

(2000) 04 GAU CK 0003

Gauhati High Court

Case No: Writ Appeal No. 238 of 1999

Rasheshwar Chandra Paul

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: April 27, 2000

Citation: (2000) 2 GLT 348

Hon'ble Judges: Brijesh Kumar, C.J; B. Biswas, J

Bench: Division Bench

Advocate: A.S. Choudhury, I. Hussain, R. Majumdar and S. Seal, for the Appellant; B. Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

D. Biswas, J.

The learned Single Judge by a common Judgment & order dated 13.5.99 disposed of Civil Rule No. 4990/97 and Civil Rule No. 357/98. The writ Petitioner, being aggrieved of the order of dismissal recorded in Civil Rule No. 4990/97, has preferred this appeal.

2. At the every outset, we would like to clear the facts for better appreciation of the problem before us. The Appellant, after obtaining MBBS Degree joined the Medical Service as Demonstrator of Pharmacology in Silchar Medical College, Silchar in the year 1982 and after regularisation of his service in the said post he was attached to the Surgery Department as Registrar of Surgery vide Govt. order dated 3.7.87. The Appellant's appointment and attachment was preceded by his selection by the Assam Public Service Commission for the post of Registrar of Surgery. The selection was held on 23.3.93 and the position of the Appellant in the Select List was at serial No. 8. He had indicated in his application to the Assam Public Service Commission that he belongs to Rudra Paul community and he is a member of Other Backward Community (OBC). After his appointment, as is the practice, it was found on verification that the Caste Certificate given by him is false. The Respondent authority, therefore, cancelled his admission which he had taken in the M.S. Course

in the meantime, by an order passed by the Governor. In this writ appeal we are not concerned with this order which has been subject matter of dispute in Civil Rule No. 357/98. However, his appointment as Registrar of Surgery of Silchar Medical College was also cancelled by an order dated 29th September, 1997. This order has been impugned by the Appellant in the Civil Rule No. 4990/97 which is now being examined by this Court.

3. The learned Single Judge dismissed the Civil rule rejecting the prayer of the Appellant for quashing the order dated 29th September, 1997 mainly on the ground that the Caste Certificate issued to the Appellant was found to have been obtained on false information.

4. Shri A.S. Choudhury, the learned Counsel for the writ Appellant submitted that the Appellant belongs to "Rudra Paul" Sub-Caste of Cachar district which is recognised by the authority as OBC. The OBC Development Board issued a Certificate, but inadvertently shown the Appellant as a member of the tea garden labourers community in place of Rudra Paul. The Appellant had filed the Caste Certificate along with his application to the Assam Public Service Commission without notice of the aforesaid mistake.

5. We have considered the judgment passed by the learned Single Judge and the documents on record. His claim for special privilege being a member of a scheduled community was found to be false after an enquiry by the appropriate authority. It would appear from Annexure-10 attached to Civil Rule No. 357/98 that the Appellant was served with a notice to appear before the Sub-Divisional Registrar (Sadar), Silchar on 29.5.97 at 11.00 AM in connection with the enquiry in respect of his OBC Certificate. He was also directed to produce relevant documents in support of his claim. The Appellant appeared before the authority and his statement was recorded. In addition, other witnesses, namely, Sri Madhab Chandra Paul, Sri Bikramjit Paul, Sri Rabindra Chandra Paul and Sri Haridhan Paul were also examined. After completion of the enquiry, the SDO (Sadar), Silchar submitted his report to the Deputy Commissioner, Cachar. The report is quoted below:

Govt. of Assam

Office of the Deputy Commissioner

Cachar :: Silchar.

No. PER/ADMN/1/96/116 dated, Silchar,

the 9th June, '97.

To

The Deputy Commissioner,

Cachar, Silchar.

Sub: Submission of enquiry report in respect of OBC certificate issued to Dr. R.C. Paul, Registrar of Surgery, Silchar Medical College, Silchar.

Sir,

With reference to the subject indicated above, I have the honour to state that self in pursuance of the directives issued vide your endorsement dated 12/5/97 on the body of the letter No. HLB 158/93 121 dated 7.5.97 received from the Addl Secretary to the Govt. of Assam, Health & Family Welfare (B) Deptt Dispur, conducted a detailed enquiry in order to ascertain the validity of the O.B.C. Development Board, Silchar and my findings are enumerated as under for favour of your perusal.

1. During my enquiry statements of the family member of Dr R.C. Paul namely (1) Sri Madhab Ch. Paul (2) Sri Bikramjit Paul & (3) Sri Rabindra Ch. Paul were recorded by me. All the family members in their deposition stated that they are businessmen by profession and belong to Kayastha Caste of Paul community. They claimed that they are the descendents of late Rahendra Paul, renowned businessman of Silchar Town and carrying out business since 100 years back. They further stated that they are neither Ex-Tea Garden Labourers nor they belong to OBC community.

2. The statements of Sri Haridhan Paul of Silchar Town and a neighbourer of Dr. R.C. Paul was also recorded during the enquiry. Sri Haridhan Paul in his deposition stated that Dr. R.C. Paul is a member of the Kayastha Paul community which is not O.B.C. Kayastha Paul belongs to General Caste. He also said that Late Jatindra Ch. Paul, the father of Dr. R.C. Paul was a member of a famous business community and not an Ex-Tea Garden Labourer.

3. The statement of Dr. Rasheswar Ch. Paul (Dr. R.C. Paul) was also recorded. In his deposition Dr. Paul admitted that he does not belong to Ex-Tea Garden Labour Community. He also admitted that his father late Jatindra Ch. Paul was a businessman by profession and never worked in any Tea Garden either in the District of Cachar or elsewhere. Dr: Paul also admitted that he obtained MBBS Degree from the Silchar Medical College in the year 1979, but he did not produce any OBC Certificate during his admission in the Silchar Medical College.

Dr. Paul in his deposition stated that in the year 1984, he applied for an OBC Certificate as Rudra Paul for submission of the same before the A.P.S.C. for service selection, but due to official mistake the OBC certificate was issued to him as Ex-Tea Garden Labourer. He further pointed out that his address was also wrongly written in Ambika Patty instead of Aryya Patty. Dr. R.C. Paul claimed himself as a member of Rudra Paul community by producing a photo copy of a certificate dated 10.5.89 issued in favour by the President, Cachar Zila Rudra Paul Samity, Silchar-5 (attached herewith).

4. Self also visited the Sub-Divisional OBC Development Board, Silchar to verify the relevant papers/records etc. in connection with the issue of the OBC Certificate to

Dr. R.C. Paul, but on search no records/papers were found available in the office. The OBC certificate as Ex-Tea Garden Labourer was issued under the hand & seal of the then Chairman, Shri Dinesh Prasad Goala, Sub-Divisional OBC Dev. Board, Silchar and was countersigned by some officer of the office of the Deputy Commissioner, Cachar on behalf of the Deputy Commissioner, Cachar on 28.12.84.

In view of what have been stated above, the OBC Certificate No. 3429 dtd. 28.12.84 issued to Dr. R.C. Paul by the Chairman of the Sub-Divisional OBC Development Board, Silchar may be declared as invalid.

Submitted for favour of your information and necessary action.

Yours faithfully,

Sd/-Illegible

(Dewan Alimiah)

Sub-Divisional Officer, Sadar, Silchar.

6. There is no dispute to the fact that the Appellant after receipt of the notice appeared before the Sub-Divisional Magistrate and had taken part in the enquiry. The statement of witnesses who are related to the writ Appellant as reflected in the aforesaid report clearly indicates that the Appellant belong to Kayastha community of Cachar district which is not recognised as Other Backward Classes. The Appellant has not been able to produce any document in support of his claim either before the learned Single Judge or before this Court to show that Rudra Paul Community of Cachar district is recognised as OBC. We do not find any reason to find fault with the report given by the Sub-Divisional Officer, Silchar. It is, therefore, obvious that the Appellant submitted a false caste certificate in order to make a wrongful gain by securing appointment against reserved category posts. This being the position, we are not inclined to interfere with the order of cancellation of his appointment issued on 29.9.97.

7. The learned Single Judge has also taken appropriate care to ensure that the future of the Appellant is not marred on account of the above conduct and, accordingly, the learned Single Judge has observed that, cancellation of the appointment shall not be a bar for the Appellant to get an appointment in the Govt. department in future as a General candidate. We endorsed the view above and also would like to add that the Appellant's case may be considered for appointment as a General category candidate in the light of his position in the Merit List provided vacancies exist for appointment against General category candidates.

In the result, the appeal is dismissed. Cost easy.