

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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+ WRIT PETITION No.1158 of 2002

% Dated 30.07.2015

M.Saroja Devi.

... PETITIONER

VERSUS

\$ Syndicate Bank rep.by its Chairman and

Managing Director, Head office, Manipal

and another. ...RESPONDENTS

! Counsel for the Petitioner: Dr. P.B.Vijay Kumar

^ Counsel for the Respondents: Sri A.Krishnam Raju

>HEAD NOTE:

? Cases referred

(2004) 2 Supreme Court Cases 105

2 AIR 1995 SC P 94 = 1994 SCC (6) 241

3 (2012) 8 Supreme Court Cases 430

4 1998 (6) ALT 494 (D.B)

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 1158 OF 2002

Between:

M.Saroja Devi. ...Petitioner

And

Syndicate Bank rep. by its Chairman and
Managing Director, Head Office, Manipal,
and another. ... Respondents

Date of Judgment pronounced: 07.2015

Submitted for Approval:

The Hon'ble Sri Justice A.Rajasheker Reddy

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1. Whether Reporters of Local newspapers

May be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be

Marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wish to see the fair

Copy of the Judgment? Yes/No

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 1158 of 2002

ORDER:

It is the case of the petitioner that she belong to Valmiki caste which has been classified as Scheduled Tribe Community and the Tahsildar, Kurnool issued Caste Certificate dated 03.06.1974, on the basis of which, she joined in the respondent Bank as clerk on 23.04.1977 and rendered service without any blemish. On a reference made by the Respondent Bank to the District Collector, Kurnool, the Collector vide proceedings Rc.C6/2026/M/2000, dated 06.07.2001 has confirmed that the Caste Certificate issued to the petitioner on the date of appointment as genuine, but it has also been mentioned in the above proceedings that the said Valmiki caste has been subsequently deleted from the reserved category.

2. While so, the respondent Bank addressed letter dated 20.06.2000 to the District Collector, Kurnool to verify the social status of the petitioner. A show-cause notice dated 10.10.2000 was served on the petitioner by the District Collector, Kurnool, directing her to appear before the Joint Collector and Chairman of the Scrutiny Committee, Kurnool on 22.10.2000 for personal hearing and for production of documentary evidence in support of her caste. Accordingly, she appeared before the authorities on 22.10.2000 and produced Caste Certificate dated 03.06.1974 issued by the Tahsildar and first page of her father's service register. But thereafter, the District Collector, Kurnool, came to the conclusion that the petitioner belong to Boya Caste under BC 'A' Group and cancelled the Caste Certificate issued

to the petitioner vide proceedings D.Dis.(C8)2036/M/2000, dated 26.11.2001. Basing on the said proceedings, the respondent Bank resorted to terminate the appointment of the petitioner vide proceedings 81/ZOH PS (AS)/IF 230445, dated 09.01.2002. Aggrieved by the same, the present writ petition is filed.

3. Counter affidavit is filed by the respondent Bank denying the averments of the affidavit filed in support of the writ petition stating that the petitioner has alternative remedy of appeal for challenging the cancellation of Caste Certificate under Rule 11 (2) of G.O.Ms.No.58 S/W Department (J), dated 12.06.1997 and without availing the same, the petitioner cannot file the writ petition, as such, the same has to be dismissed on that sole ground. It is stated that the petitioner was appointed on the basis of her declaration in the records of Bank that she belong to Schedule Tribes Community but it turned out that her declaration and the certificate, which she produced at the time of her appointment in support of her declaration is not genuine. The District Collector in his proceedings dated 26.11.2001 while canceling the Caste Certificate of the petitioner clearly held that the petitioner does not belong to Schedule Tribes Community and that when once the Certificate produced is proved/held as not genuine, there is no need for the management to hold any further enquiry. As per the judgment of the Hon'ble Supreme Court in **Kumari Madhuri Patil v. Addl. Commissioner**, the Management can act on the basis of the cancellation of certificate by the Chairman of the scrutiny committee without holding an enquiry, as such, there is no need to hold any enquiry, as contended by the petitioner. When it is held that the petitioner did not belong to Schedule Tribe Community, her appointment has become void *ab-initio* and there is no need to permit the petitioner to undergo Voluntary retirement under Voluntary Retirement Scheme. It is stated that the question of accepting her application under Voluntary Retirement Scheme arises only when the employment of the petitioner is valid in the eye of law. It is stated that thorough enquiry/investigation was conducted by the Caste Scrutiny Committee after giving full and fair opportunity to the

petitioner, as such, it is not correct to state that without giving any opportunity to the petitioner, the enquiry was conducted. The petitioner has not impleaded the District Collector who has conducted/caused the enquiry/investigation into her caste certificate in the writ petition, as such, the writ petition is not maintainable without impleading necessary parties. The petitioner is not entitled to any relief in the writ petition, as she was appointed on the basis of the false certificate produced by her. It is also stated that the petitioner answers the definition of workmen under Section 2(s) of the Industrial Disputes Act. However, the conditions of service of the petitioner are governed under/by the various awards and settlements, pronounced/signed under the provisions of the I.D.Act and that the petitioner should have approached under the provisions of the I.D Act and sought for dismissal of the writ petition.

4. Learned counsel for the petitioner Dr.P.B.Vijay Kumar submits that the concerned authorities, after verifying the claim of the petitioner, issued Caste Certificate in favour of the petitioner on 03.06.1974 stating that she belongs to Schedule Tribe Community. Basing on the same, the petitioner was appointed in the respondent Bank in the year 1977. When the respondent Bank addressed letter dated 05.05.2001 to the District Collector, Kurnool for verification of Caste Certificate issued to the petitioner, the District Collector, Kurnool, clearly stated that the certificate obtained by the petitioner as on the date of appointment is genuine, but stated that subsequently the caste was deleted from reserved category. As such, the petitioner has neither played any fraud nor produced any false Caste Certificate. He would further contend that the respondent Bank, without considering the said aspect, only basing on the cancellation of the Caste Certificate by the District Collector by proceedings dated 26.11.20901, terminated the services of the petitioner holding that the petitioner produced false and fabricated Caste Certificate, without holding further enquiry. He further contended that while cancelling the Caste Certificate of the petitioner, the District Collector has not stated that the petitioner has obtained the same by playing fraud. He would

further contend that when similar Caste Certificates were issued to others by the District Collector, Ananthapur, the District Collector, Anantapur District, also cancelled the Caste Certificates issued to an individual, clearly stating that there is no *malafide* intention on the part of the said individual in obtaining the said Caste Certificate and also found that the said certificates were issued like in the case of the petitioner, without properly verifying the rule position. There was some confusion regarding issuance of Caste Certificate in the case of 'Valmiki' caste. He also submits that the petitioner rendered considerable length of service and this Court also granted interim stay of impugned orders in the writ petition on 25.01.2002 and when Vacate Petition was filed, the stay was made absolute on 12.09.2002 and petitioner continued her service and got retired on 30.11.2013. Though the petitioner was allowed to retire, the respondents are not paying pensionary benefits because of the pendency of the writ petition.

5. On the other hand, Sri A.Krishnam Raju, learned Standing Counsel for the respondent Bank submits that since the petitioner obtained appointment basing on the Caste Certificate dated 03.06.1974 issued by the Tahsildar, Kurnool, the same is cancelled by the competent authority i.e., District Collector, Kurnool, vide proceedings dated 26.11.2001 and that the respondent Bank, relying on the same, terminated the services of the petitioner. When the appointment of the petitioner itself is void *ab-initio*, the question of granting pensionary benefits in favour of the petitioner does not arise. He would further contend that the Hon'ble Apex Court also declined to grant such relief in similar circumstances. In support of his contentions, he relied on the judgments reported in **R.Vishwanatha Pillai v. State of Kerala and others** and **Kumari Madhuri Patil v. Addl. Commissioner**.

6. It is an admitted fact that the competent authority-Tahsildar, Kurnool, issued Caste Certificate in favour of the petitioner treating her as Schedule Tribe on 03.06.1974, basing on which, she obtained employment in the respondent Bank on 23.04.1977. When the respondent Bank doubted about the social status of the petitioner,

the 2nd respondent addressed letter to the District Collector, Kurnool on 05.05.2001, who in turn issued proceedings Rc.C6/2026/M/2000, dated 06.07.2001 confirming that the Caste Certificate produced by the petitioner as on the date of appointment as genuine, but stated that subsequently, the caste was deleted from reserved category. Having not satisfied with the same, the respondent Bank again addressed another letter to the District Collector, who in turn conducted enquiry and passed proceedings dated 26.11.2001 canceling the Caste Certificate of the petitioner. It is also an admitted fact that in similar circumstances, the Caste Certificate was cancelled vide proceedings Rc.No.1747/94/C5, dated 10.09.1997 by the District Collector, Anantapur, after conducting enquiry, observed that there is no *malafide* intention on the part of the individual and that the said Caste Certificates were issued by the authorities, without verifying the Rule position properly.

7. The respondent Bank, while terminating the services of the petitioner vide impugned proceedings No. 81/ZOH PS (AS)/IF 230445, dated 09.01.2002 held that the Caste Certificate produced by the petitioner is false/fabricated and basing on which, she obtained employment in the Bank. It is to be noted that the respondent Bank, merely basing on the proceedings of the District Collector, Kurnool, dated 26.11.2001, has terminated the services of the petitioner, without conducting any enquiry. If the respondent Bank is of the opinion that the petitioner obtained the Caste Certificate by playing fraud, it could have conducted an independent enquiry against the petitioner. Moreover, in the proceedings of the District Collector, Kurnool, dated 06.07.2001 and 26.11.2001, no where it is stated that the petitioner obtained Caste Certificate fraudulently. Even the proceedings dated 06.07.2001, it is clearly held that the Caste Certificate submitted by the petitioner, as on the date of appointment is genuine. However, it is mentioned that the said caste was subsequently deleted from the reserved category. The proceedings of the District Collector, Anantapur, dated 10.09.1997, in similar

circumstances, in respect of other individuals, also goes to show that the said Caste Certificate was issued without proper verification of the exact rule position by the Tahsildar, Anantapur, and he also observed that there is no *malafide* intention on the part of the individual, who obtained Caste Certificate like that of the petitioner in the present case at hand.

8. Be that as it may, the alleged Caste Certificate obtained by the petitioner was cancelled by the District Collector, Kurnool vide proceedings dated 26.11.2001 and basing on the same, impugned proceedings dated 09.01.2002 were issued to the petitioner by the respondent-Bank, terminating the services of the petitioner. Moreover, the petitioner has retired from service on superannuation on 30.11.2013 and that she completed her service without any complaint. Now, the question that falls for consideration is whether the petitioner is to be granted pensionary benefits. If the impugned order of the respondent Bank dated 09.01.2002 is upheld, the petitioner will not get any pensioner benefits.

9. In **Kavita Solunke v. State of Maharashtra and others** in similar circumstances, it is held as follows:

“19. Our attention was drawn by counsel for the respondents to the decision of this Court in Addnl. [General Manager/Human Resource BHEL v. Suresh Ramkrishna Burde](#) (2007) 5 SCC 336 in which the protection against ouster granted by the decision in Milind’s case was not extended to the respondent therein. A bare reading of the said decision, however, shows that there is a significant difference in the factual matrix in which the said case arose for consideration. In Burde’s case, the Scrutiny Committee had found that the caste certificate was false and, therefore, invalid. That was not the position either in Milind’s case nor is that the position in the case at hand. In Milind’s case, the Scrutiny Committee had never alleged any fraud or any fabrication or any misrepresentation that could possibly disentitle the candidate to get relief from the Court. In the case at hand also there is no such accusation against the appellant that the certificate was false, fabricated or manipulated by concealment or otherwise. Refusal of a benefit flowing from the decision of this Court in Milind’s case may, therefore, have been justified in Burde’s case but may not be justified in the case at hand where the appellant has not been accused of any act or omission or commission of the act like the one mentioned above to disentitle her to the relief prayed for. The reliance upon Burde’s case (supra), therefore, is of no assistance to the respondent.”

10. This Court in **K.Rajaiah v. State of Andhra Pradesh and others**, it is observed as follows:

“15. Therefore, we are of the view that it would be difficult to conclude that there was deliberate misrepresentation or fraud played by the petitioner in obtaining the ST certificate. It is only because of confusion created by G.O.Ms.245, the petitioner might have been prompted to obtain ST certificate. The contention of the respondent that the petitioner had subsequently obtained BC certificate on 24-2-1993 and submitted the same to FCI only to cover up his misrepresentation has no merit because by that time the synonym has already been deleted by G.O.Ms.No.44, dated 23-2-1979. The letter dated 8-8-1997 of the Collector clearly indicates that the petitioner had obtained the certificate based on G.O.Ms.No.245 which subsisted at the time the certificate was issued by the revenue authorities. It also appears that the officials of the Mandal Revenue Office themselves were also under the impression that because of the insertion of the caste 'Wanjari' in Annexure-II of G.O.Ms.No.245 as a synonym to 'Sugali', the petitioner is entitled to be certified as a candidate belonging to ST community and they proceeded to cancel the same only after the synonym was deleted by G.O.Ms.No.44 and on a clarification from the Commissioner, Tribal Welfare, AP Hyderabad by letter dated 18-12-1996. Further, it is not borne out from the counter or the material on record that the officials of the MRO office have been examined during the enquiry to prove that the petitioner with an intention to gain unlawfully and illegally had deliberately obtained a false ST certificate and thereby misrepresented the FCI and committed fraud on the Corporation. The enquiry having not been done in that direction, it is very difficult to sustain the order of removal of the petitioner from service. Further, the petitioner has not obtained his initial appointment as Mazdoor on the basis that he belongs to ST community. Under these circumstances, the authorities should have applied their mind whether producing a certificate not by way of fraud or misrepresentation, but has been obtained based on G.O.Ms.No.245 would amount to misconduct and deserves the punishment of removal of the petitioner from service or it would have been proper or would have been sufficient if the promotions of the petitioner obtained as belonging to Scheduled Tribe are cancelled and reverted back to the position which he was holding prior to his first promotion given based on ST certificate and allow him to make all his claims for promotion in the category of OBC. In our view, the authorities should have followed the latter one that too after giving opportunity of hearing to the petitioner including to lead evidence and to examine any other witnesses to show that he did not obtain promotion by making misrepresentation or playing fraud.”

The Hon'ble Supreme Court in **R.Vishwanatha Pillai v. State of Kerala and others (supra)**, held as follows:

“19. It was then contended by Shri Ranjit Kumar, learned senior counsel for the appellant that since the appellant has rendered about 27 years of service the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission, as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal

appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.”

In the above judgment, the Hon'ble Supreme Court negated the contention of the learned counsel for the appellant wherein the appellant therein obtained appointment for the post meant for Schedule Caste thus depriving the genuine Scheduled Caste person, by playing fraud and that he does not deserve any sympathy or indulgence of this Court. But in the instant case on hand, the facts are otherwise. The District Collector, Kurnool in his proceedings Rc.C6/2026/M/2000, dated 06.07.2001 clearly held that as on the date of the appointment, the Caste Certificate produced by the petitioner is genuine, however, subsequently, it was deleted from the list of reserved category. In view of the same, the petitioner is entitled for relief as held in **Kavita Solunke v. State of Maharashtra and others (supra)**.

In view of above facts and circumstances, impugned proceeding No.81/ZOH PS (AS)/IF 230445, dated 09.01.2002 is set aside and the petitioner is entitled for the pensionary benefits arising out of employment, since she has already retired from service.

Accordingly, the writ petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY, J

30.07.2015.

Note: LR copy to be marked

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HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 30-07-2015

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