IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petn.No.17223 of 2010
and
M.P.No.1 of 2010

Union of India, Southern Railways,
Rep.by its Chief Personnel Officer,
Head Quarters Office,
Personnel Branch,
Chennai ... Petitioner

-vs-

1.M.Ranjana

2.The Registrar,
Central Administrative Tribunal,
Madras Bench. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records pertaining to O.A.No.698 of 2008 and quash the order dated 30.03.2010, passed by the Central Administrative Tribunal, Madras Bench and quash the same.

For Petitioner : Mr.R.Thiagarajan,Sr.counsel for
M/s.V.G.Suresh Kumar

For Respondents : Mr.AR.L.Sundaresan,Sr.counsel
for Mr.Yogesh Kannadasan

ORDER

(Order of the Court was delivered by A.SELVAM, J)

This writ petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for the records relating to the order dated 30.03.2010, passed in O.A.No.698 of 2008, by the Central Administrative Tribunal, Madras Bench and quash the same.

2. The first respondent herein, as applicant, has filed O.A.No.698 of 2008, on the file of the Central Administrative Tribunal, Madras Bench, wherein the present writ petitioner has been shown as respondent. In the Original Application it is averred that the applicant has joined in the service of the respondent in the year 1993 as Junior Stenographer under the quota reserved for Scheduled Tribes. At the time of her appointment, she produced the community certificate issued by a competent Revenue authority and all of a sudden, the respondent has issued a letter dated 15.09.2008, whereby directed the applicant to produce community certificate issued by the competent authority. Under the said circumstances, the present Original Application has been filed.

3. The Central Administrative Tribunal, Madras Bench, after considering the rival submissions made on either side, has allowed O.A.No.698 of 2008 by way of passing the impugned order and the same is being challenged in the present writ petition.

4. The learned counsel appearing for the writ petitioner/respondent has contended with great vehemence to the effect that as per G.O.(2D) No.108, Adi-Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007, community certificate in respect of Scheduled Tribes has to be issued only by the Revenue Divisional Officer and in the instant case, the petitioner has produced the community certificate issued by Excise Supervisory Officer, TASMAC, Madras Central and the same is not valid. Under the said circumstances, the letter dated 15.09.2008 has been issued to the first respondent/applicant, but the Central Administrative Tribunal, without considering the power of the writ petitioner/respondent, has erroneously allowed O.A.No.698 of 2008 and also given a specific finding to the effect that the writ petitioner/respondent is totally estopped from questioning the community of the first respondent/applicant and therefore, the order passed by the Central Administrative Tribunal is liable to be quashed.

5. The learned Senior counsel appearing for the first respondent/applicant has fairly conceded that if there is any doubt with regard to the community of a particular Government servant, the concerned department has to refer the matter to the State Level Caste Scrutiny Committee, but in the instant case, the writ petitioner/respondent has erroneously issued the letter dated 15.09.2008. Under the said circumstances, O.A.No.698 of 2008 has been filed on the file of the Central Administrative Tribunal, Madras Bench and the Central Administrative Tribunal has rightly allowed the same and therefore, the order passed by the Central Administrative Tribunal does not call for any interference.

6. In fact, this Court has perused the entire order passed by the Central Administrative Tribunal, wherein, at paragraph Nos.7 and 8, it is observed as follows:

> "7. A perusal of the community certificate produced by the applicant discloses that it is given by an officer of the Excise Department and his designation is indicated as 'Tahsildar' as per the seal affixed on the certificate. It is not in dispute that the officer who has issued the said certificate is not having the designation as 'Tahsildar' and it is a common knowledge that Tahsildars are posted to various departments to work in different categories. In as much as the certificate was issued by the person who is in the rank of the Tahsildrar, we have to come to the conclusion that he is empowered to issue the community certificate, since as per the circular instructions and Government orders issued at the earliest point of time that any officer not below the rank of Tahsildar is empowered to issue the community certificate. Further, similar objections were raised in a matter which was decided by His Lordship Hon.Mr.Justice P.Sathasivam, as he then was, in W.P.No.2815/1991 (K.Vijaya vs. Collector of Salem) and in W.P.No.1006/1994 (C.Nandagopal vs. District Collector, Madurai) in respect of community certificates issued by Tahsildar (Small Savings) and Special Tahsildar (Scholarship). His Lordship has remitted the matter for fresh enquiry by the competent authority and no decision was rendered by holding that the above community certificates are invalid.
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> 8. The next question that arises for consideration is as to whether the community certificate issued in the year 1992 by the Tahsildar can be treated as a valid certificate in so far as the respondent department is concerned. The learned counsel for the respondent has produced an unreported judgment of the Division Bench of the Madras High Court in W.P.No.19042/2007 and made submissions that as per G.O.Ms.No.2137, dated 11.11.1989 issued by the Government of Tamil Nadu, the community certificates should be issued by the Revenue Divisional Officers only. It is not in dispute

that as per the above G.O.of the Government of Tamil Nadu, the power to issue the community certificate for Scheduled Tribes is vest upon the Revenue Divisional Officers. However, the learned counsel for the applicant has produced a judgment passed by this Tribunal in OA 1401 of 1994 dated 19.08.1997 wherein the circular instructions are relied upon to decide the similar issue. This Tribunal has taken note of the fact that the Department of Personnel and Training has issued a circular only on 23.03.1995 to the effect that the community certificates in respect of Scheduled Tribes should be issued by the Revenue Divisional Officers only. It is not in dispute that the said circular is having only prospective operation. In fact, the Division Bench of the Madras High Court in its decision in K.Viswanathan vs. Government of India and others reported in 1985 Writ Law Reporter 69 considered the scope of the Central Government circulars and came to the conclusion that any circular of the State Government would operate only on the State only and it cannot affect any appointment to be made by the Central Government. This Tribunal in OA 1401 of 1994 has placed reliance upon the decision of the Division Bench of the Madras High Court and categorically held that the community certificates issued by the Tahsildars have to be accepted and as such the Central Government departments should not insist upon the employees to obtain community certificates issued by the Revenue Divisional Officers till Central Government takes decision. In fact, it is always open to the Central Government to insist upon the production of the community certificates issued by the Revenue Divisional Officer after 23.03.1995 on which date the Personnel and Training Department has issued the circular. Though, the learned counsel for the respondent has relied upon an un-reported judgment in W.P.No.19042/2007, in the said decision, the scope of the circular of the Government of India as well as the G.O.Ms.No.2137 dated 11.11.1989 issued by the Government of Tamil Nadu were not the subject matter. Even the Division Bench judgment of the Madras High Court reported in 1995 WLR 69 was not placed before the Bench for consideration. In as much as the law makers have specified the power to be exercised by the Central Government and the State Governments by specifically incorporating various subjects in List I and List II respectively in the Constitution, the respondent cannot now take a stand that the State Government's circular dated 11.11.1989 will operate the field of the Central Government Departments even before the circular is adopted by the Government of India. That apart, the community certificate produced by the individual which was dealt with in W.P.No.19042 of 2007 is dated 28.12.1998 which is subsequent to the circular of the Government of India issued in the year 1995. Hence, the facts pertaining to the decision rendered by the Division Bench cannot apply to the facts on hand."

7. As rightly pointed out on the side of the first respondent/applicant, if there is any doubt with regard to the community of a particular Government servant, the same can be referred to the State Level Caste Scrutiny Committee. But the writ petitioner/respondent has not chosen to refer the case of the first respondent/applicant to the State Level Caste Scrutiny Committee and erroneously issued the letter dated 15.09.2008. Under the said circumstances, the letter dated 15.09.2008 is liable to be set aside and the Central Administrative Tribunal has rightly done the same. However, the Central Administrative Tribunal, without knowing the power of the writ petitioner/employer, has erroneously observed that the writ petitioner/employer is estopped from questioning the community of the first respondent/applicant and the said observation made by the Central Administrative Tribunal, is not legally correct and the same is set aside.

8. It has already been pointed out that the relief sought in O.A.No.698 of 2008 can easily be granted and the Central Administrative Tribunal, Madras Bench, has rightly granted the same and therefore, the present writ petition is liable to be dismissed subject to the following observation:

In fine, this writ petition is dismissed without cost. The order passed in O.A.No.698 of 2008, by the Central Administrative Tribunal, Madras Bench, is confirmed. However, the writ petitioner/respondent is at liberty to refer the issue in question to the State Level Caste Scrutiny Committee to make proper verification of the caste of the first respondent/applicant.

No cost.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To
The Registrar,
The Central Administrative Tribunal,
Madras Bench,
Chennai-600 104

1 cc to M/s.V.G.Sureshkumar, Advocate, sr.48739
1 cc to M/s.Yogeshkannadasan, Advocate, sr.48326

W.P.No.17223 of 2010

rp co
kra 07.09.2016