
(2009) 04 UK CK 0030

Uttarakhand High Court

Case No: Writ Petition No. 316 of 2008 (S/B)

Dharmendra Prasad

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision: April 22, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2009) 2 UC 925

Hon'ble Judges: Vinod Kumar Gupta, C.J; V.K. Bist, J

Bench: Division Bench

Advocate: Alok Singh, assisted by, Parikshit Saini, for the Appellant; B.D. Kandpal and P.C. Bisht, Brief Holder for Respondent Nos. 1 and 3, for the Respondent

Final Decision: Allowed

Judgement

V.K. Bist, J.

The Petitioner has filed this writ petition for the following reliefs:

- Issue a writ order or direction in the nature of mandamus commanding the Respondent nos. 1 & 2 to make the Petitioner's selection confirmed on the post of Deputy Superintendent of Police instead of Provisional or in alternative to command the Respondent nos. 1 & 3 to issue caste certificate to the Petitioner treating the Petitioner bonafide resident of Uttarakhand State within such time which this Hon"ble Court deem fit.
- Issue any other writ order or direction which this Hon"ble Court deem fit and proper under the facts and circumstances of the case in favour of the Petitioner.
- Award the cost of the present writ petition to the Petitioner.

2. The Brief facts of the present case are that the Petitioner's father joined service in BHEL, Haridwar in the year 1976. The Petitioner was born on 19-06-1976 in Haridwar and since his birth he is residing in Haridwar. Petitioner did his schooling and

matriculation from Vidhya Mandir, College Haridwar and graduation from Gurukul Kangari University in the year 2005. According to the Petitioner he belongs to Dhanuk Caste which is notified as Schedule Caste in the State of Uttarakhand. He was issued caste certificate on 16-03-2004 as well as domicile certificate on 29-08-2006 after due verification and investigation as required under the law. In response to advertisement issued by Uttarakhand State Public Service Commission in the year 2004, the Petitioner applied for Uttarakhand State Combined Civil Services Examination 2004 under the Scheduled Castes Category. He was permitted to appear in preliminary examination as well as in main examination. After being declared successful in the main examination he was called for interview and was declared successful for the post of Deputy Superintendent of Police. However, the selection of the Petitioner was done provisionally. On inquiry the Petitioner was asked to submit his caste certificate on latest performa issued by the Government. On 14-07-2008 the Petitioner applied for issuance of fresh caste certificate in the office of Tehsildar. After waiting for a long time when caste certificate was not issued to the Petitioner, the Petitioner moved an application under Right to Information Act for obtaining the copies of report submitted by Lekhpai and Kanongo and also for disclosure of reason why fresh caste certificate was not being issued to him. Thereafter, Tehsildar, Haridwar supplied copy of the report submitted by the Lekhpai to the Petitioner. In the report of Lekhpai, which is annexure 8 to the writ petition, it is mentioned that the Petitioner is residing from 1982 but since the Petitioner is not original resident, therefore, issuance of certificate is not proper. Since fresh caste certificate was not issued to the Petitioner, the Petitioner filed present writ petition.

3. Tehsildar, Haridwar filed his counter affidavit stating therein that as per the requirement of paragraph 1 of the Government Order dated 22-06-2006 the Petitioner was required to submit the affidavit and original resident certificate and the Petitioner applied for caste certificate as per Government Order dated 22-06-2001. In the counter affidavit it is submitted that in the year 2004 the Petitioner applied for the caste certificate alongwith the application he had submitted caste certificate issued from District Nalanda, Bihar which itself goes to show that the Petitioner is an original resident ((?)) of State of Bihar. The ground taken for non issuance of caste certificate to the Petitioner in the counter affidavit is that since the Petitioner originally is resident of State of Bihar, he cannot be issued caste certificate in the State of Uttarakhand and accordingly he is not entitled to avail benefit of reservation in the State of Uttarakhand. In the counter affidavit it has further been mentioned that the Petitioner can be issued permanent resident certificate in the State of Uttarakhand on the basis of his 15 years or more residence in the State of Uttarakhand in the light of government order issued in this behalf, but he cannot be treated to be original resident in the State of Uttarakhand. The (?) certificate can be issued only to such Applicants whose forefathers have been residing in the State of Uttarakhand since generation.

4. We have heard learned Counsel for the parties and carefully perused the material available on record.

5. Learned Counsel for the Petitioner argued that since caste certificate issued to the Petitioner in the year 2004 was issued to him after due verification and investigation and since same has not been cancelled, the Respondents are not justified in not giving him fresh caste certificate as required by the Government Order dated 22-06-2006. Learned Counsel for the Petitioner further argued that the Petitioner was born in the year 1976 in Haridwar and since his birth he is residing in Haridwar which is part of State of Uttarakhand. He argued that Respondent nos. 1 & 3 cannot deny caste certificate to the Petitioner as he is bonafide resident of State of Uttarakhand. Shri P.C. Bisht, learned Brief Holder, on the other hand, advanced same arguments which are mentioned in the counter affidavit. He argued that only those persons who are original resident of State of Uttarakhand are entitled for caste certificate. According to Shri P.C. Bisht, since forefathers of the Petitioner did not belong to the area which at present is under State of Uttarakhand, the Petitioner cannot be granted caste certificate. He further argued that in the year 2004 when the Petitioner applied for caste certificate along with application he submitted caste certificate issued to him from District Nalanda, Bihar which itself shows that Petitioner is original resident of Bihar. According to learned Brief Holder, since the Petitioner is not original resident of Uttarakhand, caste certificate cannot be granted to him.

6. It is undisputed fact that father of the Petitioner joined service in BHEL, Haridwar in the year 1976 and the Petitioner was born on 19-06-1976 in Haridwar. It is also undisputed fact that since his birth the Petitioner is residing in Haridwar and did his schooling, matriculation and graduation from Haridwar. Therefore, non-issuance of caste certificate to the Petitioner on the ground of his not being original resident of Uttarakhand is not justified. The argument raised by Shri P.C. Bisht that in the year 2004 the Petitioner submitted a caste certificate which was issued to him from District Nalanda shows that the Petitioner is original resident of State of Bihar and not of Uttarakhand is misconceived as he failed to appreciate that certificate from District Nalanda was necessary for determining the caste of the Petitioner as Petitioner's forefathers lived in that district and certificate issued from District Nalanda verified the fact that Petitioner belongs to Dhanuk caste which is a Scheduled Caste of State of Bihar. On the basis of caste certificate issued from District Nalanda, the Petitioner was rightly granted caste certificate in the year 2004 and Respondents should have issued fresh caste certificate to the Petitioner in the light of Government Order dated 22-06-2006.

7. The expression "original resident" ((?)) has not been defined anywhere. In the absence of a specific definition of this expression, we have to adopt a meaningful as well as a purposeful and constructive approach to extend a construction so as to define this expression to mean such persons who have been and or ordinarily

residing in the State of Uttarakhand. One aspect which can be taken in constructing the aforesaid interpretation is to include the period of residence of 15 years so as to connote the purpose and meaning of the expression "original resident" ((?)). By adopting the aforesaid approach and in extending the aforesaid construction to the expression "original resident" ((?)), we cannot help noticing that in the present case, the Petitioner was born in the State of Uttarakhand in the year 1976 to his parents, who had been living in the State before that date. We cannot help noticing the fact also that the Petitioner, after his birth, took up his entire education in the State of Uttarakhand and, thereafter, applied for selection while residing in the State of Uttarakhand. By no stretch of imagination nor by adopting any plausible stand, can it be argued that such a person should not be treated as a "original resident" ((?)) of Uttarakhand State. Any such argument has to be out rightly rejected.

8. Article 14 of the Constitution of India strikes at any arbitrary action of the executive. It also disapproves taking of a stand by the executive, which is not based on objective criteria. The unreasonableness of a stand taken by the executive is also not approved by Article 14 of the Constitution. We have no hesitation in holding and saying that the stand taken by the Respondent State in the present case to the effect that the Petitioner cannot be included in the category of "original resident" is totally unacceptable by us.

9. For the foregoing discussion, the writ petition is allowed. Respondents 1 & 3 are directed to issue caste certificate to the Petitioner by treating him bonafide resident of the State of Uttarakhand.

10. No order as to costs.