



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2023

R

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 24847 OF 2022 (GM-CC)

BETWEEN:

HEMANTHKUMAR N.,
S/O NANYANAIAK
AGED ABOUT 27 YEARS
J LAMBANI HATTY,
RAMAJOGIHALLY POST,
CHALLAKERE
CHITRADURGA DISTRICT - 577 522.

...PETITIONER

(BY SRI. BOLA VEDVYAS SHENOY, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS CHIEF SECRETARY,
VIDHANA SOUDHA
BENGALURU - 01.
2. THE KARNATAKA PUBLIC SERVICE COMMISSION
REP. BY ITS SECRETARY
UDYOG SOUDHA
PARK HOUSE,
BENGALURU - 01.

...RESPONDENTS

(BY SMT.SHWETHA KRISHNAPPA, AGA FOR R1;
SRI.K.M.PRAKASH, ADVOCATE FOR R2)

Digitally signed
by PADMAVATHI
B K
Location: HIGH
COURT OF
KARNATAKA





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT TO DECLARE THE NON- CONSIDERATION UNDER SC, SC/KMS, SC/RL CATEGORY AND NON- SELECTION OF THE PETITIONER IN THE PROVISIONAL LIST DATED 25.11.2002 AS ILLEGAL AND ARBITRARY AND ETC.,

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question non-consideration of his candidature under SC, SC/KMS, SC/RL category owing to his name not being figured in the provisional select list dated 25-11-2022 published by the 2nd respondent/ Karnataka Public Service Commission ('the Commission' for short) for the post of Junior Assistant/Second Division Assistant. The petitioner further seeks a direction by issuance of a writ in the nature of mandamus to correct the error of the petitioner which is depicted as him belonging to Scheduled Tribe to that of Scheduled Caste.

2. Brief facts that lead the petitioner to this court in the subject petition, as borne out from the pleadings, are as follows:-



The 2nd respondent/Commission issues a Notification on 29-02-2020, inviting applications for the post of Junior Assistant/ Second Division Assistant in the Resident Parent Cadre. The petitioner belongs to Scheduled Caste and finding himself eligible applies pursuant to the said notification and the application had been sent through online as required. The petitioner claims to have got it typed at a cyber centre and while filling the application under the category column fills it as Scheduled Tribe instead of Scheduled Caste. The application gets uploaded online showing the petitioner as belonging to Scheduled Tribe instead of Scheduled Caste to which he actually belongs. Noticing the error, the petitioner again made efforts to change the category online on 15-07-2021 and claims that the change was approved on the website. Thinking that he was a participant under the Scheduled Caste category, the petitioner participated in the written test which was held on 19-09-2021.

3. The merit list was then notified of the candidates who had come within the zone of consideration and the name of the petitioner did figure in the said merit list securing 163 marks. After the notification of the merit list, the petitioner was called



for document verification on 8.09.1922. It was then the petitioner gets to know that his category has not been changed from Scheduled Tribe to Scheduled Caste and the error that had crept in online on 20.03.2020 had become part of the record. The petitioner then files an affidavit immediately before the Commission bringing to its notice that it was an error committed by the cyber centre but he does belong to Scheduled Caste and a certificate issued to him way back in the year 2013 certifying his caste. The Commission refused to accept the change.

4. The petitioner approaches the Karnataka State Commission for Scheduled Castes and Scheduled Tribes ('SC/ST Commission' for short) venting out his grievance that he would lose the opportunity of consideration of his candidature for appointment if he is not considered as belonging to Scheduled Caste. The SC/ST Commission also requests the 2nd respondent/Commission to consider the case of the petitioner. The petitioner then represented on 17-09-2022 and 23-09-2022 with regard to the correction of error. All these did not yield any result. A provisional select list was notified on 25-11-2022 and the name of the petitioner did not



figure in the said list ostensibly for the reason that the petitioner was treated as belonging to Scheduled Tribe and the posts reserved for Scheduled Tribe were minimal. It is then, the petitioner knocked at the doors of this Court in the subject petition calling in question the aforesaid action.

5. Heard Sri Bola Vedvyas Shenoy, learned counsel appearing for the petitioner, Smt. Shwetha Krishnappa, learned Additional Government Advocate and Sri K.M.Prakash, learned counsel appearing for respondent No 2/Commission.

6. The learned counsel appearing for the petitioner would contend with vehemence that it is an error on the part of the person who was uploading the application in cyber centre which missed the eye of the petitioner as it was uploaded depicting the petitioner to be belonging as Scheduled Tribe which in fact is an error and he does belong to Scheduled Caste – Lamani. Piethora of representations did not yield any result from the Commission as the Commission was adamant that it would not change any such error. He would submit that the petitioner has secured such marks that he would undoubtedly be considered if he was treated as Scheduled Caste as he was



called for document verification and with high marks the chances of him getting selected is bright in the category of Scheduled Caste. The error takes away the right of consideration for appointment of the petitioner.

7. On the other hand, the learned counsel representing the Commission would put up vehement opposition to the plea of the petitioner contending that if such plea is permitted, it would open Pandora's box. He would take this Court through the Notification to contend that the candidates are bound by what they have filled up in the application by which they would either survive or perish. The Commission cannot look into every case where errors have crept in. It is for the candidates to be diligent while filling up the application and the Commission cannot be responsible for any such error and seeks dismissal of the petition. He would submit that his submissions may be taken as objections to the petition since the aforesaid error is the only issue in the case at hand. But, he would admit that the petitioner does belong to Scheduled Caste.



8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

9. The afore-narrated facts are not in dispute. The issue lies in a narrow compass. The petitioner belongs to Scheduled Caste 'Lamani' and is in possession of a caste certificate issued by the competent authority depicting him to be a Scheduled Caste way back on 9-12-2013. It cannot be in dispute that the petitioner is a Scheduled Caste. The Commission issued a Notification on 29-02-2020 calling for applications from eligible candidates for the post of Junior Assistant/Second Division Assistant in the Resident Parent Cadre. The petitioner finding himself eligible to be considerate for the said post files his application online. While filling the application, the petitioner erroneously clicks the option Scheduled Tribe instead of Scheduled Caste notwithstanding the fact that he is a candidate belonging to Scheduled Caste. It was an error committed while filing the application online.

10. The petitioner noticed the error at a later point in time and claims to have made efforts to change the error on



the website of the Commission from the category of Scheduled Tribe to Scheduled Caste and claims that the change was approved on the website. It is after the aforesaid change, the petitioner participates in the written examination. Results of the written examination were announced. The petitioner had secured 163 marks and had been short listed as a candidate in the select list. All the shortlisted candidates were called for documents verification on 23-09-2022. It then the petitioner gets to know that the change from Scheduled Tribe to Scheduled Caste has not happened and the error that the petitioner had committed while filling the application had become a matter of record.

11. The petitioner immediately submits an affidavit with regard to the error and brings it to the notice of the Commission that the change has to be made. The Commission turned a deaf ear. Helplessly the petitioner then approaches the SC/ST Commission which also requests the 2nd respondent/Commission to effect the change by indicating that the petitioner had produced a caste certificate of the year 2013 which clearly depicts that he is a Scheduled Caste and therefore correction is to be carried out. Even then, the 2nd respondent



Commission did not accede. Representations were submitted by the petitioner seeking such change which went in vein. A provisional select list was notified on 25-11-2022 and ostensibly the name of the petitioner did not figure as he was treated as belonging to Scheduled Tribe and not as Scheduled Caste and the Commission then tells him that he can be considered only as a general merit candidate and not as either Scheduled Caste or Scheduled Tribe. The petitioner submits objections to the provisional select list again requesting to rectify the error and when the 2nd respondent /Commission turned a blind eye and a deaf ear to the plea of the petitioner, he knocks at the doors of this Court.

12. It is not in dispute that the petitioner is a Scheduled Caste. Mere error in filling up an application will not change his caste status. During the time of document verification, the petitioner had submitted his caste certificate depicting to be Scheduled Caste. The Commission could have corrected the error at that time. This human error is glorified by the Commission by declining to accede to the request for change of category at the time of document verification. It is not in dispute that the petitioner has secured high marks and would



definitely come within the zone of consideration, if he was treated as a Scheduled Caste candidate. Treating him as a general merit or Scheduled Tribe candidate has taken away the consideration for appointment of the petitioner. The glorification of a trivial human error has resulted in loss of appointment to the petitioner, a Scheduled Caste candidate.

13. In the aforesaid circumstances, the Apex Court considering the very issue where the caste certificate itself was not submitted at the time of filing of the application but was later submitted holds it to be a curable defect which would not take away consideration for appointment of a Scheduled Caste candidate. The Apex Court in the case of **RAM KUMAR GIJROYA v. DELHI SUBORDINATE SERVICES SELECTION BOARD¹**, holds as follows:

"14. The Division Bench of the High Court erred in not considering the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] . In that case, the learned Single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned Single Judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of

¹ (2016) 4 SCC 754



reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] as well as Valsamma Paul v. Cochin University [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] . The learned Single Judge in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] also considered another judgment of the Delhi High Court, in Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the SC and ST categories could not be rejected simply on account of the late submission of caste certificate.

15. The relevant paragraph from the judgment of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] has been extracted in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] along with the speech delivered by Dr Ambedkar in the Constituent Assembly and reads thus: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 9)

"9. ... '251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the Draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to "a minority of seats", lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

"... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which



have not so far had a 'proper look-in' so to say into the administration. ... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. ... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, [**Ed.:** The matter between two asterisks has been emphasised in Indra Sawhney case, 1992 Supp (3) SCC 217.] must be confined to a minority of seats [**Ed.:** The matter between two asterisks has been emphasised in Indra Sawhney case, 1992 Supp (3) SCC 217.] . It is then only that the first principle could find its place in the Constitution and effective in operation. ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State..." [Constituent Assembly Debates, Vol. 7, pp. 701-02 (1948-1949).]

These words embody the raison d'être of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.' (Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217:



1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , SCC pp. 433-34, para 251)"

16. In Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant paragraphs from Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] have also been extracted, which read thus: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)

"11. ... '15. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 issued by the Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal



opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the fundamental rights and directive principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.’ (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092: ILR (2000) 1 Del 298] , SCC OnLine Del paras 15-16)”.

(Emphasis supplied)

The Apex Court endorses/affirms the view of the Delhi High Court in the case of ***PUSHPA v. GOVERNMENT, NCT OF DELHI***². That was a case where a Scheduled Caste candidate had been denied appointment on the ground that the caste certificate had not been appended to the application. The Delhi High Court had held as follows:

“7. Caste is the only accepted criteria to identify under-represented groups. The underlying theory is that the under-representation of the identifiable groups is a legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST). The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-building activities. Later, reservations were introduced for other sections as well.

² 2009 SCC OnLine Del 281



8. *The principle of equality permeates the Constitution of India. All the citizens are entitled to be treated by the state equally, irrespective of their caste, race, religion, sex, descent, place of birth and residence. No citizen may be discriminated against by the state only on any of these grounds. The exceptions to this principle are made in favour of women and children, the backward classes, the Scheduled Castes and the Scheduled Tribes, and the weaker sections.*

9. *Referring to the reasons for reservation, the Hon'ble Apex Court in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217, observed as under:*

"251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to 'a minority of seats', lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

"... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things,



*namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ...". Constituent Assembly Debates, Vol. 7, pp.701-702 (1948-49).
(emphasis supplied)*

These words embody the raison d'etre of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal."

10. *Keeping this in mind and considering that the petitioner applied for the OBC certificate to the concerned office of SDM much before January 2008, when the advertisement was made by DSSSB and since the certificate was made available to the petitioner on 13/5/2008, the petitioner cannot be made to suffer for the lapse on the part of the SDM office. But at the same time it is made clear that in all such cases caste certificate should reach the Board prior to their making provisional selection as while making provisional selection, the Board verifies & satisfies itself with authenticity of documents and eligibility as per the recruitment rules. Herein, the petitioner had sent the documents vide letter dated 3/7/2008, prior to publication of the provisional results on 25/7/2008.*

11. *The issue is also no more res integra as in the case of Tej Pal Singh v. Govt. of NCT of Delhi, (2005) 120 DLT 117 this Court has already*



taken a view that the candidates who belong to 'SC' and 'ST' categories but could not file certificate in proof of the same could not have been rejected simply on account of the late submission of the certificates and submission of such certificates cannot be made a pre-condition for accepting the application forms. The relevant para of the said judgment is reproduced as under:

"17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including 'SC' category. Thus in order to be considered for the post reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to 'SC' category and act thereon by giving the benefit to such candidate for his belonging to 'SC' category. It is not that petitioners did not belong to 'SC' category prior to 30th June, 1998 or that acquired the status of being 'SC' only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved."

(Emphasis supplied)

The observations above were affirmed by the Apex Court in the case of **RAM KUMAR GIJROYA**. The afore-quoted cases were the cases where the caste certificate itself was not appended. If that cannot be glorified as an error and that error had been set



at naught by the constitutional Courts; the error in the case at hand is only trivial. A triviality cannot take away the right of a Scheduled Caste candidate for consideration of his case as a candidate belonging to Scheduled Caste.

14. The learned counsel for the petitioner would now submit that a final select list is also notified by the Commission during the pendency of the writ petition and therefore, a direction is required to be given to the Commission to include the name of the petitioner in the select list according to his merit vis-à-vis the candidate who is less meritorious than that of the petitioner in the category of Scheduled Caste. Here again the learned counsel appearing for the Commission submits that this would open Pandora's box and become a precedent. I decline to accept the submission of the Commission, if this order opens up Pandora's box; so be it, if it becomes a precedent; so be that. This Court would not turn a deaf ear to a cry of a Scheduled Caste candidate who has scored high marks, despite the trials and tribulations throughout that they face to lose the opportunity of getting selected for trivial reasons. The Commission ought to have corrected the trivial human error when the petitioner pointed it



out at the time of document verification. Having not done so, the Commission cannot now contend that this order would open up Pandora's box or become a precedent. *It cannot be forgotten that, "to err is human", infallibility is unknown to humanity.*

15. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Writ Petition is allowed.
- (ii) A *mandamus* issues 2nd respondent/Commission to rectify the error and treat the petitioner as one belonging to Scheduled Caste and regulate the provisional/final select list in accordance with the merit of the petitioner under the category of Scheduled Caste with all consequential benefits flowing thereto.
- (iii) The aforesaid action shall be carried out within a period of 2 weeks' from the date of receipt of a copy of this order.

**Sd/-
JUDGE**