

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.30065 of 2017
and
WMP.Nos.32635 and 32636 of 2017

A.Jayaraman .. Petitioner

Vs.

- 1.The Principal Secretary,
Adi Dravidar & Tribal Welfare Dept.,
Fort St. George, Secretariat,
Chennai-09.
- 2.The State Level Scrutiny Committee,
Rep. by its Chairman,
Adi Dravidar & Tribal Welfare Dept.,
Fort St. George,
Secretariat, Chennai-09.
- 3.The Deputy Superintendent of Police,
SC/ ST Vigilance Cell,
Chennai Region, 2nd Floor, Singaravelar Maligai,
Collectorate Chennai, Chennai-01.
- 4.The Deputy Superintendent of Police,
Social Justice and Human Rights,
O/o.ADGP, 2nd Floor, Chennai-04.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to the proceedings dated 09.06.2017 of the third respondent and quash the orders passed therein and consequently forbear the respondents from causing verification of the community certificate of the petitioner

For Petitioner : Mr.Yogesh Kannadasan

For Respondents : Mr.S.N.Parthasarathy
Government Advocate

ORDER

(Order of this Court was made by M.V.MURALIDARAN,J.)

Assailing the proceedings dated 9.6.2017 issued by the third respondent, in and by which, the petitioner was directed to appear for an enquiry qua the social status of the petitioner, the present writ petition is filed.

2. The facts in a nutshell are as under: It the case of the petitioner that he belongs to "Kondareddis" community, which is a Scheduled Tribe Community, and he holds a community certificate to that effect dated 26.5.1980.

3. Based on his social status and his qualification, the petitioner was appointed as a Probationary Officer in the State Bank of India. Thereafter, he obtained few promotions and ultimately retired from service on 29.2.2012 as Manager, Ambattur Industrial Estate Branch.

4. It is the case of the petitioner that while in service, his employer by circular dated 13.1.1998 called upon various employees belonging to Scheduled Tribe community to produce another community certificate authenticated by the District Collector. The said circular was challenged by the Scheduled Tribe Employees Welfare Association, in which the petitioner was a member, by filing W.P.No.2691 of 1998 and it is stated that this Court, by order dated 27.7.2005, quashed the said circular. Thereafter, the employer of the petitioner did not insist on such community certificate. It is stated that the petitioner was permitted to retire, paid terminal benefits and is receiving pension.

5. When things stood thus, the third respondent, issued a letter dated 23.5.2017, directing the petitioner to appear for an enquiry on 9.6.2017 qua to veracity of the community certificate issued to the petitioner. In reply to the same, the petitioner sent a letter on 10.6.2017 requesting to clarify the reason for such enquiry after superannuation and also sought certain documents cited in the reference. The third respondent, without furnishing such documents, by the impugned proceedings, directed the petitioner to appear for an enquiry on 12.6.2017. Under such circumstances, the present writ petition is filed for the relief stated supra.

6. The main thrust of the argument advanced by the learned counsel for the petitioner is that the first respondent is not empowered to initiate enquiry on its own and it is only the second respondent/State Level Scrutiny Committee which is empowered to do so, by virtue of the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil v. Additional

Commissioner, Tribal Development ((1994) 6 SCC 241).

7. It is the contention of the learned counsel for the petitioner that the initiation of an enquiry into the social status of the petitioner after completion of 33 years of service and after five years of retirement, that too without any adverse materials against the petitioner, is illegal and unlawful.

8. It is further contended that when the circular issued by the employer of the petitioner requiring various employees belonging to Scheduled Tribe community to produce another community certificate authenticated by the District Collector was challenged before this Court in W.P.No.2691 of 1998, this Court, by order dated 27.7.2005, set aside the said circular and, therefore, the present enquiry is unwarranted.

9. The learned Government Advocate appearing on behalf of the respondent submitted that the proceedings impugned in this writ petition were issued consequent to the direction of this Court in W.P.No.820 of 2016, dated 18.4.2017, wherein a Division Bench of this Court directed the State Level Scrutiny Committee to conclude the proceedings qua the social status of the petitioner on or before 24.7.2017 and, therefore, the same are justified.

10. We heard Mr.Yogesh Kannadasan, learned counsel for the petitioner and Mr.S.N.Parthasarathy, learned Government Advocate for the respondents and perused the documents on record.

11. In the case on hand, it is not in dispute that the community certificate of the petitioner is dated 26.5.1980 and admittedly, on the strength of such community certificate, the petitioner was appointed and ultimately, he retired from service without any adverse remark.

12. The Hon'ble Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, emphatically held as under:

"6. In our opinion the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid community certificate for all purpose so long such a certificate is not cancelled. The authorities cannot decline to take that into consideration."

13. In the light of the decision, referred supra, the respondents are bound to take into consideration the community certificate issued to the petitioner at the relevant time. In

any event, such community certificate was issued to the petitioner prior to 11.11.1989 cannot be brushed aside.

14. A perusal of the proceedings dated 16.5.2017 of the first respondent produced before this Court shows that the verification of the caste certificate of the petitioner is initiated based on the order passed by a Division Bench of this Court in W.P.No.820 of 2016 on 18.4.2017.

15. A bare perusal of the order dated 18.4.2017 passed by the Division Bench in W.P.No.820 of 2016 shows that the said writ petition has been filed by the petitioner herein to quash the proceedings dated 6.5.2015 of his employer and to consequently, direct the respondents to disburse to the petitioner, his provident fund share, leave encashment, gratuity, etc., including pension with reasonable interest from the date of the dues. In the said order dated 18.4.2017, it was directed as under:

"3. We direct the State Level Scrutiny Committee to follow the directions given by the Hon'ble Supreme Court in Kumari Madhrai Patil v. Additional Commissioner, Tribal Development and others, [(1994) 6 SCC 241] and subsequently in Dayaram v. Sudhir Batham [(2012) 1 SCC 333] and related orders issued by the Government of Tamil Nadu and conclude the proceedings as expeditiously as possible and in any case, on or before 24 July 2017. The report should be filed by 24 July 2017. The question of disbursement of retirement benefits to the petitioner should await the result of the enquiry."

16. When a circular dated 13.1.1998 issued by the employer of the petitioner was challenged by the Scheduled Tribe Employees Welfare Association v. State Bank of India, this Court, by order dated 27.7.2005 in W.P.No.2691 of 1998, held as under:

"2. According to the learned counsel appearing for the petitioner association, it is not open to the employer to compel the members of the writ petitioner association to get a community certificate from the District Collector, especially when there are already community certificates, issued to the members of the petitioner association prior to 11.11.1989, on the file of the second respondent. We agree with the said submission made by the learned counsel for the writ petitioner. Accordingly the writ petition stands disposed of as hereunder:

'The circular impugned in the writ petition is quashed. However it is open to the second respondent to approach the District Level Committee to be constituted as per G.O.Ms.No.111 dated 06.07.2005 to verify the community status of the members of the writ petitioner association.'"

The employer of the petitioner did not approach the Committee while the petitioner was in service to avail of the liberty granted by the Division Bench in the aforesaid order.

17. Be that as it may, it is fairly admitted that the terminal benefits of the petitioner have been settled and he is also being paid pension. This shows that the employer of the petitioner has no grievance against the petitioner since then and the prayer made in the writ petition, being W.P.No.820 of 2016, has been granted in favour of the petitioner by his employer despite pendency of the said writ petition and a specific direction that "disbursement of retirement benefits to the petitioner should await the result of the enquiry".

18. Therefore, the very basis of the enquiry initiated by the respondent authorities, viz., the reference by the employer of the petitioner, is baseless and runs counter to the order dated 27.7.2005 in W.P.No.2691 of 1998, inasmuch as the petitioner has been permitted to retire, all his retirement benefits have been paid and he is also being paid pension. It is not disputed that the petitioner was an employee of the State Bank of India and that he was a member of the Scheduled Tribe Employees Welfare Association, which challenged the circular successfully.

For the foregoing reasons, the writ petition is allowed and the proceedings dated 09.06.2017 are set aside. No costs. Consequently, W.M.P.Nos.32635 and 32636 of 2017 are closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

(vs)

To

- 1.The Principal Secretary,
Adi Dravidar & Tribal Welfare Dept.,
Fort St. George, Secretariat,
Chennai-09.

2.The Chairman,
State Level Scrutiny Committee,
Adi Dravidar & Tribal Welfare Dept.,
Fort St. George,
Secretariat, Chennai-09.

3.The Deputy Superintendent of Police,
SC/ ST Vigilance Cell,
Chennai Region, 2nd Floor, Singaravelar Maligai,
Collectorate Chennai, Chennai-01.

4.The Deputy Superintendent of Police,
Social Justice and Human Rights,
O/o. ADGP, 2nd Floor, Chennai-04.

+1 CC to Mr.Yogesh Kannadasan, Advocate, SR No.92319

+1 CC to The Government Pleader, SR No.92470

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VUM(10.02.2018)



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