(2009) 12 CAL CK 0006

Calcutta High Court

Case No: Writ Petition No. 20308 (W) of 1999 with W.P. No. 15693 (W) of 2003

Sri Basudev Saha		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: Dec. 21, 2009

Acts Referred:

- West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 - Section 9

Citation: (2010) 2 CALLT 356

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Binoy Kumar Das for the Petitioner in W.P. No. 20308W of 1999 and for the added Respondent in W.P. No. 1734W of 2009, Mr. Tapan Mukherjee, Mr. Ekramul Bari and Mr. Biswarup Biswas for the Petitioner in W.P. Nos. 15693W of 2003 and 1734W of 2009, for the appearing parties; A.K. Roy and Mrs. Amrita Sinha for the State in W.P. No. 1734(W) of 2009, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.

The Judgment of the Court was as follows:

1. The Court: The common question involved in these three Article 226 petitions is whether Biswajit Das, the petitioner in W.P. Nos. 15693 (W) of 2003 and 1734(W) of 2009 who obtained a scheduled caste certificate from the Sub-Divisional Officer, Jangipur, Murshidabad, actually belongs to the scheduled caste Sunri (excluding Saha); and hence they have been heard together.

2. The sub-divisional officer issued the scheduled caste certificate on February 3, 1986. A vacancy, reserved for the scheduled caste, arose for a Group-D post in Khamra Bhabki Junior High School in Rajput Teghari of the district Murshidabad. According to the

statutory recruitment rules, the District Inspector of Schools, Murshidabad granted the institute prior permission to fill it. Biswajit and Basudev Saha, the petitioner in W.P. No. 20308 (W) of 1999. Were two of the candidates who were interviewed by the selection committee on January 12. 1999. While Biswajit topped the select candidate list, Basudev occupied the second position.

3. The Sub-Divisional Officer, Jangipur issued a letter dated May 27, 1999 asking Biswajit to appear before him within June 10, 1999 for verification of his scheduled caste certificate. By a letter dated August 3, 1999 the sub-divisional officer informed the district inspector of schools that the verification report was positive. Basudev complained that Biswajit was not actually a member of any scheduled caste. Then alleging that the institute was making a wrongful attempt to appoint Biswajit, Basudev took out W.P. No. 20308(W) of 1999 dated November 2, 1999.

4. In view of Basudev''s complaint, the sub-divisional officer registered Misc. Case No. l of 2001 (Basudev Saha v. Biswajit Das). Then by a notice dated September 24, 2001 the sub-divisional officer directed Biswajit and Basudev to appear before him on October 8, 2001 for hearing. Alleging that the sub-divisional officer was illegally asking him to submit documents pertaining to his scheduled caste certificate, Biswajit moved W.P. No. 3897(W) of 2002, which was disposed of by an order dated July 8, 2002 directing the sub-divisional officer to supply the certified copy of the order made in terms of a notice dated February 25, 2002 that had been served on Biswajit.

5. Thereupon the sub-divisional officer issued a notice dated July 25, 2003 asking Biswajit to surrender his scheduled caste certificate and to show cause why his certificate should not be cancelled on the ground that he was not a member of any scheduled caste. The notice was issued under sections 9 and 10 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994.

6. Then by a notice dated August 28, 2003 the sub-divisional officer directed Biswajit to appear before him on September 10, 2003, with evidence and the original certificate, for final hearing of the misc, case. By another notice dated September 17, 2003 the sub-divisional officer directed Biswajit to appear before him on September 22, 2003. It was mentioned in this notice that in terms of notice dated August 28, 2003 Biswajit did not appear before the officer. Under the circumstances, questioning the legality of the proceedings Biswajit, claiming that he joined the institute as a Group-D staff on September 13, 1999, moved W.P. No. 15693(W) of 2003 dated September 29, 2003.

7. Since no restraining order was made by this Court in any of the pending petitions, the sub-divisional officer proceeded with the misc, case pending before him and both Biswajit and Basudev participated in the proceedings. After taking oral and documentary evidence of the parties and hearing them, the officer made the final order dated December 3, 2008 cancelling Biswajit''s scheduled caste certificate on the ground that Biswajit, actually belonging to the caste Baisya Banik, was and is not a member of any scheduled caste.

Questioning the final order of the sub-divisional officer dated December 3, 2008 Biswajit moved W.P. No. l734(W) of 2009 dated January 14, 2009.

8. Mr. Mukherjee, counsel for Biswajit, has argued as follows. In view of section 11 of the Act, the certificate, deemed to have been issued under the Act, could not be cancelled. In State of Maharashtra Vs. Laljit Rajshi Shah and Others, , the Supreme Court has explained the purport of a deeming provision in a statute. After holding preliminary enquiry the sub-divisional officer did not record the reasons of his satisfaction as to the truth or otherwise of Basudev''s allegation. The officer started proceedings straight away for cancellation of the certificate. Without issuing notice in terms of Rule 3(3) he proceeded to hear the case. Copy of Basudev''s complaint was not supplied to Biswajit. The officer did not consider the fact that certificate had also been issued to Biswajit''s father that he is a member of the scheduled caste mentioned in Biswajit''s certificate. On the basis of the government order No. 2202-BCH/MR-57/07 dated August 19, 2008 that could not be applied to the certificate issued in 1986, the officer could not hold that Biswajit is not a member of any scheduled caste.

9. The appointed date of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 is October 1, 1994. It has been enacted to provide for the identification of the scheduled castes and scheduled tribes in West Bengal and for matters connected therewith or incidental thereto. It has twelve sections.

10. Section 11 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 is as follows:

11. Notwithstanding anything contained in this Act, any certificate identifying any person to be a member of the Scheduled Castes or the Scheduled Tribes, issued by any authority, competent under any law for the time being in force to issue such certificate, prior to the commencement of this Act, shall be valid and shall be deemed to have been issued under this Act unless such certificate is proved to have been obtained by furnishing any false information or by misrepresenting any fact or by suppressing any material information or by producing any document which is an act of forgery, and in every such case, the certificate issuing authority shall have the power to cancel, impound or revoke such certificate in accordance with the provisions of this Act and the rules made thereunder.

11. I am unable to see how it can be said that in view of the provisions of section 11 of the Act, Biswajit''s certificate, deemed to have been issued under the Act, though it was issued as back as February 3, 1986, could not be cancelled by the sub-divisional officer, even if the officer found that Biswajit was and is not a member of any scheduled caste. Section 9 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 is as follows:

9. If the certificate issuing authority is satisfied that a certificate under this Act has been obtained by any person by furnishing any false information or by misrepresenting any fact or by suppressing any material information or by producing any document which is an act of forgery, it may cancel, impound or revoke such certificate in such manner as may be prescribed.

12. In my opinion, the Supreme Court decision relied on is total misplaced. The deeming provisions of section 11 of the West Bengal Scheduler Castes and Scheduled Tribes (Identification) Act. 1994 do not clothe the certificate in an immunity from cancellation according to the provisions of section 9 thereof. and this is absolutely clear from the provisions of section 11 themselves. Once it is said that the certificate will be deemed to have been issued under the provisions of the Act, needless to say that it can be cancelled at any time according to the provisions of section 9 of the Act. The deeming provisions do not create a protective shield for a certificate obtained before 1994 by furnishing false information.

13. The provisions of Rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules. 1995 provide the procedure for cancellation, impounding or revocation of certificate.

Sub-rule (1) of Rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 provides as follows:

1) Whenever it appears to a certificate issuing authority on complaints by any person or suo motu that a person, in whose favour a Scheduled Caste or Scheduled Tribe certificate has been issued, does not belong to such caste or tribe, the certificate issuing authority shall hold a preliminary enquiry by itself or by any officer above the rank of Inspector of the Scheduled Castes and Tribes Welfare Department, as may be authorised by it in this behalf, and shall prima facie satisfy itself as to the truth or otherwise of the complaints as aforesaid, record the reasons of its satisfaction as to the truth or otherwise of the complaints and, if necessary, start proceedings for cancellations, impounding or revocation of the certificate, as the case may be.

Sub-rules (2) and (3) of Rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 provide as follows:

2) Where any proceedings have been started under sub-rule (1), the certificate issuing authority shall, by written notice, ask the person holding the certificate to deposit the same, in original, in its office and, when a certificate has been so deposited, a receipt in favour of the person depositing the certificate shall be issued.

3) The certificate issuing authority shall, then, issue a notice to the holder of the certificate to show cause within fifteen days or within a period of shorter duration as it may think fit, as to why the certificate issued in his favour shall not be cancelled, impounded or revoked on the grounds stated in the notice.

14. From the facts stated hereinbefore it is evident that the sub-divisional officer initiated the enquiry as back as 1999. True it is that on verification of the certificate the officer informed the district inspector of schools concerned that it was a genuine certificate. But this does not mean that after making necessary enquiry he found that Biswajit belonged to the scheduled caste mentioned in the certificate. Complaint lodged by Basudev was the basis of the case initiated u/s 9 read with Rule 3, as is evident from the notice dated July 25. 2003 issued by the sub-divisional officer under Rule 3(3).

15. It was mentioned in the notice dated July 25, 2003 that by notices dated March 13, 2003 and July 7, 2003 Biswajit had been asked to surrender his certificate, but that he did not surrender the certificate. It is evident that the notices dated March 13, 2003 and July 7, 2003 had been issued under Rule 3(2) A notice dated February 25, 2002 had also been issued, and questioning that Biswajit moved W.P. No. 3897 (W) of 2002, disposed of by an order dated July 8, 2002 directing the sub-divisional officer to supply the certified copy of the order concerned.

16. It has nowhere been alleged that after holding preliminary enquiry, the officer straight away started proceedings without recording the reasons of his satisfaction as to the truth or otherwise of Basudev''s allegation. Biswajit''s allegation is that there was no preliminary satisfaction. The fact that the officer registered the misc, case in 2001 is sufficient to hold that he started the proceedings for cancellation of the certificate only after holding preliminary enquiry and recording reasons of his satisfaction as to the truth of Basudev''s allegation. The officer issued the notices dated March 13, and July 25, 2003 under sub-rules (2) and (3) respectively of Rule 3, directing Biswajit to surrender the original certificate and show cause why it should not be cancelled on the ground that he was not a member of any scheduled caste.

17. Sub-rule (4) of Rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 provides as follows:

4) (a) On the expiry of the period referred to in Sub-rule (3), the certificate issuing authority shall fix a date of hearing of the case by notice to the complainant and the holder of the certificate, asking them to bring oral witness or documentary evidence against, or, as the case may be, in support of, the caste or the tribe identity of the holder of the certificate.

(b) A copy of the notice issued to the complainant, if any, and the holder of the certificate, shall be affixed to the notice board of the office of the certificate issuing authority for the information of the public.

(c) The service of any notice under these rules shall be governed by the provisions of the Code of Civil Procedure, 1908(5 of 1908).

18. It is evident that in terms of Rule 3(4) of the rules the sub-divisional officer issued the notice dated August 28, 2003 fixing the hearing of the misc, case for September 10, 2003

and asking both Biswajit and Basudev to adduce evidence in support of their respective cases. The final order was made after taking down evidence and hearing Biswajit and Basudev. On these facts, I am unable to see how it can be contended that the sub-divisional officer made the final order dated December 3, 2008 without complying with the provisions of Rule 3 of the rules.

19. The sub-divisional officer requisitioned from the office of the District Sub-Registrar-I. Murshidabad records pertaining to two conveyances - one of 1930, executed by one Shibnath Saha, and the other of 1941, executed by one Nishakar Saha and Ors. Biswajit produced a conveyance executed by one Karalbadani Saha. The Block Development Officer, Raghunathganj submitted an enquiry report dated August 18. 2003. After considering these documents, and oral evidence of both Basudev and Biswajit, taken down by him, the sub-divisional officer held that Biswajit was and is a member of the Baisya Banik sub-caste.

20. In both the 1930 and 1941 conveyances, admittedly executed by Biswajit''s forefathers, the persons executing the conveyances, writing their surname Saha, specifically mentioned that their sub-caste was Baisya Banik. In the conveyance executed by Karalbadani, writing her surname Saha, she mentioned that her sub-caste was Sou. The admitted position is that sub-castes Baisya Banik and Sou of the caste Saha were and are not scheduled castes, though at the date the certificate was issued the sub-caste Sunri (excluding Saha), mentioned in Biswajit''s certificate, was a scheduled caste, and in view of the government order No. 2202-BCH/MR-57/07 dated August 19. 2008, Sau is a sub-caste of the caste Sunri.

21. It is important to note that before the sub-divisional officer Biswajit did not produce his father''s scheduled caste certificate dated August 10, 1976 issued by the Sub-Divisional Officer, Jangipur. There it was recorded that his father, Sisir Kumar Das, son of one late Shibnath Das, belonged to the scheduled caste Sunri. Sisir is Biswajit''s father and son of Sibnath who presumably executed the 1930 conveyance relied on by the sub-divisional officer. It appears that in 2001 Sisir was 63. The sub-divisional officer noted that it was not known how Sisir and Biswajit substituted their Das surname for their forefathers'' Saha.

22. The admitted position, therefore, is that the documents considered by the sub-divisional officer clearly proved, that Biswajit''s forefathers, using the surname Saha, actually belonged to the sub-caste Baisya Banik that was never recognised in the state as a scheduled caste. Even today Baisya Banik is not recognised as a scheduled caste. At the dates Biswajit and his father obtained their respective scheduled caste certificates Sunri (excluding Saha) was recognised as a scheduled caste, and by the government order dated August 19, 2008 it was notified that Sau is a sub-caste of the caste Sunri.

23. Biswajit, though never belonged to the caste Sunri, obtained the scheduled caste certificate recording that he belonged "to the Scheduled Caste "SUNRI" (Excluding

Saha)", and there can be no doubt that it was wrongfully issued. It is interesting to note that the office file containing the records considering which the certificate was issued to Biswajit in 1986 went missing, - a ridiculous state of affairs in the administration that is visibly unconcerned and reluctant to punish the guilty party. It is immaterial that with respect to Sisir''s certificate no proceedings have been initiated by the competent authority as yet.

24. Even if it is assumed that Biswajit was not supplied with a copy of Basudev''s complaint, I am unable to see how for that Biswajit suffered any prejudice. There is nothing to show that he ever made any grievance to the sub-divisional officer that having not received Basudev''s complaint, he was enable to defend himself effectively. Basudev''s complaint was only that Biswajit, belonging to the Baisya Banik caste, not a scheduled caste, ought not to have been granted a scheduled caste certificate stating that he belongs to the scheduled caste Sunri (excluding Saha). I find no reason to say that the decision of the officer who considered all evidence before him is perverse.

25. In view of the above-noted situation, Biswajit was not eligible for the reserved Group-D vacancy for filling which the above-noted institute initiated the recruitment process in which he and Basudev were two of the candidates Accordingly, Biswajit''s name could not be put on the select candidate list. Hence his appointment is liable to be quashed and the district inspector of schools is required to modify the select candidate list deleting Biswajit''s name, placing Basudev in the first position, and including therein the candidate occupying the fourth merit position.

26. For these reasons, I allow W.P. No. 20308(W) of 1999 and dismiss W.P. Nos. l5G93(W) of 2003 and 1734(W) of 2009. Biswajit''s selection and consequent appointment to the post are hereby quashed. The District Inspector of Schools, Murshidabad is directed to modify the select candidate list and approve the modified list within a fortnight from the date of communication of this order. If according to the modified list Basudev is entitled to an offer of appointment, then the institute shall offer him appointment within a fortnight from the date of approval of the list. No costs. Certified xerox according to law.