HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Case: CRMC No. 501/2018 c/w
OWP No. 2276/2018

Reserved on: 11.09.2023
Pronounced on: 22.11.2023

CRMC No. 501/2018

Hakeem Muzafar Khaliq, Age 34
S/o Abdul Khaliq Hajam,
R/o Chandain Pajan
Tehsil Dewsar, District Kulgam

Through: Mr. Arif Sikandar Mir, Advocate **…..Petitioner(s)**

V/s

1. **Inspector General, Crime Branch, Srinagar**
2. **SSP Crime Branch, Srinagar**
3. **Enquiry Officer**
   Crime Branch Kashmir, Srinagar
4. **Muzafar Gul Wagay**
   S/o Ghulam Mohammad Wagay
   R/o Bijbehara, Anantnag **…..Respondent(s)**

Through: Mr. Alla Ud Din Ganai, AAG
Mr. Mubashir Majid Malik, Dy. AG

OWP No. 2276/2018

Hakeem Muzafar Khaliq,
S/o Abdul Khaliq Hajam,
R/o Chandain Pajan
Tehsil Dewsar, District Kulgam

Through: Mr. Arif Sikandar Mir, Advocate **…..Petitioner(s)**

V/s

1. **Commissioner/Secretary,**
   Government School Education Department,
   Civil Secretariat, Srinagar/Jammu
2. **Commissioner/Secretary,**
   Government Revenue Department,
   Civil Secretariat, Srinagar/Jammu
3. **Director School Education Kashmir**
4. **Deputy Commissioner, Kulgam**
5. **Tehsildar Dooru**
6. **Tehsildar Kulgam**
7. **Principal, Govt. Higher Secondary School,**
   Kilam, District Kulgam, Kashmir
8. **Principal, Boys Higher Secondary School, Kulgam** **…..Respondent(s)**

Through: Mr. Alla Ud Din Ganai, AAG
Mr. Mubashir Majid Malik, Dy. AG

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

J U D G M E N T

Prayer (in OWP No.2276/2018):

01. Through the medium of the instant petition, the petitioner has questioned the order impugned bearing No. DCK/R/200/18 dated 2nd November 2018 passed by Additional Deputy Commissioner, Kulgam, whereby the OSC (Social Caste Certificate) of the petitioner has been cancelled.

Prayer (in CRMC No. 501/2018)

02. Through the medium of this petition, the petitioner has challenged the enquiries/investigations and the action taken in pursuance of the complaint dated 02.04.2016 filed by the private respondent (Muzafar Gul Wagay) initiated in pursuance of case file P.V.No. 01/2018 registered by Crime Branch, Srinagar.

FACTS

03. The petitioner was declared to fall under the week and underprivileged class (Social Caste – Hajam) in the year 2006. Accordingly, a certificate was issued by the competent authority factually verifying that petitioner belongs to a social caste group known as Hajam. The certificate was issued on 18.08.2006 and was valid for a period of five years.

04. On expiry of the social caste certificate, petitioner applied for the renewal of the certificate. The competent authority renewed the social caste certificate of the petitioner for further five years w.e.f 05.04.2013.

05. On 02.11.2018, the Additional Deputy Commissioner, Kulgam, cancelled the OSC (Social Caste Certificate) of the petitioner on the ground that social caste certificate was issued in contravention of Rule

22 (i) of SRO-294 dated 21.10.2005 also known as Reservation Rules 2005. In short, the question which falls for consideration before this court is as to whether or not, social caste certificate granted to petition had been issued in contravention of Rule 22(i) of Reservation Rules, 2005.

Arguments on behalf of petitioner:

06. Mr. Arif Sikandar Mir, learned counsel appearing on behalf of the petitioner has vehemently argued that on the plain reading of Rule 22 (i), it is crystal clear that two conditions have to be satisfied before the said rule could have been invoked by the Additional Deputy Commissioner, Kulgam for cancellation of the Social Cast Certificate granted to petitioner. First condition is petitioner should be living with his parents. Second condition is petitioner should be dependent upon his parents. It has been submitted that both the conditions are mutually exclusive. It has been submitted that the word "**and**" has been used in the rule which clearly depicts that both the conditions have to be fulfilled/satisfied for invocation of the said rule and in the present case, admittedly the petitioner is not dependent upon his parents as such the rule is not applicable. Further, it has been argued that private respondent has neither filed the appeal under Section 17 of Reservation Act, 2004 nor filed revision under Section 18 of Reservation Act, as such impugned order has been passed without jurisdiction. It has further been submitted that Additional Deputy Commissioner is not a competent authority to pass any order under Section 17 or Section 18 of Reservation Act, 2004; as such the impugned order has been passed by an incompetent authority. Further, it has been argued that once social caste certificate is granted and appeal or revision has not been preferred by an aggrieved party, then to verify the veracity of social caste

certificate within the time limit prescribed, the procedure as laid down by the Hon'ble Apex Court in a case titled Kumari Madhuri Patila and Anr. Versus Addl. Commissioner, Tribal, 1994 (6) SCC 241 has to be followed for scrutinizing the certificate, which procedure has not been followed, as such procedure in contravention of the Apex Court judgment has been followed to verify the social caste certificate of the petitioner.

Arguments on behalf of respondents:

07. *Per contra*, reply has been filed on behalf of the official respondents, in which a specific stand has been taken that the certificate has been obtained by the petitioner through fraudulent means, in violation of the rules giving false and fake information regarding income and designation of his father. Further stand of the respondents is that Principal, Government Higher Secondary School, Kilam, was asked to furnish the pay details of the petitioner for the year 2013-14 and pursuant thereto, the Principal, Government Higher Secondary School, Kilam, furnished the pay details, reflecting the monthly salary of the petitioner as Rs.22,540/- as of January, 2013 which accounts for the annual income to the tune of Rs.2,70,480/-. The respondents have also calculated the monthly income of Abdul Khaliq Hajam (father of the petitioner) for the year April, 2013, as per the pension statement duly attested by the Principal, Govt. Boys Higher Secondary School, Kulgam, as Rs.19,475 and the annual income of the father of the petitioner comes to Rs.2,33,700/-. The respondents on the other hand, have computed the income of both the petitioner and his father, which comes out to be Rs.5,04,180/- and thus, according to the respondents, exceeding the ceiling limit of Rs. 4.50 lacs as specified in SRO-303 dated 17th September 2012.

08. The respondents have also relied upon Rule 22 of SRO 294 dated 21.10.2005 and have taken a specific stand that the issue projected by the petitioner that he lives separately was enquired into, by the Deputy Commissioner, Kulgam, wherein petitioner was directed to be present on 27th August 2018. The further stand of the respondents is that concerned Assistant Director, Food Civil Supplies and Consumer Affairs, was also asked to furnish ration card details of the petitioner pertaining to the year 2013-14 and pursuant thereto, the Assistant Director, Food, Civil Supplies and Consumer Affairs furnished ration card details vide No. RCS&CA/AD-Kgm/2018/R/5244 dated 9th October 2018, reflecting therein that no separate ration card stood in the name of the petitioner in the year 2013-14, which as per the respondents indicates that the petitioner lived with his father as a single family entity. Thus, according to the respondents the OSC certificate issued in favour of the petitioner was cancelled vide Order impugned dated 2nd November 2018, which according to the respondent, has been issued after thorough enquiry and careful examination of the record.

09. A separate set of objections have also been filed to the petition on behalf of Respondent No. 4, wherein the Respondent No. 4 has taken a preliminary objection that the instant petition involves disputed questions of fact, which cannot be gone into while exercising writ jurisdiction. The Respondent No. 4 in the objections has taken a specific stand that the petitioner has provided false information before the concerned authority with a view to get the certificate. The stand of the respondent No.4 is that the income of the petitioner's family at the time of issuance of certificate as per rule was well above the ceiling limit. The documents produced before the issuing authority for issuance of OSC certificate shows the income of the family amounting

to total of Rs.3,60,000/- per annum, which formed the basis of the certificate.

10. Mr. Alla Ud Din Ganai, the learned AAG on the other hand has relied upon Rule 22(i) with particular reference to the proviso, which provides that the annual income shall be assessed by taking into account the average of the gross annual income of the last three consecutive years excluding the agricultural income. Thus, according to the learned counsel for the respondents the gross annual income of the last three consecutive years has to be taken into consideration excluding the agricultural income. He further submits that applicability of Rule 22(i), will be only in the eventuality if the incumbent is living with his/her parents and is dependent upon the same, only in that eventuality the annual income of parents/ guardians from all sources, ought to have been taken into account and the said provisions has to be applied independently.

11. **Heard learned counsel for the parties and perused the material available on record.**

Legal analysis

12. Section 2(o)(iii) of the Jammu & Kashmir Reservation Act 2004 read with Reservation Rules, 2005 provide that the government servant whose income from all sources is Rs.4.50 lacs and above cannot claim the benefit of belonging to the category of socially and educationally backward class. For facility of reference, Section 2 (o)(iii) is reproduced hereunder:

> *"Section 2 (o) "socially and educationally backward classes" mean–*
> *(i) persons residing in the backward area*
> *(ii) the persons residing in the area adjoining Actual Line of Control and International Border*
> *(iii) weak and under-privileged classes (social castes), declared as such under notification SRO-394 dated 5-9-1981 read with*

notification SRO-272 dated 3-7-1982 and notification SRO271 dated 22-8-1988 as amended from time to time :

Provided that the Government may, [on the recommendations of a Commission to be constituted by the Government in this behalf], make inclusions in, and exclusion from, the said category from time to time :

Provided further that the persons specified below and their children shall be excluded from the category of socially and educationally backward classes:—

(i) Governor (serving or retired) ;
(ii) Chief Justice and Judges (serving or retired) of High Court or the Supreme Court of India
(iii) Chief Minister and Ex-Chief Minister;
(iv) Ministers and Ex-Ministers of Cabinet rank
(v) Ministers of State and Deputy Ministers having more than one term;
(vi) Chairman and members of Jammu and Kashmir Public Service Commission or the Union Public Service Commission;
(vii) Members of the State Legislature (elected and nominated both) having more than one term irrespective of the period under the second term;
(viii) Members of All India Services;
(ix) any person whose annual income from all sources, determined in the prescribed manner, exceeds four lacs fifty thousand or such amount as may be notified by the Government from time to time ***in accordance with the prescribed norms***

Provided that the income ceiling shall not apply to a person who has lived and completed entire school education from an area identified as Backward or 4[Actual Line of Control or International Border], as the case may be, and in case such schooling is not available in such area, from the nearest adjoining area;]
(x) such other persons as the Government may notify from time to time"

13. The definition clause in specific terms says that any person whose annual income from all sources, determined in the prescribed manner, exceeds four lac fifty thousand or such amount as may be notified by the Government from time to time **in accordance with the prescribed norms**. It is pertinent to mention here that now, the amount four lac fifty thousand has been substituted by amount of Rs eight lacs, however, when the petitioner was granted the social caste certificate the ceiling limit for grant of social caste certificate was Rs Four Lac Fifty Thousand. The *prescribed norms* have been provided in Rule 22 of Reservation Rules, 2022 for determination of annual income for grant

of social caste certificate. For facility of reference, Rule 22 of SRO 294 is reproduced as under:-

> *"**22. Determination of Annual Income***
>
> *The annual income of a person claiming benefit under these rules shall be determined in the following manner:-*
>
> *(i) **Where a person is living with his/her parents/guardian and is dependent upon them/him, the annual income of parents/guardian from all sources shall be taken into account**;*
>
> *(ii) Where a person is not living with his/her parents/guardian and is not dependent upon them/him, his/her annual income from all sources including that of his/her spouse shall be taken into account:*
>
> *Provided that the annual income shall be assessed by taking into account the average of the gross annual income of last three consecutive years excluding the agricultural income.*
>
> *iii) Any person appointed against any available vacancy on the basis of his being a resident of backward area or an area adjoining line of control shall be posted in such area as provided under sub-sections (2) and (3) of section 3 of the Act."*

14. Cumulative effect on bare reading of aforementioned provisions of Reservation Act, 2004 read with Reservation Rules 2005 is that socially and educationally backward classes has been defined to include weak and under-privileged classes (Social Castes) under section 2 (o) (3) of Jammu and Kashmir Reservation Act, 2004. However, the second proviso to Section 2 (o) specifies the persons who shall be excluded from the category of socially and educationally backward classes. In the context of the present case, Section 2 (o) (iii) read with sub clause (ix) of second proviso says that any person whose annual income *from all sources does not exceed Rupees Four Lac Fifty Thousand is entiled to be declared as* socially and educationally backward class. However, the proviso to Sub-Clause (ix) says that the income sealing shall not apply to a person who has lived and completed entire school education from an area identified as backward or Actual Line of Control or International Border, as the case may be, and in case such schooling is not available in such area, from the nearest adjoining area.

15. Further, Rule 22 of Jammu and Kashmir Reservation Rules, 2005 says that the annual income of a person claiming benefit under Jammu and Kashmir Reservation Rules shall be determined in the following manner:

i. Where a person is living with his/her parent/guardian and is dependent upon them/him, the annual income of the parents/guardian from all sources shall be taken into account.

ii. Where a person is not living with his/her parents/guardian and is not dependent upon them/him, his /her annual income from all sources including that of his/her spouse shall be taken into account.

Provided that the annual income shall be accessed by taken into account the average of the gross annual income of last three consecutive years excluding the agriculture income.

16. Coming to the facts of the present case, social caste certificate was issued in favour of the Petitioner on 18.08.2006. Thereafter, the social caste certificate of the Petitioner was renewed on 30.03.2013.

17. The private Respondent has filed a complaint stating therein that the income of the Petitioner exceeds Rs. 4.5 Lac (sealing limit for grant of social caste certificate), as such his social caste certificate be cancelled. The Additional Deputy Commissioner, Kulgam in the impugned order and in the reply filed before this Hon'ble Court has held that the Petitioner draws a monthly salary of Rs. 22540, which accounts for the annual income of Rs. 2,70,480 (Two Lacs Seventy Thousand and Four Hundred Eighty Rupees). Further, the Additional Deputy Commissioner, Kulgam says that the Petitioner's father i.e. Abdul Khaliq Hajam draws a pension of Rs. 19,475 per month, which amounts to annual of Rs. 2,33,700 (Two Lac Thirty Three Thousand and Seven Hundred Rupees). Accordingly, the Additional Deputy Commissioner holds that the total income of both the petitioner and his father is Rs. 504180 i.e (Five Lac Four Thousand One Hundred Eighty) which exceeds sealing limit of Rs. 4.50 Lacs for grant of social caste certificate. The Additional Deputy Commissioner, Kulgam cancelled

the social caste certificate of the Petitioner on the ground that as per Rule 22 (i) of Jammu and Kashmir Reservation Rules, 2005 (SRO-294) the income of both the petitioner and the parent had to be taken into count for the purpose of sealing limit of Rs. 4.50 Lac. The Additional Deputy Commissioner, Kulgam has reiterated the Rule 22 (i) verbatim in para 9 of his reply and also the impugned order.

18. On the plain reading of the Rule 22 (i), it is crystal clear that two conditions have to be satisfied before the said rule could have been invoked by the Additional Deputy Commissioner, Kulgam. First condition is petitioner should be living with his parents. And, second condition is petitioner should be dependent upon his parents. It is important to note that word **and** has been used in the rule which clearly depicts that both the conditions have to be fulfilled/satisfied for invocation of the said rule. In the present case, admittedly the Petitioner is not dependent upon his parents, as such the rule is not applicable. Further, even if this rule is applicable, then rule itself says that only the income of parents has to be taken into count. Why it is so, because intention of the legislature has been that if a person is dependent upon his parents then it is decipherable that he has no income of his own and then only the income of the parents can be taken into count. This rule does not say that the ***income of the person/petitioner and his parent*** has to be taken into count. As such the legislative intention is very clear that both the conditions have to be satisfied for invocation of Rule 22 (i). If only one of the aforesaid conditions is being fulfilled/satisfied then the income of the parents is not to be taken into count. Applying the aforesaid legal position to the facts of the present case, it is an admitted position that petitioner is a government employee, as such not dependent upon his parents. In view of the above, the Petitioner's case

does not fulfil the condition number second of Rule 22 (i), *supra* and it is his income alone which is to be taken into count. It is an admitted that the income of the Petitioner is Rs. 22,540, which accounts for annual income of Rs. 2,70,480 which is much less than the sealing limit of 4.50 Lacs.

19. I am of the considered opinion that the Rule 22 is apparently clear that a son or a daughter on being employed or gainfully engaged, ceases to be dependent upon his/her father as the case may be. Thus, for the purpose of Reservation Rules, the salary or income derived from the petitioner's employment has to be taken into count and not the income of his father. The Additional Deputy Commissioner Kulgam, however, on wrong interpretation of Rule 22(i) of the Reservation Rules 2005, has held that the annual income of both the petitioner and his father exceeds the ceiling limit of Rs.4.50 lacs, which comes out to be Rs.5,04,180/- and accordingly, has cancelled social caste certificate issued in favour of the petitioner vide impugned order, which thus cannot sustain the test of law, on this count only impugned order does not stand test of law. In view of the fact, that twin conditions have to be satisfied before invocation of Rule 22 (i) of Reservation Rules, the fact that whether petitioner was living with his parents or not, is of no relevance.

20. The second limb of argument, which has been advanced by learned counsel for the petitioner, is that no appeal or revision has been preferred by the aggrieved person against the issuance of 'social caste certificate' which was granted to the petitioner initially on 18.08.2006 and thereafter it was renewed on 30.03.2013. Section 17 of the Reservation Act provides that if any person is aggrieved of the issuance of 'social caste certificate' by the competent authority under section 16,

then he may within a period of 90 days prefer an appeal to Deputy Commissioner or Divisional Commissioner as the case may be. For facility of reference, Sections 17 & 18 of the J&K Reservation Act, 2004 are reproduced as under:-

> *"**17. Appeals.-** (1) Any person aggrieved by an order of the competent authority under section 16, may, at any time before the expiry of ninety days from the date of the order, prefer an appeal to-*
>
> *(i) Deputy Commissioner, if the order appealed against is passed by an officer below the rank of Deputy Commissioner in his capacity as Competent Authority; or*
> *(ii) Divisional Commissioner, if the order appealed against is passed by Deputy Commissioner in his capacity as Competent Authority.*
>
> *(2). The Appellate Authority shall, within 30 days from the date of receipt of the appeal, pass such orders on it as it deems fit:*
>
> *Provided that no order shall be made against any person without affording him a reasonable opportunity of being heard.*
>
> ***18. Revision.-** The Appellate Authority may, suo moto or on an application made to it, call for the records of the proceedings taken, or orders made, by any Competent Authority for purposes of satisfying itself as to the legality or propriety of such proceedings or orders and may pass such orders in reference thereto as it deems fit:*
>
> *Provided that no order shall be made against any person without affording him a reasonable opportunity of being heard."*

21. Thus, from a bare perusal of the aforesaid statutory provisions, it can safely be concluded that Additional Deputy Commissioner could not have exercised the power under Section 17 or Section 18 by cancelling the 'social caste certificate' granted to the petitioner as the Appellate Authority is the Deputy Commissioner in the district and Appellate Authority has also been given powers of revision under Section 18. As such, the Additional Deputy Commissioner had no competence or authority to act under Section 17 or Section 18 of the Reservation Act, 2005 and cancel the social caste certificate of the petitioner. Further, it is borne from the record that Private Respondent has neither filed an appeal nor revision before Deputy Commissioner Anantnag. Private Respondent has filed a complaint before Additional Deputy

Commissioner, who without any competence has decided it. On this count also the impugned order does not sustain the test of law.

CRMC No.501/2018

22. The petitioner has also filed petition under Section 561 A Cr.P.C. bearing CRMC No.501/2018 which is also clubbed with OWP No.2276/2018 and is taken up for final disposal along with said petition. In CRMC No.501/2018, petitioner seeks the following reliefs:-

> ***'i) quashing the probe, enquiries, investigation and actions taken in pursuance of the complaint dated 02.04.2016 filed by the private respondent and in pursuance of case file P.V. No.01/2018 registered by the Crime Branch, Srinagar.***
>
> ***ii) any other order, or direction may also be issued in favour of the petitioner and against the respondents which this Hon'ble Court deems fit and necessary in the facts and circumstances of the case."***

23. The petitioner has pleaded similar facts and circumstances as have been pleaded in OWP No.2276/2018 and in order to avoid repetition, same are not reproduced. However, the petitioner through the medium of aforesaid petition has called in question the probe, inquiry/ investigation and action taken in pursuance of the complaint dated 02.04.2016 filed by the private respondent and in pursuance of case file P.V. No.01/2018 registered by the Crime Branch, Srinagar. On perusal of the record, the preliminary verification relates to grant of social cast certificate to petitioner despite his income and his father's income having exceeded the ceiling limit of Rs 4.5 lacs. Since this court has already decided this issue in favour of the petitioner, *supra* as such the continuation of preliminary verification by crime branch on this issue cannot sustain.

Conclusion:

24. Thus, in view of what has been discussed hereinabove coupled with the settled legal position, the instant petition is allowed and resultantly the

impugned Order bearing No.DCK/R/200/18 dated 02.11.2018 passed by Additional Deputy Commissioner, Kulgam, whereby, the OSC (Social Caste Certificate) of the petitioner has been cancelled cannot sustain the test of law, and is liable to be quashed/set aside and accordingly the same is **set aside** for the reasons indicated above.

25. As a necessary corollary, petition bearing CRMC No.501/2018 filed under Section 561-A Cr.P.C. (now Section 482 of the Central Code) also stands **allowed** and **the inquiry/investigation and the action taken in pursuance of the complaint dated 02.04.2016 filed by the private respondent namely Muzafar Gul Wagay in pursuance of which case file P.V. No.01/2018 has been registered by the Crime Branch, Srinagar, shall also stand quashed** for the reasons discussed/indicated in OWP No. 2276/2018.

26. Both the petitions stand allowed and disposed of in the aforesaid terms.

Jammu
22.11.2023 (**Wasim Sadiq Nargal**)
Narinder **Judge**

Whether the order is speaking? Yes
Whether the order is reportable? Yes