

**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**WRIT PETITION No. 5212 OF 2013**

**ORDER :**

Petitioner, a resident of Ichoda Village in Adilabad District and claims to be belonging to ST-Community (Naikpod), applied for position of School Assistant (Biological Science) under DSC-2008, as per notification No.307559. She provided a Certificate of Proof of Local Scheduled Tribe candidate (Lr.No.A4/681/2001, dt. 23-05-2001) issued by the 4<sup>th</sup> respondent, confirming her residence in the Scheduled Area since 26.01.1950. Despite securing 36 marks in the test (Hall Ticket No. 19112101199), her appointment was withheld citing alleged non-genuineness of submitted certificates in Rc.No.B2/12875/2008, dated 21.12.2009. Petitioner therefore, filed O.A. No. 31 of 2010 in Andhra Pradesh Administrative Tribunal, Hyderabad, contesting the decision and demanding appointment. While admitting the O.A., the Tribunal directed reservation of one post for her. However, memos (No. E/1835/09, dated 12.06.2010) and proceedings (No.E/859/2010, dated 25.06.2010) allegedly issued by the 3<sup>rd</sup> respondent were not communicated to her, thus denying her the opportunity to respond.

2. It is stated, the 3<sup>rd</sup> respondent requested the 4<sup>th</sup> respondent *via* Lr. No. E/1835/11, dated 11.05.2011 to provide

a factual report on the genuineness of petitioner's Local Tribe Candidate Certificate. In response, the 4<sup>th</sup> respondent submitted an enquiry report on 13.01.2012 highlighting that petitioner's father Sri Peddanna, was listed in the Election Roll for the year 1975 at Sl.No.831 with House No. 4-61, when he was 38. Additionally, it noted that Sri Peddanna passed away in 2006 at the age 75. The report also mentioned that the Mandal Revenue Inspector (MRI) and Village Revenue Officer (VRO) recorded statements from village elder, aged about 75 years, who confirmed Peddanna's residency in Ichoda Village. It is stated that her father resided there since 1950 until his passing away in 2006. Consequently, according to petitioner, the Certificate issued to her on 23.05.2001 *vide* Lr.No.A4/681/2001 was deemed genuine.

In O.A.No. 31 of 2010, the Tribunal directed the 2<sup>nd</sup> respondent to consider evidence supporting her residency in Ichoda Village by 24.07.2012. Despite this, on 14.08.2012, the 2<sup>nd</sup> respondent issued proceedings cancelling her certificate, as per proceedings No. C3/3434/2009. The petitioner's father's residency in Ichoda Village was confirmed by reports submitted to the Tribunal, including letter No. E/1835/11 dated 11-05-2011 and enquiry report dated 13-01-2012. Despite this evidence, the 2<sup>nd</sup> respondent did not consider her case properly, resulting in an unjust denial of her appointment as a School

Assistant. An appeal has been filed with the Government, seeking suspension of the proceedings pending its disposal. The petitioner seeks relief from the Court to prevent further hardship.

Petitioner seeks therefore, to quash the proceedings of the 2<sup>nd</sup> respondent dated 14.08.2012 and the accompanying notification of the same date as they are illegal, arbitrary and unconstitutional, violating Articles 14, 16, and 21 of the Constitution of India.

3. This Court on 28.02.2013, passed the following interim order:

“ On a perusal of the detailed order dated 14.08.2012 passed by the District Collector, Adilabad, 2<sup>nd</sup> respondent herein, this Court gains an impression that he was trying some how or the other to defeat the rights of the petitioner and flout the orders passed by the Andhra Pradesh Administrative Tribunal, Hyderabad. The petitioner was issued a caste and nativity certificate way back on 23-05-2001 by the Mandal Revenue Officer, Ichoda, to the effect that she belongs to Schedule Tribe (Naikpod) community and is resident of Ichoda. The District Educational Officer, Adilabad initiated steps to appoint teachers particularly in the agency areas. A District Selection Committee was constituted for that purpose. It is only the Schedule Tribes residing in the agency areas as on 26.01.1950, that are entitled to be considered for selection against the posts of teachers in those areas. The petitioner appeared in the D.S.C. and was selected. However, she was not issued any order of appointment, suspecting the genuinity of the caste and nativity certificate issued to her in the year 2001. The matter was verified through the Revenue Divisional Officer, Adilabad. After due verification from the Office of the Tahsildar and the locality, the Revenue Divisional Officer submitted a report dated 23.01.2012 stating that the certificate relied upon by the petitioner is genuine. In the meanwhile, the Andhra

Pradesh Administrative Tribunal appears to have issued certain directions against the 2<sup>nd</sup> respondent, that prompted him to initiate proceedings under the Andhra Pradesh (SCs, STs and BCs) Regulation of Issue of Community Certificates Act, 1993. Though no complaint was received, the 2<sup>nd</sup> respondent referred the matter to the District Level Scrutiny Committee and on the basis of the report said to have been submitted by the Committee, he issued the impugned proceedings.”

4. In the counter-affidavit filed by the 2<sup>nd</sup> respondent, it is stated that petitioner has already filed an Appeal before the Government challenging the same proceedings impugned in the writ petition, with the appeal pending for consideration. Consequently, the petitioner's decision to approach the court before receiving a decision on the stay application is deemed premature. Therefore, it is stated that writ petition should be dismissed on this ground alone. The counter affidavit confirms that petitioner indeed studied from 1<sup>st</sup> to 10<sup>th</sup> class at Z.P.P.S. School, Ichoda, and Intermediate and Graduation at Adilabad between 1999 and 2005. The Tahsildar of Ichoda has issued a Local Scheduled Tribe Area Certificate to petitioner, validating their tribal status. During DSC-2008 selection process, the District Collector requested verification of the Scheduled Area Local Tribe Certificates, demonstrating due diligence in ensuring the authenticity of the candidates' credentials.

In this matter, copies of Agency Certificates issued by the Tahsildars were forwarded to the RDOs *via* Office Letter No. B7/3434/2009, dated 27.10.2009, for verification pursuant

to G.O.Ms.No.3 SW (TW EDN II) Dept, dated 10.01.2000, to ascertain their authenticity and facilitate selection process for the posts of 2008. Furthermore, it is highlighted that, as per the compliance with the office instructions, the RDO of Adilabad, through Letter No. E/1835/09, dated 10.12.2009, reported that an inquiry was conducted by the Tahsildar of Ichoda regarding genuineness of Local Scheduled Area Tribe Certificate issued to petitioner and the inquiry concluded that petitioner belongs to Naikpod caste and has been residing in Echoda village and Mandal with her parents for approximately 40 to 50 years after migrating from Madhapur Non-notified village of Ichoda Mandal. However, it was found that her family members and relatives belong to Madhapur Village, a non-notified village, rendering her agency area certificate not genuine. Subsequently, upon receiving reports from the RDOs, a list distinguishing genuine and not genuine candidates was forwarded to the DEO of Adilabad through Office Letter No. B7/3434/09, dated 18.12.2009. In this list, petitioner was listed at Sl.No.17, with "not genuine" marked against her name. Following receipt of inquiry reports, the DEO of Adilabad, *via* Letter No. B2/12875/2008, dated 06.05.2010, forwarded a list of 31 non-genuine candidates, including petitioner and informed that many of them had filed OAs before the Administrative Tribunal, resulting in interim orders reserving one post for them in the

respective category. The DEO also stated that Government Pleader for School Education APAT had requested necessary steps to cancel the certificates of proof of Local Scheduled Area Tribe Candidates by the competent authorities to avoid further legal complications.

It is stated that action was initiated in accordance with Section 166 of the AP (TA) LR Act 1317 fasli, as per the request of the DEO, Adilabad. The Tahsildars were instructed to take appropriate action, while the RDOs were directed to initiate proceedings under sub-section (2) of Section 166 B of the Act,. Compliance with these directives was communicated through Office Letter No. B7/3434/09, dated 21.05.2010. Subsequently, the RDO of Adilabad through Memo No. E/1835/09, dated 12.06.2010, called upon the candidate to provide recorded evidence proving her residence in the Agency Area before 26.01.1950. However, the candidate failed to furnish any explanation or produce relevant records by 25.06.2010. Consequently, the RDO presumed the absence of recorded evidence substantiating her residence in the agency area, leading to cancellation of certificate issued to petitioner by the Tahsildar, Ichoda. The DEO, Adilabad was duly informed of these developments through the RDO's letter No. E/859/10, dated 26.06.2010.

It is stated that after a year's lapse, the RDO of Adilabad requested the Tahsildar, Ichoda dated 11.05.2011 to furnish a factual report regarding genuineness of local tribe candidate certificate issued to petitioner along with connected records. In compliance with this request, the Tahsildar, Ichoda, submitted the enquiry report through letter No. C/78/2012, dated 13.01.2012. The report affirmed that petitioner belongs to Naikpod caste and has been a resident of Ichoda village since 1950. It further corroborated that her father, Sri Peddanna, was a longtime resident of Ichoda village, with his name appearing in the Election roll for the year 1975. The statements of village elders, recorded by the MRI/VRO, also attested to the genuineness of the certificate issued to petitioner vide Lr.No.A4/681/2001, dated 23.10.2001. It is stated that Smt. S.Premala, D/o, Peddanna, residing in Ichoda Mandal, filed O.A.No.31 of 2010 before the Hon'ble Andhra Pradesh Administrative Tribunal (APAT), Hyderabad. The plea sought to challenge the proceedings of the District Educational Officer, Adilabad, dated 21.12.2009, alleging them to be illegal, arbitrary, and unconstitutional, violating Articles 14 and 16 of the Constitution of India. The relief sought was to set aside the impugned proceedings and direct the District Educational Officer to consider the applicant's case for appointment to the post of School Assistant (Biological Science) against the posts

notified in the scheduled area (Agency Area) D.S.C. 2008, appointing her with all consequential benefits. Further, during the arguments, the APAT specifically pointed out that the RDO, Adilabad, issued Letter No. E/859/2010, dated 26.06.2010, to the DEO Adilabad, cancelling the Local Scheduled Tribe Area Certificate of the applicant based on a report submitted by the Tahsildar. However, the same Tahsildar subsequently submitted another report to the RDO, Adilabad, *vide* Letter No. C/78/2012, dated 13.01.2012, asserting the genuineness of the applicant's certificate. Upon verification of the conflicting statements and records, the APAT took a serious view and directed the District Collector and RDO, Adilabad to appear before it on 03.04.2012, along with records, as per Government Pleader for School Education APAT's Letter No. O.A.31/2010/S. Edn(S), dated 09.03.2012. In compliance with the directions, a counter was filed on 29.03.2012 before the Tribunal. It was conveyed that to ascertain the facts and prevent future repercussions, the case would be referred to the District Level Scrutiny Committee for verification of the genuineness of the Local Scheduled Tribe Area Certificate issued to petitioner. The RDO, Adilabad personally appeared before the Tribunal on 03.04.2012 and informed that case was adjourned for eight weeks to produce a report by conducting District level Scrutiny Committee, as per Letter No. E/1835/2008, dated 08.05.2012.



Notices were therefore, issued to petitioner to appear before the Chairman DLSC on 28.05.2012 with documentary evidence to establish genuineness of her certificate, which she attended and submitted various documents, including copies of the Elector roll for 1975 and Bonafide Certificates from 1<sup>st</sup> to 10<sup>th</sup> class, among others. However, these documents failed to prove her residence in the agency area since 26.01.1950. Despite being given opportunities on 11.07.2012 and 20.07.2012 to present evidence of her residence in the Agency Area since the specified date, she failed to do so. Consequently, the Chairman and members of the District Level Scrutiny Committee concluded that she had not provided any documentary evidence to support her claim of continuous residence in the Agency Area since 26.01.1950. As a result, the Agency Area certificate issued to her by the Tahsildar, Ichoda, was deemed not genuine and liable to be cancelled.

A final opportunity was extended to petitioner to appear before the District Collector, Adilabad on 13.08.2012 at 4:00 P.M. to produce documentary evidence proving her continuous residence since 26.01.1950 in the Agency Area. Notice of this opportunity was issued and served to her *vide* Lr.No.C3/3434/2009, dated 11.08.2012. She attended the hearing on 13.08.2012 and submitted similar documents, which

again failed to establish her continuous residence in the Agency Area since the specified date.

According to this respondent, the burden of proof lies with the candidate as per Rule 6 of AP (SC/ST's & BC Classes) Issue of Community, Nativity and Date of Birth Certificate Rules, 1977 and petitioner failed to substantiate her continuous residence in the scheduled area since 26.01.1950. Hence, prays to dismiss the Writ Petition.

5. Heard Sri S. Gopal Rao, learned counsel for petitioner as well as learned Government Pleader for Social Welfare.

6. Through the impugned order, the local status certificate of petitioner was cancelled on the ground that she failed to produce the documentary evidence to prove her continuous residence in Agency Area since 26.01.1950 till date as per G.O.Ms.NO. 3, dated 10.01.2000. It is important to note here that in ***Chebrolu Leela Prasad v. State of Andhra Pradesh***<sup>1</sup>, the Hon'ble Supreme Court held as under:

“ The G.O. in question requires candidate or the parents to resident in the area continuously w.e.f. 26.01.1950. There is no rhyme or reason to require continuous residence for last 50 years or more. It overlooks the rights of various other persons who might have settled decades together in the area in question. It is discriminatory vis-à-vis to the Scheduled Tribes also settled in the area and it has no purpose to be achieved and imposes restriction which was not even

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<sup>1</sup> (2021) 11 Supreme Court Cases 401

provided in the Presidential Order issued under Article 371-D of the Constitution of India with respect to residential or educational requirements. Thus, it does not lay down valid conditions. The same is fixed in highly unreasonable and arbitrary manner and limits zone of consideration to miniscule where an opportunity for public employment has to be afforded to all concerned with reasonable rights.

Public employment envisages opportunity to all, who have been provided reservation is by way of exception to do the compensatory jobs. The condition above deprives the Scheduled Tribes who are permanent residents of the areas and have settled after the said cut-off date. Thus, the classification created is illegal, unreasonable and arbitrary. Making such a provision that a person should be a resident on or before 26.01.1950 to date is discriminatory and has the effect of exceeding the purpose of providing the reservation. It defeats the rights of other similar tribes who might have settled after 26.01.1950 in the area taken care of in the Presidential Order under Article 371-D. It is violative of Articles 14, 15(1) and 16 of the Constitution and has no rationale with the purpose sought to be achieved. It creates a class within a class, and the classification made failed to qualify the parameters of Articles 14, 15 and 16 of the Constitution.”

The Judgment further observed that G.O.Ms.No.3 of 2000 providing 100% reservation is not permissible under the Constitution, the outer limit is 50% as specified in ***Indra Sawhney v. Union of India*** (1992 Supp (3) SCC 217); the notification in question cannot be treated as classification made under Article 16(1). Once the reservation has been provided to Scheduled Tribes under Article 16(4), no such power can be exercised under Article 16(1). The notification is violative of Articles 14 and 16(4) of the Constitution; the conditions of eligibility in the notification with a cut-off date i.e. 26.01.1950 to

avail the benefits of reservation, is unreasonable and arbitrary one and thus quashed the G.O.

7. On the other hand, local candidate is defined in para 7 of the Presidential Order called the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975.

“ **Local Candidate:** (1) A candidate for direct recruitment to any post shall be regarded as a local candidate in relation to a local area.

- (a) In cases where a minimum educational qualification has been prescribed for recruitment to the post.
  - (i) If he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination; or
  - (ii) Where during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant qualifying examination he has not studied in any educational institutions, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the qualifying examination in which he appeared or as the case may be, first appeared.
- (b) In cases where no minimum educational qualification has been prescribed for recruitment to the post, ie he has resided in that local area for a period of not less than four years immediately preceding the date on which the post is notified for recruitment.”

8. Petitioner is stated to have studied from 1<sup>st</sup> to 10<sup>th</sup> class at Z.P.P.S. School, Ichoda and Intermediate and Graduation at Adilabad between 1999 and 2005 and the said fact was also confirmed by the counter-affidavit. Hence, she

meets the requirement of Regulation 7 of 1975 Order. In view of the same and since G.O.Ms.No.3 is quashed, the impugned order is liable to be set aside.

9. The Writ Petition is therefore, allowed and the order dated 14.08.2012 of the 2<sup>nd</sup> respondent is hereby set aside. No costs.

10. Consequently, the miscellaneous Applications, if any shall stand closed.

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**NAGESH BHEEMAPAKA, J**

04<sup>th</sup> April 2024

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