

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 25.10.2016)

DATED : 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.28362 of 2016
and
W.M.P.No.24489 of 2016

P.Sivaraj

... Petitioner

Vs.

1.The General Manager,
Human Resources Wing,
Canara Bank,
Head Office, 112, J C Road,
Bengaluru-560 002.

2.The General Manager,
Canara Bank,
HRM Section, Circle Office,
563/1, Anna Salai,
Teynampet, Chennai-18.

3.The Assistant General Manager,
Canara Bank,
Regional Office, Puducherry.

4.The Chief Manager,
Canara Bank,
Mines-II,
Neyveli-607 802.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to disburse the terminal benefits such as gratuity, staff provident fund, privilege leave encashment, pension, pension commutation and superannuation gift etc., and benefits

in accordance with retirement benefits with interest at 24% pa. from 01.06.2016 till the date of final payment in lieu of the petitioner's retirement dated 31.05.2016 as officer from the office of the respondent-Corporation, Mines-II Branch, Canara Bank, Neyveli.

For Petitioner : Mr.S.Silambanan, Senior Counsel
for M/s.Kaavya Silambanan Associates
For respondents : Mr.P.Amritraj
for M/s.Sree and Associates

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, to direct the respondents to disburse the terminal benefits such as gratuity, staff provident fund, privilege leave encashment, pension, pension commutation and superannuation gift etc., and benefits in accordance with retirement benefits with interest at 24% pa. from 01.06.2016 till the date of final payment in lieu of the petitioner's retirement dated 31.05.2016 as officer from the office of the respondent-Corporation, Mines-II Branch, Canara Bank, Neyveli.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

The petitioner belongs to Konda Reddy Community which is a Schedule Tribe Community. He obtained a community certificate from the Tahsildar, Turaiyur. In the year 1981, the petitioner was selected through the Banking Service Recruitment Board for the post of Clerk-cum-Cashier. He was allotted with the post of Clerk-cum-Cashier in the 4th respondent-Bank. The 2nd respondent issued an appointment order on 27.05.1981. The 2nd respondent-Bank had verified all his certificates including his community certificate and after due verification, he was given posting under ST category. Thereafter, the petitioner signed the service agreement with the bank on 15.06.1981. Thereafter, the petitioner has been serving at various branches of the Bank. Now, the petitioner has put in nearly 35 years of service. A superannuation letter was also given to the petitioner vide letter dated 25.05.2016 by the 2nd respondent and it was received by the petitioner on 10.06.2016. In the meantime, the petitioner was issued with a show cause notice dated 06.04.2016 by the Principal Secretary, Government of Tamil Nadu, relating to the Community Certificate. Challenging the said show cause notice, the petitioner has filed a writ petition in W.P.No.18135 of 2016 and this Court by order dated 20.05.2016

has given an interim direction to the 2nd respondent to the effect that the 2nd respondent shall proceed with the enquiry, however, no final orders shall be passed in the meantime. Thereafter, the petitioner was relieved from service by an order dated 31.05.2016 by the respondents. Though the petitioner was relieved from service, he was not paid any terminal benefits such as gratuity, staff provident fund, privilege leave encashment, pension, pension commutation and superannuation gift etc., It is further stated by the petitioner that the petitioner is facing serious financial crisis as he has several private loans which were borrowed for his hospital expenses. The petitioner has sent several representations to the respondents seeking to disburse his retirement benefits. Last representation was sent by the petitioner on 19.07.2016 to the 1st respondent and it was forwarded to the respondents 2 & 3. But, thereafter, no steps were taken by the respondents to disburse the retirement benefits of the petitioner. Hence, the petitioner has come forward with the present writ petition.

3. When the matter was taken up for consideration, the learned counsel appearing for the petitioner made a detailed argument by advertting to the averments made in the affidavit. The learned counsel for the petitioner relied upon the judgment of a Division Bench of this Court delivered in W.P.No.19234 of 2014 (Union of India and others Vs. Central Administrative Tribunal and others), dated 07.07.2015, and submitted that while dealing with an identical issue in that case, the Division Bench of this Court has directed the petitioner therein-Railway Administration to pay the terminal benefits to the 2nd respondent therein-employee. Relying upon the said decision, the learned counsel for the petitioner submitted that following the above said decision, similar order could be passed in the present writ petition also.

4. Per contra, the learned counsel appearing for the respondent, by filing a detailed counter, would contend that the petitioner was recruited as Clerk in the year 1981 under the reserved category of Scheduled Tribe, through the erstwhile Banking Service Recruitment Board, a centralized recruitment agency for nationalised Banks. The petitioner had submitted community certificate dated 11.12.1981 issued by the Tahsildar, Saidapet, stating that he is a resident of Nanganallur Vilalge and he belongs to Konda Reddies Community, which is a caste recognized under Scheduled Tribe. The respondent-Bank has addressed a letter dated 30.05.1983 to the petitioner, requesting him to produce a ST Community Certificate obtained from the Revenue Divisional Officer (RDO), as the Government of Tamilnadu as empowered only the RDO of the respondent jurisdictions to issue community certificate of ST belonging to Konda Reddies community. But, the petitioner has failed to

submit the certificate as called upon. The petitioner was once again called upon vide letter date 14.06.1983 to submit community certificate issued by the RDO. As the petitioner failed to submit the community certificate issued by the RDO, the community Certificate produced by the petitioner, which was issued by the Tahsildar, was referred for verification to the District Collector, Kanchipuram in the year 1987 in terms of verification guidelines issued by the Government at that point of time as per the procedure. Thereafter, the issue with regard to the petitioner's community status has been referred to the State Level Scrutiny Committee and it is now pending before the State Level Scrutiny Committee. In the year 2013, the petitioner was promoted as officer under ST category pending outcome of the verification process initiated by the respondent-Bank and a clause has been incorporated to that effect in the promotion proceedings. The State Level Scrutiny Committee has already initiated the process of verification and called upon the petitioner to appear on 10.05.2016, but the petitioner sought for time. The petitioner was again called on 18.05.2016 for enquiry. But, the petitioner did not attend the enquiry, but filed a writ petition in W.P.No.18135 of 2016 on 17.05.2015 before this Court seeking to quash the community certificate verification proceedings. This Court by order dated 20.05.2016 directed the 4th respondent to proceed with the enquiry, however not to pass any final order pending the writ petition. Thereafter, as the petitioner attained the age of superannuation, he was allowed to retire from service on 31.05.2016 by proceedings dated 25.05.2016. In the said proceedings dated 25.05.2016 itself, it has been specifically incorporated that decision on eligibility of terminal benefits shall be subject to the receipt of report from State Level Scrutiny Committee on his community status. But, the petitioner has filed the present writ petition seeking to disburse the retirement benefits, which is not maintainable.

5.The learned counsel for the respondent would further submit that wherever the genuineness of the certificate is confirmed by the authorities concerned, all the benefits (including the terminal benefits etc) are allowed. Sometimes, in some cases, the Scrutiny Committee has not taken any decision with regard to the verification of community, till the retirement of the employees, wherein the payment of terminal benefits is kept in abeyance till the Scrutiny Committee clears the case and passes orders. In the instant case, the issue with regard to the community status of the petitioner is pending before the Scrutiny Committee. The respondent is yet to receive the decision with regard to the community status of the petitioner from the Scrutiny Committee. Till such time, the petitioner is not entitled for payment of terminal benefits.

6.The learned counsel for the respondent has also relied upon the decision of the Hon'ble Supreme Court reported in AIR 2004 SC 1469(1) (R.Viswanatha Pillai Vs. State of Kerala and others) and submitted that the very basis of the appointment of an employee viz., the community category was taken away, there is no appointment in the eyes of law and such employee could not claim any right to post to which he was appointed on the basis of false community certificate, thereby usurping the post meant for a Scheduled Caste. A genuine reserved candidate was deprived of the benefits conferred on him. Hence, no relief could be granted as the right to salary, pension and other service benefits arises only from the valid and legal appointment to the post. Thus, the learned counsel for the respondent sought for dismissal of the writ petition.

7.Heard the submissions made on either side and perused the materials available on record.

8.The learned counsel for the petitioner is seeking a direction to the respondents to disburse the petitioner's retirement benefits, by placing reliance on the decision of a Division Bench of this Court in W.P.No.19234 of 2014 (Union of India and others Vs. Central Administrative Tribunal and others), dated 07.07.2015. But, per contra, the learned counsel for the respondent replied upon the decision of the Hon'ble Supreme Court in AIR 2004 SC 1469(1) (R.Viswanatha Pillai Vs. State of Kerala and others).

9.From a perusal of the decision of the Hon'ble Supreme Court in AIR 2004 SC 1469(1) (R.Viswanatha Pillai Vs. State of Kerala and others) relied upon by the learned counsel for the respondent, it seen that in that case, the issue with regard to the community status of the petitioner therein was settled as the petitioner therein did not belong to ST Community. But, so far as the present case is concerned, till the issue with regard to the community status of the petitioner herein is still pending before the Scrutiny Committee. As on date, the community certificate of the petitioner herein has not been cancelled. Hence, the above said decision in AIR 2004 SC 1469 (1) (R.Viswanatha Pillai Vs. State of Kerala and others) relied upon by the learned counsel for the respondent cannot be made applicable to the present facts of the case.

10.As contended by the learned counsel for the petitioner, in an identical situation, in W.P.No.19234 of 2014 (Union of India and others Vs. Central Administrative Tribunal and others), a Division Bench of this Court, by order dated 07.07.2015, has held as follows_

"36. That leaves us with one last question as to what would happen if the State Level Scrutiny Committee eventually holds that the 2nd respondent does not belong to the Scheduled Tribe. We cannot

shirk this question, but the answer is too obvious. The right of a person to receive pension continues until his final departure. Even after his departure, his family become entitled to Family Pension. Therefore, if the State Level Scrutiny Committee eventually cancels the Community Certificate of the 2nd respondent, the petitioner can always pass orders forfeiting the pension as well as the Family Pension.

37. The Railway Administration cannot raise a question as to how they will recover the terminal benefits that they will be now compelled to pay, as that is a very moot question. Logically, another question would also arise as to how they would recover the salary paid for the past 30 years. For both questions, there cannot be an answer in law. So long as the Rules contemplate a particular position, it is not only the 2nd respondent, but also the Railway Administration which is bound by the Rules. The interpretation given to the Rules by various Benches of this Court and of the Supreme Court, in *State of Jharkhand v. Jitendra Kumar Srivastava* are very clear. Therefore, the Tribunal did not commit any error in law warranting interference by this Court. Hence, the Writ Petition is dismissed. The petitioner-Railway Administration shall settle the terminal benefits within a period of eight weeks from the date of receipt of a copy of this order. The 3rd respondent-State Level Scrutiny Committee is directed to complete the proceedings, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs"

11. Similarly, in another decision in W.P.No.25554 of 2015 (*Union of India and others Vs. Sowbagiammal and another*), dated 14.09.2015, a Division Bench of this Court has held as follows—

"19. It is worth while to extract the decisions of the Hon'ble Apex Court in *Dr. Uma Agarwal v. State of U.P.*, reported in (1999) 3 SCC 438, wherein it is held as follows :

"....grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family

pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each case."

In the reported case, of the Hon'ble Supreme Court in S.K.Due v. 15 State of Haryana reported in 2008 (3) SCC 44, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine

even without issuing notice to the respondents."

A Hon'ble Division Bench of this Court following the above cases in Government of India vs. M. Deivasigamani, reported in 2009 (3) MLJ, held as follows :

"7. In view of the judgment of the Hon'ble Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution. "

20. In the light of the above decisions and discussion, the Writ Petitioners have not made out a case and hence the Writ Petition is dismissed and the order made in O.A. No. 738 of 2013 dated 30.10.2014 is sustained. Consequently, the writ petitioners are directed to make payment of the monthly pension including the arrears due, with interest, within three months from the date of receipt of a copy of this order."

The above decisions of the Division Benches of this Court are squarely applicable to the present facts of the case.

12.As stated earlier, so far as the case on hand is concerned, as on date, the issue with regard to the community status of the petitioner is still pending before Scrutiny Committee. Therefore, the judgment relied upon by the learned counsel for the respondent reported in AIR 2004 SC 1469(1) (R.Viswanatha Pillai Vs. State of Kerala and others) relied upon by the learned counsel for the respondent, wherein the issue with regard to the community certificate of the employee therein was settled, cannot be made applicable to the present facts of the case. Therefore, I am of the opinion that the petitioner is entitled to the relief as prayed for in the present writ petition.

Accordingly, the writ petition is allowed as prayed for. The respondents are directed to disburse the terminal benefits and arrears due, with interest, to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, the respondents are at liberty to move before the

Scrutiny Committee for early completion of the proceedings pending before it with regard to the community status of the petitioner. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The General Manager,
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Canara Bank,
Head Office, 112, J C Road,
Bengaluru-560 002.
- 2.The General Manager,
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- 4.The Chief Manager,
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Mines-II,
Neyveli-607 802.

+1cc to Mr.Sree and associates, Advocate, S.R.No.67350
+1cc to Mr.Kaavya Silambanan Associates, Advocate, S.R.No.66965

sm(CO)
md(05/12/2016)

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W.M.P.No.24489 of 2016