

SUPREME COURT OF INDIA

Arshad Jamil

Vs.

State of Uttarkhand & Ors.

C.A.No.7721 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

07.09.2011

JUDGMENT

Dr.Mukundakam Sharma,J.,

SLP (Civil) No. 25203 of 2008

1. Leave Granted.

2. By this Judgment and Order, we propose to dispose of three appeals, arising out of SLP (C) No. 25203 of 2008 filed by the appellant herein against the order dated 13.8.2008, SLP (C) No. 8617 of 2006 filed by the State of Uttaranchal against the Judgment and Order dated 23.12.2005 and finally SLP (C) No. 9209 of 2006 filed by the appellant against the Judgment and Order dated 23.12.2005 passed by the High Court of Uttaranchal at Nainital.

3. In SLP (C) No. 25203 of 2008 filed by the appellant, the impugned Judgment and Order dated 13.8.2008 was challenged, whereby the High Court dismissed the writ petition filed by the appellant, praying for quashing the order passed by the respondent, cancelling the caste certificate issued to the appellant.

4. SLP (C) No. 8617 of 2006 was filed by the State of Uttaranchal against the Judgment and Order dated 23.12.2005, whereby the High Court issued a direction for reinstatement of the Arshad Jamil, whose service was terminated by an order dated 18.12.2004.

5. SLP (C) No. 9209 of 2006 was filed by the appellant herein, challenging the Judgment and Order dated 23.12.2005, to the extent it denies the appellant payment of any salary or allowances for the period for which he had not actually worked.

6. Since the subject matters involved in these appeals are inter-connected and similar, all these appeals are being taken up for consideration together, and therefore, a common Judgment and Order is being passed.

7. The Uttrakhand Public Service Commission issued an advertisement in the year 2002 inviting applications for recruitment to the post of Civil Judge [Junior Division]. In the said advertisement, it was clearly mentioned that only residents of the State of Uttrakhand would be entitled to the benefit of reservation under the category of Other Backward Classes. The said advertisement also carried a proforma of the caste certificate to be submitted alongwith the application, wherein it required a certification as to "ordinarily resident" of the applicant. The appellant, herein, obtained a caste certificate, which was issued by the Thesildar, Roorkee to the effect the appellant is a resident of Roorkee and belongs to "Momin Ansari Caste". The said certificate was dated 29.06.2002.

8. A Memorandum was issued by the Government of Uttrakhand prescribing the format of the caste certificate which an applicant was required to submit in case he was seeking an appointment in the reserved category i.e. SC/ST/OBC. The appellant herein submitted his application offering his candidature for the post enclosing a caste certificate issued by the Tehsildar, Roorkee dated 29.06.02 and appeared in the written examination held for the purpose of recruitment to the aforesaid post of Civil Judge [Junior Division], and after being successful in the examination he was called for an interview on 26.7.2003 under letter dated 26.06.2003. The appellant was found successful and was selected for the post of Civil Judge [Junior Division], against a reserved category post meant for other backward classes, by an appointment order dated 18.9.2003.

9. The appellant was appointed as Civil Judge [Junior Division] on probation for a period of two years. The aforesaid appointment letter was issued, subject to the condition that the character, verification and report of the health examination of the concerned candidate should be satisfactory for judicial service. After he submitted his joining report, the appellant was posted as Civil Judge [Junior Division] at Purola, Utarkashi, Uttrakhand and assumed charge on 22.9.2003.

10. The District Magistrate, Haridwar received a letter issued by the Secretary, Public Service Commission, Uttaranchal, Haridwar informing him that a complaint had been received by the Commission against the appellant herein, wherein it was complained that Arshad Jamil is a permanent resident of House No. 156, Jansath House, Ansari Road, District - Muzaffarnagar, and that his name appeared at SI No. 862 of part No. 141 of Electoral List of constituency No. 408 of Muzaffarnagar Legislative Assembly and that he is a Member of the Muzaffarnagar Bar Association. By the aforesaid letter sent on 15.09.2003, the District Magistrate was requested to inform the Commission on priority basis about the validity of the caste certificate of OBC issued to the appellant on 29.06.2002 so that the Commission could take a decision on the aforesaid complaint.

11. Pursuant to the aforesaid letter, an inquiry was conducted and the Tehsildar Roorkee submitted a report dated 09.07.2003, confirming that Arshad Jamil, son of Jamil Ahmed, resident of 7, Sheikhpuri, Roorkee, Haridwar has been residing at that place since 1991, and that he belonged to caste Momin Ansari, which comes in the list of other backward class in Uttaranchal. In the said report, it was also stated that it is possible, that prior to his stay in Roorkee he was staying in Muzaffarnagar. In the said report, it was also stated that Arshad

Jamil was residing in Roorkee for about 12 years since his name appeared in the Municipality records as tenant. It was also stated that he was residing in Roorkee from 3.6.1998 to 2003 as a resident of Old House No. 24 and New Number 7, Sheikhpuri, Roorkee, Haridwar. It appears that a police report was also submitted on 8.12.2003, that the appellant has been residing at Roorkee since 1991.

12. A letter was sent by the District Magistrate dated 9.1.2004 to the Principal Secretary, Social Welfare Department, Uttaranchal Government, stating that the jurisdiction to cancel the caste certificate lies with the State Government and not with him. A show cause notice was issued to the appellant by the Chief Secretary, Government of Uttaranchal. Under his letter dated 13.5.2004, it was alleged that one Shri Abdul Kareem had submitted a complaint by his letter dated 12.1.2004 alleging that the appellant had succeeded in getting appointed in the Uttaranchal State Judicial Service on the basis of a fake caste and residence certificate, at the address of Sheikhpuri, Roorkee in collusion with the Tehsildar of Roorkee. In the said letter, it was also mentioned that an inquiry was made by the District Magistrate, Haridwar, who had informed the State Government that the appellant was a permanent resident of District Muzaffarnagar, Uttar Pradesh but he had produced a certificate of Other Backward Classes showing himself to be a permanent resident of Uttaranchal and therefore, was not entitled to get the benefit of OBC Caste in Uttarakhand, as he is a permanent resident of Uttar Pradesh. He was, therefore, asked to show cause as to why his appointment in the judicial service should not be cancelled for the aforesaid reason.

13. The appellant submitted his reply as against the aforesaid show cause notice on 20.7.2004. The contents of the aforesaid reply were considered but even thereafter another show cause notice appears to have been issued to the appellant on 18th September, 2004. The contents of the show cause notices and replies filed were considered by the State Government. On scrutiny thereof, it was found by the Government that the appellant was born in District Muzaffarnagar, UP and that he had also completed his education there. A Ration Card had been made in his name and in the names of his family members in District Muzaffarnagar and he completed his law course being a student from Muzaffarnagar. He also got himself enrolled in the Muzaffarnagar Bar Association. His name was also entered in the electoral roll of Muzaffarnagar up to 2007, when his name came to be deleted from the voters list after his father informed the concerned authorities that the name of the appellant is to be deleted from the voters list as he is now residing in Roorkee.

14. Considering the aforesaid facts, it was held that the defense taken in the replies by the appellant was baseless and that since he was neither a permanent resident of the State of Uttaranchal nor belonged to Other Backward Classes of State of Uttarakhand, his appointment to the post of Civil Judge [Junior Division] was terminated as per order dated 18.12.2004.

15. Another order came to be issued on 2.3.2005, whereby the Tehsildar Roorkee, who was the competent authority, cancelled the caste certificate issued to the appellant on 29.6.2002 on the ground that after a detailed inquiry it was revealed that the appellant had obtained the caste certificate by showing himself a resident of Roorkee in a mischievous manner, while he

was actually a permanent resident of Muzaffarnagar, and thereby he has misused the said caste certificate.

16. The appellant filed a writ petition challenging the legality and the validity of the order dated 02.03.2005. The said writ petition was registered as Writ Petition (Civil) No. 448 of 2005. The aforesaid writ petition, filed by the appellant, was allowed by the Uttarakhand High Court by its order dated 6.5.2005, whereby the High Court quashed the said order on the ground of violation of principles of natural justice, with liberty to the Tehsildar to issue notice to the appellant and to give reasonable opportunity to file his objections against the proposal to cancel the caste certificate.

17. Consequently, a show cause notice was issued to the appellant by the Tehsildar on 6.6.2005, calling upon him to show cause as to why the caste certificate issued to him on 29.6.2002 should not be cancelled, for the reasons stated in the said notice. The appellant submitted his reply to the aforesaid show cause notice. Thereafter, a second show cause notice dated 11.8.2005, in continuation of the notice dated 6.6.2005, was issued to Shri Arshad Jamil. After replies sent by the appellant, he was also given an opportunity to examine the documents on record by issuing a letter dated 11.8.2005 which was sent to his address House No. 7, Opposite Dev Nursing Home, Roorkee.

18. Despite the aforesaid letter, he did not appear and therefore, a notice was pasted at the address intimating him to be present to examine and peruse the relevant documents. As the appellant did not appear to examine the said documents, the Tehsildar, Roorkee proceeded to pass an order dated 1.9.2005. In the said order, the Tehsildar held that after going through the documents relied upon by the objector and other records available, it is revealed that the objector Arshad Jamil was originally a resident of Mohalla Khalapar, Muzaffarnagar, which is established by the fact that his name is mentioned as against House No. 225 of Serial No. 147 of Part No. 42 of 408 Muzaffarnagar Vidhan Sabha Kshetra Electoral Roll, 1995. From the Electoral Rolls of 2003, it was also found that a photo identity card of Arshad Jamil was prepared by the Election Commission of India for Electoral Roll of Muzaffarnagar Vidhan Sabha, wherein his name appeared until it was deleted in 2007 on the basis of information supplied by his father on 27.08.06. His father informed them that his son was now staying at Roorkee.

19. The other documents filed by the appellant were also considered, by which it was deduced that the objector had obtained the caste certificate in question by fraud. In that view of the matter the Tehsildar, Roorkee held that such caste certificate should not have been issued to the appellant and therefore, passed an order that the caste certificate dated 29.6.2002 be cancelled by issuing his order dated 1.9.2005.

20. Meanwhile, the appellant filed writ petition No. 413 of 2005 challenging the order dated 18.12.2004, terminating his service. He also filed another writ petition being writ petition no. 408 of 2006 challenging the order of cancellation of his caste certificate. The High Court considered the writ petition no. 413 of 2005 filed by the appellant, which was allowed by the High Court by order dated 23.12.2005. By the said order, the High Court directed the

reinstatement of the appellant with continuity of service without any break, but ordered that the said reinstatement would be without any salary or allowances for the period for which he had not actually worked.

21. The writ petition No. 408 of 2006 was taken up for final hearing by the High Court and by Judgment and Order dated 13.8.2008 the writ petition was dismissed holding that the appellant cannot get the benefit of being OBC status in the State of Uttarakhand as he is a permanent resident of Muzaffarnagar, UP and also that he obtained a false certificate of being resident of Roorkee, District Haridwar, Uttarakhand.

22. As against the aforesaid, the two orders passed by the High Court, three Special Leave Petitions as aforesaid came to be filed in this Court in which notices were issued. The same were listed before us for hearing and we heard the learned counsel appearing for the parties on the said Special Leave Petitions and by this common Judgment and Order we are disposing of all these Special Leave Petitions, after granting leave therein and by giving our reasons.

23. Counsel appearing for the appellant-Arshad Jamil forcefully argued that the respondent-State did not have any jurisdiction to review the order granting caste certificate in favour of the appellant. According to him, after the grant of the aforesaid caste certificate dated 29.6.2002, the matter was once reviewed by the Tehsildar, Roorkee and in the fresh inquiry also it was found and revealed that the appellant was ordinarily a resident of Uttarakhand and that he belongs to Other Backward Classes and therefore no further review was called for and permissible. According to him, the police also made a verification wherein it was also established that he has been residing in Roorkee for a very long time and, therefore, an ordinary resident of Roorkee. He therefore submitted that the subsequent review made by the Tehsildar regarding the caste verification was without jurisdiction. Counsel also submitted before us that there has been enough cogent evidence on record to justify and prove that the appellant has been in Roorkee at least from the year 1998, which fact is proved from the municipal records itself, and the police verification report also having stated that he has been in Roorkee for about 12 years, the order of cancellation of the caste certificate is illegal and without jurisdiction. He submitted that the expression "ordinarily resident" does not bar simultaneous residence at some other place also, for a person could be at two places at the same time. He also submitted that the order of cancellation of his caste certificate came to be passed on the basis of the dictation of the District Magistrate, which is apparent on the face of the records and, therefore, such an order which is passed at the behest and dictation of a higher authority is illegal and irrational. According to the counsel, there is enough evidence on record like lawyers' identity card issued by Uttarakhand HC Bar Association, entry of his name in the electoral roll of Roorkee in the year 2003, the Hibanama and also the certificate of the landlord showing him as a resident of Roorkee and the municipal records indicating the residence at Roorkee from 1998 to 2003 which, when collectively read, would support the contention that the appellant is ordinarily resident of Roorkee and, therefore, entitled to get a caste certificate of the nature which was issued to him and, therefore, cancellation of the same by the authority was illegal and is liable to be set aside.

24. Counsel appearing for the respondent however, while rebutting the aforesaid contentions, submitted that the documents on record clearly indicate that the appellant has been a resident of Muzaffarnagar, UP at least upto 2002 and thereafter, in order to make himself eligible to apply for a reserved post, he created documents to indicate that he is an ordinary resident of Roorkee. He has also drawn our attention to the various documents on record, including the document which he had submitted to the Bar Council of India applying for enrolment and the certificate given by the Bar Council, showing his residence to be at Muzaffarnagar. It was also submitted by him that the High Court was justified in upholding the administrative action taken by the respondent State, as judicial review of such administrative action should and could be exercised only in a very limited sphere. He submitted that the aforesaid order of cancellation of the caste certificate was done after an order was passed by the High Court directing for giving a hearing to the appellant and that upon giving such reasonable opportunity to the appellant, his caste certificate was finally cancelled.

25. In the light of the aforesaid submissions of the counsel appearing for the parties, we have perused the records and also perused the decisions relied upon by the counsel appearing for the parties.

26. Undisputedly, and as agreed to by the counsel appearing for the parties during the course of hearing of arguments, if the order passed by the High Court upholding the cancellation of a caste certificate is confirmed by this Court, in that event it would not be necessary to go into the other aspect regarding the issue of legality or otherwise of the order of termination as also the order regarding payment of back wages to the appellant. On the other hand, if we find that the order of the High Court cannot be sustained and that the caste certificate was issued legally and justifiably, in that event, not only the order canceling the caste certificate is to be set aside with a direction to restore the caste certificate to the appellant but at the same time the order of termination shall also have to be quashed. Consequently, the question with regard to the claim for payment of arrear of wages shall have to be considered.

27. Therefore, in our considered opinion, the issue with regard to the issuance of caste certificate and cancellation thereof, is the crucial question which goes to the root of the dispute between the parties and the same requires our consideration at the very initial stage.

28. Our attention was drawn to the advertisement issued by the respondent-State inviting applications for filling up the post of Civil Judge [Junior Division]. In the said advertisement it was clearly mentioned that the candidates who claim reservation by claiming to belong to Other Backward Classes of Uttarakhand, have to produce a caste certificate in terms of the format attached thereto. It was mentioned therein that the candidate who claims to be a member of the backward classes of Uttarakhand and is ordinarily a resident of Uttarakhand has to submit a caste certificate in format. The appellant also while applying for the said post, obtained a caste certificate which was issued by the Tehsildar on 29.6.2002, which is under challenge.

29. It is no doubt true that the Tehsildar, Roorkee subsequently also reiterated his stand that the appellant is a member of the other backward classes and is also ordinarily a resident of Uttarakhand. Subsequently, however, the same was cancelled by an order dated 02.03.2005 whereby the Tehsildar, Roorkee, who is the competent authority, cancelled the caste certificate issued to the appellant on 29.6.2002, on the ground that after a detailed inquiry it was revealed that the appellant had obtained the caste certificate by showing himself to be a resident of Roorkee in a mischievous manner, while he was actually a permanent resident of Muzaffarnagar and has thereby, misused the said caste certificate. A copy of the said order is on record. The said order indicates that District Magistrate had advised cancelling the certificate. The said order also indicates that the same was cancelled without giving any opportunity to the appellant. Therefore, a writ petition was filed by the appellant challenging the legality and the validity of the order dated 02.03.2005. The said writ petition was allowed by the Uttarakhand High Court by its order dated 06.05.2005, whereby the High Court quashed the said order on the ground of violation of principles of natural justice, with liberty to the Tehsildar to issue a notice to the appellant and to give reasonable opportunity to file his objections against the proposal to cancel the caste certificate. In view of the aforesaid order passed by the High Court, the State Government became empowered to pass a fresh order in the matter of cancellation of caste certificate, after giving notice to the appellant to show cause as to why it should not be cancelled. There is no dispute with regard to the fact that subsequent thereto the appellant has been given such an opportunity and he had filed replies thereto. The Tehsildar thereafter passed a reasoned order by referring to the various documents filed by the parties and giving reasons for his decisions by relying upon the documents which are on record.

30. The High Court, where the validity of the order passed by the Tehsildar on 02.03.2005 was challenged, considered the contentions raised by the appellant, but dismissed the writ petition holding that the appellant cannot get the benefit of Other Backward Classes status in the State of Uttarakhand as he is a permanent resident of Muzaffarnagar, UP. The High Court has also recorded a finding that the appellant obtained a false certificate of being a resident of Roorkee, District-Haridwar, Uttarakhand.

31. Although, the power and the jurisdiction of this Court in the matter of re-appreciation of evidence is restricted and also keeping in mind the well-settled principles that the scope of judicial review of administrative action is very restricted and limited and, therefore, we should be slow in interfering with the finding of facts arrived at by the High Court, we still looked into the entire records and the documents relied upon in order to satisfy ourselves that the action taken by the respondent-State in canceling the certificate of the appellant is legal, just and proper.

32. On considering the evidence on record and the documents placed before us we find that the appellant received his education in Muzaffarnagar except for a period when he studied in Mysore. He also obtained his Law Degree from Muzaffarnagar Law College. During the aforesaid period he was a resident of Muzaffarnagar which is established from the records available with us. The appellant thereafter obtained his graduation from the Law College at Muzaffarnagar, and got himself enrolled with the Bar Council of Uttar Pradesh, Allahabad.

He submitted his application on 01.12.1999 and he received the enrolment on 09.03.2000 in which also his address was shown as 225, Khalapur, District- Muzaffarnagar, U.P. His name as well as the names of his family members were included in the ration card which has been made in District-Muzaffarnagar. The said ration card however came to be cancelled by the supply office in the year 2001, during card verification scheme for want of a photograph. Despite his claim that he was residing in Roorkee, there is no documentary evidence to prove the said fact except for a document which has been placed on record, being municipal record, but issued in the year 2003 showing him as a tenant of Furkan Ahmed in Mohalla Shekhpuri for the period from 1998 to 2003. But if he was staying in Roorkee from the year 1998, there was no reason why other documentary evidence is not available in support of his contention that he was ordinarily a resident of Roorkee. His name came to be recorded in the electoral roll of Roorkee in the District-Haridwar only in the year 2003. The records placed before us show that the name of the appellant was included in the electoral roll of Muzaffarnagar in the year 1993 on the basis of door to door survey made by the election commissioner. Since he was found residing in Muzaffarnagar, his name was included in the voters list of Muzaffarnagar constituency. His name finds place in the electoral roll of Muzaffarnagar constituency for the year 1993, 1995, 1998 and 2003. The voter identity card of the appellant was also issued to him from the Muzaffarnagar Assembly constituency showing him to be a resident of House No. 225, Mohalla-Khalapur, District-Muzaffarnagar, U.P. The name of the appellant in the aforesaid voter list continued to be there till his father informed them in the year 2006 that his son is now residing in Roorkee and, therefore, his name is to be deleted from the voters list. The appellant submitted his application for being appointed for the post of Civil Judge [Junior Division] alongwith the cast certificate issued to him on 29.6.2002. There is no contemporaneous document prior to the same showing and justifying his claim that he was ordinarily a resident of Roorkee.

33. Our attention was also drawn to the Section 21 of the Representation of Peoples Act, 1950 laying down the procedure and method for the preparation and revision of electoral rolls in a constituency. Our attention was also drawn to Rule 7 of the Registration of Electors Rules, 1960 which prove and establish that an electoral roll is prepared on the basis of enumeration done by the election staff after making a door to door verification and on the basis of the information disclosed by the family members and the house they visit. On the said disclosures made, the name of the appellant was included in the voters list of Muzaffarnagar upto 2003 and therefore, it cannot be said that he was not only ordinarily resident of Muzaffarnagar but a permanent resident thereof.

34. In view of such authentic and sufficient documentary evidence on record to reject the claim of the appellant that he was an ordinarily resident of Roorkee, the findings recorded by the Tehsildar, Roorkee in his order dated 02.03.2005 and also those recorded by the High Court cannot be sought to be in any manner arbitrary, illegal or irrational.

35 . In the case of Action Committee on Issue of Caste Certificate to SC and ST in the *State of Maharashtra and Anr. v. Union of India & Anr. reported in'* a Constitution Bench of this Court considered the issue regarding a person belonging to SC/ST in relation to his original State of which he is a permanent or ordinary resident. While examining the said issue it was

held that such a person who belongs to SC/ST in one State of which he is a permanent or ordinary resident cannot deem to belong to SC/ST in relation to another State on his migration to that State for the purpose of employment, education, etc. The aforesaid conclusions were arrived at by the Constitution Bench of this Court after referring to the Government order wherein the expression "ordinary residence" came to be explained as residence which is not for the purpose of service, employment, education, confinement in jail, etc., and in short it means permanent and not a temporary residence. The Constitution Bench also referred to Section 20 of the Representation of Peoples Act, that so far as the Government of India is concerned, it has firmly held the view that a Scheduled Caste/Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for education purposes or the like, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State.

36. The order which is passed by the Tehsildar whereby he had finally cancelled the caste certificate of the appellant and which is the impugned order under challenge in the writ petition, was a detailed order giving cogent reasons for the decision rendered. The said order cannot be termed as an order passed by him at anybody's behest or at the dictation of his superior officer. The aforesaid order was passed independently exercising his own independent mind and upon detailed examination of the records. Therefore, the submission that the same was passed at the dictation of the higher authority or that the same was passed for extraneous consideration is baseless and without any merit.

37. The appellant has failed to prove and establish that he is an ordinary resident of Roorkee in the year 2002 when he made an application for his appointment to the post of Civil Judge [Junior Division] and also when he applied for and obtained the caste certificate. The caste certificate was initially issued to him without making a proper and detailed inquiry, and the Tehsildar proceeded on the basis of certain observation of two persons. A caste certificate is a very important and substantial document and, therefore, while granting the same a proper inquiry is required to be made by the Tehsildar which appears to have been not done in the present case, and the Tehsildar issued the said caste certificate to the appellant in a perfunctory manner and therefore, the same was cancelled by a detailed order giving cogent and valid reasons thereof.

38. Consequently, we find no infirmity in the judgment and order dated 13.08.2008, in writ petition no. 408 of 2006 passed by the High Court, upholding the order of the Tehsildar canceling the caste certificate of the appellant. The appeal filed by the appellant against the order dated 13.8.2008 of the High Court fails.

39. Consequently, the appeal filed by the State of Uttarakhand against the order dated 23.12.2005, passed by the High Court, setting aside the order of termination of the appellant in writ petition no. 413 of 2004 stands allowed in terms of this order.

40. In view of the aforesaid position, the appeal filed by the appellant against the order dated 23.12.2005, passed by the High Court in writ petition no. 413 of 2004, claiming payment of back wages is rendered infructuous, which is also dismissed in terms of this order.

Judgment Referred.

¹(1994) 5 SCC 0244