

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 31139 of 2010 (N)

PETITIONER:

**K.PRABHAVATHY MURUGESAN,
W/O.K.MURUGESAN,
RESIDING AT 'MAYURI',
CHANGAMPUZHA NAGAR, KOCHI-33.**

**BY ADVS.SRI.H.HAMZA ROWTHER
SRI.V.K.PEERMOHAMED KHAN
SRI.H.SUNIL**

RESPONDENT:

**THE MARINE PRODUCTS EXPORTS
DEVELOPMENT AUTHORITY,
REP.BY ITS SECRETARY, M.P.E.D.A.HOUSE,
PANAMPILLY NAGAR, KOCHI-36.**

**BY ADVS. SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH
SRI.TOM THOMAS (KAKKUZHIYIL)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE CASTE CERTIFICATE ISSUED BY THE TAHSILDAR, CHANGANASSERY TALUK, IN FAVOUR OF THE PETITIONER.

EXHIBIT P2 : TRUE COPY OF THE CASTE CERTIFICATE ISSUED BY THE TAHSILDAR, KANAYANNOOR TALUK, IN FAVOUR OF THE PETITIONER VIDE NO.5042/79.

EXHIBIT P3 : TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN O.P.NO.4351/1981(D).

EXHIBIT P4 : TRUE COPY OF THE JUDGMENT IN O.P.NO.4106/1991(L) OF THE HON'BLE HIGH COURT OF KERALA.

EXHIBIT P5 : TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO.255/2004 OF THE HON'BLE SUPREME COURT OF INDIA.

EXHIBIT P6 : TRUE COPY OF THE NOTICE ISSUED BY THE VIGILANCE OFFICER, KIRTADS, KOZHIKODE.

EXHIBIT P7 : TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER AGAINST EXT. P6 NOTICE.

EXHIBIT P8 : TRUE COPY OF NOTICE ISSUED BY THE VIGILANCE OFFICER, KIRTADS, KOZHIKODE.

EXHIBIT P9 : TRUE COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER TO THE VIGILANCE OFFICER, KIRTADS IN REPLY TO THE EXT. P8 NOTICE.

EXHIBIT P10 SERIES : TRUE COPIES OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE RESPONDENT ON VARIOUS DATES.

EXHIBIT P11 : TRUE COPY OF THE OFFICE ORDER OF THE RESPONDENT DATED 27.2.2009.

EXHIBIT P12 : TRUE COPY OF THE JUDGMENT OF HIGH COURT OF KERALA IN MFA NO.424/01.

RESPONDENT'S EXHIBITS:

- NIL

/TRUE COPY/

P.A.TO JUDGE

mbr/

C.K.ABDUL REHIM, J.

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W.P.(C). No. 31139 OF 2010

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Dated this the 24th day of February, 2015

JUDGMENT

The petitioner entered service of the 1st respondent authority during the year 1979. She was appointed in the post of 'Quality Supervisor' on 26.7.1979, against a vacancy reserved for Scheduled Tribes. The appointment was given on the basis of Exts.P1 and P2 Caste Certificates produced to the effect that the petitioner belongs to 'Hindu Konda Reddis', which is a caste recognised as Scheduled Tribe. During the year 1980 the respondent had terminated service of the petitioner based on a complaint that the petitioner had produced false Community Certificate for obtaining the job and on the basis that the District Collector had reported that the petitioner belongs to 'Reddy Community' which is not recognised as Scheduled Tribe in Kerala. The petitioner challenged the order of termination by filing O.P. No.4351/1981 before this court. In Ext.P3

judgment this court took the stand that, Government of India alone can take a final decision to resolve the dispute as to whether the petitioner belongs to Konda Reddis or not. It was observed that, the respondent had acted upon materials collected behind back of the petitioner in order to terminate her service, in violation of the principle of natural of justice. Therefore the order of termination was set aside and the petitioner was directed to be re-instated in service. Consequently the petitioner was reinstated in service on 16.8.1989.

2. Subsequent to Ext.P3 judgment and the reinstatement of the petitioner, the Central Government had referred the matter for decision of the State Government. In view of the stand taken by the State Government that 'Konda Reddis' in Kerala are only 'Reddiars' and not Scheduled Tribes, the Commissioner and Secretary of the Scheduled Caste and Scheduled Tribe Development Department had issued instructions to the District Collector to cancel the Caste Certificate issued by the Tahasildhar. Accordingly,

the Tahasildar, Changanassery had issued proceedings cancelling the Community Certificate issued to the petitioner. The petitioner challenged cancellation of the Community Certificate by filing O.P. No. 4106/1991 before this court. In Ext.P4 judgment a Division Bench of this court had set aside cancellation of the Community Certificate. It was observed that the State Government should take into consideration of the matter and has to make verifications as per the procedure prescribed under the Kerala (Scheduled Castes and Scheduled Tribes) Regularisation of Issue of Community Certificates Act, 1996 (hereinafter referred to as the Act for short). A decision as to whether the petitioner belongs to the community of 'Konda Reddis' has to be taken based on such verifications. The petitioner challenged Ext.P4 judgment before the Hon'ble Supreme Court. SLP filed in this regard was disposed of through Ext.P5 common judgment, along with certain similar other cases. It was observed that once the legislature of the State enacts an Act which is a self

contained code, it might not have been necessary for the court to refer the matter again to the Central Government. Direction issued by this court in Ext.P4 judgment was upheld by observing that, in view of the direction issued by the High Court the Committee shall determine the question, as expeditiously as possible. Ext.P5 judgment was passed on 27.4.2007. The petitioner thereafter continued in service till attaining superannuation and got retired on 28.2.2009. Immediately before her retirement the petitioner was served with a notice issued by the Vigilance Officer attached to KIRTADS, requiring her personal appearance in connection with an anthropological investigation on the caste status, which was scheduled on the date of her retirement, on 24.2.2009. Eventhough the petitioner submitted detailed objections to the said notice, a further hearing was scheduled on 13.3.2009, as evidenced from Ext.P8. The petitioner again submitted Ext.P9 objections stating detailed factual aspects contending that the petitioner belongs to the caste of 'Konda Reddis' which

is approved as Scheduled Tribe. According to the petitioner, even though the Vigilance Officer had issued Exts.P6 and P8 notices as early as in the year 2009, no further steps were proceeded in the matter of the anthropological investigation. But the petitioner was denied of her retirement benefits such as leave surrender, pay and D.A. arrears, Gratuity, Pension etc. The petitioner submitted several representations before the respondent as evidenced from Ext.P10. But the respondent had issued Ext.P11 order, which according to the petitioner is a predated one. In Ext.P11 it is stated that since caste determination process initiated by KIRTADS is not yet completed, it is not proved that the petitioner belongs to Scheduled Tribe. Therefore it has been decided to withdraw the pension and other retirement benefits of the petitioner until it is proved whether she belongs to Scheduled Tribe or not. The petitioner is challenging Ext.P11 order of the respondent and seeking direction commanding for payment of retirement benefits due to the petitioner, along with

interest.

3. Contention of the petitioner is that the respondent is not justified in indefinitely withholding the terminal benefits due to the petitioner, on the basis that the caste status of the petitioner as Scheduled Tribe is not proved yet. It is contended that the petitioner had entered service of the respondent as early as in the year 1979 on the basis of Exts.P1 and P2 Caste Certificates. Once the service of the petitioner was terminated by the respondent without there being any cancellation of the Caste Certificates. This court in Ext.P3 judgment had set aside the order of termination. Later cancellation of the caste certificate made by the Tahasildar was set aside by this court in Ext.P4 judgment. Even though this court had directed the State Government to take a decision, neither the Government nor any competent authority had cancelled the caste certificate, despite lapse of several years. Therefore the respondent is not legal and justified in withholding the terminal benefits by taking a stand that the petitioner has not proved her

Scheduled Tribe status.

4. In this regard the petitioner had placed reliance on Ext.P12 judgment of this court wherein a Division Bench had observed that even in a case of cancellation of the caste certificate the denial of Scheduled Tribe status will operate only prospectively and the benefits approved till the date of cancellation alone can be recovered or withheld. Section 30 of the Act provides that a Community Certificate issued by any competent authority before commencement of the Act, shall unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of the Act. In the case at hand Exts.P1 and P2 are Community Certificates issued prior to enactment of the Act. Therefore, unless it is cancelled in exercise of powers vested under the Act, it should be treated as valid. In the case at hand there is evidence to show that KIRTADS had initiated an inquiry as early as in the year 2009. This court directed the Special Government Pleader (SC & ST) of the State Government to ascertain as to whether the inquiry

based on Exts.P6 and P8 was proceeded. The Special Government Pleader on instruction submitted that, the inquiry has not been completed. Going by provisions of the Act, the authority empowered to cancel a Community Certificate issued prior to commencement of the Act, is the 'Scrutiny Committee' or the State Government. None of the above said authorities have cancelled the community certificates based on which the petitioner was given employment. It is brought to notice of this court that, under Section 16A of the Act if the expert agency finds that the claim regarding caste status of any employee is not genuine and if the incumbent retires while the inquiry by the Government of scrutiny committee is pending, the Government or the Government undertaking or any other authority as the case may be shall have the power to defer and withhold pensionary benefits of the incumbent, pending decision of the Government or scrutiny committee. But in the case at hand the expert agency has not completed the enquiry and had not found that the claim of the petitioner

with respect to her caste status is not genuine. Furthermore, the term Government as defined under the Act as Government of Kerala. It is admitted that the respondent authority is not an instrumentality of the State Government, but it is under the control of the Central Government. Moreover with respect to the caste status of the petitioner no proceedings is pending either before the Government or before the scrutiny committee. Under such circumstances there is no justification at all for the respondent to withhold the pensionary and other terminal benefits to the petitioner on an indefinite basis. It is pertinent to note that six years have lapsed since the date of retirement of the petitioner. There is absolutely no justification for denying terminal benefits and pension to an employee even after six years of her retirement, despite the fact that she had served the respondent for quite a long period.

5. Under the above mentioned circumstances this court is of the considered opinion that Ext.P11 order is liable to be quashed. Circumstances of the case warrants for

interference of this court in issuing direction for settlement and payment of pensionary benefits and other terminal claims of the petitioner within a time limit.

6. Hence this writ petition is allowed and Ext.P11 is hereby quashed. The respondent is directed to settle all the claims of the petitioner for payment of monthly pension and disbursal of all terminal benefits due to her. Needful steps in this regard shall be taken at the earliest and all the benefits due to the petitioner shall be disbursed at the earliest possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

7. It is made clear that the above judgment will not stand in the way of effecting any recovery if ultimately it is found that the caste certificate based on which the petitioner had secured the job is not genuine and if it is legally permissible to make any such recovery under the relevant statutory provisions.

8. Learned counsel for the petitioner made a request to order payment of interest on the amounts due towards

terminal benefits, on the basis that the illegal action on the part of the respondent had caused severe prejudice and loss to the petitioner. It is made clear that this court had not taken any decision with respect to entitlement of the petitioner for payment of the interest. It will be left open to the petitioner to make separate claim in this regard before the respondent. It will be left open to the respondent to consider such claim and to take any appropriate decision.

C.K.ABDUL REHIM, JUDGE

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