

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 11801 of 2009 (U)

PETITIONER(S):

**V. BALAN, POSTAL ASSISTANT,
HEAD POST OFFICE, THRISSUR,
RESIDING AT P & T QUARTERS,
M.5, POOTHOLE, THRISSUR.**

**BY ADVS.SRI.M.POLY MATHAI,
SRI.P.CHELLAPPAN.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
SC/ST DEVELOPMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE CHAIRMAN,
SCRUTINY COMMITTEE FOR VERIFICATION OF SC/ST CLIMS,
SC/ST DEVELOPMENT DEPT., SECRETARIAT,
THIRUVANANTHAPURAM.**
- 3. THE VIGILANCE OFFICER, VIGILANCE CELL,
DIRECTORATE OF KIRTADS, KOZHIKODE 17.**
- 4. THE DIRECTOR OF POSTAL SERVICE,
OFFICE OF THE POST MASTER GENERAL,
CENTRAL REGION, KOCHI.**

**R1 TO R3 BY SPL. GOVT. PLEADER (SC/ST) SMT.LALY VINCENT.
R4 BY ADV. SRI.N. NAGARESH, ASST. S.G. OF INDIA.
BY ADV. SRI.M.V.S.NAMBOODIRI, SC.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE CASTE CERTIFICATE DATED 13/11/1997 OF THE PETITIONER ISSUED BY TAHSILDAR, TRICHUR.
- EXT.P2 COPY OF THE REPORT OF 3RD RESPONDENT DATED 31/03/2000.
- EXT.P3 COPY OF THE ORDER DATED 03/03/2001 OF THE 2ND RESPONDENT.
- EXT.P4 COPY OF THE JUDGMENT IN M.F.A.418/2002 DATED 10/08/2006.
- EXT.P5 COPY OF THE STATEMENT SUBMITTED BY PETITION BEFORE THE 2ND RESPONDENT DATED 27/10/2007.
- EXT.P6 COPY OF THE HIS PROCEEDINGS OF THE 2ND RESPONDENT DATED 31/01/2009.
- EXT.P7 COPY OF THE G.O.M.S.16/2009/SCST DD DATED 31/01/2009.
- EXT.P8 COPY OF THE EXTRACT ADMISSION REGISTER OF S.M. HIGH SCHOOL AYALLOOR ISSUED TO PETITIONER ON 20/06/2001.
- EXT.P9 COPY OF THE DOCUMENT NO.2314/81 OF SRO KOLLENGODE IN FAVOUR OF THANKAMMA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

C.K. ABDUL REHIM, J.

W.P.(C).No.11801 of 2009

Dated this the 3rd day of February, 2015

JUDGMENT

Challenge in this Writ Petition is against the cancellation of Community Certificates issued to the petitioner and his family members, including them in the caste of 'Malai-Pandaram' which is a Scheduled Tribe, and also the consequential directions issued under provisions of the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (hereinafter referred to as 'the Act' for short).

2. The petitioner joined service under the 4th respondent in the year 1973 as an Extra Departmental Employee. In 1980 he got regular appointment as Postman, in the quota reserved for Scheduled Tribes, based on a Caste Certificate issued by the Tahsildar concerned. Subsequently he was promoted as Postal Assistant in the year 1989, considering his status as Scheduled Tribe in the reserved quota. The petitioner has

now retired from service. While he was in service, during the year 1999, the 4th respondent made a request to the 3rd respondent to investigate into the genuineness of the petitioner's caste status as Scheduled Tribe, under the caste of Malai-Pandaram. The 3rd respondent conducted an enquiry based on the said request and submitted Ext.P2 report, to the 2nd respondent. The 3rd respondent had infact conducted a joint enquiry based on the request of the 4th respondent and based on another request received from the Food Corporation of India regarding the caste status of one Sri.K.Swaminathan, who is the maternal uncle of the petitioner. In Ext.P2 report the 3rd respondent found that, on an anthropological investigation it was revealed that the petitioner as well as K.Swaminathan do not belong to the Scheduled tribe of 'Malai-Pandaram' and actually they belong to the caste of Pandaram (Veera Saiva) which is classified under 'other backward communities'. In Ext.P2 it was recommended for cancellation of the bogus Community Certificates secured from the Tahsildar, Thrissur and also

recommended to take action to set right the wrong entries of caste name in the school records of the family members of the petitioner. Further the report recommended to take action to recover the amounts which the petitioner had received under the pseudo caste identity. Based on Ext.P2 report the 2nd respondent had issued Ext.P3 proceedings directing action to terminate service of the petitioner and to cancel the bogus Community Certificate and to set right the wrong entries of caste name in the school records of their family members. The 2nd respondent decided to submit his proceedings before the Government for follow up actions. But Ext.P3 was set aside in an appeal filed before this court, through Ext.P4 judgment, finding that the scrutiny committee which took the decision was not constituted in terms of the Act and in terms of the decision of the hon'ble Supreme Court. Even though Ext.P2 report was also quashed in Ext.P4 judgment, the same was subsequently reviewed. However, liberty was reserved in favour of the respondents to take appropriate action

according to law, after consideration of the matter by any scrutiny committee constituted as per provisions of the Act.

3. Thereafter the matter was again considered by the 2nd respondent and Ext.P6 proceedings was issued confirming his earlier order. Ext.P6 was placed before the Government for appropriate action. The Government have issued Ext.P7 order and declared that the petitioner and the members of his family do not belong to Malai-Pandaram community, which is a Scheduled Tribe, but belong to Pandaram (Veera Saiva) which is included in OBC. It was further declared that none of the members of the family of the petitioner will be eligible for any benefits exclusively intended for members of Scheduled Tribes. Consequential direction was issued for effecting correction in the academic records of the family members and for cancelling all Scheduled Tribe Certificates issued to the family members. In Ext.P7 proceedings the Government have issued further directions to the 4th respondent to terminate the petitioner forthwith and to

appoint a member of Scheduled Tribe community against the post in question. The Government also ordered to prosecute the petitioner for making a false claim with respect to the caste status. It is aggrieved by Exts.P2, P6 and P7, the petitioner is approaching this court.

4. Contention of the petitioner is mainly on two aspects. It is argued that, during the enquiry conducted by the 2nd respondent it was categorically found that the brother of Sri. K. Swaminathan, namely Sri.K.Mani, was also found to be not a member of the caste Malai-Pandaram, and he actually belongs to Pandaram (Veera Siva). But despite such a finding arrived by the 3rd respondent, no action was initiated for directing termination of his service. Even though Community Certificate issued to the said person was also cancelled, no action directing termination of his service from the Postal Department was taken, observing that the Superintendent of Post Office had informed to the 3rd respondent that Sri.K.Mani was not given any benefit of communal status in the matter of promotion, under the

time bound promotion scheme. According to learned counsel for the petitioner, a discriminatory stand is taken with respect to the petitioner alone, which cannot be sustained. It is contended that the 3rd respondent, after being found that the above said person also belongs to Pandaram (Veera Saiva) community, had failed in issuing any direction to the Postal authorities to terminate his service.

5. It is evident from Ext.P2 report of enquiry conducted by the 3rd respondent that Sri.K.Mani is the brother of Sri.K.Swaminathan, who is the maternal uncle of the petitioner. It is true that the 3rd respondent found that Sri.K.Mani is not a member of Scheduled Tribe of Malai Pandaram, but he actually belongs to Pandaram (Veera Saiva) community, which is classified under OBC. It is stated in Ext.P2 that the postal authorities have taken up the matter with the District Collector, Palakkad, who in turn had informed the Senior Superintendent of Post Office about cancellation of the Community Certificate issued to Sri.K.Mani, by the Tahsildar, Chittoor.

But the Senior Superintendent of Post Office through a letter dated 24/09/1999 had informed the 3rd respondent that Sri.K.Mani was not given any benefit of caste status in the matter of promotion given under the time bound promotion scheme. It is further stated that Sri. K.Mani is not enjoying any benefits due to Scheduled Tribes at present and that he is treated only as a member of other communities. Learned counsel for the petitioner contended that even though promotion was not given to Sri.K.Mani based on the caste status, his initial entry in service was in the quota reserved for Scheduled Tribes. This court takes note of the fact that the 3rd respondent had commenced the enquiry only against Sri.K.Swaminathan and the petitioner. The enquiry was conducted specifically based on the requests made by the 4th respondent and the Food Corporation of India. Even assuming that the 3rd respondent ought to have recommended for termination of service of Sri.K.Mani based on the findings arrived by them, the petitioner cannot be permitted to take any advantage based on

alleged failure of the 3rd respondent in not recommending termination of service of Sri.K.Mani. In other words, the petitioner is not entitled to canvass any challenge against the proceedings issued against him, based on the ground that there occurred failure on the part of the authorities to take appropriate action under the Act, against Sri.K.Mani. Therefore this court is of the considered opinion that no valid challenge against the impugned proceedings can be sustained on the said ground.

6. Sheet anchor of the contentions raised by the petitioner in challenge of the impugned order is that, there occurred denial of sufficient opportunity to the petitioner to establish his case and to effectively contradict the findings contained in Ext.P2, before the 2nd respondent. It is specifically pointed out that the petitioner had submitted a detailed explanation, as per Ext.P5 before the 2nd respondent. It is further contended that the 2nd respondent had failed to advert to various documents produced along with Ext.P5, mention of which is made in paragraph 13 of the said statement. The non-

advertance and non-evaluation of such documents and the non-consideration of various contentions raised in Ext.P5 will vitiate Ext.P6 proceedings, is the contention. Since there is clear denial of the principles of natural justice, the proceedings of the 2nd respondent cannot stand scrutiny of its legal validity, is the argument raised.

7. From Ext.P2 report submitted by the 3rd respondent it is evident that a genealogical study was conducted with respect to the ancestors and family members of both Sri. K.Swaminathan and the petitioner. The findings arrived based on such study revealed that the father of the petitioner, late Vella Pandaram Muuthu Kunni belonged to 'Mantha' Clan of Pandaram community and he was a religious mendicant. It was further found that mother of late Vella Pandaram, late Smt.Chinnammu was first married to late Kulla Pandaram and a daughter named Thankamma was born out of the wedlock. The said Smt.Thankamma was married to one Sri. Arumughan of Kollengode who belonged to Pandaram community. Smt.Chinnammu's second husband Velayudha Pandaram

@ Velutha Pandaram also belonged to the same community. Two sons were born out of the wedlock namely Kulla Pandaram and Vella Pandaram (father of the petitioner). Sri.K.Swaminathan, against whom the enquiry was made is Chinnammu's brother's son. It was found that they all belonged to Pandaram community. Genealogical study made with respect to the maternal relations of the Petitioner also revealed that elder sister of Sri.K.Swaminathan namely Ninmi @ Thankayi @Thankamma is the mother of the petitioner and she was married to father of the petitioner Sri. Vella Pandaram. Therefore it is found that in the maternal side also all the ancestors of the petitioner belonged to Pandaram Community. The 3rd respondent conducted an elaborate study about the ancestors, siblings, spouse and children of the petitioner and it was concluded that the genealogical analysis and documentary evidences would show that the petitioner was born in Pandaram (Veera Saiva) community which is included in the OBC category. The 3rd respondent found that petitioner was recruited in

the department of Postal Services based on a Community Certificate issued by the Tahsildar of Thrissur, dated 27/09/1978. According to the 3rd respondent such certificate was issued without verifying his caste status at his native place of Chittoor Taluk at Palakkad District. The 3rd respondent also found that the challenge with respect to caste status of scheduled tribe claimed by the son and daughter of the petitioner's brother in-law, Sri.T.N.Govindan, was dismissed by this court in two separate writ petitions. On the basis of such conclusions, it was categorically found that, the petitioner do not belong to the scheduled tribe of 'Malai Pandaram'. While evaluating the report of the 3rd respondent, the 2nd respondent conducted a personal hearing and the petitioner was heard in person. It was found that the petitioner was born on 25/01/1955 and he had primary education from ALP school Muthukunni, Ayilur during the year 1961. It was found that the entry in the Admission Register of the petitioner at the above school had shown his caste status as 'Pandaram B.C'.(Backward

community). Further it is found that there is no mention about his caste status in the SSLC Book. It is also found that the caste status shown in the school records of the siblings of the petitioner was also as 'Pandaram B.C'. Both the respondents 2 and 3 had found that, during the course of enquiry Sri.K.Swaminathan had given statement to the effect that he belongs to 'Pandaram Community' and not 'Malai Pandaram' which is a Scheduled Tribe.

8. Learned counsel for the petitioner had drawn attention of this court to Ext.P5 statement. According to him the petitioner had submitted the said statement before the 2nd respondent at the time of personal hearing. It is pointed out that various documents mentioned in Ext.P5 statement were produced before the 2nd respondent. Particularly it is pointed out that ever so many caste certificates were issued in favour of the petitioner as well as other family members to the effect that they belong to 'Malai Pandaram', Scheduled Tribe. It is contented that the Tahsildar concerned had issued such certificates either based on direct enquiries conducted at

the place of birth of the persons or based on certificates issued by the Tahsildar having jurisdiction in that area. As stated in the previous paragraph, contention is that the non advertance to those documents as well as the non-consideration of the contentions based on those documents, would vitiate the impugned order of the 2nd respondent.

9. Under Section 9(2) of the Act it is provided that, the report of the expert agency shall be conclusive proof against the claim of the person with respect to scheduled tribe status, unless found contrary by the scrutiny committee. Evidently the copy of the report of the expert agency (Ext.P2) was furnished to the petitioner. It contained a detailed anthropological study conducted by the expert agency. An elaborate genealogical survey was seen made by the expert agency in which it was categorically proved that the ancestors of the petitioner, both paternal and maternal belonged to Pandaram (Veera Saiva) community. It was also found that the maternal uncle of the petitioner Sri.K.Swaminathan had conceded

that he belongs to 'Pandaram Community'. Further it is evident that the school Admission Register of the petitioner and his siblings had shown caste status as 'Pandaram B.C.'. Section 10 of the Act provides that, in any enquiry conducted by the expert agency or by the scrutiny committee, the burden of proof regarding the caste status is on the person making claim that he belongs to scheduled caste/scheduled tribe. Further, under Section 11(4) of the Act it is provided that, any order passed by the scrutiny committee shall be final and conclusive and no suit or appeal will lie against such order. Of course, a judicial review in exercise of power vested under Article 226 is not barred by virtue of the said provision. But the scope of judicial review is definitely limited, only with respect to such matters as patent illegality, total erroneous exercise of jurisdiction, totally unreasonable and arbitrary findings without any basis or support of documents etc. But a re-appreciation or re-evaluation of the factual aspects based on evidence and documents cannot be ventured upon by this court in

exercise of jurisdiction vested under Article 226.

10. Learned counsel made vehement contentions regarding violation of principles of natural justice, to the extent of non consideration of the materials produced. But on a prima facie evaluation, this court finds that the materials mentioned in Ext.P5 are mainly the Caste Certificates issued in favour of the petitioner and the family members. But the conclusive proof derived by the expert agency with respect to the caste status of the ancestors and the mention of caste status in the Admission Register of petitioner and his siblings would not in any manner be shaken or controverted by those documents, even if it is accepted or scrutinized. There exists a controversy as to whether those documents were produced before the 2nd respondent. But this court is of the considered opinion that even if it is accepted that those documents were available before the 2nd respondent, those materials cannot be considered in any manner as proving anything contrary to the findings arrived by the expert agency, which is confirmed by the

scrutiny committee. Under such circumstances, this court is not impressed by the contention that non-advertance to such documents had resulted in denial of natural justice which will vitiate the impugned proceedings.

11. It is evident that pursuant to Ext.P6 proceedings of the 2nd respondent, the Government have considered the matter and granted approval for actions recommended by the expert agency and the scrutiny committee. Learned counsel had canvassed a contention that the directions contained in Ext.P7 to prosecute the petitioner for making false claim as to the caste status cannot be sustained, because the petitioner had not produced any bogus or false certificate for securing the job under the 4th respondent. Learned counsel had placed reliance on a Division Bench decision of this court in **Vijayan v. State of Kerala [2013(2) KLT 488]** in order to contend that, a cancellation of the Community Certificate under Section 8A or under Section 11 can be sustained only if a bogus certificate is produced or in a

case where the person claiming status had fraudulently created such a certificate. But the question as to whether any offence punishable under Section 15 of the Act is made out or not or as to whether a punishment can be imposed against the petitioner based on an allegation that he had secured job on the basis of a false claim, are matters which are not germane for consideration in this writ petition. It will be left open to the petitioner to raise all such defence if any steps for prosecution was initiated based on Ext.P7 order, or to seek for quashing such proceedings.

For the reasons mentioned as above, this court do not find any circumstances existing warranting interference to hold that Exts.P2, P6 or P7 are liable to be set aside. Consequently, the writ petition fails and the same is hereby dismissed.

Sd/- **C.K. ABDUL REHIM**
JUDGE