

**Devi Ram Vs. State of Rajasthan and ors.**

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**Court :** Rajasthan

**Decided On :** May-13-2008

**Reported in :** RLW2008(3)Raj2540

**Judge :** Shiv Kumar Sharma and; Mahesh Bhagwati, JJ.

**Appellant :** Devi Ram

**Respondent :** State of Rajasthan and ors.

**Disposition :** Appeal allowed

**Judgement :**

**Shiv Kumar Sharma, J.**

1. The appellant was appointed on the post of Veterinary Assistant, which was reserved for the persons belonging to Scheduled Caste. Vigilance Committee recommended for removal of the appellant from the service on the ground that the appellant had obtained appointment on the basis of fake caste certificate. The said report dated August 1, 1992 of the Vigilance Committee was challenged by the appellant before learned Single Judge and after unsuccessful writ petition the appellant has preferred the instant appeal.

2. The question that emerges for our consideration is whether the appellant is a person belonging to Scheduled Caste and he could be selected against a post

reserved for the persons belonging to Scheduled Caste?

3. Contextual facts depict that the appellant belonged to Kalbelia Caste, which is Scheduled Caste, as has been enumerated at Item No. 31 in Gazette of India Extraordinary (Part II Dated September 20, 1976. The appellant obtained Caste Certificate on June 14, 1974 from Munsif & Judicial Magistrate I Class Rajgarh, Alwar. The appellant having qualified the examination for the post of Veterinary Assistant in the year 1974-75, was appointed to the post of Veterinary Assistant vide order dated June 25, 1975. The appellant thereafter got promotion to the post of Senior Compounder vide order dated January 30, 1985.

4. In the year 1992 the President of Dr. Bheemrao Ambedkar Vichar Vikas Samiti Alwar lodged a complaint against the appellant with the Public Grievance and Vigilance Committee. The said Committee held a meeting under the Chairmanship of Collector Alwar on July 29, 1992 and considered as many 37 complaints, out of which the complaint regarding appellant was at Item No. 23. The committee without issuing any notice to the appellant straightway recommended removal of appellant from service on the ground that caste certificate filed by the appellant was fake.

5. Being aggrieved by the recommendation of the Committee dated August 1, 1992 the appellant preferred the writ petition and contended that the appellant belonged to Kalbelia caste, which came in the category of Scheduled Caste and the Caste Certificate dated June 14, 1974 was issued after holding due inquiry by the competent authority.

6. In reply to writ petition, the respondents contended that appellant belonged to Jogi caste, which was not a Scheduled Caste. According to the respondents the caste certificate filed by the appellant was a fake document.

7. We have heard rival submissions.

8. It is contended by learned Counsel for the appellant that during relevant days in June, 1974 the Judicial Magistrate was empowered to issue caste certificate. The caste certificate was issued by the learned Magistrate after holding the inquiry. It is

further urged that the State Government vide order dated July 20, 1976 described at Item No. 31, 'Kalbelia caste' as Scheduled Caste.

9. It is next canvassed that the certificate issued by competent authority had to be taken by employer as sufficient proof and the employer could not sit in judgment over caste certificate.

10. Learned Counsel for the appellant placed for bur perusal a book titled Marwar Census Report 1891 published by Jagdish singh Gehlot Sodh Sansthan Jaipur to prove that the Kalbelia caste has been notified as scheduled caste.

11. Learned Counsel for the respondents however supported the impugned judgment and urged that since certificate produced by appellant was a fake document he was rightly removed from service.

12. At the outset we deem it appropriate to scan the certificate issued by the Judicial Magistrate on June 14, 1974 which reads thus:

tkfr izek.ki=

ljiap xzke iapk;r] cM+kSnk eso o iz/kku ljiap] iapk;r lfefr] xksfoUnx< dh layXu rLnhd ds vk/kkj ij izekf.kr fd;k tkrk gS fd Jh nsohjke iq= Jh vtqZu jke] fuokl & xzke cM+kSnk eso] rglhy y{e.kx< ftyk vyoj jktLFkku dkycsfy;k tkfr dk gS] tks fd vuqlwfp tkfr ds vUrZxr vkrh gS A

g-@&

eftLVsV

14-6-1974

13. A look at the above certificate shows that it was issued by learned Magistrate after verification by the Sarpanch Gram Panchayat Badoda Mev and Pradhan Sarpanch Panchayat Samiti Govindgarh.

14. At this juncture it Will not be out of place to refer to the census report dealing with Kalbelia caste, which reads as under:

ekjokM+ es tksxh 30213 gS enZ 16427 vkSjr 13787

tksx dh 'kq:vkR BsV esa egknsoth ls gqbZ gS vkSj tksx dk bYe Hkh muls gh fudyk gS ftlds lk/kus ls tksfx;ks dks cM+h cMh djkekrS gkfly gks tkrh Fkh tSlS vkdk'k esa mM+uk] ikuh ij frjuk] dk;k iyV ysuk oxSjk vkSj tksfx;ks es ,slh djkekrSa gksus dk irk vc ls 600 cjl ifgys rd rks eqlyekuks dh fdrkcks ess ls Hkh yxrk gS bccrksrk tks vkQzhdK ls lqYrku eksgEen rQxyd ds jkt es ;gka vk;k Fkk vius lQjukes esa tksfx;k dh ,slh cgqr lh djkekrSa vk[kksa ns[kh fy[krk gS ifgys tksxh Hkh ogh dgykrk Fkk tks tksx lk/krk Fkk exj vc rks tks yksx xsjos diM+s ifgus fQjrs gS vkSj dkuks esa eqanjS j[krs gS os tksxh dgykrs gS vkSj bu dh ogh ely gS fd tksxh tqxr tkus ugh diM+s jaxs rks D;k gqvk A

vc tksfx;ks dk Hkh Hkh 1 iaFk gks x;k gS tks viuh ijEijk xq: xksj[kukFk th ls feykrS gS vkSj cfYd bl iaFk dks Hkh mUgh dk pyk;k gqvk ekurs gS xksj[kukFk eaNnjukFk ds psys Fks vkSj 1 xqjekbZ mu ds tya/kjukFk th Fks tksxh budh cMh dFkk dgrs gS ftles ls dqN uhps fy[kh tkrh gS---

---tksxh egknsoth dh iwtrs gS Hkleh fryd yxkrs gS nk: ekal Hkh [kkrs ihrs gS Hkha[k ekaxrs gS dksbZ dksbZ vius xq:vks dh fl)kbZ ls xkao tehu vkSj csjs Hkh [kkrs gS buds eafnj eB dgykrs gS vkSj vklu Hkh] ftuesa fo'ks'k djds egknso th dh ewjrs gksrh gS ckts tksxh /kwuh Hkh rkirs gS

ekjokM+ es budh fdruh fdLes gS

1- ukFk tks duQMs Hkh dgykrs gS

2- elkfu;s tksxh

3- dkycsfy;s

4- vks?kM+ tks dku ugh QkMrs gS ;k 1 QM+krs gS

5- v?kksjh tks cktkjks esa iSlS ekaxrs fQjrs gS

6- jkoy

15. In item No. 31, Part XV - Rajasthan enforced with effect from July 20, 1977 of Gazette Extraordinary (Part II dated September 20, 1976, 'Kalbelia, Sapera' has been defined as a Scheduled caste.

16. Merely because the appellant used his surname as Jogi it cannot be said that the appellant does not belong to a Scheduled Caste. In *Yatish Kumar v. State of Rajasthan* 1988 (1) RLR 42 the Division Bench of this Court indicated thus: On the basis of the aforesaid report (Annexure-3) dated 31st December, 1982 by the Naib Tehsildar as well as the inquiry report dated 24th May, 1983 submitted by the Tehsildar, there can be no doubt that the petitioner is Garura by caste and merely because Garuras claim that they are Brahmins, it cannot be said that the petitioner does not belong to a Scheduled Caste. As pointed out earlier, all Garuras trace their origin from Brahmins and, therefore, merely because the petitioner and the members of the family are regarded as Garura Brahmins, does not mean that they do not belong to a Scheduled Caste. The mere fact that the petitioner used the surname 'Kaushik' cannot disentitle him for claiming himself to be Scheduled Caste if it is found that he is Garura by caste and the said caste has been notified as a Scheduled Caste in the Presidential Order issued under Clause (1) of Article 341 of the Constitution.

17. The Vigilance Committee proceeded to recommend the removal of appellant from service, without affording opportunity of hearing to the appellant. Even the relevant documents were not considered. Thus we find that the Vigilance Committee acted arbitrarily.

18. It must therefore be held that the appellant belongs to a scheduled caste and he was entitled to be selected against the post reserved for scheduled caste. The recommendation of Vigilance Committee dated August 1, 1992 as well as impugned order of learned Single Bench cannot be sustained and must be set aside. For these reasons, we allow the appeal and set aside the impugned order dated March 14, 1997 of the learned Single Judge. We also set aside the recommendation dated August 1, 1992 (Annexure-12 appended to the writ petition). It is declared that the appellant belongs to Scheduled Castes. The appellant shall be paid a sum of Rs. 20,000/- by way of compensation within a

period of one month from today. The appellant shall also be entitled to cost. The costs are assessed to Rs. 2,000/- (Rs. Two thousand only).

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