

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. _____ OF 2022
[ARISING OUT OF S.L.P. (CIVIL) NO.7241 OF 2021]**

M. V. CHANDRAKANTH

.....Appellant

Versus

SANGAPPA & ORS.

....Respondents

J U D G M E N T**Indira Banerjee, J.**

Leave granted.

2. This appeal is against a judgment and final order dated 31st March 2021 passed by a Division Bench of the High Court of Karnataka (Dharwad Bench), allowing Writ Appeal No.100388 of 2017(GM-CC) filed by the Respondent No.1 and setting aside an order dated 13th June 2017 passed by the Single Judge dismissing Writ Petition No.1449 of 2006 (GM-CC) filed by the Respondent No.1 claiming the benefit of reservation for Other Backward Classes as a member of the 'Ganiga' caste.

3. By a Government Order being G.O. No. SWD 150 BCA 94 dated 17th September 1994, the Government of Karnataka formulated a Reservation Policy, for 'Scheduled Castes', 'Scheduled Tribes' and

‘Other Backward Classes’ for admission to professional courses for the year 1994-95, which is hereinafter referred to as the “Reservation Policy”. As per the Reservation Policy the percentage of reservation was as follows:-

<i>CATEGORY -I</i>	-	<i>4%</i>
<i>CATEGORY -II(A)</i>	-	<i>15%</i>
<i>CATEGORY -II(B)</i>	-	<i>4%</i>
<i>CATEGORY -III(A)</i>	-	<i>5%</i>
<i>CATEGORY -III(B)</i>	-	<i>5%</i>
 <i>SCHEDULED CASTES</i>	 -	 <i>15%</i>
<i>SCHEDULED TRIBES</i>	-	<i>3%”</i>

4. By a Government Order being G.O. No. SWD 251 BCA 94 dated 31st January 1995, the Reservation Policy was made applicable to employment under the State.

5. In 1999, the Appellant as well as the Respondent No.1 applied for Group A and Group B posts of Gazetted Probationary Officers claiming the benefit of reservation under Category II-A of the Reservation Policy.

6. While the Appellant claimed reservation under Category II-A as a ‘Kuruba’ by caste, the Respondent No.1 claimed Reservation as a ‘Hindu Ganiga’ by caste.

7. On or about 31st December 1999, a certificate was issued to the Respondent No.1 from the office of the Tehsildar, Bagalkot certifying

that the Respondent No.1 belonged to the Ganiga sub-caste. The Respondent No.1 applied for the Group A and Group B posts of Gazetted Probationary Officer, on the strength of the aforesaid certificate.

8. On or about 30th March 2002, the Government of Karnataka issued an order in terms whereof the Lingayat Ganiga was excluded from the benefit of reservation to the 'Ganiga' sub-caste under Category II-A, and placed under Category III-B.

9. On or about 7th October 2005, the Karnataka Public Service Commission (KPSC) published the provisional list of candidates selected for the Group A and Group B posts of Probationary Officers. After publication of the provisional list on 7th October 2005, KPSC sent the caste certificate of the Respondent No.1 to the Respondent No.3 for verification. On 21st October 2005, the Respondent No.3 issued a certificate validating the caste certificate submitted by the Respondent No.1.

10. KPSC notified the final list of selected candidates on 29th November 2005. The Appellant was selected for the post of Deputy Superintendent of Police and the Respondent No.1 was selected for the post of Assistant Commissioner (Junior Grade Scale). Both the Appellant and the Respondent No.1 were selected under the Reserved Category II-A of the Reservation Policy. The Respondent No.1 secured 1152 marks and was placed at Sl. No. 15 in the category of posts of Assistant Commissioner, whereas the Appellant secured 1151 marks

and was placed at Sl. No.6 in the category of posts of Deputy Superintendent of Police.

11. The Appellant claims that in 2005, he came to know that the Respondent No.1's father belonged to the 'Lingayat' caste whereas the Respondent No.1 had claimed the benefit of reservation under Category II-A of the Reservation Policy claiming that he belonged to the 'Ganiga' caste. The Appellant contends that the 'Lingayat' caste including the sub-castes thereof fall under Category III-B with 5% reservation whereas Hindu Ganiga falls under Category II-A with 15% reservation.

12. The Appellant filed an appeal under Section 4D of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990, hereinafter referred to as "SC/ST and OBC Reservation Act" before the Respondent No.2 challenging the Caste Validity Certificate issued to the Respondent No.1 by the Respondent No.3. In the said appeal, the Appellant enclosed the school extract of Government Higher Primary School, Honnihala, Bagalokote wherein the caste of the Respondent No.1's father was recorded as 'Hindu Lingayat'.

13. The Appellant alleges that Respondent No.3 issued the Validity Certificate dated 21st October 2005 in undue haste, with scant regard to the procedure laid down in Rule 7 of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes

(Reservation of Appointment, etc.) Rules 1992, hereinafter referred to as “Karnataka SC/ST and OBC Reservation Rules ”.

14. By an interim order dated 5th December 2005, the Respondent No.2 stayed the Validity Certificate issued to the Respondent No.1 until further orders. Thereafter, the Respondent No.2 called for the records from the Respondent No.1. Notices were also issued to the Head Masters of the concerned schools for production of original school admission registers pertaining to the Respondent No.1 and his father.

15. After hearing the parties and perusing the records, the Respondent No.2 passed an order dated 23rd January 2006, concluding that the Respondent No.1 belonged to the ‘Hindu Lingayat’ caste as he would inherit the caste of his father. Relying on the school register of the Respondent No.1’s father of the year 1953, his High School records and the Service Register of DCC Bank where he (the Respondent No.1’s father) had worked as Supervisor, the Respondent No.2 cancelled the Validity Certificate. The Respondent No. 2 inferred that the entries in the school records of the Respondent No.1 had been made in the year 1982, with a view to obtain the benefit of reservation.

16. Being aggrieved, the Respondent No.1 filed the aforesaid writ petition being Writ Petition No.1449 of 2006 (GM-CC) in the Karnataka High Court at Dharwad on or about 27th January 2006 and obtained an interim order of status quo. The Appellant filed a Counter Affidavit

enclosing extract of the school records of the Respondent No.1's father showing that he belonged to the Hindu Lingayat caste.

17. On or about 1st February 2006, the Government issued appointment orders of the selected candidates. The Appellant was appointed as Deputy Superintendent of Police under II-A Category. On 13th February 2006, the Respondent No.2 directed the Civil Rights Enforcement Cell to initiate prosecution against the Respondent No.1 under Rule 7A of the Karnataka SC/ST and OBC Reservation Rules for having obtained false certificate under Category II-A.

18. On or about 21st June 2006, the Civil Rights Enforcement Cell, after conducting an enquiry into the caste of the Respondent No.1, submitted a report to the effect that the Respondent No.1 belonged to the 'Ganiga' caste, and therefore no prosecution could be initiated against him.

19. On 11th July 2007, the Respondent No. 1 was appointed to the post of Assistant Commissioner. According to the Appellant, the appointment was in violation of the status quo order granted by the High Court in Writ Petition No.1449 of 2006. The Respondent No.2 filed a counter statement to the Writ Petition in the High Court of Karnataka.

20. On or about 27th January 2009, the Government of Karnataka issued an order, whereby 19 sub-castes within the 'Veerashaiva Lingayat' caste were included in Category III-B of the Reservation

Policy. The sub-castes included 'Ganiga' sub caste of the 'Veerashaiva Lingayat' caste. As against 15% reserved for Category II-A, only 5% of the posts were reserved for Category III-B.

21. By an order dated 28th February 2009, the Government of Karnataka reverted the position of reservation of some of the sub-castes of the Veerashaiva Lingayat caste except 'Lingayath/Veerashaiva-Veerashaiva Panchamashali' in Serial No.13 to the position existing prior to the order dated 27th January 2009. The sub-castes included the 'Ganiga' sub-caste of the Veerashaiva Lingayat caste. The 'Lingayat' caste continued to remain in Category III-B.

22. On 4th July 2013, the Appellant was promoted to the post of Superintendent of Police (Non-IPS) based on Seniority-cum-Merit. On 24th March 2017, the Appellant was appointed to the Karnataka Administrative Service (Junior Scale) with effect from 1st February 2006 by creation of supernumerary post by the State Government. The State Government had placed the matter before the Cabinet and the Cabinet took the decision to appoint the Appellant with retrospective effect with effect from 1st February 2006 with all consequential benefits in the cadre of Karnataka Administrative Service (Junior Scale). The Appellant joined service in the cadre of Karnataka Administrative Service (Junior Scale) on 30th March 2017.

23. By an order dated 13th June 2017, the Writ Petition filed by the Respondent No.1 was dismissed by the Single Judge. The Single

Judge came to the conclusion that the Respondent No.1 belonged to the Hindu Lingayat caste as his father's school records reveal that his father was a Lingayat or Lingavantha. The Single Bench found that the caste 'Ganiga' was to be found both in Category II-A and III-B. There was a lot of difference in the two entries. There was reservation of 15% for persons in Category II-A but 5% for persons in Category III-B. The Single Bench was of the view that the caste 'Ganiga' in Category II-A was not equivalent to Lingayat Ganiga sub-caste of Lingayat.

24. Being aggrieved, the Respondent No.1 impugned the order of dismissal by filing Writ Appeal No. 100388 of 2017 in the Division Bench of the High Court.

25. By the impugned judgment and order dated 31st March 2021, the Division Bench of Karnataka High Court (Dharwad Bench) allowed the Writ Appeal filed by the Respondent No.1, set aside the order of the Single Judge passed in Writ Petition No.1149 of 2006 and quashed the order of Respondent No.2. In the meanwhile, on 20th September 2019, the Appellant was promoted to the Senior Scale in the Karnataka Administrative Service.

26. The Division Bench observed that from the findings given by the Single Judge, it was apparent that the Single Judge was also of the opinion that caste of the Respondent No.1 was 'Lingayat-Ganiga'. The Single Judge, however, held that he could not claim reservation under Category II-A. The Division Bench accepted that ordinarily

children belong to the caste of their father. The Division Bench, however, observed, in effect, that the Single Judge also accepted that the caste of the Respondent might be Lingayat-Ganiga but erred in arriving at the finding Lingayat-Ganiga could not be construed Hindu Ganiga.

27. The Division Bench referred to the judgments of Karnataka High Court in ***Somashekhar Veerappa B. Murgod v. State of Karnataka and Another***¹ and ***Prabhushankar K.V. v. Selection Committee for Medical Colleges & others***². In ***Somashekhar Veerappa B. Murgod*** (supra), the Single Bench held:-

“6. The evidence recorded and the conclusion reached by the Commission, in particular the underlined portions, clearly disclose that in the State there is a community which is called ‘Kuruhina Setty’. The hereditary avocation of this community is ‘neyge’(weaving). At some point of time in the past some of the Kuruhina Settys adopted Veerashaiva or Lingayat faith. Among Kuruhina Settys, there are both vegetarians and non-vegetarians and those who have adopted Lingayat faith are vegetarians. From the finding recorded by the Commission, it is clear that all persons belonging to Kuruhina Setty community are considered as backward irrespective of the fact that some of them are Lingayats and others are not. The petitioner has claimed that he is a Kuruhina Setty, though he is a Lingayat. He had also produced certificate issued by the Tahasildar in which it is specifically stated that the petitioner belongs to Kuruhina Setty Community. The only reason given by the Selection Committee for rejecting the claim of the petitioner is that in the transfer certificate produced by the petitioner, the community of the petitioner is given as Lingayat. Even the petitioner does not dispute that he is a Lingayat. The fact that he is a Lingayat does not mean that he does not belong to Kuruhina Setty community. As pointed out by the commission, among persons belonging to Kuruhina Setty community some have become Lingayats, but all of them are considered and identified as belonging to backward community. Therefore, a Kuruhina Setty who has become a Lingayat is not disentitled to the benefit of reservation. In this behalf it is necessary to set out the relevant portion in the appendix-1 to Government Order No. ED 44 TGL 77, Bangalore, dated 18th May, 1977, which sets out all the communities falling under the

¹ AIR 1980 Karnataka 62

² (1981) 1 Kant.L.J. 255

category of Neygi who are considered as Backward Community. The relevant portion reads:

“(i) BACKWARD COMMUNITIES

XXX XXX XXX XXX

10. Neygi : Kuruhinasetti, Bilimagga, Thogata, Seniga, Jamkhana, Ayiri, Avir, Sale, Padmasale, Saale, Kaikolan, Neikar, Jadar, Jandra, Swakulasale.”

9. In the result, I hold that every person who belongs to Kuruhina Setty community whether a Lingayat or not belongs to Backward community for the purpose of the Government Order, and can claim the benefit of special provisions subject to the income test prescribed in the Government Order and, therefore, the Selection Committee erred in rejecting the claim of the petitioner for selection to 1st Year M.B.B.S. Course as against seats reserved for Backward Communities.”

28. In **Prabhushankar v. Selection Committee for Medical**

Colleges (supra), a Single Bench of Karnataka High Court held:-

“6. In my view there is nothing unnatural in the conduct of the petitioner or his parents in not indicating that the petitioner apart from being a Lingayat also belonged to Ganiga Community, as no one knew at that stage that special provisions would be made in their favour and omission to do so does not preclude the petitioner from claiming the benefit of reservation if in truth the petitioner belongs to Ganiga community as indicated in the certificate issued by the Tahsildar who is the competent authority to issue the necessary certificate.

7. In the face of the certificate issued by the Tahsildar, it was not open for the Selection Committee to reject the claim of the petitioner on the mere ground that in the transfer certificate the community of the petitioner was shown as Lingayat as the possibility of a Lingayat being a Ganiga could not be excluded. Therefore in the absence of any other material evidence before the Selection Committee on the basis of which it could have come to the conclusion that the positioner did not belong to Ganiga Community, the application could not have been rejected. Therefore, the petitioner is entitled to the reconsideration of his case.”

29. The Division Bench analysed the facts of the case but found that reservation to backward classes had not been introduced when

the Respondent No.1's father had been admitted to school in 1953. By the time the Appellant came to be admitted to school, Reservation Policy for backward classes had been introduced. This could be the reason why the caste was not entered in the school records of the Respondent No.1's father where only 'Lingayat' was mentioned but in the case of the Respondent No.1 the caste was mentioned as 'Hindu-Ganiga'

30. The Division Bench rightly held that, if the Respondent No.1's father was, in fact, Ganiga, the mere fact that his caste may not have been mentioned in his school records, or elsewhere, would not mean that he would have to be treated as a non-Ganiga by caste. The Division Bench referred to a report of the Karnataka Backward Classes Commission constituted under the Chairmanship of L.J. Havanur and in particular Paragraph 11 thereof which reads:-

"11. Veerashaivas (Lingayats) claim to belong to a religion of their own, though legally they are considered as a Hindu denomination. It originated by uniting certain caste-blocks, and has grown by adding new ones which did not accept the principle of status or rank ascribed by birth. The unit of endogamy amongst veerashaivas in principle, is their denominational community, but in the process of expanding itself into a still larger community, it has allowed, perhaps, the new entrants to retain their autonomy and identity. That appears to be the reason why we find separate religious heads and monasteries of each section widespread in the State. The cases of those caste-units who have not yet been wholly assimilated into, or are half-way to, the Veerashaiva community but who could be readily identified and whose population could be ascertained have been considered separately. Such cases include the Ganigas (oil pressers), the Kumbaras (potters), the Kshowrikas (barbers), the Agasas (washermen), some Neygis (weavers), etc."

31. It appears that the finding of the Single Bench that the earlier notification in which Category II-A comprised many castes of which

Ganiga was one, did not include Lingayat-Ganiga is misconceived. In the Government notification issued on 3rd March 2002, Category II-A comprised of Ganiga and other castes without referring to Lingayat Ganigas. Subsequently, on 27th January 2009, an order was issued by the Government of Karnataka to the effect that 19 sub-castes within Veerashaiva Lingayat were included in Category III-B. One of the castes so brought under Category III-B was Lingayat/Veerashaiva-Ganiga. Subsequently, however the Government issued a Notification on 28th February 2009 to the effect that the caste in Serial No.1 to 12 and 14 to 19 which were included in Category III-B as per the order/notification dated 27th January 2009 were deleted from the Category III-B and restored to the earlier position prevailing before 27th January 2009.

32. As observed by the Division Bench, the order dated 27th January 2009 shows that 19 sub-castes of Lingayat/Veerashaiva were included in Category III-B. One of the sub-castes was 'Lingayat/Veerashaiva-Ganiga'. However, by another notification issued within a month that is 28th February 2009, the caste mentioned in Serial Nos. 1 to 12 and 14 to 19 Category III-B were deleted and the position prevailing before 27th January 2009 was restored. Lingayat/Veerashaiva-Ganiga was deleted. The intent of the order was to extend the benefit of reservation under Category II-A to the Lingayat-Ganigas also.

33. The Division Bench found that the finding of the Single Judge that Hindu-Ganiga and Lingayat-Ganiga were two different castes was

not possible to accept. A Lingayat is also a Hindu governed by the Hindu Succession Act 1956, the Hindu Marriage Act 1955, the Hindu Minority and Guardianship Act 1956 and the Hindu Adoption and Maintenance Act 1956. The caste of the Respondent No.1 was thus shown as 'Hindu-Lingayat' in the school registers by the Respondent No.1's father.

34. The Division Bench was correct in its finding that, the mere fact that the Caste Verification Committee gave a report of about 16 candidates in a few days cannot be a reason to doubt the correctness of the report. The Division Bench found that the report was made in accordance with the provisions of SC/ST and OBC Reservation Act.

35. Furthermore, during the pendency of the Writ Petition, Respondent No.1 produced a registered document of the year 1909 where the caste of the great grandfather of the Respondent No.1 was shown as 'Ganiger'. The said document was taken on record by the Writ Court, but there was no discussion about it in the impugned order. The document is relevant in that it proves the caste of the Respondent No.1 to be 'Ganiga'. 'Ganiger' is a variant of the word 'Ganiga' found in north Karnataka region. Respondent No.1 had also relied upon caste certificates issued to the relatives of the Respondent No.1 showing their caste as 'Ganiga'.

36. The Respondent No.1 also referred to an order of this Court in ***Lawrence Salvador D'Souza v. State of Maharashtra & Ors. (Civil Appeal No.6539/2016)***, where this Court directed the

Committee to consider the caste certificate of the niece of the Appellant in that case for making a report about his caste. In this case, the Appellant has produced a number of caste certificates of his relatives indicating their caste as 'Hindu-Ganiga'. After perusing the documents produced, this Court held that since the caste of the forefather of the Appellant was mentioned as 'Ganiger', an inference may be drawn with the help of this document that the caste of the Appellant was also 'Ganiga'.

37. The decision of the Civil Enforcement Cell not to initiate the prosecution may have been against the directions issued by the Respondent No.2. The decision however, was justified, considering the materials on record showing the caste of the forefather and relatives of the Respondent No.1 as 'Ganiger' or 'Ganiga'. Even if the Caste Certificate and the Validity Certificate are ignored, there are materials including a pre-constitution registered sale deed of the Respondent No.1's grandfather showing his caste was 'Ganiga'.

38. In our considered opinion, the well reasoned judgment and order of the Division Bench does not call for interference. Considering that the disputes pertaining to the case of the Respondent No.1 has been going on for years, the Division Bench rightly did not remand the matter to the Respondent No.2 for adjudication. We find absolutely no ground to interfere with the judgment. The appeal is, accordingly, dismissed.

.....J.
[INDIRA BANERJEE]

.....J.
[J. K. MAHESHWARI]

NEW DELHI;
JULY 29, 2022