

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.01.2017

Delivered on: 07.02.2017

CORAM

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.14976 of 2014

- 1.Union of India,
Rep. by the Director,
Central Drugs Testing Lab,
Government of India,
No.37, National Hospital Road,
Periamet, Chennai - 600 003.
- 2.Union of India, Rep. by the Drugs Controller,
General (I), Central Drugs,
Standard Control Organisation,
Directorate General of Health Services,
FDA Bhawan, Kotla Road,
New Delhi -2.
- 3.Union of India, rep. by the
Director General of Health Services,
Dte, GHS, Nirman Bhawan,
New Delhi - 110 008.
- 4.The Director General of Health Services,
O/o. The Directorate General of Health Services,
Union of India, New Delhi -11. ...Petitioners

vs.

- 1.V.Subha
- 2.The Registrar
Central Administrative Tribunal
Madras Bench, High Court Buildings,
Chennai - 600 104. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the order of Central Administrative Tribunal, Madras

Bench passed in O.A.No.1116 of 2012 dated 18.07.2013 and quash the same.

For Petitioners : Mr.Venkataswamy Babu
Senior Panel Counsel

For Respondents : Mr.V.Prakash, Senior Counsel
for Mr.Yogesh Kannadasan for R1
R2 - Tribunal

O R D E R

The first respondent, secured employment against a post reserved for Scheduled Tribe, by producing a Community Certificate issued by an incompetent authority. The appointing authority, while making the appointment, made it very clear that the appointment is provisional and subject to production of fresh Community Certificate issued by the competent authority. The first respondent continued in employment even after cancelling her certificate, on the strength of an interim order passed by the High Court in the writ petition challenging the cancellation of Community Certificate and thereafter, secured promotion to a higher post and stalled the scrutiny proceedings initiated by the State Level Scrutiny Committee to decide her community status. When the scrutiny proceedings was in the advanced stage, the first respondent submitted an application for voluntary retirement to overcome the proceedings. The competent authority rejected the request. The order was set aside by the Central Administrative Tribunal. The Tribunal directed the petitioners to accept the application for voluntary retirement and pay her all the retirement benefits, on a mistaken impression that the community certificate was cancelled after a period of 20 years, ignoring the fact that the certificate was cancelled within three years from the date of initial appointment.

Brief Facts

2. The first respondent was appointed as Technical Assistant in the office of the Drug Testing Laboratory, Chennai with effect from 5 April 1991. The post was later re-designated as Junior Scientific Assistant. Since proper community certificate was not produced, she was directed to produce the community certificate in the prescribed format. The first respondent failed to furnish the requisite certificate. The Director, Central Drug Testing Laboratory, therefore, forwarded the certificate produced by the first respondent during the time of appointment for verification. The competent authority found that it was a false community certificate. The community certificate was therefore cancelled. In view of the cancellation of the Community Certificate, the first respondent was dismissed from service.

3. The order cancelling the community certificate was challenged in W.P.No.2400 of 1993. The first respondent obtained an interim order of stay of cancellation of Community Certificate and on the basis of the said order, she continued her employment. The High Court finally set aside the order passed by the District Collector and directed him to pass a fresh order after permitting the first respondent to cross examine the witnesses.

4. The order of dismissal was independently challenged in O.A.No.322 of 1995. The original application was allowed by order dated 17 April 1995, in view of the order passed by the High Court setting aside the order passed by the District Collector cancelling the Community Certificate. While directing her reinstatement, the Tribunal made it clear that her continuance would be subject to the enquiry to be conducted by the District Collector, Tirunelveli, with regard to the genuineness of the community certificate.

5. Subsequently, the District Collector conducted enquiry and passed a fresh order dated 29 January 1997 holding that the applicant does not belong to Konda Kappu community. In short, the competent authority held that the applicant was not a Scheduled Tribe. The Community Certificate was accordingly cancelled. The order was challenged by the first respondent in W.P.No.2137 of 2007. The High Court granted interim stay, by order dated 17 February 1997. Subsequently, the first respondent made a representation for promotion to the post of Senior Scientific Assistant. The request was negatived. The first respondent, therefore filed O.A.No.476 of 1998. The Tribunal, while dismissing the original application observed that her continuance itself was made subject to the enquiry to be conducted by the Collector and as such, she is not entitled for further promotion.

6. The writ petition filed by the first respondent in W.P.No.2137 of 1997 challenging the cancellation of her community certificate was allowed by the High Court by order dated 6 December 2001. The High Court directed the authorities to pass a fresh order after furnishing copies of the enquiry report to the first respondent.

7. While the competent authority was in the process of verification of community certificate, the first respondent submitted an application before the first petitioner on 12 August 2011 requesting voluntary retirement. The application was rejected by the first petitioner by order dated 1 November 2011. The order was challenged before the Tribunal in O.A.No.1116 of

2012. The Tribunal allowed the original application by order dated 18 July 2013. Feeling aggrieved, the petitioners are before us.

Submissions

8. The learned Senior Panel Counsel for the Central Government, by placing reliance on series of orders, including the appointment order of the first respondent submitted that it is not a case of cancellation of Community Certificate after a considerable period. According to the learned counsel, even in the appointment order, dated 5 April 1991, it was made clear that appointment was provisional and subject to the production of Community Certificate in the prescribed format. According to the learned counsel, there was a clear indication that in case, the Community Certificate was not produced from the competent authority in the prescribed format, her appointment would be cancelled. According to the learned counsel, the first respondent continued in employment on the strength of the interim order granted by the High Court. Thereafter, she succeeded in dragging the scrutiny proceedings on one ground or the other. Finally, when it was found that the scrutiny proceeded in the right direction and an adverse order would be passed, she submitted application for voluntary retirement. The Tribunal allowed the application without understanding the background facts. According to the learned Counsel, the entire reasoning given by the Tribunal would show that the earlier proceedings were not taken into account while allowing the original application. The learned counsel further contended that the order passed by the Tribunal would give a wrong signal that employees, who have secured employment by producing false Scheduled Tribe certificates would be in a position to escape from the clutches of law and scrutiny proceedings by taking voluntary retirement during the final stage of the Community Certificate verification proceedings.

9. The learned Senior Counsel for the first respondent while justifying the order passed by the Tribunal contended that the scrutiny proceedings are still pending and as such, it cannot be said that the Community Certificate of the first respondent was cancelled. According to the learned Senior Counsel, even after permitting the first respondent to retire voluntarily, it would be possible for the competent authority to consider the genuineness of the Community Certificate. The learned Senior Counsel further contended that similar orders were passed by this Court earlier in matters relating to Community Certificates and as such, the first respondent should be permitted to retire voluntarily.

Discussion

10. This is a classic case of appointment of a person in public service against a post earmarked for Scheduled Tribe, continuing in employment for years together without producing the Community Certificate in the prescribed format and even after cancellation of the certificate issued by the incompetent authority, taking promotion and continuing in service by dragging the scrutiny proceedings.

11. The order appointing the first respondent contained a clear indication that the appointment was provisional and subject to furnishing fresh Community Certificate in the prescribed format from the competent authority and its verification through proper channel. The appointing authority in its order dated 5 April 1991 made it very clear that in case it is found that the Community Certificate is false or the applicant does not belong to Scheduled tribe, her services will be terminated forthwith without assigning reasons. The first respondent accepted the employment with the said condition. However, the fact remains that she failed to produce the Community Certificate in the prescribed format. The Community Certificate produced by the first respondent is found in Page 2 of the typed set of papers. It was issued by the Village Munsif and Magistrate, Tirunelveli Taluk. There is nothing on record to show the date on which the certificate was issued. The certificate was attested by a Government servant on 9 April 1991. Even in 1991, Community Certificate has to be obtained from the competent Revenue authority and in the prescribed format. It is therefore not in dispute that the certificate was not issued by the competent authority and it was also not in the prescribed form.

12. Since there was no follow up action taken by the first respondent to produce the community certificate, as indicated in the appointment order dated 5 April 1991, the appointing authority forwarded the certificate produced by her initially for verification. The collector conducted enquiry and found that the Community Certificate was not genuine. The certificate was thereafter cancelled. The order passed by the Collector was set aside by the High Court. Since the Community Certificate was cancelled, the first respondent was terminated from service. The said order was set aside by the Central Administrative Tribunal in O.A.No.322 of 1995. The Tribunal allowed the application on account of the order passed by the High Court dated 14 February 1995 in W.P.No.2400 of 1993, setting aside the order passed by the Collector and directing fresh enquiry. The first respondent continued in employment pursuant to the order in O.A.No.322 of 1995. Even in the said order, the Tribunal made it very clear that her continuation would be subject to the result of the

proceedings initiated by the competent authority to verify her community status.

13. The District Collector pursuant to the order in W.P.No.2400 of 1993 conducted fresh enquiry and once again arrived at a conclusion that the first respondent does not belong to Scheduled Tribe community. The order passed by the Collector dated 29 January 1997 was challenged in W.P.No.2137 of 1997. The learned single Judge set aside the order cancelling the community certificate. In view of the interim stay granted by the High Court, she was permitted to continue in employment. The High Court finally allowed the writ petition in W.P.No.2137 of 1997 and granted liberty to the concerned authorities to take further action in accordance with law.

14. It is a matter of record that pursuant to the liberty granted by the High Court in W.P.No.2137 of 1997, the Collector and the State Level Committee initiated proceedings for verification of the genuineness of the Community Certificate produced by the first respondent.

15. The first respondent was given sufficient opportunity by the District Collector during the course of enquiry and the State Level Scrutiny Committee during the scrutiny proceedings. The verification proceedings are now in the final stage.

16. The Deputy Secretary to Government, Adi Dravidar and Tribal Welfare Department, vide order dated 23 December 2013 called upon the District Collector, Tirunelveli, to furnish entire papers for taking a decision by the State Level Scrutiny Committee. It was only at that point of time, the first respondent submitted application for voluntary retirement. The appointing authority rejected the application on account of the pendency of proceedings for scrutiny of community Certificate.

17. The first respondent challenged the rejection order before the Central Administrative Tribunal in O.A.No.1116 of 0212. The Tribunal very casually made an observation that the certificate was cancelled after 20 years. The observation made by the Tribunal is incorrect for the reason that the community certificate was cancelled on 22 January 1993 itself. The Tribunal appears to have not verified the records produced by the petitioners to show that the Community Certificate was cancelled way back on 22 January 1993. The Tribunal omitted to consider the material fact that the first respondent continued in employment only on the strength of the interim order passed by the High Court and subsequently by the Tribunal. The first respondent was not eager to dispose of the verification

proceedings. It is not the case of the first respondent that she obtained a Community Certificate from the competent authority and it was cancelled without giving reasons. The order passed by the District Collector, dated 22 January 1993 shows that the certificate was not genuine. In any case, it is for the State Level Scrutiny Committee to decide as to whether the first respondent belongs to Scheduled Tribe Community. The first respondent is not prepared to wait till a decision is taken by the statutory committee. The first respondent adopted a short cut method to avoid the enquiry by submitting application for voluntary retirement. The Tribunal proceeded as if the first respondent is entitled to an order accepting her voluntary retirement notwithstanding the currency of the proceedings pending before the competent authority.

18. The first respondent appears to be under the impression that the moment she retire from service, the entire proceedings before the statutory authority would come to an end and in which case, the very same certificate could be relied on by her children and grand-children to claim Scheduled Tribe status. This case is really an eye opener as to how scrutiny proceedings are continued for years together and ultimately, the employee is permitted to retire, notwithstanding the fact that he or she got employment against the quota reserved for Scheduled Caste/Scheduled Tribe, by producing false Community Certificate.

19. In a matter of this nature, the Tribunal should be sensitive. In case the applicant before the Tribunal is a Scheduled Tribe candidate, her interest should be protected. Similarly, in the event it is found that she does not belong to that community, the benefits derived should be taken back at the earliest. The benefits of various kind are given for uplifting the downtrodden community. The benefits should not be allowed to be grabbed by people, who are from other communities. This fundamental aspect was not considered by the Tribunal, while allowing the application filed by the first respondent. We are therefore of the view that the petitioners must succeed.

20. The order dated 18 July 2013 in O.A.No.1116 of 2012 is set aside. The original application is dismissed. We direct the State Level Scrutiny Committee to dispose of the proceedings initiated to verify the community status of the first respondent as expeditiously as possible, and in any case within a period of eight weeks from the date of receipt of a copy of this order.

21. In the up shot, we allow the writ petition. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

To

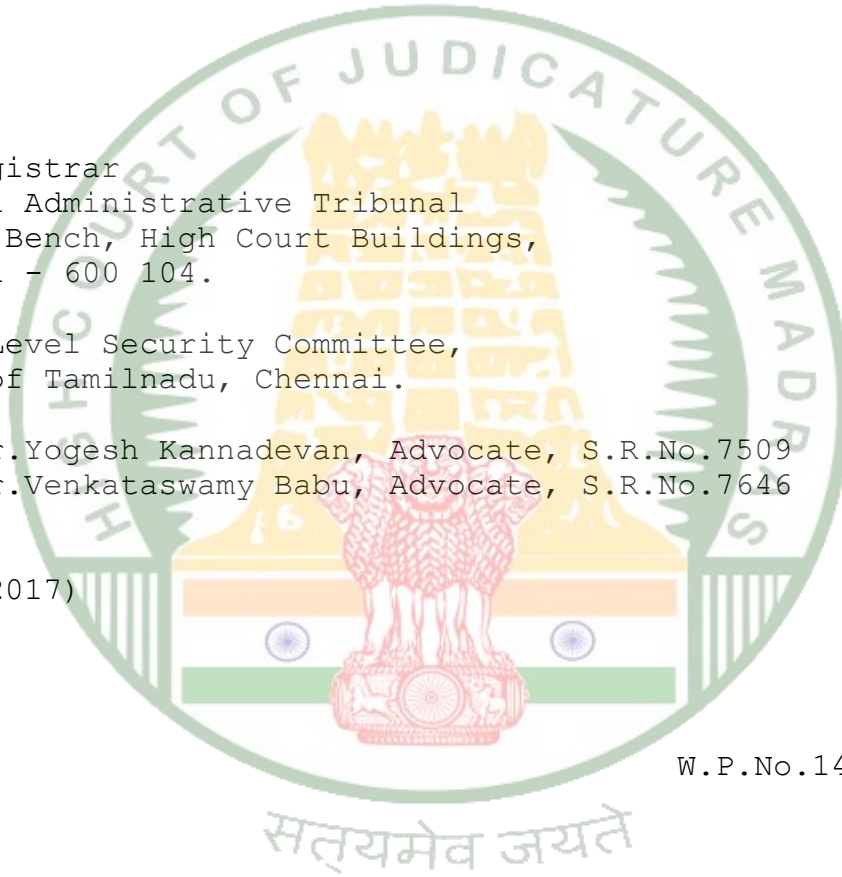
1. The Registrar
Central Administrative Tribunal
Madras Bench, High Court Buildings,
Chennai - 600 104.

2. State Level Security Committee,
State of Tamilnadu, Chennai.

+1cc to Mr.Yogesh Kannadevan, Advocate, S.R.No.7509

+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No.7646

NR(CO)
RS(24/02/2017)



Order in

W.P.No.14976 of 2014

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