

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**WRIT PETITION No. 20309 of 2001**

**ORDER:**

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The petitioner, who was working as Branch Manager in Andhra Pradesh State Financial Corporation, filed the present writ petition seeking issuance of a writ of mandamus declaring the proceedings No. AFC/HRD/2001-2002/01 3735 dated 26.07.2011, wherein and whereunder the services of the writ petitioner were terminated, as illegal, arbitrary and violation of Articles 14 and 309 of the Constitution of India; and consequently to set aside the same.

The facts which lead to filing of the writ petition are as under:

The fore fathers of the petitioner belonged to Vizianagarm District and over a period of time they migrated to East Godavari District. The father of the petitioner, who was originally an Ex-Servicemen joined in Central Excise Department and got himself transferred to Hyderabad. After completing Diploma in Mechanical Engineering, the petitioner was selected as a Technician in Telecom Department during 1969-70 in the open category. After working in the said department for ten years, the petitioner applied for the post of Senior Clerk (Technical) in the respondent Corporation. He was selected as a Senior Clerk (Technical) in the year 1980 and since then he was working in the said Corporation.

It is the case of the petitioner that he is native of East

Godavari District and belongs to Kondakapu community. It is an admitted case that the petitioner joined in the vacancy reserved for ST category. At the time of appointment, the petitioner produced certain documents, but the respondent Corporation directed him to produce a caste certificate issued by the Tahsildar. As the petitioner was residing within the jurisdiction of Tahsildar, Golconda, he made an application before him for issuance of caste certificate. The Tahsildar, Golconda issued a certificate dated 06.05.1981 stating that the petitioner belong to Konda Kapu (ST). On coming to know that the Board of respondent Corporation is trying to take some steps, since the certificate which is produced was by the petitioner was found to be bogus, the petitioner filed O.S.No.583 of 1999 on the file of the II Senior Civil Judge, City Civil Court, Hyderabad, seeking injunction restraining the respondent Corporation from taking any steps. Initially the Court below granted interim injunction but ultimately the same was dismissed on 18.06.2001. Aggrieved by the same, the petitioner preferred an appeal before the High Court vide S.R.No.62498 of 2001. Since the suit filed by the petitioner was dismissed, the respondent Corporation issued the impugned proceedings terminating the services of the petitioner. Challenging the same, the present writ petition is filed.

The respondent Corporation filed counter denying the averments made in the affidavit filed in support of the writ petition. It is stated that the petitioner secured employment in the respondent Corporation under ST category in the year 1980 by misrepresenting that he belongs to "kondakapu" caste which falls under ST category. The petitioner could not establish his caste as "kondakapu" and also failed to substantiate his claim for the last 21 years and took undue advantage of due process of law in

procrastinating the litigation from 1983 onwards by filing case one after another. It is stated that the respondent Corporation referred the caste certificate submitted by the petitioner to Tribal Welfare Department for verification. While the enquiry was in progress, the petitioner filed O.S.No.394 of 1983 before the Court of X Assistant Judge, City Civil Court, Hyderabad, which was decreed on 08.08.1986, declaring the petitioner belongs to Kondakapu community. Aggrieved by the same, the respondent Corporation preferred an appeal in A.S.No.68 of 1987 on the file of the Additional Chief Judge, Hyderabad. The learned Additional Chief Judge, by his judgment dated 04.12.1989 set-aside the decree passed by the trial Court and remanded the suit back to the trial Court for taking additional evidence and also for considering the question as to "Whether the suit is not maintainable in view of non-joinder of necessary parties for the declaration sought for by the plaintiff" by framing an additional issue. After receipt of the file, notices were given to both the parties, but the petitioner did not choose to come forward either to represent the matter or to adduce any further evidence. Hence, after framing an additional issue on 04.02.1991, the trial Court dismissed the suit with costs. Aggrieved by the same, the petitioner preferred A.S.No.40 of 1992. The learned Additional Chief Judge vide judgment dated 30.09.1994 again remanded the matter back to the trial Court to give an opportunity to the petitioner to adduce further evidence. On 10.11.1994, while dismissing the suit, the trial Court observed that in the absence of Director of Tribal Welfare being made as a party to the present suit, no effective adjudication can be made with regard to the declaration that the plaintiff belongs to S.T. It was held that under the said circumstances the suit would fail and the plaintiff is not

entitled for declaration that he belongs to Kondakapu caste which is Scheduled Tribe. It was however held that the plaintiff is at liberty to produce a caste certificate in terms of G.O.Ms.No.147, dated 27.04.1977 before the defendant, if he is otherwise entitled to.

It is stated that though the Civil Court gave an opportunity to the petitioner to produce the caste certificate in terms of G.O.Ms.No.147, the petitioner failed to produce the caste certificate but on the other hand made a representation stating that it is not possible for him to obtain a fresh certificate. He filed O.S.No.583 of 1989 on the file of the II Senior Civil Judge, City Civil Court, Hyderabad, seeking a declaration that the proposed action of the Corporation in convening a board meeting on 11.05.1995 and terminating the services of the petitioner as illegal and unjust and also seeking perpetual injunction restraining the Corporation from terminating the services of the petitioner as Assistant Manager (Technical). Initially the trial Court granted interim injunction against the Corporation. After an elaborate trial, the trial Court dismissed the suit with exemplary costs on 18.06.2001, holding that the petitioner miserably failed to establish that he belongs to Scheduled Tribe and that he is guilty of abuse of process of law. It was also held that the suit is barred by resjudicata as the claim was already considered by the civil Court in O.S.No.394 of 1983. After the judgment of the civil Court in O.S.No.583 of 1989, the respondent Corporation passed a resolution on 07.03.2002 terminating the services of the petitioner with immediate effect.

Learned counsel for the petitioner mainly submits that in view of Act No.16 of 1993 which came into effect from

15.05.1997, the orders of the civil Court are not enforceable and have no validity in the eye of law. The second ground raised by the learned counsel for the petitioner is that the petitioner being an employee of a Corporation, the respondent Corporation ought to have followed the procedure prescribed under Andhra Pradesh State Financial Corporation Staff Regulations, 1960. He submits that as per Regulation 41 of the Andhra Pradesh State Financial Corporation Staff Regulations, 1960, no employee shall be subjected to the penalties of delay or stoppage of increments of promotion, degradation to a lower post or grade or to a lower stage in his incremental scale; recovery from Pay of the whole or part of any pecuniary loss caused to the Corporation by the employee; and dismissal; except by an order in writing signed by the Managing Director and no such order shall be passed without the charge or charges being formulated in writing and given to the said employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers, and in the latter case his defence shall be taken down in writing and read to him. According to him, without following the procedure contemplated therein, the respondent Corporation passed a resolution terminating the services of the petitioner basing on the findings of the civil Court which is impermissible under law. He further submits that the certificate which has been issued to him by the Tahsildar, Golconda is still in force and so long as it is in force, it cannot be said that the petitioner is not a Kondakapu. It is his case that under Act No.16 of 1993, the District Collector alone is competent to cancel the certificate. He further submits that having regard to Section 21 of the Act, the certificates which are issued prior to the Act coming into force are valid in law till the same are cancelled under the provisions of the Act. In

support of his case he relied upon the judgment of this Court in

***P.Kranthi v. Government of Andhra Pradesh and others***<sup>[1]</sup>.

He further submits that opinion of the Tribal Welfare Commission obtained by the respondent Corporation has no legal sanctity in view of Section 21 of the Act.

Relying upon the judgments of the Apex Court in ***Shailaja Shivajirao Patil v. President, Hon'ble Khasdar UGS Sanstha and others***<sup>[2]</sup> and ***Telecom District Manager and Others v.***

***Keshab Deb***<sup>[3]</sup> the counsel for the petitioner would contend that no order can be passed without giving an opportunity to the officer. Hence, he submits that the order under challenge is liable to be set aside.

On the other hand, the learned Standing Counsel for the respondent Corporation would submit that the findings of the civil Court in holding that the petitioner does not belong to Kondakapu, is sufficient to throw out the case of the petitioner. Relying upon the judgment of the Apex Court in ***R.Viswanatha Pillai v. State of Kerala and others***<sup>[4]</sup> he submits that since the appointment to the post was void and non est in the eye of law, the person who seeks equity must act in a fair and equitable manner. He further submits that Act 16 of 1993 which came into force from 15.05.1997 has no retrospective operation. It is his case that the judgment in O.S.No.394 of 1983 which has reached its finality on 10.11.1994 categorically held that the petitioner is not a kondakapu. Since the said findings are based on a suit initiated by the writ petitioner himself and as the findings were given much prior to the Act coming into force, he submits that the provisions of Act 16 of 1993 cannot be made applicable to the case on

hand. In other words he submits that even Section 21 of the Act may not be applicable to the case on hand since the very issuance of caste certificate was commented upon by the civil Court. In view of the above, he submits that there are no merits in the writ petition and the same is liable to be dismissed.

Before proceeding further it would appropriate to refer to certain findings given by the civil Court in the suits which are filed by the writ petition himself.

As stated earlier, initially the petitioner filed O.S.No.394 of 1983 seeking a declaration that he belongs to kondakapu caste which falls under the category of Scheduled Tribe. After considering the plaint and written statement the trial Court framed the following issues:

1. Whether the plaintiff is entitled for declaration?
2. Whether the suit is maintainable?
3. To what relief?

The following additional issue was also framed by the trial Court.

Whether the suit is not maintainable in view of the non-joinder of necessary party for the declaration sought for by the plaintiff?

In the said suit the plaintiff examined himself as PW.1 and got marked Exs.A1 to A4. The defendant got examined one G.Bahen as DW.1 and got marked Exs.B1 to B4. After lengthy discussion the trial Court recorded the following findings:

1. Absolutely there is no material on record to come to the conclusion that the plaintiff belongs to Kondakapu

caste. Therefore, I am of the opinion that the plaintiff is not entitled for declaration that he belongs to Kondakapu which comes under S.T.

2. In the absence of Director of Tribal Welfare as a party to the present suit, no effective adjudication can be given with regard to the declaration that the plaintiff belongs to S.T. Under these circumstances the suit would fail for non-joinder of necessary and property parties.
3. The plaintiff is not entitled for the declaration that he belongs to Kondakapu caste which is scheduled tribe. Hence, the suit is dismissed with costs. The plaintiff is at liberty to produce a caste certificate in terms of G.O.Ms.No.147 before the defendant, if he is otherwise entitled?

The suit reached its finality on 16.11.1994. No appeal has been filed by the writ petitioner challenging the findings in O.S.No.394 of 1983. Hence the finding in the suit that there was no material to show that the petitioner belongs to Kondakapu has become final.

Similarly O.S.No.583 of 1999 was filed by the petitioner seeking a declaration that the proposed action of the respondent Corporation in convening a board meeting on 11.05.1999 for terminating the services of the plaintiff, as illegal and unjust. The plaintiff, who is the writ petitioner herein, examined himself as PW.1 and got marked Exs.A1 to A3. The respondent Corporation examined one P.S.Rajeswara Prasad as DW.1 and got marked Exs.B1 to B11. After hearing both sides, the judgment in the said suit came to be passed on 18.06.2001. The findings of the trial Court are as under:

1. If really the plaintiff belongs to Kondakapu community it is not so difficult for him to establish through the evidence

of his ancestors, agnates, the school certificate of his father, junior paternal uncle and the children of his relatives as all of them are educated people. The plaintiff has purposefully withhold those documents as they are not helpful to establish his caste as Konda Kapu. A verification made by the Tribal Welfare Department clearly establish that the plaintiff does not belong to Kondakapu, but he belongs to Telaga Caste.

2. Ex.B.7 dated 07.11.1984 indicates that the enquiries conducted by the Social Welfare Department in respect of social status of the plaintiff reveals that he does not belong to Konda Kapu tribe, but he belongs to kapu/telaga caste which is not a schedule tribe. The enquiry report was enclosed to Ex.B7, which indicates that the information furnished by the plaintiff does not support that he belongs to Kondakapu community. So, the Tribal Welfare Department made enquiries in the native place of the employee and collected documentary evidence. The said enquiry revealed that the father of the plaintiff by name Tolathan Vibhushana Rao working as Administrative Officer in Central Excise at Nizamabad, his service register shows that he belongs to kapu caste and he was not appointed under Scheduled Tribe Quota. In the school record the caste of the plaintiff's junior paternal uncle by name Tolatham Narsimha Rao in M.S.N.Charities Middle School, Jagannayakpur, Kakinada, was recorded as Telaga. The records of the three children of the said Narasimha Rao in the same school show that they belong to Kapu caste. The enquiry further reveals that the copy of the first page of service book of the plaintiff as a Technician in the office of the General Manager, Telecommunications, Andhra Circle shows that he does not belong to any Scheduled Caste or Scheduled Tribe. As per the Enquiry Report the plaintiff belongs to Telaga community and not Konda kapu as claimed by him.

From the above, it is clear that in both the suits the plaintiff failed to establish that he belongs to S.T.

The next question that arises for consideration is whether

the Certificate issued by Tahsildar, Golconda, which is not cancelled till date by the District Collector as contemplated under Act 16 of 1993, can be acted upon.

It is to be seen that in O.S.No.394 of 1983 the civil Court did not accept the certificate issued by Tahsildar, Golconda. Though in so many words the Court did not say that it is a bogus certificate but at the same time the Court refused to act on the said certificate in holding that the petitioner belongs to Konda Kapu.

In ***R.Viswanatha Pillai v. State of Kerala and others case (4 supra)*** a three Judge Bench of the Apex Court while dealing with an identical issue, wherein the petitioner therein procured appointment basing on a false certificate in a post meant for a reserved category candidate, held as under:

“[Article 311](#) provides that a member of a civil service of the Union or the State shall not be dismissed or removed by any authority subordinate to that by which he was appointed. That the employee shall not be dismissed or removed or reduced in rank except after an inquiry, in which he has been informed of the charges against him and a give a reasonable opportunity of being heard in respect of those charges. In exercise of the power conferred by sub-section (1) of [Section 3](#) of the All India Services Act, 1951, the Central Government, in consultation with the Governments of the States concerned, framed the All India Services (Discipline and Appeal) Rules, 1969. These Rules lay down the detailed procedure as to the manner in which the action is required to be taken against a delinquent public servant. Relying upon the [Article 311](#) and provisions of the Rules, it was contended by Shri Ranjit Kumar, learned senior counsel for the appellant, that the service of the appellant could not be terminated without following the procedure laid therein.

We do not find any substance in this submission. The misconduct alleged against the appellant is that he entered the service against reserved post meant for the Scheduled Caste/Scheduled Tribe on the basis of a false caste

certificate. While appointing the appellant as Deputy Superintendent of Police in the year 1977, he was considered as belonging to the Scheduled Caste. This was found to be wrong and his appointment is to be treated as cancelled. This action has been taken not for any misconduct of the appellant during his tenure as civil servant but on the finding that he does not belong to the Scheduled Caste as claimed by him before his appointment to the post. As to whether the certificate produced by him was genuine or not was examined in detail by the KIRTADS and the Scrutiny Committee constituted under the orders of this Court. Appellant was given due opportunity to defend himself. The order passed by the Scrutiny Committee was upheld by the High Court and later on by this Court. On close scrutiny of facts we find that the safeguards provided in [Article 311](#) of the Constitution that the Government servant should not be dismissed or removed or reduced in rank without holding an inquiry in which he has been given an opportunity to defend himself stands complied with. Instead of departmental inquiry the inquiry has been conducted by the Scrutiny Committee consisting of three officers, namely, (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) The Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer having intimate knowledge in the verification and issuance of the social status certifies, who were better equipped to examine the question regarding the validity or otherwise of the caste certificate. Due opportunity was given to the appellant to put-forth his point of view and defend himself. The issuance of a fresh notice under the Rules for proving the same misconduct which has already been examined by an independent body constituted under the direction of this Court, the decision of which has already been upheld upto this Court would be repetitive as well as futile. The second safeguard in [Article 311](#) that the order of dismissal, removal and reduction in rank should not be passed by an authority subordinate to that by which he was appointed has also been met with. The impugned order terminating the services of the appellant has been passed by his appointing authority.

Rule 6 of the Rules provides the penalties 'major' or 'minor' which can be awarded to the delinquent officer on being found guilty of misconduct alleged against him. Rule 7(1) provides that where a member of the service has committed any act or omission, either before his appointment or

subsequently, which renders him liable to any penalty specified in Rule 6, then, the penalty of dismissal, removal or compulsorily retirement shall not be imposed in the case of Central Government employee except by an order of the Central Government{Rule 7(2)}. In the present case, the order has been passed by the Central Government as the appellant was an IPS officer. The act or omission on the part of the appellant pertains to the period prior to his joining the service. There is no non-compliance of Rules 6 or 7 of the Rules.

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.”

It was a case where the appellant obtained appointment in service by producing a false caste certificate. The Scrutiny committee consisting of three officers found that the appellant got the appointment on the basis of a false caste certificate. In view of the finding of the scrutiny committee the appellant was disqualified to hold the post and appointment was held to be void from its inception. Holding that his appointment was no appointment in the eyes of law, dismissed the appeal.

In the instance case the appointment of the petitioner was based on a caste certificate alleged to have been issued by Tahsildar, Golconda and the said certificate which was used while securing appointment in the year 1980 itself was held to be bad in law. The said appointment can be said to be no appointment in the eye of law in view of the Judgment of the Apex Court referred to above. Such being the position, the argument of the learned counsel for the petitioner that no notice was given to the petitioner under the provisions of Andhra Pradesh State Financial Corporation Staff Regulations, 1960 prior to passing of the order of the termination cannot be accepted. In fact, the petitioner contested the matter before the civil Court, adduced evidence in support of his plea but however failed to establish that he belongs to S.T.

In a situation like this non-cancellation of the caste certificate said to have been issued by the Tahsildar, Golconda by the District Collector under the new Act may not assume any significance because the question of cancelling a certificate by the District Collector would arise if the said certificate was issued by an authority competent to issue the same under the relevant rules or orders prevailing prior to the commencement of this Act.

The material placed on record more particularly the findings of the civil Court in O.S.No. 394 of 1983 would show that the forefathers of the petitioner originally belong to Vizianagaram and thereafter the parents of the petitioner came down to East Godavari. Thereafter the petitioner along with his father settled down in Hyderabad due to the employment of his father and completed his education in Hyderabad. The competent person to issue the caste certificate would be the Tahsildar, Vizianagaram or the Tahsildar, East Godavari, where forefather and father of the petitioners have settled. The said view got support from the findings of the civil Court, wherein the said Court after analyzing the evidence categorically held that the Tahsildar, Golconda is not competent to issue the caste certificate. Such being the position, Section 21 of the Act may not be any help to the petitioner. When there is a finding of the civil Court doubting the genuinity of the certificate and the authority of the person issuing the caste certificate, merely because the caste certificate issued by the Tahsildar, Golconda was not cancelled, it cannot be said that the action of the respondent Corporation in terminating the petitioner on the basis of such finding is illegal or improper.

It is true that under Section 21 of the Act, the certificate which has been issued by competent authority prior to the Act coming into force would be valid till it is cancelled by the person who is competent to cancel it under Act 16 of 1993. But in the instant case, much prior to the act coming into force, the civil Court has held that the petitioner does not belong to 'kondakapu' and no material was placed before the Court to show that he belonged to 'Kondakapu' caste. Further the Court held that the person, who issued the caste certificate, is not competent to

issue the said certificate. Therefore, Section 21 of the Act has no application to the case on hand. Though the learned counsel for the petitioner relied upon the judgment of this Court in P.Kranthi's Case (1 supra) in order to prove his argument, I am afraid the same cannot be accepted. It was a case where the petitioner appeared for EAMCET-99 in Engineering stream and obtained a rank, belong to Schedule Tribe "Mannevarlu". She obtained an integrated community certificate in accordance with the provisions of Andhra Pradesh (SCs, STs & BCs) Regulation of Issue of Community Certificates Act, 1993 and Andhra Pradesh (SCs, STs & BCs) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997 from the Mandal Revenue Officer, the competent authority. Basing on the said certificate the petitioner appeared for counseling and produced the said certificate before the Convenor. The second respondent therein issued Memo vide Rc.No.905/99/TRI/VC2, dated 18.11.1990 to the effect that the surname "Pokala" which the petitioner has is uncommon among "Mannevarlu", which requires deeper probe and held that the seat allotted to the petitioner be kept in abeyance until further orders. The petitioner therein was also advised to appear before the Commissioner of Tribal Welfare on 29.11.1999, which was questioned in the writ petition. After analyzing the provisions and material on record, the court held that the Commissioner of Tribal Welfare has no role to play either at the stage of issuance of community certificate or cancellation of community certificate. This Court further held that the Collector can initiate action for cancellation either *suo motu* or on application or on a written complaint and it is always open to any other authority, including the Commissioner of Tribal Welfare, to make a written complaint to the District Collector to enquire into the genuineness of the

integrated community certificate produced by a person seeking admission or appointment.

The above the judgment which has been relied upon by the counsel for the petitioner may not apply to the case on hand for the reason that the certificate which was produced by the petitioner therein was obtained under Act 16 of 1993 and in view of that the court held that the District Collector is competent to cancel the certificate after making due enquiry.

Situation on hand is totally different. The caste certificate alleged to have been issued by the Tahsildar, Golconda, was placed before the respondent Corporation in the year 1981. The finding with regard to the authenticity and credibility of the said certificate came to be invited from the civil Court at the instance of the writ petitioner himself, wherein civil Court categorically held that the certificate alleged to have been issued by the Tahsildar, Golconda is not valid in the eye of law. Therefore, the argument of the learned counsel for the petitioner that terminating the services on the ground that the petitioner does not belonging to Kondakapu basing on the findings of a civil Court, as illegal and arbitrary cannot be accepted.

For the foregoing discussion, I see no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

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**JUSTICE C. PRAVEEN  
KUMAR**

24.08.2015

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[\[1\]](#) 1999 (6) ALT 734

[\[2\]](#) (2002) 10 SCC 394

[\[3\]](#) (2008) 8 SCC 402

[\[4\]](#) (2004) 2 SCC 105