

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: **9.3.2015**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

W.P.No.3899 of 2013

P.Vijayalakshmi

... petitioner

versus

1.The Oriental Insurance company Ltd.,
rep. By its Deputy General Manager,
(Disciplinary authority), Regional Office
U.I.L. Building, Esplanade,
Chennai 108.

2.Dr.R.H.Kalyanasundaram
Deputy Manager and Inquiry Officer,
Regional Office
U.I.L. Building, Esplanade,
Chennai 108.

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order bearing Ref. No.Nil dt. 28.02.2013 passed by the 1st respondent and Report dt.11.06.2012 submitted by the 2nd respondent and to quash the same as being illegal arbitrary and contrary to the order passed by this Honourable Court in W.A. No.876 of 2000 dt 7.8.2009 and W.P.No.21133 of 2000 dt. 10.12.2009 and consequently direct the respondents to settle all the terminal benefits due to the petitioners superannuation within a time-frame

For petitioner

Mr.N.G.R.Prasad

For respondents

Mr.S.K.Krishnamurthy, for R-1

ORDER

The petitioner initially challenged the notice dated 11 September 2012 issued by the Oriental Insurance Company, calling upon her to show cause as to why punishment should not be imposed on her, on account of the proved misconduct. During the currency of the Writ Petition, the first respondent passed an order dated 28 February 2013, terminating her from service. The petitioner amended the prayer and the present challenge is to the order dated 28 February 2013 whereby and whereunder she was terminated from service.

Facts in brief :-

2. The petitioner was appointed as Assistant (Typing) by order dated 22 January 1979. The appointment was made against the post reserved for Schedule Caste. The petitioner, a Hindu Vanniakula Shatriya, married a person from Schedule Caste Community and on that basis, Schedule Caste community certificate was issued to her by the Tahsildar, Fort Tondiarpet Taluk,

3. While she was working as an employee of Oriental Insurance company, pursuant to an anonymous complaint, District Collector, Chennai, issued a notice dated 25 September 1990 to her to show cause as to why the Community Certificate should not be cancelled. The petitioner submitted her reply explaining the circumstances under which the Tahsildar issued the certificate to her. The District Collector, finally cancelled the certificate. The appeal filed against the said order was rejected by the Commissioner of Revenue & Administration by order dated 18 July 1992. The order passed by the Appellate Authority was

unsuccessfully challenged in W.P.No.19469 of 1992. The order dated 28 April 2000 in W.P.No.19469 of 1992 was challenged in W.A.No.873 of 2000. The Division Bench by judgment dated 7 August 2009, negated the contention taken by the petitioner with regard to the correctness of the order passed by the District Collector. However, the Division Bench granted liberty to the petitioner to approach the Enquiry Officer to cite his attention to the fact that there was no misrepresentation during the time of initial appointment.

4. The 2nd respondent conducted enquiry pursuant to the charge memo issued to the petitioner. The Enquiry Officer was of the view that the petitioner failed to inform the 1st respondent with regard to the cancellation of community certificate and as such, she has committed a serious misconduct. The 1st respondent on receipt of the enquiry report forwarded it to the petitioner along with second show cause notice. The second show cause notice was challenged in this Writ Petition. During the currency of the Writ Petition, the 1st respondent passed the dismissal order. The petitioner, therefore, challenges the legality and correctness of the second show cause notice and the ultimate order of dismissal.

5. The first respondent in its counter affidavit contended that the petitioner submitted a community certificate and got appointment against a post reserved for scheduled caste. She failed to intimate the employer with regard to the cancellation of community certificate. Accordingly, the first respondent justified the impugned proceedings.

Submissions:-

6. The learned counsel for the petitioner contended that there was no misrepresentation on the part of the petitioner, as alleged by the respondents. The petitioner has produced Schedule Caste certificate issued by the competent authority. The fact that the certificate was cancelled at a later point of time, on account of the clarification given by the Government of India and Government of Tamil Nadu, cannot be a reason to initiate disciplinary proceedings against the petitioner. The learned counsel contended that this Court in its order dated 10 December 2009 in W.P.No.21133 of 2000, directed the Enquiry Officer to consider the explanation, including the circumstances leading to the issuance of community certificate before taking further action in the matter. However, no such effort was taken by the Enquiry Officer or the Disciplinary Authority. The learned counsel finally contended that the petitioner disclosed the fact that she is a Hindu Vanniya Kula Shatriya and on account of her marriage to a person from a notified community, she was issued with Schedule Caste certificate. There was a full disclosure of the factual position and as such, the first respondent was not correct in initiating disciplinary proceedings and dismissing the petitioner from service.

7. I have also heard the learned counsel for the respondents.

Discussion :-

8. The petitioner married a person from Schedule Caste community. The Tahsildar, Fort Tondiarpet Taluk, issued a community certificate to her dated 27

November 1978. The petitioner made an application for appointment to the post of Assistant (Typing) pursuant to the notification issued by Oriental Insurance company. The community certificate was produced along with the application. The petitioner has also produced her certificates and records relating to her education. Those records also contain details about her community status before marriage. The community of the petitioner was declared as Vanniya Kula Shatriya, which is a Most Backward Class, in her SSLC Book. It was only after her marriage, she was given a Schedule Caste certificate. The petitioner disclosed the fact that she belongs to Vanniya Kula Shatriya, and that she married a person from Schedule Caste community. It was only on the said basis, the Tahsildar issued the community certificate. There was absolutely no misrepresentation on the part of the petitioner. Even the District Collector, who cancelled the certificate, has no case that the petitioner misrepresented and obtained a community certificate.

9. The District Collector, Madras, initiated proceedings to cancel the community certificate. The order passed by the District Collector dated 20 August 1991 clearly shows that the certificate was cancelled pursuant to the clarification issued by the Government of India in its letter dated 18 March 1985 to the effect that no person who was not a Schedule Caste or Schedule Tribe by birth will be deemed to be a member of a Schedule Caste or Schedule Tribe merely because he or she had married a person belonging to Schedule Caste or Schedule Tribe. It is therefore very clear that only on account of the subsequent clarification issued by the Government of India with regard to status of a person

belonging to a denotified community marrying a person from a Schedule Caste, certificate issued to the petitioner was cancelled. It is also a matter of record that the order passed by the District Collector has become final.

10. The first respondent initiated disciplinary proceedings against the petitioner by issuing a charge memo dated 28 October 1992. The first respondent alleged that the petitioner has produced legally invalid and factually incorrect community certificate issued by the Tahsildar. The petitioner submitted her explanation to the charge memo, contending that she has disclosed true facts and only thereafter, community certificate was issued by the Tahsildar.

Observation made by Division Bench :-

11. While confirming the order passed by the District Collector and the Appellate Authority, the Division Bench was pleased to observe that there was no fraud or misrepresentation on the part of the petitioner. Paragraph 12 of the judgment dated 7 August 2009, in W.A.No.873 of 2000 reads thus :-

“12. So far as the question of misconduct is concerned, we are not deliberating on the issue as a proceeding has merely been initiated against the appellant. The appellant has stated that she never misrepresented and in view of the letter dated 11th June, 1976, she was granted community certificate as Scheduled Caste. She applied along with others and the insurance company, having noticed the full facts, appointed her against the post. **Therefore, she has not committed any fraud nor misrepresented for appointment in the insurance company.** The letter

written by the Personnel Department from its Regional Office, Chennai dated 31st Jan., 2005, also speaks in the same manner. In these circumstances, we are of the view that the appellant may bring the aforesaid fact to the notice of the enquiry officer and the competent authority, who may decide whether in the background aforesaid it can be alleged that the petitioner made any misrepresentation and whether proceeding should be dropped. The writ appeal stands disposed of with the aforesaid observations. But there shall be no order as to costs.”

(emphasis supplied)

Direction given by Writ Court :-

12. The petitioner filed a Writ Petition in W.P.No.21133 of 2000 challenging the charge memo. While passing orders in the said Writ Petition, this Court issued the following direction :-

13. The order impugned in this Writ Petition is only the proceedings initiating enquiry against the petitioner as well as the appointment of Enquiry Officer to conduct an enquiry. It is open to the petitioner to submit her explanation and to prove her innocence. The petitioner is permitted to take up all such contentions in view of the observation as contained in the judgment of the Division Bench cited supra. **The Enquiry Officer as well as the Disciplinary Authority are directed to consider the explanation including the circumstances leading to the issue of community certificate and the report submitted by the Tahsildar on 30.11.1978 which contains an indication that the certificate was issued only as per the prevailing guidelines given by the Government by way of circular dated 11.6.1976 and decide the matter**

on merits and as per law.

(emphasis supplied)

13. The petitioner, in her detailed explanation to the Enquiry Officer, has narrated the entire background facts right from the issuance of community certificate by the Tahsildar and her appointment in the Insurance company. The petitioner has very clearly stated that only after disclosing the fact that she belongs to MBC and she married a member of Schedule Caste Community, a certificate to that effect was given by the Tahsildar. The documents available on record would show that the Revenue Department officials have been issuing similar certificates to those who have married persons belonging to Schedule Caste Community. It was only after the clarification issued by the Government of India in 1995, the Revenue Department has put an end to the practice of issuing community certificates on the basis of marriage. Though this Court in its order dated 10 December 2009 in W.P.No.21133 of 2000 issued a direction to the respondents to consider the circumstances under which certificate was issued to the petitioner no such effort was taken.

14. There is nothing on record to show that the petitioner misrepresented facts and secured employment. The petitioner submitted a valid community certificate issued by a Competent authority. The fact that such a certificate was later declared as without authority cannot be a reason to hold that the petitioner committed a serious misconduct. As stated earlier, the Tahsildar issued the certificate on the basis of prevailing regulations and instructions. It was long after the issuance of the said certificate, Government of India had clarified the matter.

15. The Enquiry Officer proceeded as if the petitioner suppressed information with regard to cancellation of certificate and as such, she has committed a serious misconduct. The Enquiry Officer was of the view that the petitioner misrepresented facts and obtained a certificate. According to him, subsequent events relating to the cancellation of certificate was also not reported to the employer. There is absolutely no merit in this contention.

16. The charge memo issued to the petitioner proceeds as if the petitioner has produced a legally invalid and factually incorrect community certificate. The allegation that the petitioner failed to inform the first respondent with regard to cancellation of community certificate was not the subject matter of disciplinary proceedings.

17. The first respondent in its order dated 28 February 2013, has stated that the petitioner occupied the post reserved for Schedule Caste candidates even though she does not belong to the said community. The second reason for dismissal was on account of the failure on the part of the petitioner to inform the employer that her caste certificate was cancelled.

18. The fact that the petitioner occupied a post reserved for Schedule Caste Candidate alone cannot be a reason to dismiss her from service inasmuch as she was appointed on the basis of a valid certificate issued by a competent authority, as per the prevailing guidelines. It would be a misconduct only in case

the petitioner being a Hindu Vannia Kula Shatriya, misrepresented facts and obtained a community certificate and claimed employment in respect of a post reserved for a Schedule Caste Community candidate. The petitioner, a member of most backward class community, married a person from Schedule Caste Community. The relevant orders and circulars issued by the Government of India and guidelines issued by Government of Tamil Nadu at that point of time permits issuance of community certificate to those who have married members of Schedule Caste Community. The Government, at that point of time, was of the view that in case a person, who has married a person belonging to Scheduled Caste, is accepted as a member of that community, he is eligible for issuance of a certificate declaring that he belongs to Schedule Caste Community. The first respondent has no case that the petitioner has not married a person from Schedule Caste Community. It is the admitted case of the parties that the petitioner married a person belonging to Scheduled Caste community and only on the basis of her marriage, Tahsildar issued the certificate. The petitioner has produced her community certificate and other records to show that originally she belonged to M.B.C. and after marriage, she became a member of Schedule Caste Community. Therefore, there was absolutely no misrepresentation on the part of the petitioner so as to give a cause of action to take disciplinary proceedings against her.

19. The second reason stated by the Disciplinary Authority is that she failed to inform the company that her community certificate was cancelled by the

District Collector. It is a matter of record that the first respondent initiated proceedings to verify the community status of the petitioner. The Vigilance Department of Oriental Insurance Company was also a party to the proceedings initiated by the District Collector. The first respondent was therefore fully aware of the proceedings initiated against the petitioner, including the ultimate order passed by the District Collector. The first respondent was also a party to the Writ Petition in W.P.No.19469 of 1992 and the related intra court appeal in W.A.No.873 of 2000. There is no basis for the charge in question.

20. The petitioner filed W.P.No.21133 of 2000, challenging the charge memo. The said Writ Petition was disposed of by this Court by order dated 10 December 2009. The order contain a clear statement that there was a Government circular as to how a certificate has to be issued to a non scheduled caste marrying the member of Schedule Caste Community. This Court has given a factual finding that it was only on the basis of the then prevailing Government circular that the designated authority has issued a community certificate to the petitioner, taking into account her marriage with a person belonging to Schedule Caste community. The first respondent was a party to the said Writ Petition also. The first respondent is therefore bound by the said order. The first respondent cannot now turn round and contend that the petitioner misrepresented facts and obtained a certificate. Similarly, the contention regarding failure on the part of the petitioner to inform the first respondent with regard to cancellation of certificate is also not available, in view of the fact that the Vigilance Department of the first respondent company initiated proceedings to verify the genuineness of the

certificate and that they were parties to all the earlier proceedings.

21. The case of the petitioner should be considered in the light of the peculiar background facts. The petitioner married a person belonging to Schedule Caste Community. The marriage was solemnized on 3 June 1977 and registered on 10 August 1977. The petitioner was accepted as a member of Schedule Caste Community. The Tahsildar, Fort Tondiarpet, after conducting multi-level enquiry besides discreet enquiry, issued a community certificate to the petitioner in accordance with letter dated 11 June 1976 issued by the Government of Tamil Nadu. The petitioner has not committed any kind of misconduct by producing the said certificate before the first respondent for appointment against a post reserved for members of the Schedule Caste community. The petitioner is therefore perfectly correct in her contention that there was no misrepresentation at all on her part. The first respondent failed to consider all these vital factors before passing the order of dismissal. In fact, the first respondent even omitted to consider the direction issued by this Court in its order dated 7 August 2009 and 10 December 2009 in W.A.No.873 of 2000 and W.P.No.21133 of 2000 respectively. There is absolutely no basis for the adverse finding recorded by the Enquiry Officer. The first respondent failed to address the issues raised by the petitioner in the light of the direction given by this Court in W.A.No.873 of 2000 and W.P.No.21133 of 2000. I am therefore of the view that the petitioner must succeed.

Net result:-

22. In the result, the impugned order dated 28 February 2013 dismissing

the petitioner from service is set aside. Since the petitioner has already attained the age of superannuation, there is no question of her reinstatement. The first respondent is directed to pass a consequential order, permitting the petitioner to retire from service. The petitioner should be given all the benefits except pay and allowances for the period during which she was out of employment. The entire service period should be taken into account for the purpose of counting the total period of service and settlement of terminal benefits. Such exercise shall be completed within a period of eight weeks from the date of receipt or production of a copy of this order.

23. In the upshot, I allow the Writ Petition. No costs. Consequently, M.P.Nos.1 of 2013 and 5 of 2013 are closed.

9.3.2015

Index: Yes/no
Internet: Yes/no
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K.K.SASIDHARAN, J.

(tar)

To

1.The Deputy General Manager,
Oriental Insurance company Ltd.,
(Disciplinary authority), Regional Office
U.I.L. Building, Esplanade, Chennai 108.

P.D. Order in
W.P.No.3899 of 2013

9.3.2015