

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH

Appeal From
Writ Petition (Civil)

WA No. 22 (AP) 2015
IN
WP(C) 445 (AP) 2014

Appellant
Petitioner.

The State of A.P.

-Versus-

Respondent
Opposite Party.

Shri Putul Chandra Deori.

Counsel for the Appellant

Petitioner. Ms. G.Deka, Sr. G.A.

Counsel for the Respondent
Opposite Party.

MR A. Apang Sr. Advocate
MS. N. Anju
B. Taku
R. Wangmo
K. Ribal
A. Apang
A. Mibang

Noting by Officer	Date	Serial No.	Page	Office note, reports, orders or proceeding with signature
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This today at				

IN THE MATTER OF :-

The State of Arunachal Pradesh
represented by the Commissioner/
Secretary, to the Govt. of Arunachal
Pradesh, Department of Agriculture,
Itanagar.

..... ***Appellant.***

-Versus-

Shri Putul Chandra Deori
S/o Late S.R Deori
Resident of Mahadevpur-II
P.O Mahadevpur, District-Lohit
Arunachal Pradesh.

..... ***Respondent.***

WA 22(AP)2015 in WP(c) 445(AP)2014

:::BEFORE:::

**HON'BLE MR. JUSTICE SUMAN SHYAM
HON'BLE MR. JUSTICE AJIT BORTHAKUR**

28.03.2017

(Borthakur, J.)

Heard Mr. Duge Soki, learned Addl. Senior Government Advocate, learned counsel for the appellant-State of Arunachal Pradesh.

Also heard Mr. Ajin Apang, learned senior counsel, assisted by Ms. Nani Anju, learned counsel, appearing for the petitioner.

Brief facts leading to the filing of this appeal is that the respondent as the writ petitioner, approached this Court by filing WP(c)445(AP)2014, for a direction for setting aside the letter dated 11.11.2014 issued by the Director of Agriculture, Government of Arunachal Pradesh, Naharlagun, in non-considering the petitioner for promotion to the post of Agriculture Development Officer(ADO). The writ petitioner had contended that inspite of holding of a valid "Scheduled Tribe" certificate, he has not been considered as "Arunachal Scheduled Tribe" and thereby, has been deprived from promotion to the post of ADO while his juniors have been promoted in 1993.

To the above writ petition, the State Respondents had filed the affidavit-in-opposition.

Upon hearing the matter, the learned single Judge, vide judgment & order, dated 25.05.2015, directed the respondents to consider the case of the petitioner for promotion to the post of ADO from the date when his immediate juniors were promoted, by applying the same yardsticks, parameters and norms and the petitioner's pay be notionally fixed. Being aggrieved, the State of Arunachal Pradesh has filed the instant Writ Appeal, on various grounds.

By relying upon the Constitution (Scheduled Tribes) Order, 1950, Mr. Soki, learned Addl. Senior Government Advocate, has brought to the notice of this Court that the Deori Tribe is listed at serial No. 3 of Part II-Assam.

Learned Addl. Senior Government Advocate has also relied upon the case of *Debananda Deori -vs- State of Arunachal Pradesh & ors.*, as reported in **1997(3) GLT 151**.

Mr. Apang, learned senior counsel for the writ petitioner, has placed before this Court, the letter, dated 02.06.2010, issued by the Office of the Director of Census Operations, Arunachal Pradesh, wherein the alphabetical list of the Scheduled Tribes of Arunachal Pradesh was enclosed. A perusal of the same reflects that Deori Tribe has been listed at Serial No. 21.

Mr. Apang, has also placed before this Court, the list of Scheduled Castes and Scheduled Tribes, Arunachal Pradesh, as enumerated in the Census of India 1991, wherein, it has been clearly held in column 'Scheduled Tribes' as under :-

"In the Presidential Order of 1956, mentioned above, it is said that all the tribes of the Agency are to be treated as Scheduled Tribes. At paragraph 2 of Part II of Schedule III of the order, an illustrative list of the tribes of Arunachal Pradesh is provided. It has been mentioned that the Presidential order is illustrative and not exhaustive with respect to the tribes of Arunachal Pradesh. The names of the following tribes were returned during 1971 and 1981 Censuses.

1. Adi

2.

3.

.....

.....

21. Deori

.....

.....

111. Any Naga Tribe"

By the impugned judgment & order, dated 25.02.2015, the learned single Judge has disposed of the writ petition by issuing the following direction:-

"Considering the matter in its entirety, this writ petition is disposed of directing the respondents to consider the case of the petitioner for promotion to the post of ADO from the date when his immediate juniors were promoted, applying the same yardsticks, parameters and norms. It is made clear that upon promotion of the

petitioner, he will not be entitled to any back wages but his pay will be notionally fixed.

As regards the arrear salary, he will be entitled to the same, from the month of October, 2014, in terms of the earlier judgment & order dated 06.08.2014, by which, direction was issued to complete the exercise within a period of 2(two) months on receipt of the said judgment & order dated 06.08.2014."

The learned single Judge while passing the above impugned order, took note of the facts that the petitioner-respondent belongs to the Deori Tribe of Arunachal Pradesh, which is recognized as ST, under the Constitution(Scheduled Tribes) Order, 1950, and the Deputy Commissioner, Lohit District, Arunachal Pradesh, issued the ST certificate in his favour, way back on 03.06.1974. It has been further noted that in the Service Book, it was recorded that the petitioner is a ST of Arunachal Pradesh and that the Deputy Commissioner, Lohit District, clarified to the Director of Agriculture, Government of Arunachal Pradesh, Naharlagun, vide his letter, dated 03.05.2011, to the effect that the ST certificate issued in favour of the petitioner-respondent herein, was valid. Referring to the Apex Court judgment rendered in *R.K. Sethi & anr. v. Oil & Natural Gas Commission & anr.*, reported in *(1997) 10 SCC 616*, the learned single Judge had further observed that if a junior is promoted ignoring the case of the petitioner, in that case, applying the test of "Next Below Rule", the case of the senior is required to be considered.

Mr. Soki, learned Addl. Senior Government Advocate, for the appellant-State of Arunachal Pradesh, submits that a Division Bench of this Court in the case of *Debananda Deori v. State of Arunachal Pradesh & ors.*, reported in *1997(3) GLT 151*, had held, as herein quoted below:

"29. In the light of the law laid down by the Supreme Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi case(supra), neither the Supreme Court nor this Court has the power either to amend or to modify or alter the Scheduled Castes Order or the Scheduled Tribes Order, as it has been promulgated under Article 341 or 342 of the Constitution, as the case may be. However, the Supreme Court ruled that it is open to the State Government, if it so deems proper, to forward the report of the competent authority whether the Scheduled Castes Order or the Scheduled Tribes Order needs amendment by appropriate legislation. Thus, in the light of the law laid down by the Supreme Court, it is not possible for this Court to accede to the contention of Mr. Deori, learned counsel for the petitioner, to issue a Mandamus as sought for in the writ petition."

On perusal of the above judgment, we find that the issue involved in the said Civil Rule was, in short, for grant of ST certificates to the people belonging to Deori community as STs in the State of Arunachal Pradesh, in terms of the Constitution (Scheduled Tribes) Order, 1950, whereas the issue involved in this appeal, is substantially different as the petitioner respondent's grievance in the connected W.P.(c) No. 445(AP)2014 was related to non-consideration of his case for promotion to the post of ADO by treating him as a Schedule Tribe candidate, notwithstanding the fact that the writ petitioner was holding a valid Schedule Tribe certificate issued by the competent authority. Since an attempt was being made to dispute the Schedule Tribe status of the petitioner despite the fact that the certificate issued to him way back in the year 1974 was still in existence, this Court had passed an order dated 21-11-2016 directing the appellant to file additional affidavit enlisting the recognised tribes and sub-tribes within the State of Arunachal Pradesh. However, despite such direction issued by this court, no such affidavit has been brought on record by the State respondents. On the contrary, the learned Government Advocate had produced Gazette Notifications containing successive amendments carried out to "the Schedule Caste and Schedule Tribe Orders" so as to indicate that there are only 16 tribes mentioned in the Presidential Order and 'Deori' is not one of the listed tribes for the State of Arunachal Pradesh. Contending that 'Deori' is a recognised Schedule Tribe only in the State of Assam, Mr. Soki submits that the writ petitioner cannot be treated as a Schedule Tribe, in the State of Arunachal Pradesh.

It is true that the name of "Deori" community does not find place in the list of 16 tribes mentioned in the amended Presidential Order. However, we have also noticed that the Presidential Order pertaining to the State of Arunachal Pradesh begins with a paraphrase "all tribes in the State including". Thereafter, the list of the 16 Tribes has been included in the order. Therefore, we are unable to agree with the submission of the learned Government Advocate that only the 16 tribes named in the Presidential Order can be treated as

recognised Schedule Tribes in Arunachal Pradesh. Be that as it may, what must be noted herein is that the issue in the present proceeding is not pertaining to the question as to whether the writ petitioner/respondent is a Schedule Tribe within the meaning of the Presidential Order of 1950, but the issue is whether the learned Single Judge had committed an error in recognising the right of the writ petitioner on the basis of his Schedule Tribe certificate.

As has been mentioned above, the certificate issued to the petitioner has not been cancelled or revoked till date. If that be so, the writ petitioner shall have to be given the benefit of his 'Schedule Tribe' certificate until such time the certificate issued by the competent authority is revoked as denying the same would be in utter violation of his rights guaranteed under Article 14 and 16 of the Constitution of India. In the present proceeding we are not concerned with the larger issue of entitlement of the "Deori" community to ST status in the State of Arunachal Pradesh nor are we called upon to decide the question of validity of the Schedule Tribe certificate issued to the writ petitioner.

In the light of the observations made hereinabove, we find ourselves in agreement with the views expressed by the learned Single Judge leading to issuance of the impugned direction. Such being the position, this writ appeal fails and is accordingly dismissed.

The appellants would now carry out the direction contained in the order dated 15-02-2015 within a period of 03 months from today.

JUDGE

JUDGE