

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3179 OF 2007

Shiv Pujan Prasad (Dead) by Lrs.

... Appellants

Versus

State of U.P. & Anr.

... Respondents

J U D G M E N T**K.S. Radhakrishnan, J.**

1. This appeal is being prosecuted by the widow and children of one Shiv Pujan Prasad who died pending this appeal. On the eve of his retirement, as an Executive Engineer, he was served with an order of dismissal *vide* Office Memo dated 29.7.2005 dismissing him from service following a disciplinary enquiry initiated under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999.

2. Shiv Pujan Prasad challenged the above mentioned order before the High Court of Allahabad, in Writ Petition No.5709/2005 and also sought a direction to disburse the entire post-retiral benefits including the provident fund, leave encashment, gratuity, group insurance, etc. and also the pension due to him.

3. Shiv Pujan Prasad was initially appointed as an Overseer in the Public Works Department of the State of Uttar Pradesh on 25.06.1971. While entering service he produced a certificate dated 22.02.1971 issued by the Sub-Divisional Magistrate, Chakia, showing that he belonged to 'Manjhi' (Majhwar) Community, a scheduled caste. The post of Overseer was subsequently designated as Junior Engineer and he was confirmed in that post on 14.01.1974. On 01.04.1978, Shiv Pujan Prasad was awarded selection grade. Later, on 27.1.1982, he was promoted as an Assistant Engineer, a post reserved for scheduled castes. The Chief Engineer, however, subsequently passed an order reverting him to the post of Junior Engineer on the ground that he did not belong to the scheduled caste community. Aggrieved by the order of reversion, Shiv Prasad preferred Writ Petition No.4080 of 1984 before the Lucknow Bench of the Allahabad High Court which was dismissed on 24.08.1984. Shiv Pujan Prasad brought up the matter before this Court, by way of appeal by special leave, in Civil Appeal No.2964/1985. It was contended before this Court that the caste status of Shiv Pujan Prasad was determined without giving him any effective opportunity to submit his defence. Counsel appearing for the State of Uttar Pradesh fairly conceded to that fact. This Court, therefore, set aside the impugned order and directed the District Collector, Varanasi,

to hold a fresh enquiry after giving reasonable opportunity to Shiv Pujan Prasad to defend his case. Shiv Pujan Prasad was also permitted to hold the post of Assistant Engineer, and it was ordered that his further posting would be governed by the outcome of the enquiry which was directed to be completed within two months.

4. Pursuant to the directions of this Court, a fresh inquiry was held by Collector, Varanasi, through Sub-Divisional Officer, Chakiya, Varanasi. It was found that Shiv Pujan Prasad belonged to "Manjhi" (Majhwar) by caste, which is a scheduled caste. A copy of the report dated 25.8.1985 was submitted by the Sub-Divisional Magistrate to the District Magistrate, Varanasi. The District Magistrate, Varanasi, referring to the judgment of this Court in Civil Appeal No.2964 of 1985 forwarded a communication to the Registrar of Supreme Court of India, enclosing a copy of the order passed in pursuance of the directions of this Court. A copy of the letter was also forwarded to the Special Secretary, Government of Uttar Pradesh, Public Works Department, Section 8, Lucknow.

5. Shiv Pujan Prasad had to file a contempt petition before this Court since authorities did not permit him to function as Assistant Engineer in spite of the determination of his caste as ordered by this Court. The

Respondents had to express their unconditional apology for not complying with the order of this Court. Accepting the apology, the contempt proceedings were dropped by this Court *vide* order dated 27.11.1987, Shiv Pujan Prasad was permitted to resume work as an Assistant Engineer and continued in service. He was promoted as Executive Engineer *vide* order dated 02.02.1985.

6. The State Government later received a complaint dated 03.02.1998 from the General Secretary of an Association called Kisan Sangharsh Samiti, Mirzapur, Sonbhadra, questioning the caste status of the appellant. Another complaint was registered before the Uttar Pradesh Schedule Caste and Schedule Tribe, Commission, by the All India SC, ST, Backward Classes and Minority Employees Welfare Association, Pipri, on 20.04.1999. The Commission ordered yet another enquiry on the caste status of Shiv Pujan Prasad under Section 11 of U.P. Schedule Caste and Schedule Tribe Commission Act, 1995. Enquiry revealed that Shiv Pujan Prasad belonged to "Mallah" community which is a backward community and that he did not belong to "Manjhi" community which is a Scheduled Caste. Pointing out that Shiv Pujan Prasad had obtained appointment on the basis of forged caste certificate, an FIR was lodged against him by the Department for an offence punishable under Section 420 IPC. Shiv Pujan

Prasad was then placed under suspension pending disciplinary proceedings. The Enquiry Report held that Shiv Pujan Prasad got appointment on the basis of forged caste certificate in which the caste “Manjhi” was written in place of “Mallah” and got several promotions in the service. The Government accepted the report and dismissed Shiv Pujan Prasad from service on 29.7.2005, two days prior to the date of his superannuation. The correctness of that order is in issue before us.

7. Shri Dinesh Dwivedi, learned senior counsel appearing for the appellants submitted that the respondents have committed a grave error in dismissing Shiv Pujan Prasad from service few days before his retirement. Learned counsel submitted that the correctness or otherwise of the certificate issued on 22.02.1971 by the District Magistrate holding that Shiv Pujan Prasad belonged to “Manjhi” community, which was a Scheduled Caste, was the specific issue before this Court in Civil Appeal No.2964/1985. This Court ordered a fresh enquiry by the Collector, Varanasi, which was endorsed by the learned counsel appearing for the State Government as well. Consequently, the Collector was directed to conduct a fresh enquiry with regard to the genuineness of the caste certificate issued on 22.02.1971. Enquiry revealed that the certificate issued on 22.02.1971 was in order. Later Shiv Pujan Prasad was also

promoted as Assistant Engineer and thereafter as Executive Engineer. The matter, therefore, attained finality. In such a situation learned counsel submitted that there was no justification in re-opening an issue at the instance of the third party, that too after a decade.

8. Shri Pramod Swarup, learned senior counsel for the respondents submitted that Shiv Pujan Prasad was guilty of forging the caste certificate, thereby entered service in the PWD Department and, accordingly, got further promotions in service. Learned senior counsel submitted that the respondents were therefore justified in conducting a detailed enquiry in spite of the earlier enquiry conducted on the basis of the direction of this Court.

9. We fail to see how the State Government can conduct a fresh enquiry when this Court had specifically directed the District Collector to conduct an enquiry to determine the caste status of Shiv Pujan Prasad, who found that he belonged to "Manjhi" caste which was accepted by the Department as a consequence of which he was taken back and continued in service and was even given further promotions. Further, the Division Bench of the Allahabad High Court has also recorded a clear finding that Shiv Pujan Prasad had not forged his caste certificate dated 25.08.1985

showing his caste as “Majhwar” or “Manjhi” belonging to the scheduled caste and that he had not forged his earlier caste certificate issued on 22.02.1971. The Division Bench also recorded a clear finding rejecting the contention of the respondents that Shiv Pujan Prasad had earlier obtained caste certificate fraudulently by playing fraud or misrepresenting the authorities and held that such a contention was wholly misconceived and misplaced. The High Court also expressed the opinion that the criminal prosecution initiated against Shiv Pujan Prasad on the basis of the report of the Sub-Divisional Magistrate dated 30.03.2000 was not justified under law. The findings recorded by the Division Bench have not been challenged by the respondents before this court and hence those findings have become final. In such a situation, we fail to see how the respondents can re-open the entire issue which was given a quietus in the year 1985 that too at the instance of a third party. On the strength of the order passed by the authorities, Shiv Pujan Prasad was promoted as Assistant Engineer and later as Executive Engineer and few days before his retirement he was dismissed from his service, which in the facts and circumstances of this case was totally unjustified.

10. We have already indicated that while this matter was pending before this Court, Shiv Pujan Prasad died and, therefore, wife and children

are claiming entire post retiral benefits including the provident fund, leave encashment, gratuity, group insurance, etc. and also the pension due to him which have been denied to them, which they are entitled to get. For the reasons stated above we are inclined to allow this appeal and set aside the judgment of the High Court passed in Writ Petition No.5709/2005 and also the order of dismissal dated 29.07.2005. There will be a further direction to the respondents to disburse entire post-retiral benefits including the provident fund, leave encashment, gratuity, group insurance, etc. and also the pension due to Shiv Pujan Prasad to the appellants forthwith.

11. We record these findings in view of the peculiar facts and circumstances of the case and that this judgment shall not be treated as a final determination of the caste status with reference to the legal heirs of Shiv Pujan Prasad. Appeal is allowed, as above.

.....J.
(R.V. Raveendran)

.....J.
(K.S. Radhakrishnan)

New Delhi;
November 30, 2009.