



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.11.2016
Pronounced on : 01.12.2016

WEB COPY

CORAM :
THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD)No.12659 of 2016
& W.M.P.(MD) No.11964 of 2016

K.Raja Lenin

... Petitioner

vs.

1. State Bank of India, Rep. by its Chairman,
Corporate Centre, "State Bank Bhavan",
Madam Cama Road, Mumbai 400 021
 2. The Deputy General Manger (B & O),
State Bank of India - Administrative Unit NW-II,
Madhukam Complex, No.2, Melur Road, Madurai - 625 002
 3. The Regional Manager, Region-I,
State Bank of India, Madurai
 4. The Branch Manager, State Bank of India,
Narayanapuram Branch,
Madurai 625 014
- ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to pay the retirement benefits including Gratuity, Employees Provident Fund to the petitioner, in pursuant to the retirement of the petitioner, on attaining the age of superannuation on 31.05.2016 along with interest at the rate of 18% per annum for the delayed period, within a stipulated time that may be fixed by this Court.

For Petitioner : Mr. D.Sivaraman
For Respondent : Mr. Pala Ramasamy, for R-4,
No Appearance, for R-1 to R-3

O R D E R

This writ petition has been filed by the petitioner, seeking for a direction against the respondents to pay the retirement benefits including Gratuity, Employees Provident Fund along with interest at the rate of 18% per annum, to the petitioner, pursuant to the retirement of the petitioner, on attaining the age of



superannuation on 31.05.2016.

2. The petitioner was appointed as a clerk-cum-typist by the State Bank of India, on 27.02.1984, in the vacancy reserved for SC / ST category, based on the claim made by the petitioner that he belonged to SC Gavara community. The petitioner relied upon the community certificate dated 17.06.1983, issued by the Tahsildar, Devikulam Taluk, Idukki District, Kerala State. The petitioner retired, while working as Special Grade Senior Assistant, after attaining super-annuation, on 31.05.2016.

3. After retirement, the pension and commuted value of pension were paid to the petitioner on 24.06.2016. The other retirement benefits, i.e., the Gratuity and Employees Provident Fund were not paid on the ground that the community certificate of the petitioner has been subjected to scrutiny / examination towards authentication. Hence, the writ of mandamus has been filed seeking direction to the respondents to provide those dues with interest at 18% per annum, for the period of delay involved.

4. The respondents claim that the retirement benefits can be paid only subject to the outcome of the verification proceedings pending in respect of the community certificate, which was furnished by the petitioner; the retirement benefits of the petitioner are kept under deposit with the fourth respondent Bank and the same will be disbursed depending upon the result of verification proceedings of the community certificate; the petitioner is liable to pay a sum of Rs.4,08,736/- which is due as on 18.11.2016, payable on account of two housing loans.

5. The National Commission for Schedule Caste and Schedule Tribes had received a complaint, dated 27.05.1994, from the President of SC / ST Welfare Association, about the genuineness of the community certificate and a similar complaint has been received from the Vigilance Cell of the All India SC / ST Bank Employees' Welfare Association, informing that the petitioner has produced bogus community certificate and thus, he deprived the opportunity of people, who originally belong to SC of their legitimate rights and the Bank was requested to enquire into the matter.

6. The Bank forwarded the Community Certificate of the petitioner to the issuing authority, namely, the District Collector, Idukki, for verification of its genuineness through letter, dated 08.01.1996, followed by letters, dated 15.03.1996 and 30.04.1997. The Bank issued a warning letter to the petitioner, dated 19.12.1997, stating that if the petitioner fails to produce the community status certificate, duly authenticated by the District Collector, Idukki District, further action will be taken. In reply to that, the petitioner submitted a letter dated 28.01.1998, reiterating that he relies upon the letter dated



01.11.1996, issued by the District Collector, Idukki, addressed to The Branch Manager, State Bank of India, Bodinayakanur, Tamil Nadu, under which it is stated as follows:-

"Ref - That Office Ef. No.Misc No.332/dated 15-3-96

I send herewith the attestation form(s)/ verification roll(s) in respect of the candidate (s) mentioned below duly verified / completed.

The candidate(s) is/are suitable for service in the Force / Civil Service as there is nothing against him/her/them which would render his employment under the Government of India unsuitable.

The form of acknowledgment appealed to this letter may be returned to me by return post duly filled up and signed.

Name of the candidate(s) : Sri. K.Raja Lenin."

7. Even thereafter, the Bank was requesting the Secretary to Government of Kerala, SC / ST Development Department, to complete the enquiry and to forward the report, through its letter, dated 24.03.1998. Despite similar efforts taken by the respondents, the enquiry is not yet over and the petitioner was successfully dragging on the enquiry.

8. The Bank has also received a complaint from the petitioner's relative, Jayaguruvammal, stating that the certificate issued by the petitioner is a bogus certificate.

9. The contention of the learned counsel appearing for the fourth respondent is that the Bank has kept the retirement benefits of the petitioner in Bank Deposit, as ordered by the Hon'ble Courts in various decisions, and it will be disbursed after the authentication process of the community certificate of the petitioner is completed.

10. The question, though simple, but perplexing is, when the petitioner was appointed in the year 1984, i.e., on 25.02.1984 and when he has retired from service, on 31.05.2016, i.e., when he has completed service of 32 years to his credit, after the lapse of 32 years, when the respondents would complete the process of verification of the community certificate.

11. When the complaint is dated 27.05.1994, from then onwards, the Bank is asking for enquiry, into the authenticity of the community certificate and when it is not completed till date, i.e., till November 2016, is there a possibility to get the verification certificate, if so, within what time.

12. How long when an employee can be asked to wait to receive the retirement benefit on the ground that the verification of



community certificate is pending for more than 22 years.

13. The learned counsel for the petitioner would submit that already the verification with regard to the social status certificate of the petitioner is over and the District Collector, Idukki, who issued the certificate at the time of appointment in the year 1984 has certified it, in the year 1996 that verification is completed and the petitioner is not disqualified from holding the appointment and the relevant lines read as under:-

"I send herewith the attestation form(s)/ verification roll(s) in respect of the candidate (s) mentioned below duly verified / completed.

The candidate(s) is/are suitable for service in the Force / Civil Service as there is nothing against him/her/them which would render his employment under the Government of India unsuitable."

14. It is relevant to point out that this certificate has been issued in response to a query raised by the Bank, by the letter, dated 15.03.1996, by which the District collector, Idukki, was directed to send the verification report with regard to the community certificate of the petitioner. Therefore, when the verification certificate has been obtained even in the year 1996, there is no justification to seek for further enquiry report from other authorities. It is always open to the Bank to state the reason as to why the report of the District Collector was not acceptable and then to ask for further enquiry from any other authority. However, no reason has been stated by the Bank.

15. It is contended by the learned counsel for the fourth respondent that the certificate issued by the District Collector, Idukki, was only a conduct certificate and it was not a verification certificate, as contended by the petitioner.

15.1. A mere perusal of the order passed by the District collector, Idukki, would go to show that it is a certificate issued regarding the authentication of the community certificate of the petitioner.

15.2. Even assuming that the certificate is not pertaining to authentication of the certificate, then, once again the respondents are back to square one, (raising the very same question) facing the very same question, to answer how long they will keep the money in deposit, without paying it to the petitioner on the ground that the enquiry is pending.

16. It is appropriate to point out the judgment of the Hon'ble Supreme Court reported in the case of Ajay Kumar Choudhary vs Union Of India Thr. its Secretary, on 16 February, 2015 in CIVIL APPEAL No. 1912 OF 2015, wherein it has been held as follows:-

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"9. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be



subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

10 The Supreme Court of the United States struck down the use of nolle prosequi, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in *Klapfer vs. State of North Carolina* 386 U.S. 213 (1967). In *Kartar Singh vs. State of Punjab* (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better than to extract these paragraphs from that celebrated decision -

" 86 The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. This Court in *Hussainara Khatoon (I) v. Home Secretary, State of Bihar* while dealing with Article 21 of the Constitution of India has observed thus:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article

21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."

17. The learned counsel for the respondents relied upon the following decisions, in support of his contentions:-



(i) MANU/TN/2064/2009:-

"10. Learned counsel submitted that the decisions reported in the case of R.Vishwanatha Pillai v. State of Kerala MANU/SC/0023/2004 : AIR 2004 SC 1469, Regional Manager, Central Bank of India v. Madhulika Guru Prasad Dahir MANU/SC/3215/2008 : AIR 2008 SC 3266 and Union of India v. S.Krishnan MANU/SC/0765/2008 : (2008) 3 SCC 177 are to the effect that a person, who has been appointed on the basis of fake certificate, will not be entitled to any right either in obtaining service or for any other benefits flowing from the said Certificate obtained by her. The Bank will keep the amount payable to the petition in a fixed deposit and if the State Level Committee certifies that she does belong to the Konda Reddi Community, then alone this amount would be disbursed to her."

(ii) Order, dated 04.06.2014, in W.P.Nos.13346 of 2013 and W.P.No.19055 of 2013 of this Court:-

".... unless and until the issue relating to the community certificate is decided, the terminal benefits of the petitioners need not be part with by the Bank and till the issue is decided by the State Level Committee, there is no need for the Bank to release terminal benefits. The benefit should reach the Downtrodden community, namely, Scheduled Tribe. Whether the petitioner belonging to Schedule Tribe or not has to be decided only by the State Level Committee. Admittedly, in this case, the State Level Committee is not a party to the Writ Petitions. The petitioners have retired in the year 2012. The Bank in all fairness has released the employees' contribution towards provident fund and kept other terminal benefits in an interest fetching deposit, apart from, depositing the pensionary benefits in an interest fetching deposit. Hence, the petitioners are not put to any disadvantage. If the amount is released to the petitioners without verification, the petitioners would be in advantage and the Bank would be in most disadvantage position"

(iii) AIR 1995 SC 94 (Kumari Madhuri Patil v. Additional Tribal Commissioner):-

"As soon as the finding is recorded by the Scrutiny Committee holding that the Certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority, by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc., of the educational institution responsible for making the admission or the appointing authority should cancel the admission /



appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post"

(iv) State of Punjab v. Jagdip Singh (AIR 1964 SC 521):-

"... where a Government servant has no right to a post or a particular status, though an authority under the Government acting beyond to give, he will not be in law be deemed to have been validly appointed to the post or given the particular status."

(v) R.Vishwanatha Pillai v. State of Kerala (AIR 2004 SC 1469):-

".... 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 practising fraud..."

(vi) Director of Tribal Welfare, Govt. of A.P., v. LavetiGiri (AIR 1995 SC 1506) : 1995 (3) SCT 118 :-

"....Burden of proof of social status is always on the person who profound it to seek constitutional socioeconomic advantages. It is no part of the duty of the State to disprove or its reverse. The criteria to obtain caste certificate from Native Tahsildar/Mandal Revenue Officer/Revenue Divisional Officer is relevant for the reason that



Scheduled Tribes generally live in forest areas, mountainous regions and specified pockets and will be known to local officers or easily accessible for verification...."

(vii) Regional Manager, Central Bank of India v. Madhulika Guru Prasad Dahir (AIR 2008 SC 3266):-

"....In our opinion, the fact that caste certificate was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment."

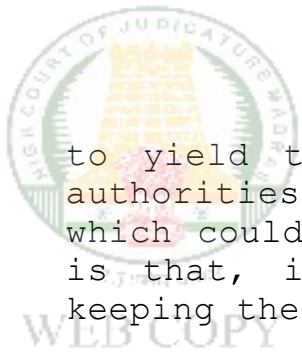
17.1. The applicability of these decisions, to the facts of this case, has its own limitations, in terms of context and time. No doubt, enquiry is needed when there is an allegation of fake certificate, especially when the benefit is meant for the people at the periphery. But the question is whether in the name of enquiry, the legal dues payable to the retiring employee can be kept in abeyance indefinitely and endlessly is the question.

18. There cannot be any dispute that truth and purity are concomitant for entering into the Government Service and to continue the same. No doubt, anybody who try to enter into the service utilizing the quota which is meant for the last, least and the littlest is to be severely punished; so that it will be a deterrent to all others who will be the potential offenders trying to grab the opportunity which is meant for marginalized and downtrodden, in order to make them others in the higher strata.

18.1. However, in the case on hand, it is not as if that the enquiry has been ordered either at the time of appointment or immediately after the appointment, but the enquiry itself has commenced after twelve years of the appointment, based on the complaint from some other sources. It is relevant to point out that the Bank did not initiate any Department enquiry, so far. It would not have been much difficult for the Bank to enquire the persons who were the complainants in the above case. The Bank has not shown any interest in expediting the enquiry, but only to the limited extent of writing letters after letters to the authorities concerned.

19. The contention of the learned counsel for the fourth respondent is that the petitioner is successfully prolonging the matter.

19.1. This contention obviously cannot be accepted, because a Bank employee will not be able to prolong the enquiry for a period of twenty years when the enquiry is expected to be conducted by the independent Government Officials. Even if the petitioner had adopted dilatory tactics, it is not for the statutory authorities



to yield to the tactics and to keep quiet. When the concerned authorities are not able to complete the enquiry for twenty years, which could have been completed by twenty days, then the inference is that, it is an indirect way of punishing the petitioner by keeping the sword pending on his head in the name of enquiry.

20. In view of the foregoing reasons, the conduct of the respondents in keeping the enquiry pending for the decades together and continuing the same even after the superannuation cannot be justified, especially in the light of the decision of the Hon'ble Supreme Court, reported in the case of Ajay Kumar Choudhary's, cited supra. Therefore, the respondents are directed to disburse the pending retirement benefits to the petitioner, within a period of one week from the date of receipt of a copy of this order. If at all, the Bank is able to get the enquiry completed and if the result turns out to be against the petitioner, then the Bank is at liberty to proceed against the pension amount, which is payable to the petitioner.

21. The writ petition stands disposed of. No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

srk

1. State Bank of India, Rep. by its Chairman,
Corporate Centre, "State Bank Bhavan",
Madam Cama Road, Mumbai 400 021
2. The Deputy General Manager (B & O),
State Bank of India - Administrative Unit NW-II,
Madhukam Complex, No.2, Melur Road, Madurai - 625 002
3. The Regional Manager, Region-I,
State Bank of India, Madurai
4. The Branch Manager, State Bank of India,
Narayanapuram Branch,
Madurai 625 014

1CC TO MR. D. SIVARAMAN, ADVOCATE SR: 78284

1CC TO MR. PALA RAMASAMY, ADVOCATE SR: 79271

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