IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No.11146 of 2009 (K)

PETITIONER:

K.G.VISWANATHAN,AGED 58 YEARS,
S/O.LATE K.T.GOVINDAN,MANAGER (INSPECTION-MOBILE),
STATE BANK OF TRAVANCORE,HEAD OFFICE,
TRIVANDRUM,
PERMANENTLY RESIDING AT "KARTHIKA",
KUNJATHOOR POST,MANJESWARAM.

BY SRI.M.K.DAMODARAN (SENIOR ADVOCATE.)
ADVS.SRI.GILBERT GEORGE CORREYA
SRI.J.VIMAL
SRI.ALAN PAPALI

RESPONDENTS:

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1. STATE OF KERALA,REP.BY THE SECRETARY,
SCHEDULE CASTE/SCHEDULE TRIBE,
DEVELOPMENT DEPARTMENT,TRIVANDRUM.

2. SCRUTINY COMMITTEE FOR VERIFICATION OF
SC/ST CLAIMS,REP.BY THE CHAIRMAN,
PRINCIPAL SECRETARY,SC/ST DEVELOPMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,TRIVANDRUM.

3. THE MANAGING DIRECTOR,
STATE BANK OF TRAVANCORE,
HEAD QUARTERS,TRIVANDRUM.

R1 & R2 BY SMT. P.K.SANTHAMMA SPECIAL GOVT. PLEADER
R3 BY ADV.SRI.P.RAMAKRISHNAN
SRI.R.S.KALKURA,SC FOR SBT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27.02.2015 THE COURT ON 20-03-2015, DELIVERED THE FOLLOWING:

pk

W.P(C) NO.11146/2009

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:PHOTOCOPY OF THE SHOW CAUSE NOTICE NO.7315/G3/98/SCSTDD DATED 2.5.1998 ALONG WITH THE REPORT OF THE VIGILANCE OFFICER OF THE KIRTADS.

EXT.P2:PHOTOSTAT COPY OF THE PROCEEDINGS NO.7315/G3/98/SC/ST DATED 3.3.2001 ISSUED BY THE II RESPONDENT.

EXT.P3:PHOTOSTAT COPY OF THE REPRESENTATION DATED SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P4:PHOTOSTAT COPY OF THE JUDGMENT DATED 17.3.2006 IN O.P.NO.17296/2001 OF THIS HONOURABLE HIGH COURT.

EXT.P5:PHOTOSTAT COPY OF THE LETTER NO.7315/G3/1998/SCSTDD DATED 17.1.2008 ISSUED BY THE 2ND RESPONDENT.

EXT.P6:PHOTOSTAT COPY OF THE REPRESENTATION DATED 16.2.2008 SUBMITTED BEFORE THE 2ND RESPONDENT.

EXT.P7:PHOTOSTAT COPY OF THE LETTER NO.7315/G3/1998/SCSTDD DATED 19.3.2008 ISSUED BY THE 2ND RESPONDENT.

EXT.P8:PHOTOSTAT COPY OF THE LETTER NO.PAD/5/2651 DATED 30.3.2009 FROM THE GENERAL MANAGER(OPERATIONS) OF THE 3RD RESPONDENT.

EXT.P9:PHOTOSTAY COPY OF THE ORDER NO.7315/G3/2004/SCSTDD DATED 31.1.2009 ISSUED BY THE 2ND RESPONDENT.

EXT.P10:PHOTOSTAT COPY OF THE G.O(MS) NO.15/2009/SCSTDD DATED 31.1.2009 ISSUED BY THE 1ST RESPONDENT.

EXT.P11:TRUE COPY OF THE LETTER NO.RTI/CPIO/50/260 DATED 6.9.2012 ISSUED BY THE RESPONDENT BANK.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A. MUHAMED MUSTAQUE, J.
= = = = = = = = = = = = = = =
W.P.(C) No.11146 of 2009
= = = = = = = = = = = = = = = =
Dated this the 20th day of March, 2015

JUDGMENT

The writ petitioner belongs to 'Bakuda' community, a recognised Scheduled Caste community. The petitioner approached this Court challenging proceedings of scrutiny committee for verification of community certificate and also termination notice issued by the State Bank of Travancore, wherein the petitioner was employed. By the interim order of this Court, the petitioner has been permitted to continue in service of the bank. The petitioner now retired from the bank on attaining the age of superannuation.

2. The learned senior counsel appearing for the petitioner urged before this Court that notwithstanding any finding made by the scrutiny committee, the petitioner is entitled for entire terminal benefits and leaving open all issues relating to caste, this Court may consider the decision of the bank in regard to termination for the purpose of granting pensionary benefits.

3. The petitioner was appointed in the Bank as a clerk on 26.09.1975. The scrutiny committee constituted under the Scheduled Castes and Scheduled Tribes Regulation of Issue of Community Certificates Act, 1966 (Kerala) (hereinafter referred to as the Act 11 of 1996) by Ext.P9 proceedings dated 31.01.2009 rejected the claim of petitioner as he belonged to Scheduled Tribe. Consequent upon the finding, without conducting any enquiry in this matter, the petitioner has been ordered to be terminated from the service of the bank.

4. The learned Senior Counsel submits, provisions of the Act 11 of 1996 would not apply in this matter, as the Act 11 of 1996 would only apply to any other community obtaining a false Community Certificate either as Scheduled caste or Scheduled tribe as the case may be. According to the learned counsel, since the petitioner belongs to Scheduled caste whether any finding made by the Scrutiny committee petitioner belongs to Scheduled tribe has no consequence in terms of Act 11 of 1996 as the same does not contemplate cancellation of such certificate obtained by Scheduled Caste member as Scheduled Tribe or Scheduled Tribe as Scheduled Caste as the case may be. The

learned counsel further submits that there was no fraud as such committed by the petitioner in obtaining Caste Certificate as the caste name was shown in the SSLC book and other school records would describe the caste as Scheduled tribe “Mala Araya”. It is further submitted that all the family members were admitted in the school as they belonged to Scheduled Tribe in Mala Araya community. It is the case of the petitioner that they all suffered same hardships and backwardness of a Scheduled Tribe. It is further submitted that no fraud was committed in obtaining job in the State Bank of Travancore. If at all any discrepancies occur, that can only be treated as error or irregular and cannot be attributed as a fraud committed by the petitioner. Therefore, it is submitted that, leaving open the issue relating to the caste certificate the petitioner is entitled to pensionery benefits for the simple reason that the bank did not conduct any enquiry in this matter fo find out fraud on the part of the petitioner.

5. The Act 11 of 1996 was enacted to regularise the issues relating to community certificates for Scheduled caste and Scheduled tribe in the State of Kerala. It also provides for

cancellation of false community certificates. Section 11 of the Act provides as follows:-

> "**11. Cancellation of false community certificate-**
>
> 1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes or the Scheduled Tribes has obtained a false community certificate to the effect that either himself or his children belongs or belong to such Caste or the Tribe, the Scrutiny Committee may either suo motu or on a written complaint or report by any person or authority, call for the records and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudently, it shall, by order, cancel the certificate after giving the person concernd an opportunity of making a representation, if any."

Section 11 abundantly makes clear that any Community certificate fraudulently obtained has to be cancelled. However, it has to be noted, the reference is made obtaining such certificate by a person who doesnot belong to Scheduled Caste or Scheduled Tribe.

6. The argument of the learned Senior counsel is that the petitioner being a Scheduled Caste member is not contemplated in this Act and therefore if a Scheduled Caste member obtains

certificate as Scheduled Tribe, the Act has no application. I have find considerable force in this argument, especially in the context of such cancellation based on fraud. The fraud vititates every action, therefore, if any other community member obtains a certificate as Scheduled Caste or Tribe, it can be safely concluded that this was based on fraud. However, when a Scheduled Caste obtains a certificate in the name of Scheduled Tribe, it cannot be termed as a 'fraud' as referred under Section 11 as the Act as such has no application. In such situation, a finding has to be made by competent authority as to the nature of fraud perpetrated by the person who obtained such certificate. I am not entering upon the finding of the scrutiny committee in this matter. If at all the finding is correct, that finding cannot be considered as a finding in terms of Section 11, as above. Processing as such would not apply to a member of Scheduled Caste who obtains such certificate in the name of Scheduled Tribe but that finding can be a piece of evidence for the authority who has given employment to establish a fraud committed by the petitioner in obtaining the employment. Therefore, leaving open the issues relating to the veracity of the finding by the scrutiny committee, the question is whether the petitioner had committed any fraud in obtaining the employment with the bank.

7. Ext.P8 is the proceedings of the bank terminating the petitioner. As evident from Ext.P8 itself, the bank did not conduct any enquiry. Though it is stated that the petitioner has been appointed in the reserve vacancy for Scheduled Tribe based on the caste certificate produced by the petitioner as Scheduled Tribe. Nothing has been stated about the nature of vacancy that was available at the time of appointing the petitioner. The bank authorities simply relied upon the scrutiny committe report. This scrutiny committee report cannot be termed as a finding in terms of Section 11, as it may not have an application if a Scheduled Caste member obtaining such certificate as a Scheduled Tribe. It can only be relied as a piece of evidence to establish fraud committed by the petitioner in obtaining the employment. The fraud is defined under the Black's dictionery as follows:-

> "Fraud: An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or

> misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth or suggestion of what is false, whether it be by direct falsehood or innuenduo, by speech or silence, word of mouth, or look or gesture."

8. The quality of the finding as entered in the scrutiny committee itself would go to show that the caste shown in the petitioner's school record could be error or mistake. Nowhere it refers that the petitioner fraudulently styled as a Scheduled Tribe member and obtained the caste certificate. If a person's caste is found out later to be a Scheduled Tribe instead of Scheduled Caste, in the absence of any fraudulent act on the part of such person, it is not safe to conclude that the caste certificate was obtained by fraudulent method. As has already been noted, Section 11 of Act 11 of 1996 as such would not apply in the matter to conclude that the caste certificate obtained by the petitioner is by fraudulent method as the same Act would not apply to a Schedule caste member.

9. In such situation, the only way of establishing case against the petitioner for obtaining Scheduled Tribe certificate

by fraud is by adducing independent evidence. The bank without adverting into any of these materials and also without attributing any of the fraudulent acts, has terminated the petitioner from the service. This action is illegal. If there was error or mistake in obtaining the certificate, that will not vitiate the petitioner's employment in the bank. In law irregular appointments and void appointments are having different repercussions. In the former case the appointment itself will not be vitiated, in later of course employment itself will be vitiated dis-entitling him all terminal benefits. The bank did not make any endeavour to find out fraud on the part of the petitioner. In such situation, I am of the view that the termination of the petitioner is illegal and liable to be set aside. Accordingly, Ext.P8 is set aside.

10. In **State of Jharkhand v. Jithendra Kumar Srivastava** (2013(3) KLT 782 (SC) it is held that the State Government cannot withhold pensionary benefits pending departmental/criminal proceedings. Consequently, there shall be a direction to release the entire pensionary benefits to the petitioner without delay, at any rate, within a period of two months from the date of receipt of a copy of the judgment. The

Bank is at liberty to proceed against the petitioner if so warranted in accordance with law to conduct an enquiry regarding fraud committed by the petitioner. Any payment of terminal benefits will be subject to outcome of such enquiry, if any.

The writ petition is disposed of. No costs.

A. MUHAMED MUSTAQUE, JUDGE

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