

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.3.2015.

CORAM

THE HON'BLE MR.JUSTICE V.DHANAPALAN
AND
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.P.Nos.12131 and 12132 of 2014
and
M.P.Nos.1 of 2014

T.Soundararajan ... Petitioner in W.P.12131/2014

K.Manivannan ... Petitioner in W.P.12132/2014

vs.

1. The Chairman,
Chennai Port Trust, Chennai.
2. The Secretary,
Chennai Port Trust, Chennai. ... R1 & R2 in both W.Ps
3. The Financial Advisor and
Chief Accounts Officer,
Chennai Port Trust, Chennai. ... R3 in W.P.No.12131 of 2014 alone
4. The Chief Mechanical Engineer,
Chennai Port Trust, Chennai. ... R3 in W.P.No.12132 of 2014 alone
5. The Secretary to Government,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare
Department,
Secretariat, Chennai 600 009.
(R4 impleaded as per order dated
16.6.2014) ... 4th Respondent in both the WPs

Prayer in W.P.No.12131 of 2014

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the proceedings of the 3rd respondent in its No.Estt(R) 2/6832/2014/F dated 28.2.2014 and quash the same and consequently

direct the respondents to grant the petitioner Full Pension, DCRG, Earned Leave Encashment, Provident Fund and all other admissible benefits along with interest.

Prayer in W.P.No.12132 of 2014

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the proceedings of the 3rd respondent in its CME/A1/3012/2011/MEE dated 29.2.2012 and quash the same and consequently direct the respondents to grant the petitioner Full Pension, DCRG, Earned Leave Encashment, Provident Fund and all other admissible benefits along with interest.

For petitioner : Mr.V.Vijay Shankar

For RR 1 to 3 : Mr.Haja Mohideen Gisthi

For R4 : Mr.R.Rajeswaran, Special Govt. Pleader

COMMON ORDER

(Order of the Court was delivered by G.CHOCKALINGAM)

The writ petitions have been filed to quash the proceedings of the third respondent temporarily withholding the terminal benefits of the petitioners and to direct the respondents to grant the same alongwith interest.

2. The case of the petitioner in W.P.No.12131 of 2014 is that he belongs to Konda Reddy Community which is a Scheduled Tribe as evidenced by the community certificate issued by the Tahsildar and he has been appointed as Key Punch Operator in Chennai Port in the year 1985 and later, he was given promotion periodically upto the level of Assistant Director EDP and on attaining the age of superannuation, he was permitted to retire on 28.2.2014. But, however, his terminal benefits were not released on the ground that his community status needs to be established at the State Level Scrutiny Committee, Chennai and that is the grievance of the petitioner. According to the petitioner, his community certificate was originally cancelled by the District Vigilance Committee without any proper enquiry or notice and hence, he had filed writ petition in W.P.No.13023 of 2005 challenging the same and this court, held that the District Level Committee had no jurisdiction and gave liberty to the State Level Scrutiny Committee to make verification. The case of the petitioner is that though he co-operated for the enquiry by the State Level Scrutiny Committee, the matter was not referred properly for enquiry

by the Vigilance Cell and in the meanwhile, he had retired from service and he is left in lurch without terminal benefits. Hence, he has come up with the present writ petition.

3. The case of the petitioner in W.P.No.12132 of 2014 is that he belongs to Sholaga Community which is a Scheduled Tribe as evidenced by the community certificate issued by the Tahsildar and he has been appointed as Junior Assistant in Chennai Port in the year 1988 and later, he was given promotion periodically upto the level of Administrative Officer on 4.6.2003 and he had retired from service on 29.2.2012. However, his terminal benefits were not released on the ground that his community status needs to be established at the State Level Scrutiny Committee, Chennai and that is the grievance of the petitioner. According to the petitioner, his community certificates was originally cancelled by the District Vigilance Committee without any proper enquiry or notice and based on that order, the respondents abruptly terminated the petitioner's services and hence, he filed writ petition in W.P.No.1451 of 2006 challenging the same and this court quashed the order of termination holding that the appeal filed by the petitioner must be disposed of by the State Level Scrutiny Committee and until then, his services cannot be dispensed with and pursuant to that, he was reinstated into service on 13.4.2006. The case of the petitioner is that though he co-operated for the enquiry by the State Level Scrutiny Committee, the matter was not referred properly for enquiry by the Vigilance Cell and in the meanwhile, he had retired from service and is left in lurch without terminal benefits. Hence, he has come up with the present writ petition.

4. The respondents have filed counter affidavits contending as under:-

On receipt of complaint questioning the community status, the community certificates of the petitioners were referred for verification to the District Vigilance Committee Chennai. The petitioners were not co-operating with the authority in verifying the community status and they ignored the call letters and advices and even then, they were relieved from services with provisional pension. It is incorrect to say that the petitioners had sent several letters and representations and it is also incorrect to say that the District Vigilance Committee has cancelled the community certificates without conducting proper enquiry. The petitioners have no right to command the activities of State Level Scrutiny Committee and contend that it has not initiated the verification in right earnest. Only the petitioners have failed to respond to the summons issued by the Officer on various occasions. The claim of the petitioners to settle the terminal benefits other than the provisional pension cannot be

sustained and that can be considered only after the final order to be passed by the State Level Scrutiny Committee.

5. Learned counsel for the writ petitioners contended that the petitioners belong to scheduled tribe in terms of Constitution Scheduled Tribes Order, 1950 and they were originally issued with the community certificates by the Tahsildar and they were permitted to retire on attaining the age of superannuation and even after the retirement, the respondents have not given the pension and other terminal benefits to the petitioners and there are no departmental proceedings or criminal cases pending against the petitioners and in the absence of any departmental proceedings pending against the petitioners, respondents 1 to 3 have no right to withhold the pension or other terminal benefits.

6. The learned counsel for the petitioners further submitted that the Honourable Supreme Court has observed in various decisions that once a person has reached the age of superannuation, the terminal benefits cannot be withheld and hence, the order of the respondents withholding pension is not justified. He further submitted that even if the matter was taken by the State Level Committee for enquiry, it will take long time to complete the enquiry and hence, in the meanwhile, the terminal benefits have to be released as otherwise, the petitioners would be put to great hardship and loss. Hence, it is prayed on the side of the petitioners to quash the order of the third respondent and consequently direct the respondents to grant the petitioners full pension, DCRG, Earned Leave Encashment, Provident Fund and all other terminal benefits. The learned counsel for the petitioners relied upon the decision in ANIL VASANTRAO SHIRPURKAR v. STATE OF MAHARASHTRA (2003-I-LLJ 275) to contend that in a similar case, the proceedings of the employer was quashed on the ground that the proceedings commenced five years after regularisation in service and seven years after appointment holding that it was not within 'reasonable period'. He also relied upon another decision in DATTU v. STATE OF MAHARASHTRA ((2012) 1 SCC 549) on the same issue.

7. Learned counsel appearing for respondents 1 to 3 would submit that the District Collector, on a detailed enquiry with the petitioners to prove the veracity of the community certificates has declared that the community certificate produced by the petitioners at the time of their employment is not a genuine one and cancelled vide Three Men District Vigilance Committee Order with the condition that they had to file the appeal within thirty days to the appellate authority viz., Secretary, The Chairman, State Level Scrutiny Committee, Adi Dravidar and Tribal Welfare Department, Secretariat, Chennai. Based on the above order, the petitioner

Manivannan was terminated from the service on 19.1.2006, but, subsequently, following an order that has been passed in a writ petition filed by the petitioner in W.P.No.1451 of 2006, he was reinstated and also following an order passed in another writ petition in W.P.No. 13023 of 2005, the matters were referred to State Level Scrutiny Committee for conducting enquiry and passing, but, however, the petitioners were not co-operating with the enquiry of the State Level Committee inspite of the fact that so many letters were issued to the petitioners to appear, and hence, no final verdict was given by the State Level Committee. Since, pending enquiry before the State Level Committee, they attained the age of superannuation, they were permitted to retire by withholding the terminal benefits pending enquiry by the State Level Enquiry Committee. The learned counsel for the respondents would submit that the delay in finalisation of issue is only because of the non-cooperation of the petitioners and hence, they cannot take advantage of their own wrong committed. The action taken by respondents 1 to 3 in withholding the terminal benefits of the petitioners is a reasonable one and if at all, the State Level Committee viz., the fourth respondent can be directed to pass final orders at the earliest by giving opportunity to the petitioners. The learned counsel for the respondents vehemently contended that the case laws produced on the side of the petitioners are not applicable to the present facts of the case since in this case, the petitioners themselves approached the Honourable High Court and the Honourable High Court gave direction to the State Level Committee to give its finding within a stipulated time and the petitioners also participated at the initial stage of the enquiry, but, they were not cooperating with the enquiry in the State Level Committee thereafter and hence, they cannot take shelter under the case laws relied on by them which are not applicable to the present facts and circumstances of the case.

8. The grievance of the petitioners is that they were permitted to retire from service and no criminal proceedings are pending against them, but, however, their terminal benefits are withheld by respondents 1 to 3 for which they have no authority.

9. It is relevant to quote the operative portion of the order passed by this court in W.P.No.5139 of 2004 dated 4.1.2012, which reads as follows:-

"2. It is needless to point out that as per the judgment in Kumari.Mathuri Patil's case (vide AIR 1997(SC) page 2581), the genuineness of community certificate issued in favour of a Scheduled Tribe can be verified only by a three members State

Level Committee. As of now, there is no District Level Vigilance Committee headed by the District Collector.

3. In such view of the matter, the question of the District Collector verifying the genuineness of the community certificate does not arise. Therefore, this writ petition is disposed of with liberty to the State Level Scrutiny Committee to verify the genuineness of the community certificate issued to the petitioner if need be. No costs. "

10. It is relevant to quote here the operative portion of the order passed by this court on the petition filed by the petitioner Manivannan in W.P.No.1451 of 2006, which reads as follows:-

"The learned counsel for the respondent submitted that the Appeal preferred by the petitioner before the State Level Caste Scrutiny Committee dated 20.3.2006 may be directed to be disposed of within a stipulated time, even though the State Level Caste Scrutiny Committee, Chennai-9, is not a party in this writ petition. Having regard to the fact that the Appeal is filed by the petitioner on 20.3.2006, the said Appeal shall be considered on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. Since the State Level Caste Scrutiny Committee is not a party to this writ petition, Registry is directed to send a copy of this order to the said Committee."

11. Hence, in the peculiar circumstances of this case, one of the petitioners preferred writ petition and on his writ petition alone, the above order has been passed. Against the above judgment of this Court, no appeal was preferred and thereby the judgment became final and binding upon both the petitioners and respondents 1 to 3. In view of the above circumstances, the argument of the learned counsel for the petitioners that the respondents have no authority to withhold the terminal benefits of the petitioners, since no departmental proceedings were pending against the petitioners is not an acceptable one.

12. In this case, even though there is no criminal proceedings pending against the present petitioners, this Court passed the order on the petition filed by the petitioner which became final and according to the above decision, they have to await the report of the State Level Committee. Hence, we are of the considered view that

since when there is enquiry pending before the State Level Committee which is the only authority to verify the veracity and genuineness of the community certificate and since the report from the authority as to whether the community certificate is a genuine one or not is a vital document to come to a conclusion as to whether the petitioners were genuine in getting employment or they have committed fraud in getting employment, the argument of the learned counsel for the petitioners that after completing the service, all the retirement benefits should be given to the petitioners is not acceptable. We are of the view that there is reasonable cause for withholding the terminal benefits of the petitioners by the respondents. Hence, we are of the considered view that the petitioners cannot contend that the action of the respondents in withholding the terminal benefits of the petitioners is arbitrary.

13. Further, we are of the considered view that since there is enquiry pending before the State Level Committee with regard to the veracity of the community certificate produced by the petitioners, the prayer of the learned counsel for the petitioners to quash the impugned proceedings cannot be granted at this stage.

14. On verification of the counter affidavit putforth by the respondents, it was found that the petitioners were not co-operating with the enquiry by the State Level Committee. Therefore, fourth respondent was impleaded by the order of this court on 16.6.2014. Hence, it is just and necessary to give suitable direction to the fourth respondent to complete the enquiry. Accordingly, we direct the fourth respondent to hold the enquiry on day to day basis and complete the same within four weeks from the date of receipt of copy of this order. Further, we direct the petitioners to appear before the State Level Committee then and there on the dates fixed by the State Level Committee and co-operate with the State Level Committee to complete the enquiry within the abovesaid period.

15. In fine, we are of the considered view that it is not necessary to allow the writ petitions filed by the petitioners and the writ petitions are dismissed with the above direction to the fourth respondent. No costs. The connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Chairman,
Chennai Port Trust,
Chennai.
2. The Secretary,
Chennai Port Trust,
Chennai.
3. The Financial Advisor and
Chief Accounts Officer,
Chennai Port Trust, Chennai.
4. The Chief Mechanical Engineer,
Chennai Port Trust, Chennai.
5. The Secretary to Government,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare
Department,
Secretariat, Chennai 600 009.

+1cc to Mr.V.Vijayshankar, Advocate, S.R.No.18266

+1cc to Mr.Haja Mohideen Gisthi, Advocate, S.R.No.18135

+1cc to the Government Pleader, S.R.No.18519

W.P.Nos.12131 & 12132 of 2014

GJ(CO)
CA(11/04/2015)

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