

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND

THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.P.No.12843 of 2015

and

M.P.No.1 of 2015

1.Union of India
represented by the General Manager
Southern Railway,
Park Town, Chennai-600 003.

2.The Divisional Personnel Officer
Divisional Office
Southern Railway
Madurai-10.

3.Senior Deputy Finance Manager
Divisional Office
Southern Railway
Madurai-10.

... Petitioners

Versus

1.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai-104.

2.Mr.N.Chakravarthy Selvarajan

3.The Chairman
State Level Scrutiny Committee
Secretary to Government
Adi Dravidar and Tribal Welfare Department
Government of Tamil Nadu
Fort St. George, Chennai-9

..Respondents

(R3 is suo motu impleaded as per
order, dated 29.6.2015 by this Court
in W.P.No.12843 of 2015).

Prayer: The writ petition is filed for the relief as stated therein.

Writ Petition file Under Article 226 of Constitution of India praying for issuance of Writ of Certiorari calling for the entire records of the 1st respondent in OA.No.1056 of 2014, the order dated 09.12.2014 and quash the same.

For Petitioner : Mr.V.G. Suresw Kumar
For Respondent No.2 : Mr.J. Sivanandaraj
for Mr.M.Nandakumar

ORDER

(The Order of the Court made by T. MATHIVANAN, J.)

Invoking the special original jurisdiction of this Court under Article 226 of the Constitution, the petitioners have filed this writ petition seeking the relief of issuance of a writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ calling for the records of the first respondent concerned in O.A.No.1056 of 2014 including the order, dated 9.12.2014 and quash the same.

2.The second respondent herein is the applicant in the original application in O.A.No.1056 of 2014 on the file of the first respondent herein, viz., Central Administrative Tribunal, Chennai, whereas the writ petitioners 1 to 3 are the respondents 1 to 3 therein.

3.The third respondent herein, viz., the Chairman, State Level Scrutiny Committee has been suo motu impleaded in this writ petition in pursuant to the order of this Court, dated 29.6.2015.

4.The second respondent herein, viz., Mr.N.Chakravarthy Selvarajan, in the above said original application in O.A.No.1056 of 2014 had challenged the order of the second petitioner herein, dated 27.5.2014 in Order No.U/P500/VI/120.

5.Besides this, he had also sought a consequential direction as against the petitioners 2 and 3 herein to disburse the full pension DCRG, leave salary, Social Security Scheme Balance and all other admissible terminal benefits due to him with interest.

6.In the order, dated 27.5.2014 in NOU/P500/VI/120, the second petitioner had informed the second respondent that

in view of the pendency of his community certificate verification case before the State Scrutiny Committee, the provisional pension not exceeding maximum of pension under Rule 10 of RS (Pension) Rules, 1993 only was sanctioned to him from 1.6.2014.

7. That application was resisted by the petitioners on the ground that, "when the matter of verification of genuineness of the community certificate of the applicant is still pending before the appropriate forum the Original Application filed by the applicant (R2 herein) before the Tribunal is prematured and also not maintainable."

8. After hearing both sides, the Central Administrative Tribunal, on 9.12.2014 had proceeded to allow the original application filed by the second respondent on the ground that, "inasmuch as no proceeding has been taken up against him so far, the appropriate course is to release the terminal benefits to him without prejudice to the right of the appropriate authority to take up proceedings in accordance with law, including even criminal action, in case the State Level Scrutiny Committee finds that he does not belong to ST community and it is considered that the Applicant had obtained appointment and earned promotions on the basis of false caste certificate and by playing a fraud."

9. While allowing the original application in O.A.No.1056 of 2014, the Tribunal had ordered that the payment of the terminal benefits should be made within a period of four months from the date of receipt of a copy of the order.

10. Challenging the order of the Central Administrative Tribunal, dated 9.12.2014, the petitioners 1 to 3 herein, who were the respondents 1 to 3 in the original application have filed the present writ petition seeking the relief as afore stated.

11. Heard Mr.V.G.Suresh Kumar, learned counsel appearing for the petitioners and Mr.J.Sivanandaraj, learned counsel appearing on behalf of Mr.M.Nandakumar, learned counsel, who is on record for the second respondent.

12. Before entering into the merits of the case, we find that it would be appropriate to place the prime contention of the second respondent which was projected before the Central Administrative Tribunal on record. We take the risk of reiteration of the same, which reads as under:-

"With the acceptance of the community certificate by the Appointing Authority (Senior DPO) based on the report of

the District Collector (Competent Appellate Authority), the issue had been finally settled. According to the Policy Guidelines of the Railways, issued in PBC No.41/2008, dated 24.3.2008, ST community certificates issued by the Tahsildars prior to 11.11.1981 and by RDOs of Tamil Nadu after 11.11.1981 on which there was reasonable suspicion, should be referred to State Level Committee."

13. In the case of the second respondent, the Revenue Divisional Officer, Virudhachalam, had issued a community certificate on 2.3.1981 certifying that the second respondent belongs to Malayali (Hill Tribe), which is recognized as Scheduled Tribe and under the Scheduled Castes and Scheduled Tribes (Dists) Modification order, 1956 and it was scrutinized and verified by the competent Appellate Authority, i.e., District Collector, South Arcot on 9.12.1981 and the same was accepted by the Senior DPO on 22.1.1983, who had made necessary entries in his Service Register.

14. As observed by the Central Administrative Tribunal, hitherto no proceedings has been taken up against the second respondent/applicant and that is why the Tribunal has concluded that it may be appropriate to release the terminal benefits of the applicant without prejudice to the right of the appropriate authority to take up proceedings as against the second respondent/applicant in accordance with law.

15. What it transpires from the averments of the original application is that the applicant is belonged to Malayali (Hill Tribe) Community. He is a native of Palayapalapattu Village, Pudupalapattu Post, Kallakurichi Taluk, South Arcot District. On account of wrong entry in his S.S.L.C. Book, his appointment to the post of porter in Southern Railways at Madurai Branch was made under general quota category on 29.8.1975.

16. That on 20.9.1976, that is, one year after his appointment, his area was notified in the Official Gazette of India as Scheduled Tribe, vide, "The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976" under Gazette No.108 of 1976, dated 18.9.1976.

17. The Amendment Act is to provide for the inclusion and exclusion from the lists of Scheduled Castes and Scheduled Tribes of certain castes and tribes for the re-adjustment of representation of parliamentary and assembly constituencies in so far as such re-adjustment is necessitated by such inclusion or exclusion.

18.The Parliament by Section 4 of the Amendment Act has amended the Second Schedule of the Scheduled Tribes Order, 1950. On 20.9.1976 in the Official Gazette of Government of India Extraordinary in Part XIV of the Second Schedule under Serial No.25, the Malayali community in Dharmapuri, North Arcot, Salem, Pudukottai and South Arcot and Thiruchirapalli Districts in the State of Tamil Nadu were declared as Scheduled Tribe. In pursuant to the above notification, the Malayali (Hill Tribe) in the South Arcot District were declared as Scheduled Tribe by the Government of India.

19.On coming to know about this fact, the second respondent/applicant had approached the second petitioner herein and requested to consider him as Scheduled Tribe for seniority and other service benefits. Since the latter had turned his deaf ear, the applicant had approached the Tahsildar, Kallakurichi for issuance of his community certificate. After proper verification, the Tahsildar, Kallakurichi had issued the community certificate on 27.9.1976.

20.When the true copy of the above said community certificate was submitted before the second petitioner through proper channel with a representation, dated 8.10.1976, the second petitioner through his office proceedings, dated 15.11.1976 and made in No.U/P/171/VI/C1 IV ST, had called for the original certificate issued by the Tahsildar, Kallakurichi for reference.

21.It is revealed from the records that the community certificate issued by the Tahsildar, Kallakurichi, was not accepted by the second petitioner, instead he had referred the said certificate to the District Collector, South Arcot, for verification, who was the Chairman of the District Committee.

22.After enquiry, the District Collector, South Arcot had suggested to get a certificate from the District Collector, Madurai, and in turn, he had directed the second respondent/applicant to get the community certificate from the native District Collector, that is, from the Collector, South Arcot District.

23.Thereafter, the R.D.O., Vridhachalam, had issued a community certificate, dated 2.3.1981 bearing No.A7.3381/81 and thereby certified that the second respondent/applicant belongs to the Malayali (Hill Tribe), which is recognized as "Scheduled Tribe under the Scheduled Caste and Scheduled Tribes" (Dists) Modification Order, 1956.

24. When the applicant had made a representation along with the community certificate issued in his favour, dated 2.3.1981, the second petitioner in his proceedings, dated 7.12.1981 and made in U/P 171/VI/TFC.C1 IV, had stated that the original community certificate issued by the R.D.O., Virudhachalam was placed before the Collector of South Arcot District for investigation.

25. Again, after proper verification and due enquiry, the District Collector, South Arcot, who was the appellate authority, had sent a reply to the second petitioner on 21.4.1981 to accept the community certificate of the applicant.

26. The Collector has addressed a letter, dated 7.12.1981 in D.Dis.185970/81 to the second petitioner, viz., Divisional Officer, Personal Branch, Madurai, wherein, it is stated as under:-

"The Revenue Divisional Officer, Virudhachalam after conducting a detailed enquiry has issued community certificate certifying that Thiru Chakravathi Selvarajan belongs to Malayali, which is recognized as Scheduled Tribe and hence, the certificate issued by the R.D.O., Virudhachalam, may be accepted."

27. In the meanwhile, in the general quota, the applicant was selected as First Class Coach Attendant with a pay scale of Rs.218 on 26.5.1982.

28. The grievance of the applicant is that he was deprived of his right to get any service benefits in the Scheduled Tribe category under the pretext of certificate verification and that his juniors in Scheduled Tribe category were promoted to higher post by overlooking him.

29. It is also revealed that the applicant's community was entered in his service register and the benefits under the Scheduled Tribe category were conferred thereafter with prospective effect that is only after the date of his community was entered in his service register.

30. It is also divulged that the Secretary to Government, Adi Dravidar and Tribal Welfare (ADW-5) Department, Secretariat, Chennai-9 had addressed a letter, dated 22.4.2014 in letter No.6143/ADW5/2014-1 to the second petitioner, viz., Divisional Railway Manager, wherein, the latter was requested to furnish details in respect of the applicant for verification of genuineness of Scheduled Tribe Community Certificate by the State Level Scrutiny Committee.

31.It is pertinent to note here that the community certificate issued by the R.D.O. Virudhachalam on 2.3.1981 in favour of the applicant was ratified by the Collector, South Arcot District and he had requested the second petitioner to accept the same in his proceedings, dated 7.12.1981.

32.After passing of more than 30 years, that is, on 6.5.2014, the second petitioner had addressed a letter to the State Level Scrutiny Committee for certificate verification. The conduct of the second petitioner, according to the applicant, amounts to executive brutality.

33.The second petitioner in paragraph No.6 of the reply statement filed before the Tribunal has admitted that on 22.1.1983 the applicant had produced the community certificate issued by the R.D.O., Virudhachalam, stating that he belonged to Malayali (Hill Tribe) and only thereafter all the service benefits applicable to Scheduled Tribe employees were extended to him.

34.It is the contention of the second petitioner that the All India Scheduled Caste and Scheduled Tribe Railway Employees Association, Madurai Division had made a complaint against some ST employees by enclosing a list of such employees, which included the name of the second respondent/applicant, stating that they had produced bogus certificates vide their complaint, dated 18.11.2005.

35.On receipt of the above said representation from the All India SC and ST Employees Association, in terms of paragraph No.5 (Grounds for referring community certificate for verification) of the Personnel Branch Circular (PBC in short) No.41/2008, dated 24.3.2008 of the Chief Personnel Officer, Southern Railway, Chennai, it was decided to verify the genuineness of the applicant's community status.

36.It is also revealed from paragraph No.9 of the reply statement of the second petitioner that the Railway Administration had asked all the ST employees enlisted in the complaint to submit a copy of their community certificate so as to verify the genuineness of the community status by forwarding them to the Chairman of the concerned District Vigilance Committee.

37.Since the applicant had not responded, a general complaint was lodged before the District Collector and Chairman of the District Vigilance Committee to verify the genuineness of the community status of the applicant and subsequently, after the formation of the three member State Level Scrutiny Committee for verification of SC and ST Community Certificates, the petitioners had referred all the

bogus certificate complaint cases to the State Level Scrutiny Committee and the matters, according to the petitioners are still pending with the Scrutiny Committee.

38.As afore stated, it is the contention of the petitioners that in the school records (S.S.L.C. Book) the caste of the applicant is recorded as 'Vanniyakula Kshatriya' (OBC). It is also their case that the All India SC and ST Railway Employees Association vide their letter, dated 18.11.2005 had complained that the applicant is not belonged to ST Community and since the verification of genuineness of the community certificate of the applicant is still pending before the appropriate forum, the application filed by applicant is not at all maintainable.

39.Mr.V.G.Suresh Kumar, learned counsel appearing for the petitioners has submitted that if the State Level Scrutiny Committee comes to the conclusion against the applicant that he did not belong to ST Community, the promotion given to him would be rendered void and that he would then become dis-entitled to any benefits much less terminal benefits.

40.He has also submitted that as directed by the Tribunal, if the terminal benefits were disbursed to the applicant and in case, if the State Level Scrutiny Committee concluded that the applicant was not belonged to ST Community then the applicant would be disentitled to any benefits and it would be difficult for the Railways to recover the terminal benefits which might be disbursed to him in view of the direction given by the Tribunal.

41.Mr.V.G.Suresh Kumar, in support of his contention, has placed reliance upon the following decisions:-

a. Bank of India and another vs. Avinash D. Mandivikar and others (2005) 7 SCC 690).

b. R.Vishwanatha Pillai vs. State of Kerala and others with Civil Appeal No.90 of 2004 (Vimal Ghosh v. State of Kerala and others (2004) 2 SCC 105).

42.In Bank of India and another, first cited supra, the respondent No.1 employee had obtained appointment in the service on the basis that he belonged to Scheduled Tribe. The Scrutiny Committee had examined various documents and come to a definite conclusion that the documents were manipulated to present false claim.

43.The finding of the Scrutiny Committee was challenged before the High Court in a writ petition. The High Court had remanded the matter to the Scrutiny Committee for

fresh hearing.

44. Again, the Scrutiny Committee by its Order, dated 17.6.1995 had invalidated the caste certificate. The matter was again remanded by the High Court by order, dated 7.8.1996. The Scrutiny Committee on 24.12.1998 had once again invalidated the caste certificate. The said order was challenged before the Bombay High Court by filing a writ petition, but it was withdrawn subsequently with a liberty to file a fresh writ petition.

44a. Another writ petition was filed which was disposed of by order, dated 12.4.2001. In the writ petition, it was prayed that the enquiry proceedings were initiated by the employer, and if any adverse decision is given by the enquiry officer or his services are affected by any order passed by the disciplinary authority on the basis of the finding of the enquiry officer, liberty may be granted to challenge the legality of the order of the Scrutiny Committee and the disciplinary proceedings. The prayer was accepted and the writ petition was dismissed as withdrawn granting opportunity as afore stated.

45. Based on the report submitted by the enquiry officer holding that the charges were proved and the disciplinary authority after issuing a show cause notice terminated the services of the respondent No.1 employee by order, dated 28.2.2002.

46. When the matter was challenged before the Bombay High Court, it was found that there was some substance in such plea stating that though the respondent No.1 employee had joined the services of the Bank in 1976, the reference was made in the year 1987 and it was held that the period was not reasonable for initiation of proceedings. It was further held that the respondent No.1 employee did not belong to Scheduled Tribe and therefore, was not entitled to promotion in the next higher rank.

47. Subsequently, a direction was given to reinstate him in the post he was appointed with continuity of service. The order of the High Court was challenged before the Hon'ble Apex Court in the above said civil appeal.

48. His Lordship, Hon'ble Mr. Justice Arijit Pasayat, while speaking on behalf of the Division Bench has observed that when the clear finding of the Scrutiny Committee is that he did not belong to Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of law. There is absolutely no justification for his claim in respect of the post he usurped as the same was

meant for a reserved candidate.

49. His Lordship has also held that, "the rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. Equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud. Hence the contention of the respondent employee that he has put in nearly three decades of service and has about three years to go before retirement is inconsequential."

50. In *R. Vishwanatha Pillai*, cited second supra, the caste of *R. Vishwanatha Pillai* (appellant) in the school record was recorded as "Veduvar Pillai". His father was one Radhakrishna Pillai. He was a Nair by caste. His mother's caste was "Veduvar Pillai". "Nair" as well as "Veduvar Pillai" are forward castes. The appellant had obtained a community certificate on 14.10.1969 from the Tahsildar, Ambalappuzha stating that he was a member of the "Vettuvan" community. On the basis of his community certificate, he was able to get an appointment as Assistant in the Legislative Secretariat in the year 1973. Subsequently, he was selected as direct recruit to the post of Deputy Superintendent of Police against a seat reserved for Scheduled caste on the basis of the caste certificate obtained by him.

51. He was subsequently promoted and included in the cadre of I.P.S. The Government of Kerala on the basis of a complaint received, ordered a full-fledged anthropological enquiry into the caste status of the appellant. It was alleged that the appellant did not belong to the Scheduled caste and had usurped the post meant for a Scheduled caste. The preliminary investigation was conducted by the Kerala

Institute for Research, Training and Development Studies of Scheduled Castes and Scheduled Tribes (for short "KIRTADS") which is a department under the SC/ST Development Department which conducts anthropological investigation into the caste status of an individual, wherever it is doubted.

52.After due enquiry, KIRTADS had submitted a report stating that the appellant did not belong to the Scheduled caste community as claimed.

53.We understand from paragraph No.5 of the above said decision that pursuant to the judgment of the Apex Court in Kumari Madhuri Patil vs. Additional Commissioner, Tribal Development ((1994) 6 SCC 241: 1994 SCC (L&S) 1349 : (1994) 28 ATC 259), the Government of Kerala had constituted a Scrutiny Committee by a notification, dated 8.5.1995. The enquiry into the caste status was referred to the said Scrutiny Committee. The Scrutiny Committee by an order, dated 18.11.1995 had rejected the claim of the appellant in a well-considered and elaborate order. The appellant had challenged the order of the Scrutiny Committee before the Kerala High Court. His petition was dismissed by a Division Bench. Thereafter, the order of the High Court was challenged before the Apex Court by filing a Special Leave Petition. That SLP was also dismissed on 12.8.1998.

54.Subsequently, the appellant had filed an original application in O.A.No.340 of 1997 before the Central Administrative Tribunal (Ernakulam Bench) seeking a direction to the respondents not to terminate his service based on the proceedings of the Scrutiny Committee and also not to terminate the service without satisfying the conditions laid down in Article 311 of the Constitution of India along with the provisions of the All India Services (Discipline and Appeal) Rules, 1969.

55.The Central Administrative Tribunal had allowed the said application and directed that the service of the appellant be not terminated without following the procedure laid down in Article 311 and also under the Rules. The said decision of the Administrative Tribunal was challenged before the High Court of Kerala by the State of Kerala.

56.The Kerala High Court by the impugned order had accepted the writ petition and reversed the order of the Central Administrative Tribunal.

57.While allowing the writ petition filed by the Kerala Government, the High Court had held that the question regarding the caste status of the appellant stood settled in the earlier proceedings up to this Court and was no longer

debatable. The competent authority had found that the appellant did not belong to a Scheduled Caste. The very basis of his appointment was no appointment in the eye of law and that the appellant could not claim any right to the post to which he was appointed on the basis of a false caste certificate, thereby, usurping the post meant for a Scheduled Caste.

58. After the judgment of the Kerala High Court, the appellant was removed from service by an order, dated 12.10.2000. Aggrieved by the order passed by the Kerala High Court, the above said appeal was preferred before the Apex Court.

59. Under the above said circumstances, His Lordship, Hon'ble Mr. Justice Ashok Bhan, while speaking on behalf of the three Judges Bench of the Apex Court has observed in paragraph No.15 as under:-

"This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As appellant had obtained the appointment

by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

60. We have carefully gone through the above cited decisions.

61. In so far as our view is concerned, the ratio laid down in the above cited decisions, cannot be applied to the present case on hand, because as admitted by the petitioners, the enquiry is still pending before the Scrutiny Committee. Further, neither any criminal proceedings nor any disciplinary proceedings has been initiated by the petitioners as against the second respondent/applicant.

62. On the other hand, Mr. J. Sivanandaraj, has submitted that according to the Policy Guidelines of the Railways, issued in PBC No.41/2008, dated 24.3.2008, ST community certificates issued by the Tahsildars prior to 11.11.1981 and by RDOs of Tamil Nadu after 11.11.1981 on which there was any reasonable suspicion, should be referred to State Level Committee.

63. He has also maintained that in so far as the applicant is concerned, the community certificate, certifying that the applicant belonged to Malayali (Hill Tribe), was issued by the competent authority, that is, R.D.O., on 2.3.1981 and it was scrutinized by the competent appellate authority, the District Collector, South Arcot on 9.12.1981 and after accepting the same, the Senior Divisional Personnel Officer on 22.1.1983 had made necessary entry in the service register of the applicant. When such being the case, the second petitioner had called upon the applicant for second scrutiny which was in total negation of the departmental guidelines as quoted above, which would tantamount to double jeopardy.

64. He has also submitted that the second petitioner in the communication, dated 27.5.2014 had sanctioned only the provisional pension withholding the terminal benefits, which is against the Rule 10 of Railway Services (Pension) Rules 1993, as there was no either departmental enquiry or judicial proceedings pending.

65.He would further submit that the applicant could not be deprived of his pension without the authority of law which was the constitutional mandate as enshrined under Article 300-A of the Constitution of India.

66.In this connection, he would further submit that the attempt of the second petitioner to take away the part of pension or gratuity or even leave encashment is without any statutory provision but under the umbrage of the administrative reasons, which could not be entertained.

67.During the course of his arguments, he has also placed reliance upon the decision of the Supreme Court in the State of Jharkhand and others vs. Jitendra Kumar Srivasta and another (Order, dated 14.8.2013 in C.A.No.6771 of 2013).

68.In this case, the Apex Court has held that unless there are proceedings which conclude that a person is guilty, there is no power to withhold the payment of pension and other terminal benefits. Similarly, in the present case, there are no disciplinary proceedings or judicial proceedings pending or the applicant is found guilty.

69.Applying this principle to the given case on hand, we are of the considered view that since neither disciplinary proceedings nor any judicial proceedings is pending and since the appellant is not found guilty by any competent authority, the denial of the applicant's terminal benefits by the petitioners is absolutely against the settled principle of law.

70.Further, Mr. J. Sivanandaraj, in support of his contentions has placed reliance upon the decision of this Court, dated 5.12.2002 and made in W.P.No.3621 of 1996 (N. Rangarajan vs. The District Collector, Pudukottai and three others).

71.In this case, the petitioner had been employed under the fourth respondent on the basis of the community certificate issued by the Tahsildar. Subsequently, the said certificate was confirmed by the District Collector. Thereafter, it appears that the Tahsildar had given some adverse report regarding the community certificate, which was forwarded by the District Collector, Pudukottai to the railway to take appropriate action, which was challenged by the petitioner in the above writ petition.

72.After hearing both sides, a learned Single Judge of this Court has observed that unless and until the community certificate is cancelled by any appropriate authority in accordance with law, no punitive action is to be

taken by the employer/fourth respondent on the basis of the suspicion raised in the report of the Tahsildar. However, it was made clear that in case, by any appropriate authority, the community certificate is cancelled and it is held that the petitioner does not belong to the scheduled tribe community, it will be open to the employer/fourth respondent to take action against the petitioner in accordance with law. With the above observations, the above said writ petition was disposed of.

73. We have considered the submissions made by both the learned counsels. We have also perused the grounds of the writ petition as well as the impugned order passed by the Central Administrative Tribunal.

74. Having given our careful consideration, we have decided to endorse the finding of the Central Administrative Tribunal which, according to our considered view, does not require any interference.

75. The Central Administrative Tribunal has also highlighted the Rule 9 of the Railway Services (Pension) Rules, 1993.

76. Rule 9 contemplates, "the Right of President to withhold or withdraw pension".

77. The cause of action arose when the All India SC and ST Railways Employees Association, Madurai had made a complaint in their letter dated 18.11.2005 against some ST employees enumerated in the list appended to it. The applicant's name was found place in the above said list and hence, the above said complaint had triggered of the verification and the enquiry with regard to the applicant's community and the matter is now pending with the State Level Scrutiny Committee for verification.

78. It is understood from the records that the applicant has retired on attaining superannuation on 31.5.2014. It is also understood that the provisional pension, which is equal to full pension is being paid to the applicant.

79. As observed by the Administrative Tribunal, if the finding of the State Level Scrutiny Committee goes against the applicant, proceedings could be initiated under Rule 9 of Railway Services (Pension) Rules, 1993 with the prior sanction of the President for withdrawing pension in full or part.

80.Keeping in view of the above facts, the Tribunal while allowing the original application filed by the applicant, has observed that, "inasmuch as no proceeding has been taken up against the applicant so far, the appropriate course is to release the terminal benefits to the applicant without prejudice to the right of the appropriate authority to take up the proceedings in accordance with law including even criminal action in case the State Level Scrutiny Committee finds that he does not belong to ST community and the applicant had obtained the appointment and earned promotions on the basis of false caste certificate."

81.The Tribunal had also observed that the payment of the terminal benefits should be made within a period of four months from the date of receipt of the said order.

82.According to our view, the above said order is a well-reasoned one and it is within the amplitude of the law which does not require our interference.

In the result, the writ petition filed by the petitioners is dismissed. We direct that the terminal benefits shall be disbursed within a prescribed period of six weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Connected M.P. is also dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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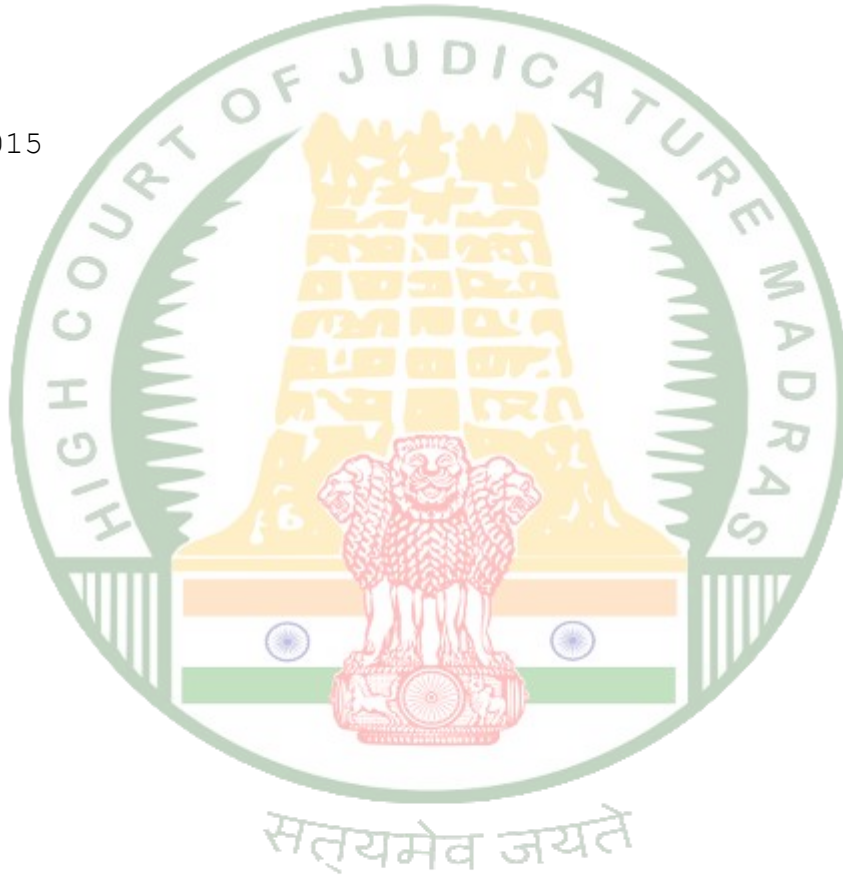
1.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai-104.

2.The Chairman
State Level Scrutiny Committee
Secretary to Government
Adi Dravidar and Tribal Welfare Department
Government of Tamil Nadu
Fort St. George, Chennai-9

+3 cc to Mr.M.Nandakumar Advocate sr.34015
+1 cc to Mr.V.G.Sureshkumar Advocate sr.34610

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and
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