

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	23/08/2017
PRONOUNCED ON	06/09/2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKEVALU

W.P.No.11119 of 2015 &
M.P.No.1 of 2015

R.S.Babu Rao .. Petitioner
Vs.

- 1.The Executive Director (Southern Region),
Air India Limited, Air Lines House,
Meenambakkam, Chennai-27.
- 2.The General Manager (Personnel),
Southern Region,
Air India Limited, Air Lines House,
Meenambakkam, Chennai-27. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the proceedings of the second respondent in its Ref.No.MAA/ST-RSB/829 dated 28.03.2014 and consequential proceedings in No.ED/SR/RTI/3568 dated 18.11.2014 of the first respondent and quash both the orders and consequently direct the respondents to grant the petitioner Full Pension, DCRG, Earned Leave Encashment, Provident Fund Contribution (Management share), Medical, passes and all other admissible benefits along with interest.

For Petitioner : Mr.V.Vijay Shankar
For Respondents : Mr.K.Srinivasa Murthy for
M/s.N.G.R.Prasad for R1 & R2

O R D E R

[Order of the Court was made by P.D.AUDIKEVALU, J.]

The Petitioner who was working in Air India and has attained the age of superannuation, is aggrieved by the denial of his terminal benefits in consequence of the order bearing (M)

Rc.No.391/2013/C5, dated 30.11.2013 of the District Level Scrutiny Committee, Vizianagaram District in the State of Andhra Pradesh, holding that he does not belong to Scheduled Tribe and has preferred this Writ Petition.

2. The Petitioner was appointed in the post of Traffic / Cargo Assistant vide Order No.MSI/AD/ST/4066, dated 17.10.1979 in Air India against a vacancy reserved for Scheduled Tribe on the strength of the Scheduled Tribe Community Certificate dated 09.11.1979 issued by the Tahsildar, Srungavarapukota Taluk, Vishakapatnam District, Andhra Pradesh to him as belonging to Konda Kapu caste. That appointment order contained the following clause:-

"(For Scheduled Tribe candidate only:) As the post in which you are being appointed is reserved for Scheduled Tribe candidates, your appointment is subject to your being a member of Scheduled Tribe as listed in the Scheduled Castes and Scheduled Tribes (Lists) Modification Order, 1956, read with the Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976 and the applicable Act / Constitution Order."

Subsequently, the Petitioner had secured appointment to the post of Assistant Station Superintendent in Air India vide Order No.HRD-R/ASS-MT/Comm1./1107, dated 15.06.1994, which contained the following clause:-

"(For Scheduled Tribes candidates only):- As the post in which you are being appointed is reserved for Scheduled Tribe candidate, your appointment is subject to your being a member of Scheduled Tribe listed in the 'Scheduled Castes and Scheduled Tribes (Lists) Modification Order, 1956', read with the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and the applicable Act / Constitution Order."

3. When the Scheduled Tribe community status of the Petitioner claimed by him was referred to the authorities in the State of Andhra Pradesh for verification, it was noticed from its photocopy that the same appeared to have been issued on 09.11.1979 by the Tahsildar, Srungavarapukota Taluk, describing the Petitioner to be a resident of Srungavarapukota Taluk in Vishakapatnam District and that his family ordinarily resided in Kothapalem Village, Srungavarapukota Taluk in Vishakapatnam District. Inasmuch as Srungavarapukota Taluk had ceased to be in Vishakapatnam District with effect from 01.06.1979 and had become part of Vizianagaram District that was formed on that date, it was reported by the Collector, Vizianagaram that the said Community Certificate of the Petitioner was fabricated and far from genuine. In pursuance thereof, a notice bearing Ref.No.RO/CMD/12/23, dated _ May 2012 was issued to the

petitioner by the Chairman and Managing Director, Air India to show cause as to why his services should not be terminated with immediate effect as he had been appointed in a vacancy exclusively reserved for Scheduled Tribes based on the aforesaid Community Certificate. The Petitioner challenged the said show cause notice in the Writ Petition bearing W.P.No.14371 of 2012 before this Court which was disposed by order dated 28.01.2013 holding as follows:-

"7. As already pointed out, except for a doubt raised by the District Collector as regards the genuineness of the community certificate produced by the petitioner, so far, we do not find that any proceedings are issued against the petitioner from the Competent Authority withdrawing the community certificate and that unless and until the certificate issued to the petitioner is validly suspended or withdrawn, the question of the Management acting just on a communication from the Collector, by itself, would not be a justifiable one to call for explanation from the petitioner. It is always open to the Management to pursue the further proceedings before the Collector to set things right, so that the genuineness of the community certificate issued stands established.

8. In the circumstances, while allowing the writ petition, we reserve the liberty of the respondents to take further measures as are required for the purpose of verifying the genuineness of the community certificate. Depending upon the outcome of the proceedings before the Collector as well as the statutory authority on the genuineness of the certificate produced by the petitioner, it is always open to the Management to take such further action as are required in the interests of the institution."

4. Since the petitioner was attaining the age of superannuation on 30.11.2013, it was informed to him by the Senior Manager-HRD (SI), Air India vide letter reference No.MAA/ST-RSBR/720, dated 28.11.2013 that the settlement of the retirements dues would be subject to the outcome of the verification process of the genuineness of the Community Certificate which was still pending before the Competent Authority and without prejudice to their rights and contentions in the matter. Coincidentally, on the date of retirement of the Petitioner from service on 30.11.2013, the Collector and District Magistrate, Vizianagaram by letter (M)Rc.No.391/2013/C5 informed the Senior Manager, HRD Department, Air India, Chennai that it has been proved that the Scheduled Tribe Konda Kapu Community

Certificate held by the Petitioner was a forged / fabricated one and a copy of the findings of the District Level Scrutiny Committee in that regard was enclosed thereto. Acting upon the aforesaid communication, the General Manager, (Personnel), Southern Region, Air India Limited by letter dated 28.03.2014 informed the Petitioner that he would not be entitled to payment of his terminal benefits and the concluding portion of that order reads as follows:-

"15. In view of the conclusion and recommendation made by the District Level Scrutiny Committee that the Scheduled Tribe Konda Kapu Certificate held by him is proved to be a forged and fabricated one and also as mentioned in Clause (x) in letter No.MSI/AD/ST/4066 dated October 17, 1979 and Clause xi in letter No.HRD-R/ASS-MT.Comml/1107 dated June 2015, 1994, his appointment in the Company initially as a Traffic Assistant against a post reserved for Scheduled Tribe, w.e.f. November 21, 1979 by letter No.MSI/AD/ST/4066 dated October 17, 1979 in Commercial Department at Madras and by letter No.RMD/TA.10254 dated January 11, 1980, partially modifying the earlier letter, and also subsequent promotions stands cancelled.

He will be eligible for only his subscription amount to his account in the company's Provident Fund after adjusting commitments to the company if any. He will not be eligible for anything else. His accounts will be settled upon his surrendering the company's property held by him including the Identity cards issued by the company and the Bureau of Civil Aviation Security."

5. The petitioner, who claims to have not received the findings of the District Level Scrutiny Committee, Vizianagaram District in the State of Andhra Pradesh, had sought a copy of that report by application dated 06.10.2014 under the Right to Information Act, 2005, from Executive Director-SR (India) & CPIO / Air India, which was furnished to him through a letter No.ED/SR/RTI/3568 dated 18.11.2014. Thereafter, the petitioner filed the instant Writ Petition challenging the aforesaid letters dated 28.03.2014 and 18.11.2014 of the Authorities of Air India and has sought consequential direction to grant him Full Pension, DCRG, Earned Leave Encashment, Provident Fund Contribution (Management share), medical passes and all other admissible benefits along with interest.

6. The respondents on entering appearance in the Writ Petition, have filed counter affidavit dated 31.03.2017 and additional counter affidavit dated 07.08.2017.

7. Heard Mr.V.Vijay Shankar, learned counsel appearing for the petitioner and Mr.K.Srinivasamurthy, learned counsel appearing for the respondents and perused the materials placed on record.

8. At the outset, it requires to be noticed here that the Petitioner has conspicuously not impeached the findings of the District Level Scrutiny Committee, Vizianagaram District in the State of Andhra Pradesh, in which it was held that the Scheduled Tribe Konda Kapu Community Certificate dated 09.11.1979 produced by the Petitioner was a forged / fabricated one, before the appropriate forum in a manner recognised by law. As such, it would have to be proceeded on the premise that the said findings against the Petitioner have attained finality and the Petitioner cannot rely on that Community Certificate for claiming Scheduled Tribe community status.

9. It was the initial contention of the Petitioner as revealed from the contents of his affidavit in support of his Writ Petition that he had been earlier issued with a Community Certificate dated 18.12.1978 by the Tahsildar, Saidapet, describing him as Konda Kapu (Scheduled Tribe) Community and he had applied for the post of Traffic / Cargo Assistant under Scheduled Tribe quota in Air India on that basis and that after his appointment to that post, it had been insisted that he must get a fresh Community Certificate from Guntur, Andhra Pradesh from where he had done his schooling and he had accordingly applied to the Tahsildar, Srungavarapu Taluk in Vishakapatnam District, Andhra Pradesh, who had issued a Scheduled Tribe Community Certificate to him on 09.11.1979, which is now been reported to be a forged / fabricated one. Referring to the observations of the District Vigilance Committee in its Proceedings dated 26.11.2013 that the petitioner hails from Tamil Nadu, it was contended that he had correctly obtained Caste Certificate from the Tahsildar, Saidapet on 16/18.12.1978 which has not been cancelled till date and therefore, it is not open to the respondents to assume that he does not belong to Konda Kapu Scheduled Tribe and that at any rate, the respondents were not justified in relying upon the report dated 26.11.2013 of the District Level Vigilance Committee as it was not determinative or conclusive of the Scheduled Tribe Community status of the Petitioner.

10. In reply thereto, it has been categorically stated in paragraph no.8 of the counter affidavit dated 31.03.2017 filed by the respondents that the Scheduled Tribe Community Certificate dated 09.11.1979 submitted by the petitioner at the time of his appointment had been sent for verification to the Tahsildar, Srungavarapukota and that the Certificate said to have been issued by the Tahsildar, Saidapet was not recorded in his

personal file at any time of his appointment or thereafter. This statement of the respondents has not been denied by the petitioner by way of affidavit and no evidence has been placed on record to the effect that the Community Certificate dated 18.12.1978 said to have been issued by the Tahsildar, Saidapet had been produced at any time before the Appointing Authority of Air India to prove the community status of the Petitioner as a member of the Scheduled Tribe. Hence, it is not possible to accept the contention of the Petitioner that he has to be treated as a Scheduled Tribe so long as the Community Certificate dated 18.12.1978 issued to him by the Tahsildar, Saidapet has not been cancelled.

11. The learned counsel for the petitioner in fact, did not press on the aforesaid contention during the course of arguments and instead, he proceeded to make an ingenious submission focusing that the appointment of the Petitioner in the post of Assistant Station Superintendent in Air India vide Order No.HRD-R/ASS-MT/Comm1./1107, dated 15.06.1994 was not against a vacancy reserved for Scheduled Tribe and that he had to be considered as a general candidate since the marks secured by him in that selection were higher than those of some general candidates at that time. In order to buttress that contention, the learned counsel for the Petitioner pointed out that out of 54 persons selected then, the petitioner was ranked at position No.43 securing 44 (out of 100) marks and that four others viz., Messrs.S.Srivardhan, Harish Kumar Malhotra, Roda Krishna and Thomas Desa, ranked in position Nos. 45, 47, 48 and 49 respectively in the selection list with lesser marks than that secured by the petitioner were general candidates.

12. In response to that submission, the learned counsel for the respondents explained that two notifications calling for applications to the post of Assistant Station Superintendent had been issued by Air India, one on 28.09.1992 from the general public and other on 27.09.1993 from the staffs working in the Commercial Department of Air India, for filling up 50 vacancies of which 8 had been reserved for Scheduled Caste and 4 for Scheduled Tribes. It has been pointed out that the eligibility criteria in respect of applications from the general public was restricted to graduates from a recognized University with Post-graduate / Diploma in Business Management / Administration from a recognized University / Institute with age not to exceed 26 years as on 01.09.1992, while in the case of staff working in the Commercial Department, it would suffice to be a graduate from a recognized University with age not more than 45 years as on 01.10.1993. On the basis of that eligibility criteria, it has been highlighted that inasmuch as the date of birth of the petitioner was 06.11.1955, he was aged 39 years as on 01.10.1993 and he was only a graduate and did not possess any Post-graduate Degree / Diploma, it would necessarily mean that he could not

have been considered under the category from the general public and that he had to be treated only as a staff working in the Commercial Department of Air India. In short, it is emphasized that but for the then existing employment of the Petitioner in the post of Traffic / Cargo Assistant which he had secured with the Scheduled Tribe Community Certificate dated 09.11.1979 issued by the Tahsildar, Srungavarapukota, he would not have been entitled to be considered for appointment to the higher post of Assistant Station Superintendent in the year 1994. It has been further brought out from the report dated 06.04.1994 of the Selection Panel Report for the post of Assistant Station Superintendent that only such candidates who had obtained a minimum of 25 and above (out of 50) marks in respect of general candidates and 20 and above (out of 50) marks in respect of Scheduled Caste / Scheduled Tribe candidates, had been considered for the purpose of preparation of list of suitable candidates and it has been demonstrated that inasmuch as the Petitioner had obtained only 23 marks in the interview, he could not be considered as a general candidate and he had been rightly treated as a Scheduled Tribe in that appointment. It has been further established from the list of unsuitable candidates in that selection that the general candidates who have obtained more than 44 marks on the total (which was the marks secured by the Petitioner) and did not have the required minimum of 25 marks in the interview, had not been considered. We have to arrive at the only possible conclusion from these well founded submissions made on behalf of the respondents, which deserve acceptance, that the Petitioner had been appointed to the post of Assistant Station Superintendent only against a vacancy reserved for Scheduled Tribe and not as a general candidate under open competition.

13. The learned counsel for the Petitioner sought to draw inference from the letters dated 28.09.1994 and 07.12.1994 relating to his appointment in the post of Assistant Station Superintendent in which in the reference, the words "EST/R-3/(ASS)(GEN)" had been indicated, to show as if the Petitioner had been selected as a general candidate. This 'attendant circumstance' cannot be of any avail to the Petitioner as there is nothing indicated in the contents of those letters to imply that the Petitioner had been treated as a general candidate. Similarly it was pointed out that in the appointment order dated 17.10.1979 of the Petitioner to the post of Traffic / Cargo Assistant, the paragraph applicable to the Scheduled Caste candidate had been struck off retaining that relating to Scheduled Tribe candidates, whereas in the appointment order dated 15.06.1994 of the Petitioner to the post of Assistant Station Superintendent, such striking off in respect of the paragraphs of the Scheduled Caste Candidates and Scheduled Tribe Candidates had not been made. The failure to strike off the paragraphs applicable to Scheduled Caste and Scheduled Tribe

candidates cannot lend support to such claim of the Petitioner inasmuch as the wordings in those paragraphs make it specific that they apply only to Scheduled Caste and Scheduled Tribe candidates respectively and on the other hand, far from supporting the Petitioner, it tends to create an impression that the Petitioner was not selected under the general category.

14. Reliance was placed by the learned counsel for the Petitioner on the decision of the Hon'ble Supreme Court of India in Jitendra Kumar Singh and another v. State of Uttar Pradesh [(2010) 3 SCC 119] for the proposition that if age relaxation and waiver of examination fee had been granted for Scheduled Caste / Scheduled Tribe candidates, it would not preclude them from being considered under open competition if they secured the requisite higher marks for determination of merit. Yet another decision in Ravinder Kumar v. State of Haryana and others [(2010) 5 SCC 136] was cited by the learned counsel for the Petitioner for the principle that if a candidate belonging to a reserved category scored high enough marks to entitle him to be selected in the general category, such candidate ought to have been selected in the said category instead of being placed in the reserved post. In this case, since the Petitioner had not secured the requisite minimum of 25 marks in the interview prescribed for general candidate, he cannot be considered as a general candidate and as such the aforesaid principles in those rulings do not have any application.

15. In the aforesaid circumstances, the initial appointment of the Petitioner in the year 1979 for the post of Traffic / Cargo Assistant as well as the subsequent appointment to the higher post of Assistant Station Superintendent in the year 1994, were both void ab initio as the Petitioner did not belong to Scheduled Tribe for whom those posts had been exclusively reserved. In State of Punjab vs. Jagdip Singh [AIR 1964 SC 521], a Constitution Bench of the Hon'ble Supreme Court of India has ruled that where a Government servant has no right to a post or a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status. The Hon'ble Supreme Court of India in R.Vishwanatha Pillai vs. State of Kerala [AIR 2004 SC 1469 at para 19 in page 1475] has further categorically held that if a person is appointed against a reserved category on the basis of a Community Certificate, which is later found to have been false, such appointment to the post is void and non est in the eyes of law, that the right to salary or pension after retirement flow from a valid and legal appointment, that the consequential right of pension and monetary benefits can be given only if the appointment was valid and legal and such benefits cannot be given

in a case where the appointment is found to have been obtained fraudulently and rested on false caste certificate. Restating the same position in Chairman and Managing Director, FCI v. Jagdish Balaram Bahira [Civil Appeal No.7187 of 2013 etc, judgement dated 06.07.2017], it has been held since the decision in Kumari Madhuri Patil and another Vs. Additional Commissioner [(1994) 6 SCC 241] which was rendered on 02.09.1994, the regime which has been holding the field in pursuance of those directions envisage withdrawal of benefits in terms of the termination of the appointment on the cancellation of the Caste Certificate where the claim is found to be false or not genuine. In the light of this incontrovertible legal position coupled with the facts of the instant case, the impugned action of the respondents / Air India, as the employer of the Petitioner in denying his terminal benefits despite the fact that he may have worked till he had attained the age of superannuation, is in accordance with law, based upon relevant considerations, absolutely justified and cannot be faulted, and the reliefs as claimed by the Petitioner in the Writ Petition cannot be granted.

16. Hence for all the reasons aforesaid, we find no merits in this Writ Petition and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Executive Director (Southern Region),
Air India Limited, Air Lines House,
Meenambakkam, Chennai-27.

2.The General Manager (Personnel),
Southern Region,
Air India Limited, Air Lines House,
Meenambakkam, Chennai-27.

+1cc to Mr.N.G.R.Prasad, Advocate, S.R.No.64269

+1cc to Mr.V.Vijay Shankar, Advocate SR.No.65244

Pre Delivery Order made in
W.P.No.11119 of 2015 &
M.P.No.1 of 2015

BR(CO)
GN(12/09/2017)