

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.3056 of 2015

&

M.P.No.1 of 2015

1. Union of India,
Represented by the General Manager,
Southern Railway,
Park Town, Chennai-600 003.
2. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-600 003.
3. The Divisional Personnel Officer,
Southern Railway,
Tiruchirapalli.
4. The Senior Divisional Medical Officer/Hospital,
Railway Hospital,
Golden Rock, Tiruchirapalli.
- .. Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by the Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
2. The State Level Caste Scrutiny Committee,
Represented by its Chairman,
Fort St.George,
Chennai-600 009.

3. Mr.C.Gunaseelan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the second respondent to complete the verification of the community status of the third respondent, within a time as may be specified by this Court.

For petitioners: Mr.V.G.Suresh Kumar

For respondents: Mr.R.Rajeswaran, Spl.G.P. for RR-1 & 2
No appearance for R-3

ORDER

(The Order of the Court was made by V.Dhanapalan,J)

Heard Mr.V.G.Suresh Kumar, learned counsel appearing for the petitioners/Southern Railway and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 and 2. Though the third respondent had been served with notice and his name also been printed in the cause list, none appears for him.

2. This Writ Petition has been filed for issuance of a Writ of Mandamus to direct the second respondent/State Level Caste Scrutiny Committee, to complete the verification of the community status of the third respondent, within a time as may be specified by this Court.

3. The Union of India, represented by Southern Railway and three other railway authorities, have come out with a plea in this Writ Petition stating that the third respondent was originally appointed in the Southern Railways as a Pharmacist Grade-B on 18.11.1978 in the Medical Department of the Railways against the Scheduled Tribe community quota, based on the Community Certificate submitted by him stating that he belonged to Konda Reddy Community, which Community Certificate had been issued by the Tahsildar, Thuraiyur, Tiruchirappalli District; while so working as Pharmacist, a complaint was received against him that he gained employment in the Railways by producing a false Community Certificate at the time of initial appointment; the Railway Administration referred the said complaint to a Three-Member District Level Vigilance Committee, Tiruchirappalli, which enquired into the genuineness of the said Certificate of the third respondent and the said Committee, by proceedings, dated 31.07.2007, declared that he did not belong to Konda Reddy Community, but he actually belongs to Reddiar Community, which is a Forward Community, and consequently, the said Committee directed cancellation of the Community Certificate, dated 22.07.1977 issued by the said Tahsildar; challenging the said order of the Committee, the third respondent filed W.P.(MD).No.8117 of 2007 before the Madurai Bench of this Court and by order dated 18.07.2008, the Madurai Bench of this Court held that by virtue of G.O.(2D).No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007, the power to verify the Community status of the persons belonging to Scheduled Tribe, vests only with the State Level Scrutiny Committee and this Court therefore directed the third respondent to file an application before the State Level Scrutiny Committee, within a period of four weeks from the date of receipt of a copy of the order and on receipt of such application, the State Level Committee was directed to enquire into the Community status of the third respondent and finalise the proceedings within a period of four weeks

thereafter; pursuant thereto, the third respondent has not complied with the said order of this Court and did not file any application before the second respondent/State Level Committee, as stipulated by this Court; ultimately, the second respondent-State Level Committee, by proceedings, dated 31.10.2008, followed by reminder, dated 02.02.2009, informed the third respondent to file an application as directed by this Court; even then, he failed to comply with the direction and consequently, the second respondent-State Level Committee issued a communication to the Railways on 24.03.2009 requesting to intimate the third respondent to appear before the second respondent-State Level Committee; resultantly, the Railway Administration also informed him about the said proceedings and directed him to appear before the second respondent-Committee and file his application, which has not been done till date; in response to the communication, dated 18.05.2009 issued by the fourth petitioner herein, the third respondent filed O.A.No.457 of 2009 before the Central Administrative Tribunal, Chennai Bench, which by order dated 14.06.2010, quashed the said communication issued by the Railway Administration holding that the third respondent had given an undertaking that he would appear before the second respondent-Committee whenever he receives a notice or summons from the Committee and that the same had been recorded by the Tribunal; thereafter, nothing had happened and there had been no progress in the matter; though more than six years had lapsed ever since the order of this Court, dated 31.07.2007 made in W.P(MD).NO.8117 of 2007, the second respondent-Committee ultimately failed to conclude the proceedings on the ground that the third respondent herein did not file the requisite application within the period as prescribed by this Court and hence, the petitioners/Southern Railway approached this Court by filing the above Writ Petition for the relief stated supra.

4. On behalf of the second respondent, a counter affidavit has been filed, wherein, apart from stating the facts of the case, they have also averred that subsequent to the abovesaid order of the Madurai Bench of this Court, the third respondent did not file any application, thereby he failed to comply with the direction of this Court, however, the State Level Committee took up the matter for enquiring the community status of the third respondent after collecting all the original records with regard to him from the District authorities and he was instructed to appear on 30.09.2011 before the State Level Committee for personal enquiry regarding the genuineness of Hindu Konda Reddy Scheduled Tribe Community Certificate obtained from the Tahsildar, Thuraiyur, along with the following original records/documents in support of his claim:

(i) original of the Elementary/Primary School Admission Register/Record Sheet of father or mother (if educated) of the individual;

- (ii) Secondary School Leaving Certificate of individual and their parents (if educated);
- (iii) School Transfer Certificate of individual and their parents (if educated);
- (iv) Community Certificate issued to the individual by the Revenue authority;
- (v) First page of Service Register of father/mother of the individual, if employed/retired;
- (vi) Community Certificate issued to father/mother of the individual;
- (vii) Sale deed, if any executed prior to the year 1950, wherein community is expressly mentioned;
- (viii) any record/evidence to defend individual's claim of the community status and
- (ix) extract of Birth Register of individual's parents.

It is further stated in the counter that the third respondent did not appear for the enquiry without any intimation; however on 30.09.2011, he requested the Committee to fix the enquiry after six weeks and accordingly, time was also granted by the Committee and he was further instructed to appear before the State Level Committee on 17.09.2013, but he was absent on that day, and instead, he gave a representation/letter, dated 05.09.2013 stating that he underwent Cataract Operation on his right eye on 21.08.2013 in the Railway Hospital, Tiruchirappalli and the surgery on the left eye had been fixed on 06.09.2013 in the same hospital and that the hospital authorities advised him to take complete rest for five to six weeks and therefore, the third respondent requested the Committee to fix the date of enquiry after two months; that the first and second respondents gave one more chance to the third respondent by adopting the principles of natural justice and instructed him to appear for the enquiry on 26.12.2013 as third chance and that he appeared on that date and submitted the following documents in support of his claim as Konda Reddy:

- (i) Community Certificate, dated 09.07.1965 of his cousin brother Radhakrishnan, whose father Ramasamsy and his father Chinnasamy are coupling brothers;
- (ii) Community Certificate, dated 13.08.1974 of Janaki, who is his maternal sister's daughter;
- (iii) Registered sale deed, dated 31.01.1992 in which his Community is described as Konda Reddy Community;
- (iv) Registered sale deed, dated 29.03.1996 in favour of his wife Uma who is his own sister's daughter and
- (v) his wife's school record to show that she has been described as belonging to Konda Reddy Community.

In pursuance of production of the said documents, the first and second respondents concluded that the third respondent did not produce the relevant documents as referred to by them in their letter, dated 20.09.2011, observing as follows:

(i) With regard to the first document produced by the third respondent, it was stated that he did not submit any proof for relationship between Ramasamsy and Chinnasamy that they are cousin brothers;

(ii) With regard to the second document produced by the third respondent, it was submitted that he did not show any proof that his wife Tmt.Janaki is her maternal sister's daughter;

(iii) With regard to the third document produced by the third respondent, it was stated that it is a latest document and it could not be taken as an evidence to prove his community status, since it is not a document executed before 1950;

(iv) With regard to the fourth document produced by the third respondent, it was stated that it is a latest document and it could not be taken as an evidence to prove his community status, as the same was not a document executed before 1950 and

(v) With regard to the fifth document produced by the third respondent, it was submitted that it is not available in the records submitted by the third respondent.

On an analysis of the above documents and records, the first and second respondents issued a show cause notice on 13.01.2014 to show cause as to why the Hindu Konda Reddy Community Certificate obtained by the third respondent be rejected and also instructed him to furnish his reply within a period of 30 days from the date of receipt of the said show cause notice. Thereafter, the third respondent requested some more time to produce certain documents and also requested to refer the matter to the Scheduled Castes/Scheduled Tribes Vigilance Cell as per G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department, dated 15.12.2012 issued by the Government of Tamil Nadu. Subsequently, the matter was referred to the Deputy Superintendent of Police, Scheduled Castes/Scheduled Tribes Vigilance Cell, Trichy Region, as requested by the third respondent and the Vigilance Cell submitted report on 07.10.2014, which was not in favour of the third respondent. Again, he was instructed to appear before the second respondent-Committee on 05.01.2015 as a last chance, but he was absent on that date also. Hence, it is submitted on behalf of the respondents 1 and 2 in the counter that the third respondent did not co-operate in finalising the issue, and requested time periodically with an intention to drag the matter, as he could not submit sufficient evidence to prove his claim as Konda Reddy. Hence, it is stated on behalf of the respondents 1 and 2 in the counter that the second respondent-State Level Committee has followed the procedures/guidelines laid down by the Supreme Court and there are no procedural lapses in the matter and the Committee decided to finalise the next hearing which is due to be held in April 2015 and therefore, they prayed that the Writ Petition may be dismissed.

5. On the above background of pleadings, we have heard the learned counsel appearing for the parties and perused the material documents available on record.

6. While considering the prayer of the writ petitioners/Railways for a direction to the second respondent to complete the verification of the Community status of the third respondent within a time frame as may be fixed by this Court and while perusing the pleadings of the parties, it is seen that on the basis of a complaint given against the third respondent, the matter was dealt with by the District Level Committee, which passed an order, against which, he moved the Madurai Bench of this Court in W.P.(MD).No.8117 of 2007, which was disposed of on 18.07.2008, directing the third respondent to move the second respondent-State Level Committee, which was ultimately not followed by the third respondent and he was dilly-dallying the matter and ultimately, the second respondent-State Level Committee took up the issue and called for records and issued show cause notice to him and even then, he dragged the matter. It is to be noted that in the meantime, the matter was referred to the Deputy Superintendent of Police, Scheduled Castes/Scheduled Tribes Vigilance Cell, Trichy Region, which submitted its report on 07.10.2014 against him. Again, steps have been taken by the second respondent-Committee to finally conduct enquiry and hear the matter conclusively in April 2015, on the basis of the verification of the documents already submitted by him. Having no other option, the petitioners/Railway Administration, having a Constitutional obligation in the matter to determine the community status of the third respondent and finding that there is no other effective alternative remedy, have filed this Writ Petition for the relief as stated above, for conclusion of the matter.

7. In the light of the above stated position, as the second respondent-State Level Scrutiny Committee had ultimately fixed the enquiry for hearing during April 2015, as the Government/respondents 1 and 2 are not in a position to state in the counter affidavit the time frame for conclusion of the matter to take a decision thereon, we are of the considered opinion, as suggested by the learned Special Government Pleader appearing for the respondents 1 and 2 that the respondents 1 and 2 shall conclude the enquiry proceedings initiated against the third respondent with regard to his community status, in accordance with law based on the documents available on record and upon conducting enquiry and upon hearing the parties concerned, including the third respondent, within a period of four weeks from the date of receipt of a copy of this order, without further delaying the matter, taking into account the fact that already sufficient opportunity had been given to the third respondent in the matter, coupled with the fact that though notice had been served on him, he did not appear before this Court in person or through counsel and it is expected that the third respondent shall co-operate in the matter in finalising the enquiry.

8. With the above observations/direction, the Writ Petition is disposed of. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The General Manager, Union of India,
Southern Railway,
Park Town, Chennai-600 003.
2. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-600 003.
3. The Divisional Personnel Officer,
Southern Railway,
Tiruchirapalli.
4. The Senior Divisional Medical Officer/Hospital,
Railway Hospital,
Golden Rock, Tiruchirapalli.
5. The Secretary to Government,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
6. The Chairman,
State Level Caste Scrutiny Committee,
Fort St.George,
Chennai-600 009.

+ 1 cc to Government Pleader Sr.18161

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MSM(CO)
Eu 22.04.2015