IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

®

DATED THIS THE 01ST DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

WRIT PETITION NO. 205994 OF 2014 (GM-CC)

BETWEEN:

DR. GUDDADEV S/O GOLLAPPA YADRAMI
AGE: 56 YEARS, OCC:MEDICAL OFFICER,
GOVT. AYURVEDIC MEDICAL COLLEGE MYSORE,
R/O MYSORE.

...PETITIONER

(BY SRI T. H. AVIN ,ADVOCATE)

AND:

1. THE DIRECTOR,
   SCHEDULE TRIBES WELFARE & APPELLATE
   AUTHORITY,
   KRISHI BHAVAN, II FLOOR,
   HUDSON CIRCLE, BANGALORE-1.

2. THE CHAIRMAN CASTE VERIFICATION COMMITTEE
   THE DEPUTY COMMISSIONER,
   GULBARGA DISTRICT, GULBARGA.

3. THE STATE OF KARNATAKA
   THROUGH PRINCIPAL SECRETARY,
   DEPARTMENT OF HEALTH AND FAMILY WELFARE,
   VIKASA SOUDHA,
   BENGALURU-1.

4. SRI.KRISHNAMURTHY NAIK,
   S/O JAYARAM NAIK
   AGED ABOUT 26 YEARS, OCC : NIL,
   R/O : HARNALLI VILLAGE,
   BEHIND KALIKAMBA TEMPLE,
   TQ : ARSIKERI, DIST : HASSAN.

5. SRI.C.B.NANJARAJU,
S/O LATE C.S.BASAVEGOUDA,
AGED ABOUT 51 YEARS,
OCC : DISTRICT AYUSH OFFICER,
GOVT. AURVEDIC AND HOMEOPATHIC HOSPITAL,
HOSALANE ROAD,
DIST : HASSAN.

6. THE DISTRICT SOCIAL WELFARE OFFICER
CUM-MEMBER SECRETARY,
CASTE VERIFICATION COMMITTEE,
GULBARGA DISTRICT,
GULBARGA-1.

7. THE TAHSILDAR,
GULBARGA TALUK,
DISTRICT: GULBARGA-1

8. THE ADDL. DIRECTOR GENERAL OF POLICE,
CRE CELL, PALACE ROAD,
BANGALORE-01.

9 THE DIRECTOR OF AYUSH DEPARTMENT
(AYURVEDA, YOGA, UNANI, SIDDA,
NATUROPATHI, HOMEOPATHI),
DHANVANTHARI ROAD,
BENGALURU-560009.

…RESPONDENTS

(BY SRI C. JAGADISH, SPL. GOVT. ADVOCATE
FOR R1 TO R3, R6 TO R9; R-4 SERVED;
SRI HULEPPA HEROOR, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO (A)ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER PASSED BY RESPONDENT NO.1 IN DSTW/APPEAL CR-2/2011-12 DATED 11.09.2014 PRODUCED AT ANNEXURE-A, IN THE INTEREST OF JUSTICE AND EQUITY. (B) ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER PASSED BY RESPONDENT NO.1 IN DSTW/APPEAL CR-1/2011-12 DATED 11.09.2014 PRODUCED AT ANNEXURE-A1, IN THE INTEREST OF JUSTICE.

THIS WRIT PETITION IS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri T.H.Avin, learned counsel for the petitioner, Sri Huleppa Heroor, learned counsel for respondent No.5 and Sri C.Jagadish, learned Special Government Advocate.

2. The writ petition is filed with the following reliefs:

(a) Issue a writ of certiorari quashing the impugned order passed by respondent No.1 in DSTW/ AppealCR-2/2011-12 dated 11.09.2014 produced at Annexure-A, in the interest of justice.

(b) Issue a writ of certiorari quashing the impugned order passed by respondent No.1 in DSTW/AppealCR-1/2011-12 dated 11.09.2014 produced at Annexure-A1, in the interest of justice.

(c) Pass any other writ, order or direction, as deemed fit by this Hon'ble Court.

[sub para No.(d) of prayer column mentioned below is added in this petition as per order of this Hon'ble Court on I.A.No.1/2016, dated 26.06.2023]

(d) Issue a writ of certiorari quashing the impugned cancellation of the Caste Certificate dated

12.05.2016 vide Annexure-P passed by the respondents, in the interest of justice and equity.

[sub para No.(e) of prayer column mentioned below is added in this petition as per order of this Hon'ble Court on I.A.No.2/2017, dated 26.06.2023]

(e) Issue a writ of certiorari quashing the impugned order bearing No.Sam/Kam/Sankirna-2/611/2014-15, dated 13.10.2015 vide Annexure-Q, passed respondent No.7 cancelling the Caste Certificate of the petitioner, in the interest of justice and equity.

[sub para No.(f) of prayer column mentioned below is added in this petition as per order of this Hon'ble Court on I.A.No.2/2023, dated 26.06.2023]

(f) Issue a writ of mandamus directing respondents No.3 & 9 to reinstate the petitioner notionally into service, to the post held by the petitioner immediately before he was dismissed from service, and treat him as deemed to have been continued in service and retired on attaining the age of superannuation on 31.05.2018 and to provide all service benefits including arrears of salary, leave salary, promotions, pension benefits, gratuity, GPF, GIS etc., in the interest of justice and equity."

3. Facts in brief which are utmost necessary for disposal of the writ petition are as under:

Petitioner was appointed as Ayush Medical Officer on 04.09.1995 and he worked in different places. Admittedly, petitioner was appointed as against a post which was reserved for 'Scheduled Tribe' person. To meet the requirements, petitioner produced the caste certificate that he belongs to 'Gonda' community which is a Scheduled Tribe community. Petitioner produced the caste verification certificate issued by the District Caste Verification Committee. Based on the document produced by the petitioner, his appointment was confirmed.

4. Thereafter, based on the complaint given by respondent Nos.4 and 5, there was an enquiry with regard to caste certificate produced by the petitioner.

5. Petitioner contended that in the District of Gulbarga, 'Kuruba' community and 'Gonda' community are one and the same and the words 'Kuruba' and 'Gonda' are used as synonyms. Subsequent to the year 1993, there were serious

disputes that 'Kuruba' community is a distinct community, though both communities are one and the same communities. Thereafter, the State Government, as early as on 10.02.1997 recommended to the Government of India to include 'Kuruba' community of Gulbarga District to be included as Scheduled Tribe community which is nothing but synonym of 'Gonda' community. The State Government had also issued a Government Order that persons belonging to 'Kuruba' community in Gulbarga district shall not be liable for penal or disciplinary action for having obtained a caste certificate as they are belonging to 'Gonda/Rajagonda' community on 02.09.1986. When the matter stood thus, enquiry was held as to which caste the petitioner belongs to and Orders at Annexures-A and A1 came to be passed. The operative portions of Annexures-A and A1 read as under:

Annexure-A:

> *"In view of the reasons stated above, I hold that the respondent No.5 belongs to 'Kuruba' community, which is notified as Backward Class Category II-A and does not belong to 'Gond' Scheduled Tribe community. Accordingly, the validity certificate issued in favour of respondent*

No.5 dated 06.10.1994 vide No.153/94-95 and also the caste certificate issued by the respondents 1 to 3 are hereby directed to cancel the Certificate. Appeal filed by the appellant is allowed."

Annexure-A1:

In view of the reasons stated above, I hold that the respondent No.7 belongs to 'Kuruba' community, which is notified as Backward Class Category II-A and does not belongs to 'Gond' Scheduled Tribe community. Accordingly, the validity certificate issued in favour of respondent No.7 dated 07.10.1994 vide No.153/94-95 and also the caste certificate issued by the respondents 3 to 5 are hereby directed to cancel the Certificate. Appeal filed by the appellant is allowed."

6. Those orders are called in question in this writ petition.

7. Sri T.H.Avin, learned counsel for the petitioner, reiterating the grounds urged in the writ petition, vehemently contended that in Kalaburagi District, 'Kuruba' community people are also called as 'Gonda' community persons and the words 'Kuruba' and 'Gonda' are synonyms used in peculiar to Kalaburagi and therefore, there is confusion among general public which is rightly appreciated by State Government while

making a recommendation to the Government of India to include 'Kuruba' community as also part of Scheduled Tribe community and Government of Karnataka had also realized the factual aspects which are prevalent and peculiar to Kalaburagi and got issued the Government Order on 02.09.1986 and sought for considering the case of the petitioner as an appointment in the general category and settled the retirement benefits.

8. He also contended that if the petitioner and similarly placed persons were confused with their caste, they cannot be penalized, that too, at this distance of time and sought for allowing the writ petition.

9. He also brought to the notice of the Court that the District Caste Verification Committee which issued the Caste Certificate at the first instance did not find that the petitioner is not a Scheduled Tribe person and therefore, Caste Certificate issued by the competent authorities was approved by the District Caste Verification Committee and therefore, petitioner cannot

be now called upon with regard to validity of the caste certificate and sought for allowing the writ petition.

10. Per contra, Sri C.Jagadish, learned counsel representing the respondent Nos.1 and 2 contended that the Government Order which has been issued by the State Government dated 02.09.1986 has been called in question in several writ petitions and co-ordinate Benches of this Court as well as the Division Benches have held that Government has no power whatsoever to pass a Government order or issue Circular which is against the principles of constitutional mandate and statutory provisions and therefore, same are not of any avail in getting the benefit of the said Circular.

11. He also pointed out that the Apex Court has considered the said aspect of the matter in the case of ***State of Maharashtra and others vs. Ravi Prakash Babulalsing Parmar and another*** reported in ***(2007)1 SCC 80***, especially, with regard to implication of false certificates obtained by unscrupulous elements and in para-23 of the said Judgment, it is held as under:

> *"The makers of the Constitution laid emphasis on equality amongst citizens. The Constitution of India provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter."*

12. Sri C.Jagadish, learned Special Government Advocate also pointed out that the Apex Court, in the case of ***Shoba Lakshmi vs. Divisional Commissioner and others (In Special Leave to Appeal (Civil) No.138/2013 dated 28.01.2013)***, has held as under:

> *"Be that as it may, there was certain confusion in regard to treating 'Maleru' and 'Maaleru' as Scheduled Tribe. The said fact has been settled stating that 'Maleru' alone belongs to Scheduled*

Tribe and not 'Maaleru'. A Co-ordinate Bench of this Court in W.A. No.4023/2004 and other connected writ appeals has decided that 'Maaleru' does not belong to Scheduled Tribe and that such candidates cannot claim the benefit of Scheduled Tribe and therefore, the said question is no more a res-integra. The Judgment relied upon by the learned Counsel for the appellant in Union of India Vs. H. Ramakrishna is also not helpful to the appellant in view of the subsequent judgment of the Hon'ble Supreme Court which are relied upon by the learned Counsel for the appellant. When the order of the State Government cannot be extended to the central Government Employees as ruled by the Hon'ble Supreme Court in Addl. General Manager - Human Resource, Bharat Heavy Electricals Ltd., Vs. Suresh Ramkrishna Burde [(2007) 5 SCC 336]. It is clear that the appellant cannot contend that in view of the order of the Government dated 11th March 2002, the appellant's appointment has been saved because the Parliament has not declared 'Maaleru' as Scheduled Tribe to save the appointment of the appellant based on the order of the State of Karnataka. In addition to that, by the order of the State a right vested under Articles 341 and 342 of the Constitution of India cannot be diluted and cannot be taken away."

13. He also pointed out that, if a person has obtained a caste certificate by making false representation at the inception, no benefit could be granted to such person at a future point of time. At the inception itself, fraud has been played on the authorities and appointment has been obtained and therefore, writ petition has to be dismissed.

14. He further pointed out that mere delay or at the instance of the complaint of respondent Nos.4 and 5, initiation of action of cancellation of the caste certificate is thus, just and proper and sought for dismissal of the writ petition.

15. Sri Huleppa Heroor, learned counsel adopts the arguments advanced by Sri C.Jagadish, learned Special Government Advocate.

16. In reply, Sri T.H.Avin, learned counsel for the petitioner vehemently contended that in the case of ***Shoba Lakshmi*** supra, the factual aspects are different inasmuch as 'Maleru' community was called in question and that there was no confusion that 'Maleru' was mistaken for any other community

and therefore, said judgment is not applicable to the facts of the present case.

17. He further emphasized that in Kalaburagi District, 'Kuruba' and 'Gonda' are always used as synonyms and therefore, there was a confusion in the minds of the people belonging to both the communities and therefore, principles of law enunciated in ***Shoba Lakshmi*** case supra is not applicable to the facts of this case and it can be distinguished and sought for allowing the writ petition.

18. Having heard the learned counsel for the parties, perused the material on record, meticulously.

19. Before adverting to the factual aspects of the matter, this Court also directed on the previous date of hearing, to the petitioner to furnish his 10th standard marks card.

20. Sri T.H.Avin, learned counsel for the petitioner took time to place on record the original 10th standard marks card of the petitioner. However, he has failed to produce the original on the ground that same is misplaced. In the place of original

marks card, he has furnished the photocopy of the true copy of 10th standard marks card. So also, he has furnished the photocopy of the application for admission to Pre University class for second year Science to S.B.Arts and KCP Science P.U.College, Bijapur.

21. While filling up the said application in hand by the petitioner, he has mentioned in column 'community and caste' as 'Hindu (Kuruba)' and in column B, he has specifically stated that 'I belong to community backward classes'. It is pertinent to note that the said document has come into being at an undisputed point of time when the petitioner was a student. This Court, on 07.01.2015, has passed an order, as under:

> *"Heard both sides.*
>
> *The first respondent filed an application for vacating interim order. This Court by its order dated 01.12.2014 granted interim order staying the operation of the order Annexure A and A1 dated 11.09.2014 of the Appellate Authority. Thereafter, on 15th December 2014 stay was not extended.*
>
> *Learned counsel for the petitioner claims that his case is for consideration on the basis of the Transfer Certificate dated 06.11.2007 wherein it is*

referred as 'Hindu Kurubar Gonda'. The case of the petitioner was examined by the statutory appellate authority as per Annexure-A and held against the petitioner by holding that he does not belong to Gonda community, which is classified as ST. The transfer certificate dated 06.11.2007 wherein the caste of the petitioner is named as Hindu-Kurubar-Gonda is neither certified nor the original and the petitioner has not stated as to from what source he has obtained certificate. Until and unless the source is disclosed, it is to bee treated as a stolen document.

Interim order of stay stands vacated.

At the request of petitioner's counsel list the matter for hearing on 12.01.2015."

22. In pursuance thereof, in order to remove the lable that documents at Annexures-J and K are stolen documents, petitioner has produced the original Transfer Certificate issued in original along with a memo on 09.03.2023. The said documents are marked as Annexures-J1 and K1. This Court, perused the said documents, carefully.

23. Admittedly, Annexures-J1 and K1 does not bear the date on which the Head Master has signed them. But, on the

documents, it is found that they are issued on 06.11.2007. The application that has been filed by the petitioner is while he joining 2nd year PUC is dated 14.07.1975. Annexures-J1 and K1 are admittedly prepared based on the information given by the petitioner. If he has stated in col.7 of Annexures-J1 and K1 that he belongs to 'Hindu Kurubara Gonda', what prevented him to mention that he belongs to 'Hindu Kurubara Gonda' when he applied for admission into college while filling up the application in the year 1975 is a question that has remained unanswered.

24. When these aspects of the matter are taken into consideration cumulatively in the light of the arguments that has been put forth on behalf of the parties, since the petitioner did not want to utilize the benefit of 'Scheduled Tribe' when he joined the college by filling up the application on 14.07.1975, how he can make use of his caste for the purpose of getting an employment as 'Scheduled Tribe' is again a question that remains unexplained by the petitioner.

25. How a person who has declared himself that he belongs to a community of backward classes would transform himself into a 'Gonda' Scheduled Tribe community at the time of employment is again a question that remained unexplained on behalf of the petitioner.

26. If confusion were to be there as to caste and petitioner wanted to take advantage of his caste based on the confusion, nothing prevented the petitioner to mention in the application while joining the college that he belongs to 'Hindu Kurubara Gonda' and should have obtained the benefit of Scheduled Tribe at the time of joining the college where he was not even required to pay any fee.

27. Documents produced today would also go to show that petitioner has sought for permission to pay fee at a later point of time on account of poverty. Request in this regard was furnished along with application wherein petitioner has stated that he hails from a poor background and therefore, he cannot pay Rs.100/- at the time of admission. However, he has sought for time till August 15th to pay the said registration fee

of Rs.100/- and he has signed the said application and Principal of the College has approved for late payment.

28. If petitioner were to be a person belonging to Scheduled Tribe and required to get admission in the College on 14.07.1975 on the basis of he being a 'Kuruba' which is also called as 'Gonda' as is contended by the learned counsel for petitioner, there was no necessity of filing an application to the Principal seeking extension of time to pay Rs.100/-.

29. These aspects of the matter at an undisputed point of time attributable to petitioner alone would falsify all his contentions in the writ petition.

30. Pertinently, these documents were not furnished by the petitioner at the time of filing writ petition. It shows that petitioner has not approached this Court with clean hands and he has suppressed the material facts some how to get a favourable Order.

31. Be it what it may. Petitioner has obtained employment as Ayush Medical Officer representing himself as a person

belonging to 'Scheduled Tribe'. When petitioner has pursued his education as a person belong to backward class community knowingfully well that he does not belong to 'Scheduled Tribe', he suppressed the material facts and was able to get an employment as 'Scheduled Tribe' person by not only creating a false document in the form of caste certificate and produced before the employer and gained himself, but also denied a fair chance of a Scheduled Tribe person being appointed for the said post. Therefore, petitioner is to be non suited for the writ prayer only on the ground of suppression of material facts.

32. Further, having said thus, when respondent Nos.4 and 5 complained that petitioner does not belong to 'Scheduled Tribe', as a fair person, petitioner should have resigned from the job. Instead, he continued to contest the matter and matter was taken to concerned authorities and enquiry was held. In the enquiry, petitioner was the respondent before the Director of Scheduled Caste and Scheduled Tribe Welfare Appellate Authority, contested the matter all along and maintained that he belongs to Scheduled Tribe community. The said contention taken by the petitioner before the Director of Scheduled Caste

and Scheduled Tribe Welfare Appellate Authority was up against the records that he has furnished all along during his education days.

33. Before the Appellate Authority also, petitioner did not chose to produce the 10th standard marks card or College records for the reasons best known to him and continued to maintain that he belongs to 'Scheduled Tribe'.

34. It is settled principles of law that a party to a litigation cannot approbate and reprobate from his stand taken before the quasi judicial authority to suit to his convenience.

35. In the case on hand, petitioner having suppressed the material facts before the Appointing Authority at the time of his employment and has produced the caste certificate knowingfully well that he belongs to 'Kuruba' and managed to get a certificate that belongs to 'Gonda' community and hanging on to that certificate before the Appellate Authority only shows that some how petitioner wanted to take benefit of caste certificate and employment. Such a person cannot be shown any mercy or lenience.

36. These aspects of the matter has been considered by the Appellate Authority especially in the light of the arguments put forth on behalf of the parties and passed the Orders at Annexures-A and A1 which are called in question in this writ petition.

37. The question of delay in taking the action cannot be taken advantage by the petitioner inasmuch as if a fraud has been committed by a person at the inception and obtained benefit thereof, there cannot be any limitation to question the said fraudulent act. A fraudulent document is *non est* from the beginning and any benefits taken thereof cannot also be countenanced in law on the ground of delay and mercy.

38. In the case on hand, since caste certificate was called in question and *prima facie* it has been established that caste certificate of the petitioner is a fraudulent one, petitioner has been dismissed from service. Petitioner has also amended his prayer in this writ petition and has sought for benefits to be granted to him for the years that he has rendered the service.

39. Since the very appointment of the petitioner itself is based on a fraudulent caste certificate that has been issued as Annexures-A and A1 and also having regard to the discussion made supra, this Court is of the considered opinion that none of the reliefs sought for by petitioner can be granted.

40. Accordingly, the writ petition is ***dismissed*** as devoid of merits.

Sd/-
JUDGE

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LIST NO.: 1 SL NO.: 55