

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).NO. 15185 OF 2012 (W)

PETITIONER:

ANILA.C, AGED 22 YEARS,
D/O.NARAYANAN, PUTHEN VAYAILIL HOUSE,
PERUVALARHUPARMBA P.O., IRIKKUR AMSOM, KUNLINHA DESOM,
TALUKPARAMBA TALUK, KANNUR DISTRICT

BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI
SRI.J.ABHILASH

RESPONDENT(S) :

1. TAHSILDAR, TALIPARAMBA,
TALIPARAMBA TALK, TALIPARAMBA P.O., KANNUR DISTRICT
670141
2. VILLAGE OFFICER,
IRIKKUR VILLAGE OFFICE, IRIKKUR P.O.,
KANNUR DISTRICT -670592
3. STATE OF KERALA,
REP.BY THE SECRETARY,
DEPARTMENT OF SOCIAL WELFARE SECRETARIAT,
THIRUVANANTHAPURAM-1
4. DEPUTY SECRETARIAT,
SPECIAL RECRUITMENT WING,
KERALA PUBLIC SERVICE COMMISSION, PATTAM,
THIRUVANANTHAPURAM-695004

R4 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
R1 BY SPL. GOVERNMENT PLEADER, P.K. SANTHAMMA
R BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1:- TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE OF THE PETITIONER
- P2:- TRUE COPY OF THE COMMUNITY CERTIFICATE DTD 20/6/2007 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- P3:- TRUE COPY OF THE MEMBERSHIP RECEIPT ISSUED TO THE PETITIONER DTD 14/5/2009 BY THE KERALA ADIVASI CONGRESS
- P4:- TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER FROM THE KERALA ADIVASI CONGRESSI KANNUR DIST COMMITTEE DTD 22/6/2012
- P5:- TRUE COPY OF THE CERTIFICATE ISSUED BY THE WARD MEMBER OF IRIKKUR GRAMA PANCHAYATH DTD 22/6/2012
- P6:- TRUE COPY THE CERTIFICATE ISSUED BY THE WARD MEMBER OF IRIKKUR GRAMA PANCHAYATH DTD.22/6/2012
- P7:- TUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD 19/6/2012
- P8:- TRUE COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER, IRIKKUR DTD 19/6/2012
- P9:- TRUE COPY OF THE ORDER DTD 20/6/2012 ISSUED BY THE 1ST RESPONDEN TO THE PETITIONER
- P10:- TRUE COPY OF THE LETTER DTD 6/6/2012 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.15185 of 2012

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Dated this the 20th day of November, 2015

J U D G M E N T

The petitioner is a person born in a wedlock of inter-caste couples, Hindu-Paniyan and Hindu-Thiyya. Hindu-Paniyan community is a Scheduled Tribe. But, Hindu-Thiyya would fall under OBC. According to the petitioner, he was following the customary rites and tenets of Hindu-Paniyan Community. Therefore, he is liable to be treated as a member of that Community and he is entitled to get all benefits provided to that Community under the Constitution of India and the relevant laws made thereunder.

2. In the year 2007, the petitioner had approached the 1st respondent for issuing a Community Certificate and at that time the 1st respondent had

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conducted an enquiry and issued Ext.P2 Certificate, showing that the petitioner belongs to Hindu-Paniyan Community and that Certificate had validity for six months only.

3. While so, the petitioner had applied for Draftsman Grade II, before the Kerala Public Service Commission and the Commission required him to produce Community Certificate, by Ext.P10. Pursuant to Ext.P10, the petitioner again applied for a Community Certificate. The 1st respondent sent the application to the Village Officer, for report. The Village Officer in his report dated 19.06.2012 had stated that the petitioner is living as per the customs and lifestyle of Thiyya Community. On the basis of the said report, the 1st respondent by Ext.P9 order, declined to issue Community Certificate to the petitioner on the premise that the petitioner is living, as per the customs and

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lifestyle of Thiyya community. This order is under challenge in this Writ Petition, on the ground that the denial of issuing of Community Certificate is arbitrary and illegal.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. Going by the submissions at the Bar, the sum and substance of the arguments advanced by the learned counsel for the petitioner is that in the year 2007, the petitioner has been served with a Community Certificate, after conducting an enquiry, by the 1st respondent, stating that he belongs to Hindu-Paniyan Community. After the expiry of the period provided in the said Certificate, the petitioner again submitted an application for issuing Community Certificate as required by the Kerala Public Service Commission for his employment and at that time the 1st respondent has

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declined the Community Certificate stating that on enquiry, it was found that the petitioner belongs to Hindu-Thiyya Community. Thus the stand taken by the 1st respondent within a short period is inconsistent and mutually opposite. Thus, the 1st respondent has not applied his mind properly, while declining the Community Certificate to the petitioner, which is detrimental to his future. *Per contra*, the learned counsel for the petitioner advanced arguments to justify the reasons, whereby the Community Certificate was declined.

6. Going by the records, it is seen that this Court has passed an interim order dated 29.06.2012, directing the 1st respondent to issue Community Certificate to the petitioner provisionally certifying that the petitioner belongs to Hindu-Paniyan, which could be used by the petitioner only for production before the Public Service

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Commission in terms of the notice issued by the Public Service Commission and now the petitioner has got employment on production of the Provisional Certificate.

7. Going by the Kerala Scheduled Caste Regulation and Issue of Community Certificate Act, 1996 (*hereinafter referred to as 'the Act'*), provision for appeal is provided under Section 12 of the said Act to any person aggrieved by an order passed under sub-section (1) of Section 5 by the competent authority, rejecting the application made to it under Section 4 of the said Act. Even though, such an appellate remedy is provided under the Statute, the petitioner has preferred this Writ Petition, challenging the denial of Community Certificate. I do not find any reason to interfere with the matter in issue, before exhausting the statutory remedy provided under law.

8. Having regard to the fact that the denial of

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Community Certificate was pending under challenge before this Court from 2012 onwards, the petitioner is allowed to file a statutory appeal as provided under Section 12 of the Act. In the above view, the petitioner is directed to file statutory appeal before the appellate authority as provided under Section 12 of the Act within a period of three months from today and if an appeal is filed, the appellate authority shall dispose of the same on merits, after affording an opportunity of being heard to the petitioner, within a period of three months from the date of appeal.

The Writ Petition is disposed of as above.

Sd/-
K. HARILAL,
JUDGE

DST

//True copy//

P.A. To Judge