

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 37093 of 2009 (F)

PETITIONER(S):

1. T.K.SURENDRAN, S/O.T.K.KOCHU KUNJU,
RESIDING AT "SURAMYA", PUNNAPRA P.O., ALAPPUZHA - 4.
2. SURYA.S., D/O.T.K.SURENDRAN,
RESIDING AT "SURAMYA", PUNNAPRA P.O., ALAPPUZHA - 4.
3. KANNAN.S., S/O.T.K.SURENDRAN,
RESIDING AT "SURAMYA", PUNNAPRA P.O., ALAPPUZHA - 4.

BY ADVS. SRI. N.N. SUGUNAPALAN (SR.)
SRI. S. SUJIN

RESPONDENT(S):

1. THE VILLAGE OFFICER,
PUNNAPRA VILLAGE, ALAPPUZHA DISTRICT.
2. THE TAHSILDAR, AMBALAPPUZHA TALUK,
ALAPPUZHA DISTRICT.
3. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT, GOVT.SECRETARIAT
THIRUVANANTHAPURAM.

ADDL.R4. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
ALAPPUZHA.

ADDL.R5. THE GENERAL MANAGER,
ALAPPUZHA DISTRICT CO-OPERATIVE BANK LTD.,
ALAPPUZHA.

(ADDL. R4 AND R5 ARE IMPEADED AS PER ORDER DT. 22.12.09 IN I.A. NO. 16265/09)

R5 BY ADV. SRI.P.K.VIJAYAMOHANAN
R5 BY ADV. SRI.N.N.ARUN BECHU
R5 BY ADV. SRI.GEORGE POONTHOTTAM,SC,ALAPPUZHA DIST.CO.OPBANK
R1 TO R3 BY GOVERNMENT PLEADER SMT. LALY VINCENT
R4 BY ADV. SMT.K.N.RAJANI, SC, ALAPPUZHA DIST.CO.OP.BANK LTD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P1:- COPY OF THE JUDGMENT OF THIS HON'BLE COURT DT. 18.7.1975 IN OP NO.717/74 REPORTED IN 1976 KLT 10.
- EXT.P2:- COPY OF THE JUDGMENT OF THIS HON'BLE COURT DT. 22.2.2008 IN MFA NO. 1379/02.
- EXT.P3:- COPY OF THE GOVERNMENT ORDER G.O.(MS) NO.63/2008/SCSTDD DATED 4.6.2008.
- EXT.P4:- COPY OF THE APPLICATION FOR ISSUANCE OF CASTE CERTIFICATE, DT. 11.10.2009 SUBMITTED BY THE FIRST PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P5:- COPY OF THE REPORT DT. 15.10.09 SUBMITTED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.
- EXT.P6:- COPY OF THE LETTER NO.ASS I(3)/3613-10061 DATED 14.12.2009 ISSUED BY THE 4TH RESPONDENT.

I.A.NO. 5261 OF 2010

- EXT.P6:- COPY OF THE PROVISIONAL CERTIFICATE DATED 28.12.2009 ISSUED BY THE 2ND RESPONDENT.
- EXT.P7:- COPY OF THE RANK LIST PUBLISHED BY THE KERALA PUBLIC SERVICE COMMISSION.
- EXT.P8:- COPY OF THE APPOINTMENT CHARGE ISSUED BY THE DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.37093 of 2009

Dated this the 16th day of July, 2015.

JUDGMENT

The first petitioner, who had claimed caste status as 'Malayaraya', a recognised schedule caste, claims such status to his children also, the other petitioners, by virtue of Ext.P1 judgment. The first petitioner was appointed as a technician under the Post Master General, Kerala Circle, Trivandrum and while he was undergoing training, orders were passed terminating him, since he was found to be belonging to 'Hindu Araya Community', an Other Backward Community and not a Scheduled Caste. The termination was on the basis of the report of an enquiry committee. This Court, by Ext.P1 judgment, found that there is nothing to show the nature of the enquiries conducted and even as to whether notice was given to the petitioner in the matter. The termination order hence was found

to be wrong. The petitioner's selection for training as a 'Malayaraya' was found to be legal and proper.

2. Subsequently, the question of caste status of the petitioner's family came up for consideration under the Kerala Scheduled Caste and Scheduled Tribe (Regulation of Issue of Community Certificate) Act, 1996 [for brevity, the Act of 1996]. Ext.P1 judgment was prior to the enactment of the Act of 1996. The Scrutiny Committee constituted under the Act of 1996 found that the petitioner and his siblings could not claim the benefit of Scheduled Caste status, since they do not belong to the 'Malayaraya' community. The Scrutiny Committee findings were challenged before this Court by M.F.A. No.1379 of 2002, which concluded with Ext.P2.

3. The Division Bench rejected the claim of 'Malayaraya', and affirmed the decision of the Scrutiny Committee constituted under the Act of 1996. The Division Bench found that the petitioners and their siblings had attempted to assert their caste status before the Civil Court. The Civil Court of original jurisdiction being the Munsiff's Court, Thiruvalla in O.S. No.487

of 1978 found in favour of the plaintiffs. The decree stood confirmed in appeal. A belated Second Appeal, however reversed the judgment and decree and relegated the plaintiffs to the hierarchical authorities under the Act of 1996. The Scrutiny Committee constituted under the Act of 1996 found against the Scheduled Caste claim, which was confirmed by Ext.P2 judgment.

4. The Division Bench in Ext.P2 found that the affirmative decree of the Munsiff's Court had held the field for a considerable period of time. The caste certificates issued by the authorities on the basis of the Munsiff's Court decree as affirmed in appeal, showered benefits of reservation on the siblings, who were the plaintiffs. Since that was on account of a Civil Court decree, it was declared that no prosecution need be taken against any of the appellants therein. As to the first petitioner, this Court noticed Ext.P1 judgment and found that rightly or wrongly the petitioner's appointment for training as a technician, as a Scheduled Caste candidate, was upheld. The first petitioner was also held to be immune from any proceeding based on the findings in Ext.P2. No action could hence be taken against the

first petitioner. A reading of Ext.P2 would also indicate that the first petitioner has been subsequently appointed as Post Master General on the basis of the said reservation made, with respect to the first petitioner, by the Division Bench.

5. Herein, the petitioner claims such status to be conferred on his children also. The petitioner also relies on Ext.P3, by which there was a modification made of the earlier order, in so far as excluding the first petitioner alone from among the other siblings for being treated as 'Malayaraya'. Ext.P1 judgment, as has been noted by the Division Bench, rightly or wrongly found that the first petitioner's appointment for training as a technician, on the strength of the caste status of 'Malayaraya', claimed by him could not be interfered with. That appointment could also have been made on the basis of the judgment and decree in O.S. No.487 of 1978. The adverse order by the Scrutiny Committee against the plaintiffs in the suit, was on the ground that there was absolutely no evidence to show that they belonged to the said Scheduled Caste community.

6. The enquiries conducted, as revealed in Ext.P1, however

were conducted behind the back of the first petitioner. The Court in Ext.P1 was concerned with the termination of the petitioner and it was interfered with not on an affirmation of the caste status, but only on the enquiry having been held behind the back of the employee and there being no cogent material available to reject the claim of the employee resulting in a termination. The Division Bench in Ext.P2, much later, rejected his caste claim, but refused to interfere with his appointment by reason only of Ext.P1 having attained finality.

7. The interference made in Ext.P1 judgment was to the termination order issued and it cannot be considered as an affirmation of the caste status of the first petitioner. The caste status of the petitioner was decided comprehensively in a procedure as prescribed by the statute. The same was considered by the statutory authority being the Scrutiny Committee constituted under the Act and found against the first petitioner and his family. This Court affirmed the decision of the Scrutiny Committee in Ext.P2. This Court also noticed that there were certificates issued to the petitioner and his siblings on the basis

of their claim as a 'Malayaraya', which was on the basis of a judgment, in a suit filed by the petitioner and his siblings. The said judgment and decree were eventually overturned by this Court finding that it is for the statutory authorities as constituted under the Act, to decide upon the caste status of a person. In the circumstances of certificates having been issued on the basis of the judgment and decree in the suit, it was specifically directed that, no prosecution will be taken and that the benefits already given on the basis of such certificates shall not be taken away.

8. Hence, even the petitioner's siblings, who obtained benefits on the basis of such certificates could not be divested of such benefit on the basis of the affirmation of the caste status of the petitioner and his siblings as an Other Backward Community member. The reservation in so far as the first petitioner, is also only to that extent and cannot upset the overwhelming evidence, that was relied on by the Scrutiny Committee, in finding the petitioner's caste status to be that of an Other Backward Community. The petitioner would not be divested of the benefits *inter alia* of the appointment obtained on the strength of the

Scheduled Caste status nor could the petitioner be prosecuted for having obtained such benefits.

9. However, it cannot be claimed that, on the basis of the reservation made by the Division Bench, the caste status of the petitioner's children should also be that, allowed to the petitioner. Without fear of repetition, it is to be emphasised that the the first petitioner has not been declared to be a Scheduled Caste; the reservation is only in his being allowed to continue the appointment, he obtained as a Scheduled Caste. Otherwise that would go against the principle of reservation.

10. Reservation is a special benefit conferred to members of Scheduled Communities, under the constitution, against the guarantees enshrined of equality and equal opportunity, only to better their social status and to help them tide over the disadvantageous start in life, they suffered only by reason of their accidental birth in such a Community. The caste status of the petitioner stands affirmed as an Other Backward Community. His children could only take their caste from him and not on the basis of a reservation made, to enable the first petitioner to enjoy

benefits, which he would otherwise not be entitled to. Ext.P3 is also only based on the exception provided in Ext.P2. In any event, it cannot be said that the Government can determine the caste of a particular person. The caste of a person, depends on his birth **Valsala M.C. v. State of Kerala [(SiC: 2005 (4) ILR 122].**

In such circumstances, the claim of the first petitioner to grant the status of 'Malayaraya' community to the children of the first petitioner cannot be accepted.

The writ petition hence would stand dismissed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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