe candidate. The facts narrated above leave no manner of doubt that there was no falsehood or mis-representation in the action of the petitioner which prima facie showed that he belongs to a Schedule Tribe known as 'Naga'. The petitioner was permitted to appear at the examination by the Commission. He has successfully passed the written examination in the mains P. C. S. examination in

the year 1994. He successfully encountered the interview at the Commission and was declared as a selected candidate belonging to Scheduled Tribes category. After this had happened, wisdom dawned on the Commission to find out whether 'Naga' category of Tribe is or is not a Scheduled Tribe in the State of U. P. No doubt. 'Naga' Tribe is not included in the list of Scheduled Tribes in State of U. P. but was there any provision which prohibited the petitioner from applying for the service on the strength of the aforesaid certificates obtained from the Collector. Allahabad, which was based on the certificates issued by the relevant authorities of Nagaland? The answer shall have to be that the petitioner's claim of Scheduled Tribe was based on genuinely issued certificates and there was nothing which prevented the petitioner from being selected if successful. In this connection, some provisions of the aforesaid U. P. Public Services (Reservation for SC/ST/OBC) Act, 1994 shall have to be considered and then the ratio laid down by the Hon'ble Supreme Court in the aforesaid two decisions has to be applied to the facts of the present case.

12. Section 2 (b), Other Backward Classes of citizens as those specified in Schedule I appended to the Act and this all about the definition of Scheduled Castes, Scheduled Tribes and Backward Classes.' Section 9 says, 'For the purposes of reservation provided under this Act, caste certificate shall be issued by such authority or officer in such manner and form as the State Government may, by order, provide'. Through Section 8. it is provided that the State Government may grant such concessions in respect of fees for any competitive examination or interview and relaxation in upper age limit, as it may consider necessary for the candidates mentioned in sub-section (1) of Section 3. It has been provided in Section 3 (1) that in public services and posts, there shall be reserved at the stage of direct recruitment, according to the roster referred to in sub-section [5) thereof :

(a) in the case of Scheduled Castes 21%

(b) in the case of Scheduled Tribes 2%

(c) in the case of Other Backward Classes of Citizens 27%

It has been provided that the reservation under clause (c) shall not apply to the category of Other Backward Classes of Citizens specified in Scheduled II. There are only two schedules in the Act. Schedule I notifying certain castes under Section 2 (c) to be included as OBC and Schedule II describes the prohibitions of certain candidates who will not get the benefit of reservation. That is all about the reservation in public services concerning candidates of Scheduled Tribes in the State of U. P.

13. Coming now to the decision of the Hon'ble Supreme Court in the case of M. Chandra (supra), it should be at once stated that the said decision was considered in detail by the Hon'ble Supreme Court in the later decision of Action Committee (supra), consequently, the ratio in the latter case shall have to be applied to the facts of the present case.

14. It has been held on a reading of the language used under Articles 341 and 342 of the [Constitution of India](#) that the Parliament is empowered to include or exclude by law from the list of Scheduled Castes and Scheduled Tribes specified in the notification issued under Clause I thereof. Article 342 specifically deals with any tribe or tribal community in the same fashion as Scheduled Castes and Scheduled Tribes are dealt with under Article 341. It has been observed by Hon'ble Supreme Court. 'What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified'. After that the Hon'ble Supreme Court has gone on to consider the relevant provisions with which the grievances related to in the petition before the Apex Court. In para 4 of the judgment, the circulars which were issued by the Maharashtra Government have been dealt with. Applicability of the Government orders issued by Maharashtra Government were found not to be attracted to the migrants who came to settle in Maharashtra after 1950. Admittedly, the challenge before the Apex Court in the aforesaid case of the Action Committee (supra), was to the aforesaid Government Orders by such persons who claimed to be migrants of Maharashtra after the Constitution came into being. On the aforesaid factual background, after referring to the aforesaid decision in M. Chandra's case, which was a Constitution Bench decision, their Lordships hold as

under :

'We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non-existent in another State to which persons belonging thereto may migrate. Coincidentally, it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State 'for the purpose of this Constitution'. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution makers as is evident from the choice of language of Articles 341 and 342 of the Constitution.'

15. In the concluding paragraph, their Lordships in the Apex Court made a distinction with regard to certain classes of candidate that, 'All these decisions were considered by the Constitution Bench which agreed with the latter view. It upheld the view expressed in the communication dated 22.2.1985 and negated the challenge of the petitioner that the said view was ultra vires Articles 14, 15, 16 or 21. It, however, observed that in the facts and circumstances of the case and having regard to the fact that the petitioner student's career was involved, it directed the authorities to consider whether the petitioner was a 'Goudi' and if yes, the institution may consider if he can be allowed to complete his studies in the institution. However, on the interpretation of the relevant provisions of the Constitution, this Court was clear in its view that legally speaking he was not entitled to admission in the Scheduled Tribe quota'.

16. As stated above. the petitioner's consistent plea in this writ petition that migration had taken place before the Constitution was enforced and consequently the castes certificate was applied for by the petitioner from the Nagaland Government which was duly issued. Once, this was so done, he applied for a certificate under Section 9 of the aforesaid Act. The certificate having been granted by the State Government to the effect that the petitioner was a Scheduled Tribe candidate of Nagaland, it was permissible for the petitioner to apply for the aforesaid post and claim reserved quota for the Scheduled Tribe candidates.

17. The petitioner, therefore, has been able to prove all the facts of his belonging to Scheduled Tribe of the State of Nagaland. Simultaneously, the law and the relevant provisions quoted above did not bar the extending of the benefit of the reservation of 2% in public services to Scheduled Tribe candidates of other State. It is not a question that the petitioner's joining, if accepted, would increase the list of Scheduled Tribes as prevalent in the State of U. P., but it is a question whether a citizen of India, may be belonging to a different State, can rightly claim the reservation which is available to the Scheduled Tribe candidate of the State where he is presently living. There is no law and no provision has been brought to the notice of the Court which will limit the said reservation quota to be extended only to citizen of the State of U. P. The petitioner has claimed that he should be extended the said benefit being a candidate of Scheduled Tribe of the State of Nagaland. That claim has to be upheld and sustained so long as there is no such Government Order or Circular as has been issued by the Government of Maharashtra which have been noticed in the decisions cited above.

18. In this view of the matter, it is hereby held that the petitioner was rightly permitted to appear at the P. C. S. (Preliminary) Examination, 1994, he was rightly permitted to appear in the main examination, rightly permitted to participate in the interview and being successful was rightly declared as having passed the P. C. S. examination, 1994. Therefore, the Commission erred in cancelling the result of the petitioner and the said order suffers from an error apparent on the face of the record. Hence, the impugned order has to be quashed.

19. In view of the aforesaid discussions, the writ petition succeeds and is allowed. The order of the Commission dated 30.6.1997/ 1.7.1997 (Annexure-15 to the writ petition) is hereby quashed. The petitioner shall be taken as having passed the P.C.S. main examination, 1994. The State of U. P. is hereby commanded to afford appointment to the petitioner forthwith in accordance with law. However, parties will bear their own costs.

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