IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P.No.13824 of 2014

R.Raghupathy .... Petitioner

Vs.

1. The Commissioner of Income Tax
   O/o. The Commissioner of Income Tax,
   AAYAKAR BHAVAN, Chennai V,
   Chennai - 600 034.

2. The Joint Commissioner of Income Tax
   (Disciplinary Authority),
   O/o. The Joint Commissioner of Income Tax,
   Salary Range IV, AAYAKAR BHAVAN,
   Chennai - 600 034.

3. The Registrar
   The Central Administrative Tribunal,
   Madras Bench, High Court Buildings,
   Chennai - 600 104. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorarified mandamus, to call for the records pertaining to the impugned order in O.A.No.621 of 2011, dated 25.03.2014 on the file of the third respondent and quash the same and issue an order of direction directing the respondents 1 and 2 restore the petitioner in service and to pay all the consequential benefits, including the arrears of pay.

For Petitioner : Mr.R.Amardeep
for M/s. Tamizh Law Firm

For Respondents : Mr.V.Vijay Shankar, Senior Counsel
for R1 and R2.

R3 - Tribunal

ORDER

(Order of the Court was made by P.KALAIYARASAN, J)

This writ petition has been filed under Article 226 of the Constitution of India, seeking to issue a writ of certiorarified mandamus to call for the records pertaining to the order, dated 25.03.2014 in O.A.No.621 of 2011 of the Central Administrative Tribunal (Madras Bench) and quash the same and also to direct the authorities to restore the petitioner in service and to pay all the consequential benefits.

2. The facts of the case in nutshell are as follows :

(i) The petitioner was appointed by direct recruitment to Group 'D' post of Peon in the respondents department and the petitioner belonged to "Kurumans" community, which comes under Scheduled Tribes. The petitioner produced the Scheduled Tribe Community Certificate, dated 13.12.1985 at the time of appointment on 15.12.1993.

(ii) The Chief Commissioner of Income Tax Department addressed the District Level Vigilance Committee, Chennai to scrutinise the genuineness of the community certificate. The District Level Vigilance Committee, after enquiry passed an order, dated 24.02.2007 cancelling the community certificate obtained by the petitioner. The petitioner filed W.P.No.35860 of 2007 challenging the cancellation and the same was dismissed. Then the Disciplinary Authority initiated disciplinary proceedings against the petitioner and imposed penalty of dismissal from service on 08.11.2010. He preferred appeal before the first respondent and the first respondent confirmed the order of the second respondent. Therefore, the petitioner moved the Central Administrative Tribunal, by filing O.A.No.621 of 2011. The Central Administrative Tribunal dismissed the original application. Aggrieved by the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner contends that the community certificate submitted by the petitioner at the time of appointment was obtained by his family members and it is not a bogus community certificate; that the petitioner discharged his service with the respondents department for more than 15 years and that the State Level Scrutiny Committee never scrutinised the case of the petitioner and therefore, the order of the Central Administrative Tribunal is erroneous.

4. The learned Senior counsel appearing for the respondents 1 and 2 per contra contends that the cancellation

of the community certificate became final by the order of this Court in W.P.No.35860 of 2007; that the Tribunal after analysing the divergent contentions has not found any merit in the contention of the petitioner to interfere with the order of dismissal and rightly dismissed the Original Application and therefore, the writ petition is to be dismissed.

5. The petitioner produced community certificate, dated 13.12.1985 to the effect that he belongs to "Kurumans" community, which comes under Scheduled Tribes at the time of his appointment for the post of Group 'D', i.e., Peon in the respondents Department. Thus, he got the appointment of the post reserved for the Scheduled Tribes. When the certificate was sent for verification to the District Level Vigilance Committee, Chennai, the Committee after due enquiry found that the petitioner does not belong to that community and cancelled the certificate. The petitioner challenged the cancellation order by filing writ petition in W.P.No.35860 of 2007, which also ended in dismissal. Then the Department initiated disciplinary proceedings and conducted enquiry by giving opportunity to the petitioner. Finally, the department inflicted the punishment of dismissal.

6. The contention of the petitioner that the petitioner never produced bogus certificate and the community certificate submitted by him at the time of appointment was obtained by his family members and therefore, the action initiated against the petitioner as if he produced bogus certificate is not correct is not sustainable. The community certificate produced by the petitioner has been found false by the Scrutiny Committee and confirmed by the orders of this Court in the earlier writ petition. A person who enters the service by producing a false caste certificate and obtains appointment to the post meant for a reserved category, deprives a genuine candidate falling in that category and therefore, the above contention is liable to be rejected.

7. The learned counsel appearing for the petitioner cited an unreported Judgment of Nagpur Bench of the Bombay High Court, (Ku.Alka v. Joint Director & Vice chairman, Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur in W.P.Nos.1802 of 2014 etc., batch, dated 13.03.2015). In the said Judgment, following the Full Bench Judgment, job protection was given to the petitioners, who applied for and got caste certificate as per law without resorting to any wrong or unfair means. The concession of protection in employment was extended as the petitioners in that case have not participated in any falsehood or fraud, while obtaining that caste certificate.

8. In this case on hand, no doubt community certificate was obtained from Tahsildar and the same was produced at the

time of appointment by the petitioner. But District Level Vigilance Scrutiny Committee, after enquiry cancelled the above certificate by passing a detailed order. In that order, it has been clinchingly stated that the petitioner does not belong to "Kurumans" Community. Therefore, it cannot be said that the above certificate was obtained as per law without resorting to any wrong or unfair means. Therefore, the above unreported Judgment is not applicable to the facts of this case.

9. Another contention that the petitioner had been working for the past 15 years without any remarks is also sans merit. The consensus of judicial opinion is that equity, sympathy or generosity have no place where the original appointment rests on a false caste certificate. The petitioner having got the appointment of a post reserved for Scheduled Tribes by producing false community certificate, he does not deserve for any sympathy or generosity and the contentions raised by the petitioner do not have any merit.

10. The Central Administrative Tribunal has rightly dismissed the Original Application and this Court does not find any irregularity or illegality in the impugned order. Hence, this writ petition is liable to be dismissed.

In fine, this writ petition is dismissed, confirming the order, dated 25.03.2014 made in O.A.No.621 of 2011 passed by the Central Administrative Tribunal (Madras bench), Chennai. No costs

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsvn

To

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O/o. The Commissioner of Income Tax,
AAYAKAR BHAVAN, Chennai V,
Chennai - 600 034.

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O/o. The Joint Commissioner of Income Tax,
Salary Range IV, AAYAKAR BHAVAN,
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The Central Administrative Tribunal,
Madras Bench, High Court Buildings,
Chennai - 600 104.

1 cc to Mr.V.Vijay Shankar, Advocate, sr.54292

W.P.No.13824 of 2014

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kra 05.10.2016