

SUPREME COURT OF INDIA

State of Orissa

Vs.

Bibhisan Kanhar

C.A.No.9124 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

17.07.2017

JUDGMENT

L.Nageswara Rao,J.,

SLP (C) No.7712 of 2016

1. Leave granted. The order for removal of the Respondent who was working as Farash in the office of the Revenue Divisional Commissioner, Central Division, Cuttack (Second Respondent) was set aside by the Orissa Administrative Tribunal, Cuttack. The judgment of the Tribunal was confirmed by the Division Bench of the High Court of Orissa at Cuttack. Aggrieved, the State of Orissa has filed this Appeal.

2. The Revenue Divisional Commissioner requested the Employment Officer of the Employment Exchange, Cuttack signal,tod sponsor five candidates belonging to the Schedule Tribe community and five from unreserved category for selection and appointment to the posts of Farash and Peon. On the basis of a caste certificate filed by the Respondent in the Employment Exchange, he was sponsored as a candidate belonging to a Schedule Tribe community (Kandha). The Respondent was appointed as a Farash in the office of the Second Respondent. As there was a doubt raised about the Respondent belonging to a Schedule Tribe, proceedings were initiated before the State Level Scrutiny Committee for verification of his caste certificate. He was also placed under suspension. After a detailed enquiry, the State Level Scrutiny Committee found that the Respondent did not belong to the "Kandha" tribe. His caste was "Pano", which is a Schedule Caste in the State of Orissa. The State Level Scrutiny Committee directed cancellation of the caste certificate issued in favour of the Respondent and also recommended initiation of criminal prosecution against him. The Committee further requested the disciplinary authority to take appropriate action against the Respondent for removal from service. After issuance of a show cause notice, the Respondent was removed from service by the Second Appellant.

3. Initially, the Respondent approached the High Court assailing the legality of the order of the State Level Scrutiny Committee as well as the order of removal. As the Respondent was

a civil servant, the High Court relegated the Respondent to the Central Administrative Tribunal and also gave him liberty to question the order passed by the State Level Scrutiny Committee cancelling his caste certificate. The Central Administrative Tribunal set aside the order of removal and directed reinstatement of the Respondent. The reasons given by the Tribunal for allowing the O.A. filed by the Respondent are that the Respondent was not appointed in a post reserved for Schedule Tribes and that there was no material to show that the Respondent forged the caste certificate for the purpose of procuring employment. The Writ Petition filed by the Appellants was disposed of by the High Court confirming the order of the Tribunal. The High Court reiterated the direction issued by the Tribunal to reinstate the Respondent. The High Court further directed that the Respondent was entitled for back wages at 50 per cent from 01.09.2014 till the date of his reinstatement. The only point that was found in favour of the Respondent by the High Court is that he was not appointed in a post reserved for Schedule Tribes. The Tribunal and the High Court directed the Respondent not to use his Schedule Tribe certificate in future.

4. We have examined the material on record and the submissions made by the learned counsel appearing for the parties. We are not in agreement with the judgment of the Tribunal as confirmed by the High Court that the Respondent is entitled for reinstatement for the following reasons:

“a) It is clear from the record that the Respondent was sponsored by the Employment Exchange as a candidate belonging to a Schedule Tribe community. His name would not have been sponsored but for the certificate which showed that he belongs to Schedule Tribes community.

b) The State Level Scrutiny Committee recorded a finding that the Respondent indulged in fraud in obtaining a certificate showing that he belongs to a Schedule Tribe. The Committee recommended action to be taken against the officer who had issued the certificate. The order passed by the State Level Scrutiny Committee has become final as it has not been set aside by any Court.

c) Though he was appointed in a post not reserved for Schedule Tribes, he would not have been in the zone of consideration if he did not produce the certificate showing that he belongs to Schedule Tribes.

d) The Tribunal has committed a serious error in recording a finding that there is no evidence to show that the Respondent has obtained the certificate only to procure employment.

e) It is clear from the facts that the Respondent fraudulently obtained a certificate showing that he belongs to Schedule Tribes community which stands cancelled by the order passed by the State level scrutiny committee. It was held by Denning, L. J. in *Lazarus Estates, Ltd. v. Beasley* (1956) 1 All E.R. 341, 345 that "No Court will allow a person to keep an advantage which he has obtained by fraud. [...] Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and

proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever".

5. For the foregoing reasons, the Appeal is allowed and the judgments of the Tribunal and the High Court are set aside. No costs.