IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.7.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Petition No.19234 of 2014

1.The Union of India,
Ministry of Railways, rep. by the
Divisional Personnel Officer,
Southern Railway,
Tiruchirappalli Division,
Tiruchirappalli.

2.The Union of India,
Ministry of Railways, rep. by the
Chief Personnel Officer,
Southern Railway, Chennai.

3.The Union of India,
Ministry of Railways, rep. by the
General Manager,
Southern Railway,
Chennai. .. Petitioners

vs.

1.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court,
Chennai- 600 104.

2.N.Rengarajan

3.The Chairman,
State Level Scrutiny Committee & Secretary,
Adi Dravidar Tribal Welfare Dept.,
Govt. of Tamilnadu,
Fort St. George, Chennai. .. Respondents
[R3 impleaded as per order dated 3.6.2015
in MP.2/2014]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent-Tribunal in O.A.905/2010, dated 25.10.2013, and quash the same.

For petitioners : Mr.M.Vellaisamy
For respondents : Mr.V.Vijay Shankar for R2
Mrs.A.Sri Jayanthi,
Special Govt. Pleader for R3

O R D E R

[BY V.RAMASUBRAMANIAN, J.]

The Railway Administration has come up with the above Writ Petition challenging the order passed by the Central Administrative Tribunal, directing the Railway Administration to settle the terminal benefits in favour of the 2nd respondent herein.

2. Heard Mr.M.Vellaisamy, learned Standing Counsel for the petitioners, Mr.V.Vijay Shankar, learned counsel for the 2nd respondent and Mrs.A.Sri Jayanthi, learned Special Government Pleader for the 3rd respondent.

3. The 2nd respondent herein was originally appointed as an Apprentice Mechanic on 25.8.1976, claiming himself to be a person belonging to the Hindu Kattunaicken community, which is classified as a Scheduled Tribe. When he was working as such, certain complaints were received from his colleagues about the genuineness of his Community Certificate. Therefore, way back in the year 1983, his Community Certificate was sent to the District Revenue Officer for a verification. In the mean time, the 2nd respondent was also promoted to the next higher post on 7.4.1984.

4. In response to the clarification sought by the Railway Administration from the Revenue Authorities, the Tahsildar, Thirumayam, sent a reply on 30.4.1984 stating that the 2nd respondent belonged to Vadugan Community, which is classified as a Backward Class. Therefore, the 2nd respondent approached the Civil Court by filing two different Suits, one for an injunction and another for a declaration that he belongs to Kattunaicken Community.

5. At this stage, it is relevant to note that the Government Order empowering only the Revenue Divisional Officers to issue Community Certificates for Scheduled Tribes had not come at that time. The Government Order came only in the year 1989. We must also note that the decision of the Supreme Court in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development reported in 1994 [6] SCC 241, had not come at the time when the 2nd respondent filed the Civil Suits in 1984.

6. By judgment and decree dated 28.2.1995, the Sub Court, Tiruchirappalli, declared the 2nd respondent to belong to Kattunaicken Community. However, the Railway Administration filed an Appeal in A.S.113/1995 before the District Court, Tiruchirappalli. The District Court allowed the Appeal by a judgment and decree dated 23.2.1996. By this judgment and decree, the lower Appellate Court

not only reversed the finding of the trial Court, but also specifically held that the 2nd respondent belonged to the Vadugan Community.

7.As against the said judgment and decree of the lower Appellate Court, the 2nd respondent filed a Second Appeal in S.A.335/2001 on the file of the Madurai Bench of this Court. It was only during the pendency of this Second Appeal, that the decision of the Supreme Court in Kumari Madhuri Patil came holding that the Civil Court will have no jurisdiction to entertain such pleas and also directing all the State Governments to constitute Vigilance Committees for the verification of the community status of persons. This aspect has to be remembered, for the purpose of deciding the rival contentions of the parties in this case.

8.During the pendency of the Second Appeal, the 2nd respondent was compelled to file a fresh Writ Petition in W.P.3621/1996, challenging the order of the Tahsildar dated 30.4.1984. It is true that this Writ Petition was filed after 12 years of the order of the Tahsildar. But the 2nd respondent had no alternative except to approach the High Court in 1996, in view of the declaration that he obtained from the trial Court in his Civil Suit and the same having been reversed by the Appellate Court. Therefore, this Court, despite the patent delay, admitted the Writ Petition and granted an interim order in favour of the 2nd respondent. Eventually, the Writ Petition was disposed of by an order dated 5.2.2002, holding that the Railway Administration cannot take any punitive action unless and until the Community Certificate was cancelled in the manner known to law.

9.In the year 2008, the Second Appeal came up for final disposal before the Madurai Bench of this Court. By this time, the law had settled down to the effect that the Civil Court would have no jurisdiction to entertain any Suit for declaration of community status. Therefore, the Second Appeal was dismissed by the Madurai Bench of this Court by judgment dated 26.3.2008. It is relevant to note that the judgment of this Court in the Second Appeal contains seven paragraphs. The first two paragraphs narrate the history. The third paragraph contains the question of law framed. The fourth paragraph was about the arguments being heard on both sides. The fifth paragraph merely summed up the ratio laid down by the Full Bench of this Court in P.Maragathamani v. General Manager [In-charge], Bharat Heavy Electricals Limited, Trichy Complex, Tiruchirappalli-14 and others reported in 2006 [1] CTC 497, wherein the Full Bench had followed the decision of the Supreme Court in Secretary, Ministry of Chemicals and Fertilizers, Government of India v. Cipla Ltd., and others reported in 2003 [7] SCC 1. The portion of the decision of the Full Bench extracted in paragraph 5 of the judgment in the Second Appeal revolves entirely around the question of the Civil Court's jurisdiction to entertain such Suits and not with respect to the finding of the lower Appellate Court that the 2nd respondent belonged to a particular community. In paragraph 6 of the judgment in the Second Appeal, this Court made it very clear that a

Suit will not lie for the purpose of declaring the community status of a particular individual. Therefore, the finding of this Court in the Second Appeal was that the Suit was liable to be dismissed. But in paragraph 7, while recording the dismissal of the Second Appeal, this Court stated that the judgment and decree of the First Appellate Court are confirmed. Therefore, it is contended by Mr.M.Vellaisamy, learned counsel for the Railway Administration that the 2nd respondent has been declared by a Civil Court to belong to Vadugan Community and that there is no escape from the said conclusion. In other words, his contention is that the finding of the lower Appellate Court, as confirmed by this Court, has attained finality and the 2nd respondent now belongs to the Vadugan Community.

10. But we are completely surprised at such a contention.

11. Paragraphs 6 and 7 of the judgment of this Court in Second Appeal No.335/2001, read as follows:-

> "6. It is explicitly clear that a suit will not lie for the purpose of declaring the caste status of a particular individual of this nature. Accordingly, I could see no merit in this second appeal and accordingly the substantial questions of law is answered.
>
> 7. In the result, there is no merit in the second appeal and the same is dismissed, confirming the judgment and decree of the first appellate Court. However, in the facts and circumstances of the case, there is no order as to costs."

Once this Court comes to the conclusion that the Civil Court will have no jurisdiction to declare the community status of an individual, the said finding operates bothways. It cannot be contended that for the purpose of declaring the 2nd respondent to belong to Kattunaicken Community, the Civil Court will have no jurisdiction, but for the purpose of declaring him to belong to Vadugan Community, the Civil Court will have jurisdiction. Therefore, the said argument is stated only to be rejected.

12. As a matter of fact, the Railway Administration itself did not think that the judgment of this Court in the Second Appeal sealed the fate of the 2nd respondent with regard to his community status. Therefore, after the dismissal of the Second Appeal, the Railway Administration itself referred the Community Certificate of the 2nd respondent to the State Level Scrutiny on 4.5.2010. If the Railway Administration has understood the judgment of this Court in the Second Appeal to mean grant of declaration of the community status of the 2nd respondent, as if he belongs to the Vadugan Community, they would not have referred the Community Certificate to the State Level Scrutiny Committee. We are therefore of the considered opinion that the Railway Administration understood correctly the scope of the judgment of this Court in the Second Appeal.

13. From 4.5.2010, the date on which the Community Certificate of the 2nd respondent was referred by the Railway Administration to the State Level Scrutiny Committee, it appears that the matter is in a state of limbo. A period of five years by now have passed and nothing has moved.

14. In the mean time, the 2nd respondent reached superannuation on 31.7.2010. Since he was only sanctioned provisional pension and he was not granted the retirement benefits, the 2nd respondent approached the Central Administrative Tribunal in O.A.905/2010. During the pendency of the Application, the 2nd respondent moved a Miscellaneous Application in M.A.32/2011 for the disbursement of leave salary, medical benefits, privilege pass, etc. That Application was allowed by the Tribunal by an order dated 25.4.2011. However, this Court set aside the said order in W.P.2994/2012 and directed the Central Administrative Tribunal to take up the main O.A. for disposal.

15. Accordingly, the Tribunal took up the main Application in O.A.905/2010 for disposal and allowed the same by a final order dated 25.10.2013 directing the Railway Administration to settle all the terminal benefits and to sanction regular pension. It is against this order, that the Railway Administration has come up with the above Writ Petition.

16.Before considering the contentions of Mr.M.Vellaisamy, learned counsel for the petitioner-Railway Administration, it is necessary to have a look at the order against which the 2nd respondent moved the Central Administrative Tribunal. This order is dated 8.7.2010. The order dated 8.7.2010 by which the 2nd respondent was denied the terminal benefits and pensionary benefits, reads as follows:-

> "It has been decided by the administration to withhold your settlement benefits, since your Community Certificate verification is pending before the State Level Scrutiny Committee. However, Provisional Pension has been sanctioned for payment of your retirement [sic] till the case is finalized.
>
> The Xerox copy of the CPO's letter in this regard is enclosed Please note."

17. It is relevant to note that the order dated 8.7.2010 does not refer to any provisions of the Railway Services [Pension] Rules, 1993. It may also be seen that by the said order, the benefits of the 2nd respondent were directed to be withheld and only provisional pension had been sanctioned on the basis that the Community Certificate is under verification by the State Level Scrutiny Committee. In other words, the order impugned in the main Application did not refer to any particular statutory provision. Keeping this in mind, let us now take up the contentions of the learned counsel for the petitioners.

18. The contentions of Mr.M.Vellaisamy, learned counsel appearing for the petitioner-Railway Administration are actually two fold, viz., a] that the non-payment of regular pension and the non-payment of the retiral benefits, were not by way of any penalty, but traceable to Rule 91 of the Railway Services [Pension] Rules, 1993 and hence the 2nd respondent cannot question the competence of the authority, and b] that since it was the 2nd respondent who prevented any kind of investigation or enquiry from being made into the genuineness of the Community Certificate of the 2nd respondent right from 1984, and managed to continue in employment for 30 years, the only alternative that the Railway Administration has, is to make a reference to the State Level Scrutiny Committee. It is his contention that if the State Level Scrutiny Committee decides in favour of the 2nd respondent, the petitioner will have no hesitation in releasing all the terminal benefits and pensionary benefits.

19. In response to the above contentions, it is contended by Mr.V.Vijay Shankar, learned counsel for the 2nd respondent that at the outset, Rule 91 of the Railway Services [Pension] Rules, 1993, has no application to cases of this nature and that so long as no departmental proceedings or judicial proceedings are initiated against the 2nd respondent, it is not open to the petitioner to withhold any of his terminal benefits. In support of his contention, the learned counsel for the 2nd respondent relies upon Rules 9, 10 and 69 of the Railway Services [Pension] Rules, 1993, and various decisions of this Court, as well as the Supreme Court. We shall advert to the same at the appropriate stage.

20. We have carefully considered the rival submissions.

21. Keeping in mind the fact that the order impugned in the Original Application did not refer to any statutory Rule and it has safely left it to the imagination of the Advocates appearing for both sides, let us now have a look at the relevant provisions of the Railway Services [Pension] Rules, 1993.

22. Rule 9 of these Rules reserves the right to the President of India to withhold or withdraw the pension of a railway servant. Similarly, Rule 10 speaks about the entitlement of a railway servant to the grant of provisional pension not exceeding the maximum pension, whenever Rule 9[3] comes into operation. It will be useful to extract Rules 9 and 10, which read as follows:-

"9. Right of the President to withhold or withdraw pension.

(1) The President reserves to himself the right of with holding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any

departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem.(Authority: Railway Boards letter No. 2011/F (E) III/1 (1)9dated 23.09.13)

(2) The departmental proceedings referred to in sub-rue (1) -

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not institute while the railway servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the President;
(ii) shall not be in respect of any event which took place more than four years before such institution; and
(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 10 shall be sanctioned.

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and
(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

10. Provisional Pension where departmental or judicial proceedings may be pending.

(1) (a) In respect of a railway servant referred to in sub-rule (3) of Rule 9, the Accounts Officer shall authorise the provisional pension not exceeding the maximum pension which would have been admissible on the bases of qualifying service up to the date of retirement of the railway servant or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension.

(b) The Provisional pension shall be authorised by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iii a) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such railway servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

23. Rule 91, on which reliance is placed by Mr.M.Vellaisamy, learned counsel for the petitioner-Railway Administration, actually speaks about the provisional pension. Though it is a very long Rule, we are compelled to extract it, in view of the fact that there is a distinction between the fields of operation of Rules 10 and 91. Rule

10 operates in cases where departmental or judicial proceedings are pending. Rule 91 operates in cases where nothing is pending. Rule 91 reads as follows:-

"91. Provisional Pension (1) The various stages of action laid down in rule 79, it may not be possible for the Head of Office to forward the pension papers referred to in rule 81 to the Accounts Officer within the period specified in sub-rule (4) of that rule; or where the pension papers have been forwarded to the Accounts Officer within the specified period but the Accounts Officer may have returned the pension papers to the Head of Office for eliciting further information before issue of pension payment order and order for the payment of gratuity. If the Head of Office in such a case is of the opinion that the railway servant is likely to retire before his pension or gratuity or both, can be finally assessed and settled in accordance with the provisions of these rules, he shall without delay, take steps to determine the qualifying years of service and the emoluments qualifying for pension after a most careful summary investigations that may be made. For this purpose, he shall

(i) rely upon such information as may be available in the official records; and

(ii) ask the retiring railway servant to file a written statement on plain paper stating the total length of qualifying service including details of emoluments drawn during the last ten months of service but excluding the breaks and other non-qualifying periods of service.

(2) The railway servant while furnishing the statement, as in clause (ii) of sub-rule (1) shall, at the foot of the statement, make and subscribe to a declaration as to the truth of the statement.

(3) The Head of Office shall, thereafter determine the qualifying years of service and the emoluments qualifying for pension in accordance with the information available in the official records and the information obtained from the retiring railway servant under sub-rule (1) and he shall, then, determine the amount of provisional pension and the amount of the provisional death-cum-retirement gratuity.

(4) After the amount of pension and gratuity have been determined under sub-clause (3), the Head of Office shall take further action as follows

(a) He shall issue a sanction letter addressed to the railway servant endorsing a copy thereof to the Accounts Officer authorising

(i) hundred per cent of pension as determined under sub-rule (3) as provisional pension for a period not exceeding six months to be reckoned from the date of retirement of the railway servant; and

(ii) hundred per cent of the gratuity as provisional gratuity as determined under sub-rule (3) withholding that part of gratuity as provided in these rules.

(b) He shall indicate in the sanction letter the amount recoverable from the gratuity under sub-rule (1) of rule 83. After issue of the sanction letter he shall draw: -

(i) the amount of provisional pension; and

(ii) the amount of provisional gratuity after deducting there from the amount mentioned in sub-clause (ii) of clause (a).

(5) The amount of provisional pension and gratuity payable under sub-rule (4) shall, if necessary, be revised on the completion of the detailed scrutiny of the records.

(6) (a) The payment of provisional pension shall not continue beyond the period of six months from the date of retirement of the railway servant. If the amount of final pension and the amount of final gratuity had been determined by the Head of Office in consultation with the Accounts Officer before the expiry of the said period of six months, the Accounts Officer shall

(i) issue the pension payment order; and

(ii) direct the Head of Office to draw and disburse the difference between the final amount of gratuity and the amount of provisional gratuity paid under sub-clause (ii) of clause (b) of sub-rule (4) after adjusting the Government dues, if any, which may have come to notice after the payment of provisional gratuity.

(b) if the amount of provisional pension disbursed to a railway servant under sub-rule (4) is, on its final assessment, found to be in excess of the final pension assessed by the Accounts Officer, it shall be open to the Accounts Officer to adjust the excess amount of pension, in installments, by making short payments of the pension payable in future.

(c) (i) If the amount of provisional gratuity disbursed by the Head of Office under sub-rule (4) is larger than the amount finally assessed, the retired railway servant shall not be required to refund the excess amount actually disbursed to him.

(ii) The Head of Office shall ensure that chances of disbursing the amount of gratuity in excess of the amount finally assessed are minimised and the officials responsible for the excess payment shall be accountable for the overpayment.

(7) If the final amount of pension and gratuity have not been determined by the Head of Office in consultation with the Accounts Officer within a period of six months referred to in clause (a) of sub-rule (6), the Accounts Officer shall treat the provisional pension and gratuity as final and issue pension payment order immediately on the expiry of the period of six months.

(8) As soon as the pension payment order has been issued by the Accounts Officer under clause (a) of the sub-rule (6) or sub-rule (7), the Head of Office shall take steps to refund the amount of withheld gratuity under sub-clause (ii) of clause (a) of sub-rule (4) to the retired railway servant after adjusting railway dues or Government dues which may have come to notice after the payment of provisional gratuity under sub-clause (ii) of clause (b) of sub-rule (4). If the railway servant was an allottee of Government accommodation or railway accommodation, the withheld amount should be refunded on receipt of No Demand Certificate from the Directorate of Estates or on vacation of railway accommodation as the case may be."

24. At the outset, we should point out that Rule 91 cannot have any application to cases of this nature. Rule 91 is an enabling provision, which entitles the Railway Administration to release pension in cases where the various stages of action for the processing of the pension papers as contemplated under Rule 79, could not be completed within the time stipulated. A look at Rule 79 would show that the same lays down three stages for the processing of pension papers. Rule 79 makes it incumbent upon the Railway Administration to divide the period of preparatory work of two years, referred to in Rule 78 into three stages. In the first stage, the verification of records have to take place. In the second stage, making good the omissions in the Service Book has to take place. In the third stage, the Head of Office is obliged to take Form 8, at least eight months prior to the date of retirement of the railway servant. If for any administrative reasons, there is a lapse on the part of the Administration in completing the process, that should be gone through in three different stages as stipulated in Rule 79. It is only then, that the Administration is entitled to rely upon Rule 91 for the purpose of taking more time for the settlement of benefits. When the intention of the Administration is to withhold the entire terminal benefits and the regular pension pending a verification from the State Level Scrutiny Committee, Rule 91 has no application at all.

25. As a matter of fact, in the affidavit in support of the Writ Petition that is sworn to by the petitioner-Divisional Personnel Officer, no reference is made either to Rule 9, or to Rule 10, or even to Rule 91. Reference is made only with regard to Rule 96 in paragraph 6 of the affidavit. Again, Rule 96 relates only to sanction, drawal and disbursement of provisional family pension and gratuity. Therefore, we do not think that we need to spend more time on Rule 96.

26. From the above, it is very clear that the provisions of Rule 91, has no application at all to the case on hand. If Rule 91 has no application and if at all the Railway Administration would rely upon any other Rule, it could only be Rules 9 or 10. If according to the Railway Administration, these two Rules cannot also be relied upon, then there is no statutory provision under which the action of the petitioner could be justified.

27. For a minute, we will presume that the action of the Railway Administration would be traced to Rule 9 or 10, even though it is not the contention of the petitioner that the present action could be traced to any of these two Rules.

28. Even if the petitioner could fall back upon Rule 9 or 10, both these Rules are very clear to the effect that they can be invoked only when judicial or departmental proceedings are pending against the employee concerned. We have already extracted both the Rules as above. Rule 9[1] specifically makes a mention about the pensioner being found guilty of grave misconduct or negligence, in any departmental or judicial proceedings. Today, no judicial or departmental proceedings have been initiated against the 2nd respondent. Therefore, the contingency contemplated under Rule 9[1] where the Railway Administration will have a right to withdraw pension, or gratuity in cases where a person is found guilty of a misconduct in a departmental or judicial proceedings, has not even arisen. Even Rule 9[3] makes a specific mention about the pending of a departmental or judicial proceedings, as on the date of railway servant reaching superannuation. On the date on which the 2nd respondent reached the age of superannuation, viz., 31.7.2010, there were no departmental or judicial proceedings either initiated or pending. Even after five years of his retirement, that is even today, no proceedings other than a mere reference of the Community Certificate of the 2nd respondent is pending with the State Level Scrutiny Committee.

29. In order to satisfy our conscience whether any such proceedings are actually pending, we impleaded on the earlier occasion the State Level Scrutiny Committee and issued notices. Insofar as the case on hand is concerned, the State Level Scrutiny Committee appears to have sent a communication only yesterday, viz., 6.7.2015 to the Divisional Personnel Officer asking him to forward a copy of the Community Certificate for the purpose of initiating proceedings. The letter produced by Mrs.A.Sri Jayanthi, learned Special Government Pleader for the State of Tamil Nadu shows that

only after we impleaded the State Level Scrutiny Committee and only after we issued a specific direction to the Government Pleader to ascertain the status of any such enquiry, the first salvo has been fired on 6.7.2015. Therefore, the pendency, if at all it is taken to be pendency of the proceedings for verification before the State Level Scrutiny Committee, cannot impede the settlement of terminal benefits and pensionary benefits upon the 2nd respondent.

30. The above view is not what we are persuaded to take on our own. There are precedents and we think we are obliged to follow the same.

31. In State of Jharkhand v. Jitendra Kumar Srivastava reported in AIR 2013 SC 3383, the provisions of Rule 43[5] of Bihar Pension Rules, 1950 came up for consideration. The said Rule which was extracted by the Supreme Court in paragraph 9, is in pari materia with Rule 9 of the Railway Services [Pension] Rules, 1993. Paragraphs 8 and 9 of the decision of the Supreme Court in State of Jharkhand requires reproduction, to see how a similar Rule has been interpreted by the Supreme Court. Hence, they are extracted as follows:-

"8. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.

> 9. Having explained the legal position, let us first discuss the rules relating to release of Pension. The present case is admittedly governed by -
>
> Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This Rule 43(b) reads as under:
>
> "43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty to grave misconduct, or to have caused pecuniary loss to Government misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement".
>
> From the reading of the aforesaid Rule 43(b), following position emerges:-
>
> (i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the department proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before."

32. Again in paragraph 11, the Supreme Court made it clear that as per Rule 43[b], it is permissible for the Government to withhold pension only when a finding is recorded either in a departmental proceedings or in a judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in Office. Such interpretation, in respect of a Rule, which is in pari materia with the Rule that we are now concerned with, has to be followed by us.

33. The learned counsel for the 2nd respondent relied upon several orders passed by the Division Bench of this Court in W.P.7991/2010 dated 28.4.2010, W.P.18214/2010 dated 10.12.2010, W.P.21759/2011 dated 21.2.2013, W.P.30779/2012 dated 18.6.2013, W.P.22714/2013 dated 26.8.2013, W.P.18724/2013 dated 31.10.2013. We do not propose to extract all of them as it is sufficient that we have relied upon the judgment of the Supreme Court of the year 2013.

34. However, Mr.M.Vellaisamy, learned counsel for the petitioner-Railway Administration relies upon another decision of the Supreme Court in Bank of India v. Avinash D.Mandivikar reported in [2005] 7 SCC 690. But, we fail to understand as to how the ratio laid down in the said decision can be of any assistance to the petitioner.

35. In Bank of India, what happened was that a person who joined the services of the Bank on the basis of a Community Certificate, was dismissed from service, after the Caste Scrutiny Committee cancelled his certificate. There was actually a finding by the Scrutiny Committee in that case that the employee about whom the Scrutiny Committee was concerned, did not belong to the Scheduled Tribe. It is only on account of such a finding rendered by the proper authority, viz., the Scrutiny Committee that the Supreme Court held in Bank of India that the right to salary, pension and other service benefits are entirely statutory in nature in public service and that a person who has played a fraud upon the employer by securing employment on the basis of a false Community Certificate, cannot gain either the terminal benefits or even the sympathy of the Court. Therefore, we are of the view that the said decision can be applied by the Railway Administration after the 2nd respondent is found by the State Level Scrutiny Committee not to be belonging to Kattunaicken Community.

36. That leaves us with one last question as to what would happen if the State Level Scrutiny Committee eventually holds that the 2nd respondent does not belong to the Scheduled Tribe. We cannot shirk this question, but the answer is too obvious. The right of a person to receive pension continues until his final departure. Even after his departure, his family become entitled to Family Pension. Therefore, if the State Level Scrutiny Committee eventually cancels the Community Certificate of the 2nd respondent, the petitioner can always pass orders forfeiting the pension as well as the Family Pension.

37. The Railway Administration cannot raise a question as to how they will recover the terminal benefits that they will be now compelled to pay, as that is a very moot question. Logically, another question would also arise as to how they would recover the salary paid for the past 30 years. For both questions, there cannot be an answer in law. So long as the Rules contemplate a particular position, it is not only the 2nd respondent, but also the Railway Administration which is bound by the Rules. The interpretation given to the Rules by various Benches of this Court and of the Supreme Court, in State of Jharkhand v. Jitendra Kumar Srivastava are very clear. Therefore, the Tribunal did not commit any error in law warranting interference by this Court. Hence, the Writ Petition is dismissed. The petitioner-Railway Administration shall settle the terminal benefits within a period of eight weeks from the date of receipt of a copy of this order. The 3rd respondent-State Level Scrutiny Committee is directed to complete the proceedings, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gs.

To

1.The Divisional Personnel Officer,
Union of India,
Ministry of Railways,
Southern Railway,
Tiruchirappalli Division,
Tiruchirappalli.

2.The Chief Personnel Officer,
Union of India,
Ministry of Railways,
Southern Railway, Chennai.

3.The General Manager,
Union of India,
Ministry of Railways,
Southern Railway,
Chennai.

4.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai.

5.The Chairman,
State Level Scrutiny Committee & Secretary,
Adi Dravidar Tribal Welfare Dept.,
Govt. of Tamilnadu, Fort St. George, Chennai.

+ 1 cc to M/s. V.G. Sureshkumar, Advocate Sr.34611
+ 1 cc to M/s. V. Vijayashankar, Advocate sR.34251

Writ Petition No.19234 of 2014

UG(CO)
EU 13.10.15