

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM :

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

Writ Petition No.33207 of 2017
and
WMP.Nos.36626 to 36628 of 2017

R.Sundaram .. Petitioner

Vs

- 1.The State Level Scrutiny Committee,
Rep. by its Director cum Member Secretary,
Tribal Welfare Department,
Chepauk, Chennai - 5.
- 2.The Deputy Superintendent of Police,
SC/ST Vigilance Cell,
Madurai Division (in charge),
Salem Division, Salem - 1.
- 3.The General Manager,
Indian Bank, Corporate Office,
No.254-360, Avvai Shanmugam Salai,
Royapettah, Chennai - 4. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the first respondent in Na.Ka.No.Pa.Me/Aa2/1760/2017, dated 07.12.2017, and the report of the second respondent in Na.Ka.No.136/D.S.P./SC/ST Vigilance Cell/Salem Division/2017, dated 29.11.2017, to quash the same and to direct the respondents to conduct a fresh enquiry in accordance with law.

For Petitioner : Mr.T.Ayngaraprabhu

For Respondents : Mr.S.N.Parthasarathy (for R1 & R2)
Government Advocate

Mr.Kalyanaraman (for R3)

ORDER

<https://hcservices.ecourts.gov.in/hcservices/>
Order of this Court was made by M.V.MURALIDARAN, J.)

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the first respondent in Na.Ka.No.Pa.Me/Aa2/1760/2017, dated 07.12.2017, and the report of the second respondent in Na.Ka.No.136/D.S.P./SC/ST Vigilance Cell/Salem Division/2017, dated 29.11.2017, to quash the same and to direct the respondents to conduct a fresh enquiry in accordance with law.

2. Succinctly put, the facts are as follows: On 15.11.1975, the petitioner was issued a community certificate by the Tahsildar, Mettur Taluk, Salem District (who is the competent authority at that point in time) to the effect that he belongs to "Konda Reddy Community". It is the case of the petitioner that the said community certificate was issued after conducting of proper enquiry.

3. On the strength of the said communal status, the petitioner secured appointment in the Indian Bank as Clerk Shroff during November, 1975, and his appointment was confirmed after verification of the community certificate. The petitioner was promoted to various cadres up to the rank of Scale III Officer during March, 2005.

4. It is averred that, in the meanwhile, to wit, during the year 1998, based on an anonymous petition, the Revenue Divisional Officer, Mettur Dam, initiated proceedings for cancellation of the community certificate issued to the petitioner and also sent a report to the District Collector, Salem. Thereafter, the District Collector, Salem, is stated to have issued a notice to the petitioner, which the petitioner challenged by filing W.P.No.12546 of 1998.

5. It is stated that on 09.06.2009, a Division Bench of this Court, set aside the notice issued by the District Collector, Salem, and held that the State Level Scrutiny Committee is the competent authority to decide the community of the petitioner and remitted the matter to the authorities concerned. However, it is claimed that no further action was taken by the first respondent/Committee thereafter for years.

6. It is further stated that on 28.05.2013, three days prior to the superannuation of the petitioner (31.05.2013), the third respondent/bank placed the petitioner under "cessation", stating that the verification of the communal status of the petitioner is still pending. Challenging the said order dated 28.05.2013 and alleging that retirement benefits and provisional pension were not paid to him, the petitioner filed W.P.No.19006 of 2013, wherein, by order dated

04.07.2014, a Division Bench of this Court directed the first respondent/Committee to enquire into the matter and pass orders within eight weeks, with a direction the third respondent/bank to pay the retiral benefits due to the petitioner till the first respondent/Committee passes an order.

7. It is alleged that since pursuant to the said order neither the retirement benefits nor provisional pension were paid to him, the petitioner filed S.L.P.(C) No.33267 of 2014, by order dated 06.02.2017, directed respondents 1 and 2 to complete the enquiry and pass orders within six weeks, of course, without granting any stay. It is stated that thereafter the first respondent/Committee directed the second respondent to conduct an enquiry and submit a report. It is claimed that the second respondent, without conducting detailed enquiry and without examining the witnesses in the presence of the petitioner, submitted a report on 29.11.2017 to the effect that the community certificate issued to the petitioner is not genuine. The said report of the second respondent was communicated to the petitioner by the first respondent/Committee by proceedings dated 14.12.2017. Impugning the said proceedings, the present writ petition is filed for the relief stated supra.

8. The learned counsel appearing for the petitioner vehemently contended that since the date of appointment in 1975, the petitioner has rendered unblemished services in the third respondent/bank, and three days before his retirement, he was placed under cessation and was not paid any retirement benefits or provisional pension and the same is in gross violation of the order passed by a Division Bench of this Court, which was not stayed by the Supreme Court, and such non payment of benefits due to him is causing irreparable loss and mental agony to the petitioner.

9. He further submitted that the bare bones of principles of natural justice have not been followed while the second respondent conducted an enquiry and that he was not afforded an opportunity to cross-examine the witnesses examined by the authorities and all evidence was collected behind his back.

10. On the contrary, the learned Government Advocate appearing on behalf of respondents 1 and 2 submitted that the second respondent conducted enquiry in the manner contemplated under law and found that the communal status of the petitioner is not genuine and, therefore, the same does not warrant interference.

11. The learned counsel appearing on behalf of the third respondent/bank justified their action of keeping the

petitioner under cessation and not paying the retirement benefits and provisional pension pending verification of the communal status of the petitioner.

12. We heard Mr.T.Ayngaraprabhu, learned counsel for the petitioner, Mr.S.N.Parthasarathy, learned Government Advocate for the respondents 1 and 2 and Mr.Kalyanaraman, learned counsel for the 3rd respondent and perused the documents available on record.

13. A perusal of the documents filed in support of the writ petition reveals that the petitioner was issued a community certificate on 15.11.1975 to the effect that he belongs to "Konda Reddy Community", which is a Scheduled Tribe Community. Qua the competency of the Tahsildar to issue the said community certificate, it is apposite to refer to the decision of the Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein it is 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 as a certificate is not cancelled. The authorities cannot decline to take that into consideration."

(emphasis supplied)

14. In the case on hand, the community certificate dated 15.11.1975 was issued by the Tahsildar, who is a competent authority, at the relevant time, which is prior to 11.11.1989, the date stipulated in the decision supra. When such community certificate is put to test, certainly, the person to whom it is issued should be afforded a fair and reasonable opportunity to put forth his case.

15. The primordial plea of the learned counsel for the petitioner is that the impugned proceedings have been passed in gross violation of the principles of natural justice.

16. The affected should be appraised is a cardinal constitutional creed flowing from Article 14 of the Constitution of India and unless the affected is appraised there is no compliance of principles of natural justice and fair play in action. A decision-making authority is duty bound to disclose any and every adverse material collected by it before using them against a person and an adverse decision is taken, and if it is not done the order made by such authority will be vitiated only on that count. Bearing in mind this trite principle, let us analyse the factual aspects of the case on hand.

17. It cannot be gainsaid that under G.O.(Ms.) No. 106, Adi Dravidar and Tribal Welfare (CV1) Department, dated 15.10.2012, the Government has constituted Vigilance Cell and modified the functions of the Committees ordered in G.O.(2D) No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007, to verify the certificate issued to a person. In the context of the Government Order thus passed, before taking final decision, the State Level Committee shall have the benefit of report from the Vigilance Cell. Wherever any such report is given, the same shall be furnished to the individual concerned in compliance of principles of natural justice.

18. The Hon'ble Supreme Court in Kumari Madhuri Patil case, referred supra, held as under:

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place

from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the

claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same.

It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. 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 acknowledgement 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."

19. The issue as to whether the 15 guidelines given in the case of Madhuri Patil (supra) were valid and whether it amounts to legislation was referred by the two Judges Bench of the Hon'ble Apex Court to a larger Bench. The reference was answered by the three Judges Bench of the Hon'ble Apex Court in the case of Dayaram v. Sudhir Batham, (2012) 1 SCC 333. In effect, the Hon'ble Supreme Court held that the directions issued in Madhuri Patil's case were intrinsic to the fulfilment of the fundamental rights of the backward classes of citizens and were issued to preclude denial of such fundamental rights. It noted that the directions given in the case of Madhuri Patil were working satisfactorily for decades. Therefore, the guidelines laid down in Madhuri Patil case, supra, hold the field and the action of the authorities should hew to the same.

20. In the case of Ayaubkhan Noorkhan Pathan v. State of Maharashtra & Ors., (2013) 4 SCC 465, wherein the issuance/ verification of caste certificate was under consideration, the Hon'ble Supreme Court, after referring to a plethora of decisions, held that not only should the opportunity of cross examination be made available, but it should be one of effective cross examination, so as to meet the requirement of principles of natural justice. In the absence of such opportunity, it cannot be held that the matter has been decided in accordance with law, as cross examination is an integral part and parcel of the principles of natural justice.

21. It is well settled that principles of natural justice have to be respected by quasi-judicial or administrative authorities while taking action if they adversely affect the interest of a person or that the action involves criminal or civil consequences. Obviously, the rules of natural justice include cross examination of the witnesses relied by the administrative authority/quasi-judicial authority and denial of the same is a serious violation of principles of natural justice. Opportunity to lead evidence in defence is also another salient feature of the principles of natural justice.

22. In the instant case, is beyond any demur that the petitioner was not granted an opportunity to cross-examine the witnesses, whose evidence was relied upon by the second respondent. We are, therefore, of the firm view that the

proceedings conducted before the second respondent are in gross violation of the elementary principles of natural justice and the first respondent ought to have considered the said aspect before forwarding the report of the second respondent to the petitioner. Therefore, on this score, the impugned orders are liable to be set aside.

23. Since the issue of non-payment of retirement benefits and provisional pension is not the major challenge in this writ petition and the Hon'ble Supreme Court is in seisin of the said issue, we do not propose to issue any direction qua the said aspect.

24. Accordingly, we allow the writ petition and set aside the impugned orders in Na.Ka.No.Pa.Me/Aa2/1760/2017, dated 07.12.2017, passed by the first respondent and the report of the second respondent in Na.Ka.No.136/D.S.P./SC/ST Vigilance Cell/Salem Division/2017, dated 29.11.2017 with the following directions:

i. The matter is remanded to the State Level Scrutiny Committee for fresh consideration.

ii. It is made clear that in case the State Level Scrutiny Committee seeks to rely on such statements, necessarily opportunity should be afforded to the petitioner to cross examine those witnesses and copies on all documents relied on should be furnished to the petitioner. The cross examination should be conducted in the presence of the State Level Scrutiny Committee and such cross-examination should be an effective one. The State Level Scrutiny Committee must ensure the presence of the witnesses, so as to enable the petitioner to cross examine them on the very same day. In any case, the petitioner is not entitled to the assistance of lawyers for cross examination of witnesses.

iii. If the Committee is of the view that the issue can be decided even without reference to the deposition given by the witnesses, there is no need for summoning them. In such event, the Committee shall give an opportunity to the petitioner to produce documents in support of his claim and thereafter, decide the matter on merits and as per law.

iv. The petitioner is directed to co-operate with the State Level Scrutiny Committee for an early disposal of the matter. In case, the petitioner is prolonging the matter on one pretext or the other, it is open to the State Level Scrutiny Committee to decide the matter on the basis of available materials.

v. The above said exercise shall be completed within a period of two months from the date of receipt or production of a copy of this order.

There will no order as to costs. Consequently, W.M.P.Nos.36626 to 36628 of 2017 are closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

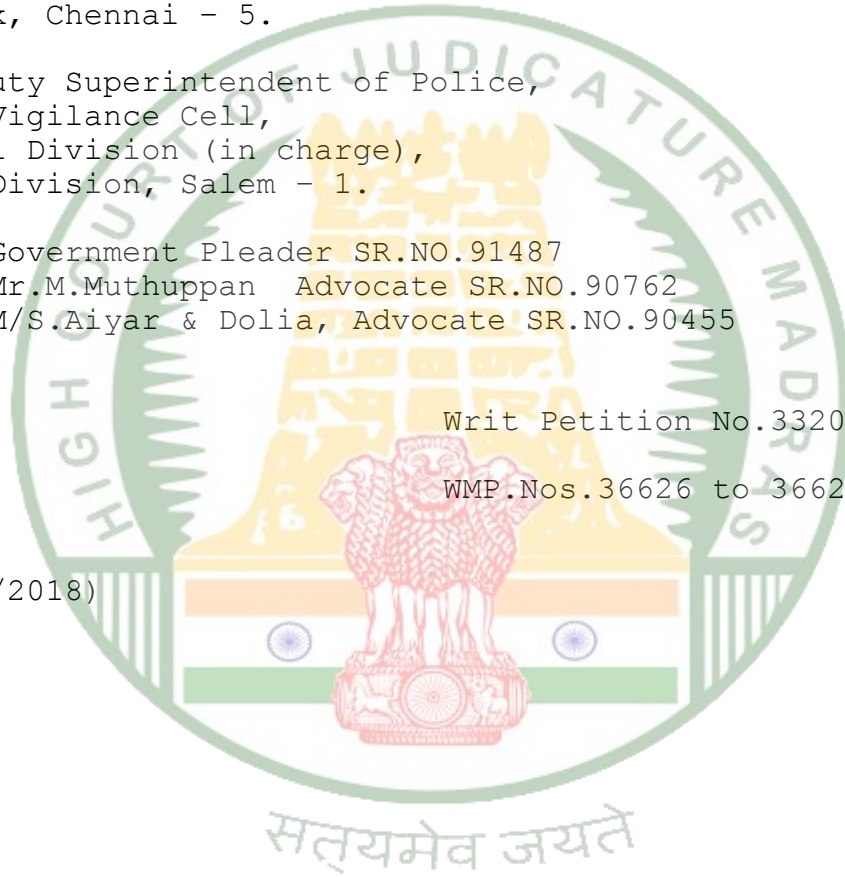
1.The Director cum Member Secretary,
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+1 CC to Government Pleader SR.NO.91487
+1 CC to Mr.M.Muthuppan Advocate SR.NO.90762
+1 CC to M/S.Aiyar & Dolia, Advocate SR.NO.90455

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PA (CO)
VC (05/02/2018)



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