

CASE NO.:
Appeal (civil) 6120 of 2000

PETITIONER:
U.P. Public Service Commission, Allahabad

RESPONDENT:
Sanjay Kumar Singh

DATE OF JUDGMENT: 11/08/2003

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

JUDGMENT

With

CIVIL APPEAL NO. 2001 OF 2003

(Arising out of Special Leave Petition (Civil) No. 16466 of 2001)

State of U.P. Appellant

Versus

Sanjay Kumar Singh Respondent
P. Venkatarama Reddi, J.

Delay condoned and leave granted in S.L.P.(Civil) No. 16466 of 2001 filed by the State of U.P. Aggrieved by the judgment of the High Court at Allahabad, the present appeals are preferred by the U.P. Public Service Commission and the State of U.P. Pursuant to an advertisement issued on 31.12.1994 by the U.P. Public Service Commission for Combined State/Upper Subordinate Examination, the respondent herein submitted his application as a Scheduled Tribe candidate. He passed the preliminary and main examination held in June/July, 1996. He was called for interview for consideration to the post of History Lecturer in the vacancy reserved for Scheduled Tribes. In the results published on 14.11.1996, the respondent was declared successful. However, it is the case of the Service Commission that on a recheck of the documents furnished by the respondent, it was found that the Naga tribe to which the respondent belongs is not a recognised Scheduled Tribe in the State of U.P. In the Presidential order issued under Article 342 of the Constitution as well as the State Government's notification, only five tribes are mentioned as Scheduled Tribes. Therefore, the appellant-U.P. Public Service Commission did not send up its recommendation for recruitment of the respondent. At the same time, on 1.7.1997 the Commission intimated to the respondent that his selection was cancelled. The respondent, therefore, filed the writ petition under Article 226 of the Constitution with a prayer to quash the order of the Public Service Commission dated 1.7.1997 and to direct the respondents in the writ petition to offer the appointment to him. This writ petition was allowed by the impugned judgment of the Division Bench of the High Court. The High Court was of the view that there was no bar under any of the provisions to extend the benefit of reservation to Scheduled Tribe candidates of other States. The High Court observed:

"There is no law and no provision has been brought to the notice of the Court which will limit the said reservation quota to be extended only to citizen of the State of U.P."

The High Court directed the State of U.P. to offer the appointment to the respondent on the footing that he is a S.T. candidate.

It is not in dispute that Naga tribe is not specified as one of the Scheduled Tribes in the State of U.P. The respondent claimed that his forefathers were residents of Old Ngaulong village of Kohima District in Nagaland and they initially migrated to Chhapra in Bihar and the father of the respondent shifted his residence to Allahabad and after rendering service in the Army, settled down at Allahabad. The respondent, pursued his studies in Allahabad. Based on the certificates issued by the Nagaland authorities, the Tehsildar, Sadar, Chial Tehsil, Allahabad issued a certificate on 18.1.1996 to the effect that the respondent "has been accorded recognition as Scheduled Tribe-Naga as per the Scheduled Tribes Order of 1970 relating to Nagaland".

Thus, the certificate affirms the fact that respondent is a Naga tribal which is a notified Scheduled Tribe in the State of Nagaland. During the pendency of the writ petition, the genuineness of the certificate issued by the Nagaland authorities was confirmed through enquires made with the Nagaland authorities. The question is whether respondent can claim the benefit of reservation in public service in the State of U.P. as a member of Scheduled Tribe though 'Naga' is not specified to be a Scheduled Tribe in that State.

It may be noted that the reservation in favour of Scheduled Tribes to the extent of 2% is provided for by the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994. There is no particular definition of 'Scheduled Tribe' in the Act. However, the term 'Scheduled Tribe' can only be understood in accordance with the provisions of Article 342 read with the notifications issued thereunder as interpreted by this Court.

The question arising in this case is no longer res integra. Almost the same question was considered in Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra Vs. Union of India [(1994) 5 SCC 244]. The following question arose for consideration:

"Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B?"

The Constitution Bench answered that question in the negative. Interpreting Articles 341 and 342, the Court observed: "What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified."

After referring to another decision of the Constitution Bench in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College [(1990) 3 SCC 130], Ahmadi, J. speaking for the Court observed thus: "We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes

in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

The ruling in the above case applies with greater force to the present case for the reason that it is not the case of the writ petitioner that there is any caste or tribe bearing the same nomenclature of 'Naga' in U.P. State. In Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College case, supra, it was pointed out that the "Scheduled Castes and the Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to, in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas." The same view was taken in a recent decision in Municipal Corporation of Delhi Vs. Veena [(2001) 6 SCC 571], though it was a case of OBCs. Suffice it to quote the following passage occurring in that judgment.

"The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different." (per Rajendra Babu, J.)

Reliance was placed by the respondent's counsel on the Government of India, Home Ministry's Circular dated 25.11.1982 which enables the concerned authorities of the State to which the Scheduled Tribes migrated, to issue the S.C. and S.T. certificates. This Circular and the later clarification were also referred to in Action Committee case (supra) and the Court observed thus: "By this clarificatory order forwarded to Chief Secretaries of all States/Union Territories, the only facility extended was that the prescribed authority of the State/Union Territory to which a person had migrated was permitted to issue the certificate to the migrant on production of the genuine certificate issued to his father by the prescribed authority of the State of the father's origin provided that the prescribed authority could always

enquire into the matter through the State of origin if he entertained any doubt. The certificate to be so issued would be in relation to the State/Union Territory from which the person concerned had migrated and not in relation to the State/Union Territory to which he had migrated. Therefore, the migrant would not be entitled to derive benefits in the State to which he had migrated on the strength of such a certificate. This was reiterated in a subsequent letter dated 15.10.1987 addressed to Smt. Shashi Misra, Secretary, Social Welfare, etc., in the State of Maharashtra. In paragraph 4 of that letter it was specifically stated:

"Further, a Scheduled Caste person, who has migrated from the State of his origin, which is considered to be his ordinary place of residence after the issue of the first Presidential Order, 1950, can get benefit from the State of his origin and not from the State to which he has migrated."

* * * * *

It will thus, be seen that so far as the Government of India is concerned, since the date of issuance of the communication dated 22.3.1997, 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 educational 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."

The contention of the appellants should therefore be accepted and the appellant cannot be treated as a Scheduled Tribe candidate so as to qualify himself to claim reservation against the vacancy reserved for Scheduled Tribe in public services in the State of U.P. The view of the High Court cannot be sustained as it goes counter to the pronouncements of this Court. Hence it is set aside and the appeals are allowed without cost. However, in the peculiar circumstances of the case, the ends of justice would be met if the appellants are directed to consider the case of the respondent in general category and if in comparison with the general category candidates selected, the respondent had secured higher marks/grading, he should be offered appointment to an appropriate post against one of the existing vacancies.