IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.15666 of 2014
and
M.P.Nos.1 to 3 of 2014

S.Ulaganathan ... Petitioner

vs.

1.State of Tamil Nadu
Rep. by its Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.State Bank of India,
Rep. by its Assistant General Manager,
15, Rue Suffren,
Pondicherry - 605 001.

3.Deputy General Manager,
State Bank of India,
Chennai Local Head Office,
College Lane, Nungambakkam,
Chennai - 600 006.

4.The Secretary to Government,
State Level Scrutiny Committee,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Chennai - 600 009. ... Respondents

(R4 Suo Motu impleaded as per order dated 19.06.2014 by this Court in WP.No.15666 of 2014)

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent in Proceedings No.6315/CV.III/2014-1 dated 08.05.2014 and the consequential order of the 2nd Respondent in Proceedings No.AGM/BR/37 dated 19.05.2014, quash the same and consequently

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direct the 2nd Respondent to settle all the retirement benefits of the petitioner.

For Petitioner : Mr.Vijayanarayan SC for Mr.R.Parthiban

For Respondents : Mr.K.Dhananjayan (for R1 and R4) Special Government Pleader

Mr.P.D.Audikesavalu (for R2 and R3)

ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

This writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent in Proceedings No.6315/CV.III/2014-1 dated 08.05.2014 and the consequential order of the 2nd Respondent in Proceedings No.AGM/BR/37 dated 19.05.2014, quash the same and consequently direct the 2nd Respondent to settle all the retirement benefits of the petitioner.

2.The case of the writ petitioner is that he has attained the Superannuation from the State Bank of India and retired as Deputy Manager (Scale II) on 31.05.2014 and at that time, he was worked at Pondicherry. Since, the petitioner was belongs to Kondareddy Community and based on the community certificate issued by the Tahsildar, Thuraiyur Taluk, Trichy District on 24.08.1977, the petitioner was appointed to the Bank on 17.01.1979 and his appointment was confirmed on 17.06.1979.

3.The writ petitioner also come forward by saying that in the year 1992, the respondent/bank has referred the community certificate to the District Collector, Trichy, for verification and later on the Sub-Collector, Trichy has conducted an enquiry and submitted a report on 05.02.1992, but the writ petitioner states that the said enquiry was conducted behind back of the petitioner. On filing the report, a show cause notice was issued to the petitioner for his personal appearance and enquiry on 05.12.1994 by the Revenue Divisional Officer, Musiri. On receipt of the said show cause notice, this petitioner was appeared and informed the Revenue Divisional Officer, Musiri that the said alleged enquiry was conducted behind back of the petitioner and on 05.12.1994, the District Collector, Trichy has directed the Sub-Collector, Musiri, to conduct a fresh enquiry, but there was no further enquiry was conducted.

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4.The writ petitioner also states that the State Bank of India, by his letter dated 15.11.1995 informed the petitioner that the petitioner was secured the said appointment in the respondent/bank by producing a false community certificate. Therefore, he was directed to submit his explanation within 7 days from the date of receipt of the above said letter. Pursuant to that, on 29.11.1995, he sought for the enquiry report in order to furnishing his reply for the letter dated 15.11.1995, but the respondent/State Bank of India by his letter dated 22.12.1995 informed the petitioner that there was no mention of any report in the Charge Sheet dated 15.11.1995. Therefore, it is needless for producing all the enquiry report and the petitioner was directed to submit his defence statement.

5.Though the petitioner has questioned the above issuance of charge sheet by his letter dated 12.01.1996 stating that in the very beginning of the said Charge Sheet, it is stated that "it has been reported against him", therefore, he questioned the respondent/bank that unless there is a report either in oral or written, the said allegations would not be mentioned in the Charge Sheet, but, without prejudice the above statement, the petitioner also submitted his explanation for the charge memo. In the explanation, the petitioner stated that the community certificate produced at the time of securing the appointment was a valid one, since, it was issued by the Competent Authority, after conducting the verification. Till the said community certificate issued on 24.08.1977, is set aside in accordance with law and there was no question of any disciplinary proceedings against this petitioner by the respondent/bank. Though the said explanation was given by the petitioner on 12.01.1996, but after 2 years, there was no further proceedings from the employer/State Bank of India. On the other hand, the 1st respondent/Secretary to Government, Adi-Dravidar and Tribal Welfare Department, Government of Tamil Nadu, Secretariat, Chennai-600 009 has issued a letter as follows:

> "VERIFICATION OF COMMUNITY STATUS
>
> You have represented to the Bank that you belong to Konda Reddy Community in your application for appointment in the Bank under SC/ST category. Accordingly, you were appointed in the Bank on 17.1.79 based on the community certificate produced by you.
>
> 2.You have not so far produced the community certificate duty authenticated by the District Collector who is the competent authority for certifying that you belong to SC/ST community.
>
> 3.We, therefore, call upon you to produce a certificate from the District Collector duly authenticating that you belong to SC/ST community as claimed by you at the time of appointment in the Bank within 30 Days from the date of this notice failing

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> which we will be constrianed to take suitable administrative action in matter."

6.On receipt of the above said letter dated 03.01.1998, this petitioner has given a reply stating that the community certificate produced by him is a valid and authenticated community certificate. Therefore, in the insistence on the part of the Management to produce a fresh community certificate from the District Collector is in violation of G.O.Ms.No.2137 dated 19.11.1989 as well as the judgments of this Court and the Hon'ble Supreme Court.

7.The writ petitioner also states that in fact he has enclosed the judgments passed by this Court and the Hon'ble Apex Court along with the said reply to the first respondent. Thereafter, the respondent/bank has issued a proceedings dated 20.02.1998 initiating the disciplinary proceedings in support of the charge memo dated 15.11.1995 and the said proceedings was received by the petitioner on 14.03.1998. Challenging the said orders dated 03.01.1998 issued by the first respondent and 20.02.1998 issued by the respondent/bank by way of the writ petition in W.P.Nos.4618 and 4619 of 2008 and both the writ petitions were allowed on 12.11.2002 by passing the orders as follows:-

> "In such view of the matter, the order passed regarding initiation of departmental proceedings or enquiry by the employer is to be quashed. It would be open to the employer to raise the question relating to validity of the community certificate before the appropriate authority. It goes without saying that until the community certificate is cancelled in accordance with law by the appropriate authority, such certificate has to be given effect to. If a reference is made to the appropriate authority, all efforts should be by the appropriate authority to dispose of the matter as early as possible in accordance with law."

8.The writ petitioner also come forward by saying that after the above writ petition ordered more than 12 years, the respondent particularly the employer/respondent/bank has not taken any action till his retirement on 31.05.2014. But, just prior to retirement of the petitioner, an enquiry notice has been issued by the respondent/bank on 08.05.2014 directing the petitioner to appear on 14.05.2014 with all available documents. On receipt of the said enquiry notice, this petitioner has sent reply to the respondent/bank requesting them, due to his treatment from the Orthopedic Surgeon, to postpone the said enquiry in the second week of June 2014. But, the 2nd respondent by his letter dated 19.05.2014 stating that the terminal

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benefits of the petitioner would be kept in abeyance till the enquiry be completed by the State Level Scrutiny Committee, though the petitioner is entitled to terminal benefits such as pension, gratuity and bank's contribution towards provident fund. Aggrieved against the said order dated 19.05.2014, the petitioner has approached this Court and filed the writ petition with a prayer calling for the records of the 1st Respondent in Proceedings No.6315/CV.III/2014-1 dated 08.05.2014 and the consequential order of the 2nd Respondent in Proceedings No.AGM/BR/37 dated 19.05.2014 and quashing the same and consequently direct the 2nd Respondent to settle all the retirement benefits of the petitioner.

9.The writ petitioner has challenged the above two orders dated 08.05.2014 and 19.05.2014 on various grounds that an enquiry was conducted by the respondent/bank, after a delay of 35 years and 5 months and just 15 days prior to retirement from service, which is grossly illegal and in violation of Articles 14 and 16 of the Constitution of India.

10.The writ petitioner also raised a ground stating that the respondent/bank initiating the action under Rule 19(3) of the State Bank of India Officer's Service Rules, but the said rule does not have any application to the facts and circumstances of the case, since no disciplinary proceedings have been initiated against the petitioner under the relevant service rules. Therefore, the writ petitioner has prayed this Court to quash the above two orders dated 08.05.2014 and 19.05.2014 and consequently directing the respondent/bank to settle all the retirement benefits to the petitioner.

11.Counter affidavit has been filed by the respondents 2 and 3 and denied all the allegations set out in the affidavit.

12.The respondents stating that the petitioner was appointed in the services of State Bank of India on 17.01.1979 against a vacancy reserved for Scheduled Tribes as he had claimed to be belonging to the 'Kondareddis' caste on the basis of a community certificate dated 20.06.1977 issued by the Tahsildar, Thuraiyur. In terms of the extant instructions in vogue, the community certificates of the persons appointed against vacancies exclusively reserved for Scheduled Caste and Scheduled Tribes candidates have to be verified by the concerned revenue authorities. The Government of India, Ministry of Finance, Department of Economic Affairs on 23.03.1990 had also directed all the public sector banks/financial institutions to get the caste certificates of the existing employees, belonging to various scheduled tribes, verified. This requirement has been restated by the Hon'ble Supreme Court of India in the procedure prescribed for the

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issuance and verification of caste certificates in the decision in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94. Accordingly, the aforesaid Scheduled Tribe Community Certificate of the petitioner was sent for verification to the District Collector, Trichy, who had by his letter No.Rc.W.25.129491/89 dated 15.02.1994 informed that it has been reported by the Revenue Divisional Officer, Musiri, that the petitioner does not belongs to Kondareddi (ST) Community and he actually belongs to 'Reddiar' which is a forward community and that his original community certificate has been sent for cancellation.

13.The respondent also come forward by saying that on the basis of the above said communication dated 15.02.1994 received from the District Collector, Trichy, the respondent/bank has proposed to initiate the disciplinary proceedings against the petitioner for submission of false community certificate at the time of his appointment in the services of State Bank of India and an explanation in this regard was called from the petitioner vide letter dated 15.11.1995. The petitioner was required to produce a certificate from the District Collector duly authenticating that he belonged to ST community as claimed by him at the time of his appointment in the Bank within 30 days from the date of that notice, failing which suitable administrative action to be taken in the matter.

14.The respondent/bank also states that the disciplinary proceedings dated 20.02.1998 were initiated against the petitioner in support of the Charge memorandum dated 15.11.1995. The petitioner has filed the Writ Petitions in W.P.Nos.4618 and 4619 of 1998, challenging the abovesaid disciplinary proceedings initiated against him, this Court by orders dated 12.11.2002 disposed the said writ petitions holding that validity of community certificate issued by the Tahsildar, empowered to issue such certificate should not be decided by the disciplinary authority and has to be decided by the appropriate authority and on that view of the matter, the orders passed regarding initiation of disciplinary proceedings by the employer were quashed with an observation that it would be open to the employer to raise the question relating to validity of community certificate of the petitioner before the appropriate authority and if a reference is made to the appropriate authority, all efforts should be made to dispose of the matter as early as possible in accordance with law. Pursuant to the orders passed by this Court in the above writ petitions, the respondent/bank namely the State Bank of India, Zonal Office, Personnel Section, Madurai, as an employer vide letter dated 24.11.2003 requesting the District Collector, Trichy, to pass appropriate orders an enquiry regarding verification of the Scheduled Tribe Community Certificate of the Petitioner in order to enable the employer to

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determine the validity of the initial appointment of the petitioner in the services of State Bank of India, which was followed by reminders dated 21.05.2004 and 14.10.2004.

15.The respondent also states that in the meanwhile, on the suggestions of the Division Bench of this Court, the Government of Tamil Nadu had re-constituted the District Level Vigilance Committees vide G.O.Ms.No.111 dated 06.07.2005 whereby an Anthropologist was co-opted as the third member and the Division Bench of this Court in the order dated 22.07.2005 in W.A.No.1645 of 2011 etc., batch has specifically recorded the same to be in accordance with the law laid down by the Supreme Court of India in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94. Pursuance to the above, a reference was made by the Deputy General Manager, State Bank of India, Zonal Office, Madurai, by his letter dated 31.12.2005 to the three member District Vigilance Committee, Coimbatore which was re-constituted by the Government of Tamil Nadu vide G.O.Ms.No.111 dated 06.07.2005, for expeditious verification of the community status of the petitioner to enable the respondent bank to proceed in determination of the employment of the petitioner, which was followed by a periodical reminders on 10.07.2006, 12.10.2007, 13.02.2008, 11.05.2009, 19.12.2010, 07.04.2011, 28.07.2011, 28.10.2011, 20.11.2012, 13.02.2013, 19.07.2013, 03.09.2013 and 20.03.2014.

16.The respondent also states that as per G.O.(2D)No.108, dated 12.09.2007, the Government of Tamil Nadu, Adi Dravidar and Tribal Welfare (CV-1) Department, the verification of Scheduled Tribe Community Certificates have to be made by the State Level Scrutiny Committee constituted in accordance with the directions of the Supreme Court of India in the decision in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94. Therefore, the decision regarding the Scheduled Tribe communal status of the Petitioner is awaited from the State Level Scrutiny Committee for determining the validity of the initial appointment of the petitioner in the services of State Bank of India and reminder dated 17.04.2014 has been sent to the said Committee in this regard by the respondent/bank. Though the petitioner was required by the State Level Scrutiny Committee vide letter No.6315/CVIII/2014-1, dated 08.05.2014 to attend the enquiry on 14.05.2014, he absented himself on that day and had requested to postpone the enquiry to another date citing medical grounds as per the information received vide letter dated 20.05.2014 from the Secretary to Government, Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu, Chennai.

17.Due to the attaining the age of superanuation, the petitioner was relieved from service on 31.05.2014, but the

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status of the petitioner in Scheduled Tribe Community is still under verification and to be confirmed by the appropriate authority namely, the State Level Scrutiny Committee. Therefore, the Assistant General Manager/respondent bank by letter dated 19.05.2014 informed the petitioner that if the verification of his community certificate status by the appropriate authority is not completed before 31.05.2014, the payment of his terminal benefits will be kept in abeyance and he was requested to arrange for verification and confirmation of the same immediately. But, the petitioner is not co-operating to complete the verification of his Scheduled Tribe Community status in order to ascertain the validity of his initial appointment in the services of State Bank of India, therefore, the employee's contribution of Rs.9,96,769/- to provident fund alone has been paid to him on 02.06.2014 and the payment of all other terminal benefits is entirely dependent upon the outcome of the community certifiate verification proceedings.

18.The respondent also states that as per the interim measure, the gratuity of Rs.10,00,000/- and employer's contribution of Rs.10,29,524/- to provident fund have been invested in interest fetching fixed deposits bearing Account Nos.33869806031 and 3386986531 respectively and the monthly pension is being credited into a recuring deposit bearing Account No.33973442438 for time being. This writ petition filed by the petitioner challenging the order dated 08.05.2014 and 14.05.2014 and the respondent/bank in his letter dated 19.05.2014 informing the petitioner that the payment of his terminal benefits would be kept in abeyance till the completion of verification of his Schedule Tribe Community Certificate.

19.The respondent/bank also stated in their counter that since the petitioner had been appointed in the services of State Bank of India in a vacancy exclusively reserved for Scheduled Tribe persons only on the basis of the Scheduled Tribe community certificate, which is now under verification, the employer has an implicit public duty cast under Articles 14 and 16(1) of the Constitution and also as a necessary corollary of Article 16(4) of the Constitution to ensure in larger public interest that the beneficial provisions of reservation in public employment are not allowed to be indefinitely enjoyed by an ineligible person on the basis of a community certificate wrongfully obtained by him and the public funds of the State are not misused by way of payment of salaries and extending other perks to such an ineligible person. The respondent also cited the judgment rendered in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94 as follows:

> "As soon as the finding is recorded by the Scrutiny Committee holding that the Certificate obtained was false, on its cancellation and

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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."

20.The respondent also states that another judgment rendered by the Hon'ble Supreme Court of India in the case of State of Punjab v. Jagdip Singh reported in AIR 1964 SC 521, a Constitution Bench of the Hon'ble Supreme Court 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.

21.The respondent also cited various judgments rendered by the Hon'ble Supreme Court of India in the case R.Vishwantha Pillai v. State of Kerala reported in AIR 2004 SC 1469 and Director of Tribal Welfare, Government of A.P. v. Laveti Giri reported in AIR 1995 SC 1506, since the Hon'ble Supreme Court held that the burden of proof of social status is always on the person who propounds it to seek socio-economic advantages and it is no part of the duty of the State to disprove or otherwise. The respondent also states that this respondent/bank has duly referred the Scheduled Tribe Community certificate of the petitioner submitted at the time of his initial appointment as per extant instructions for verification to the Revenue Authorities even prior to the year 1994 and the delay caused in completing the verification of the Scheduled Tribe Community Certificate of the petitioner have been evidently for reasons beyond the control of the employer, it cannot be faulted or held responsible for the same.

22.The respondent also states that the Hon'ble Supreme Court in a case of Regional Manager, Central Bank of India v. Madhulika Guru Prasad Dahir reported in AIR 2008 SC 3266 the Hon'ble Supreme Court has held that the caste certificate was referred to the Scrutiny Committee for verification after ten years of an employee joining 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. The respondent also states that the withheld

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terminal benefits of the petitioner would be released if the State Level Caste Scrutiny Committee passes final order confirming that the petitioner belongs to Scheduled Tribe category, which is in consonance with the dictum laid down by the Hon'ble Division bench of this Court in the judgment in W.P.No.23638 of 2008 dated 23.07.2009 in the case of Usha Rani Sukumar v. State Bank of India and the another judgment in W.P.No.17184 of 2011 dated 29.09.2011 in V.Balasubramanian v. State Bank of India.

23.The respondent also states that the interest of the petitioner have also been adequately protected by investing the eligible amounts of terminal benefits that have fallen due in interest fetching deposits in the interregnum has already explained earlier. Therefore, the orders passed by the respondent, there is no infirmity or arbitrariness in the decision making process of the respondents warranting interference of this Court in the exercise of powers of judicial review under Article 226 of the Constitution of India and therefore, the respondent prays this Court for dismissal of the writ petition.

24.The respondents 2 and 3 also filed an additional counter affidavit and states that as per the judgment rendered by the Hon'ble Supreme Court of India in the case of Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94 that the Government of India, Ministry of Finance, Department of Economic Affairs on 23.03.1990 had directed all the public sector banks/ financial institutions to get the caste certificates of the existing employees, belonging to various scheduled tribes for verification.

25.The employees of the Bank can be broadly classified under two categories as follows:

> “(i) Award Staff, who are initially appointed at the Module (Zonal / Regional) Level of the Bank and may be later promoted to the category of Officers; and
>
> (ii)Officers, who are directly appointed at the Circle (Local Head Office) Level of the Bank.”

The verification of the Scheduled Tribe certificates of the employees, who had been selected under the posts reserved for Scheduled Tribe candidates, are being monitored at the Human Resources Department in the Local Head Office of the Bank in Chennai Circle (Tamil Nadu), whereas the sanctioning of the terminal benefits of the employees is done at the Module (Zonal/Regional) Level where the respective employees are working at the time of attaining the age of superannuation till 2012, when the authorities sanctioning terminal benefits in the Module Level, appear to have not taken note of the pendency of the caste verification proceedings against them and they had

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proceeded to inadvertently disburse the same to those employees.

26.The respondent also states that the erstwhile employee of the State Bank of India, one Usha Rani Sukumar, who had wanted to voluntarily retire from service that request was not permitted as the verification of her Scheduled Tribe community certificate was then pending before the State Level Scrutiny Committee. Aggrieved thereby, she had filed the writ petition in W.P.No.23638 of 2008 before this Court which came to be decided by a Division Bench of this Court on 23.07.2009 holding that her application for voluntary retirement would be accepted by the Bank with payment of Employees' Contribution Provident Fund alone, but all other amounts that may be payable to her will be invested in a Fixed Deposit till the State Level Scrutiny Committee gives its decision on her certificate and the amounts would be disbursed only if the certificate is ultimately found to be true.

27.The respondent/bank also states that by citing another employee viz. V.Balasubramaniam attained the age of superannuation on 31.03.2011, he was relieved from service and paid the Employees Contribution Provident Fund alone and all other amounts payable to him were invested in a Fixed Deposit awaiting the decision of the State Level Scrutiny Committee regarding the validity of his Scheduled Tribe Community Certificate, on the basis of which he had been initially appointed in service and the same was challenged before this Court in W.P.No.17184 of 2011. The Hon'ble Division Bench of this Court by order dated 29.09.2011, after elaborately dealing with that issue which frequently arises. The respondent also given the terminal benefits were withheld for the above said reason, since the certificate verification is pending before the State Level Scrutiny Committee, though the petitioner was relieved from service on 31.05.2011 on attaining the age of superannuation, but he was paid only the employee's contribution to provident fund of Rs.9,96,769/- alone and other amounts were deposited in the bank as fixed deposit. Therefore, the respondents were pryaed this Court for dismissal of the writ petition.

28.A counter affidavit has been filed by the first respondent stating that the first respondent admitted that the community certificate dated 20.10.1977 issued by the Tahsildar, Thuraiyur, indicating that he belonged to Kondareddies community, classified under Scheduled Tribes quota. The Community Certificate did not have any Serial Number and the same was sent for verification of genuineness. On verifying the genuineness of the Community certificate, the District Collector, Trichy had intimated in his letter No.R.C.No.25/129491/89 dated 15.02.1994 that the writ petitioner

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does not belong to Kondareddis Scheduled Tribe community. But, he belonged to Hindu Reddiar community which is not coming under the category of Schedule Tribe community. After intervention of this Court, a fresh enquiry was conducted by the Chairman, District Vigilance Committee and after due process of enquiry, passed final order stating that he does not belong to Kondareddy vide letter No.6468 dated 28.12.1999.

29.The first respondent also states that on the strength of the order of the District Collector, Tiruchirappalli, the Bank initiated Disciplinary Proceeding against the petitioner. In the meantime, the petitioner filed a writ petition before this Court in W.P.No.4619 of 1998 and this Court passed an order dated 12.11.2002 as follows:

> "It would be open to the employer to raise the question relating to validity of Community Certificate before the appropriate authority. It goes without saying that until the Community Certificate is cancelled in accordance with law by the appropriate authority. Such Certificate has to be given effect to. If a reference is made to the appropriate authority, all efforts made by the appropriate authority to dispose of the matter as early as possible in accordance with law."

30.Pursuant to the above judgment passed on 12.11.2002, the petitioner's employer i.e. the Zonal Office, Madurai and Tiruchirapalli have been continuously taking up the matter for verification of genuineness of the Community Certificate of the petitioner with the District Collector and the Chairman, District Level Vigilance Committee, Tiruchirappalli, since the matter is pending for a long time and the petitioner is due to retirement on superannuation on 31.05.2014, the matter was referred to State Level Scrutiny Committee by the employer i.e. State Bank of India, Chennai.

31.The State Level Scrutiny Committee took up this case for enquiry of Community status of the petitioner. Accordingly, the District Collector was requested to depute the concerned official along with the original records relating to this case to the enquiry meeting of the State Level Scrutiny Committee held on 14.05.2014. The petitioner was also instructed to appear before the State Level Scrutiny Committee for enquiry on 14.05.2014 along with the following original documents/records. But he was absented himself on 14.05.2014. In fact, the State Level Scrutiny Committee has directed the petitioner to produce the following certificates:

i.Original of the Elementary/Primary School Admission Register/Record Sheet of father or mother (if educated) of the individual.

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ii.Secondary School Leaving Certificate of individual and their parents (if educated)

iii.School Transfer Certificate of individual and their parents (if educated)

iv.Community Certificate issued to the individual by the Revenue Authority.

v.First page of Service Register of father/mother of the individual if employed/retired.

vi.Community Certificate issued to father/mother of the individual.

vii.Sale deed if any executed prior to the year 1950 wherein community is expressly mentioned.

viii.Any record/evidence to defend individual's claim of the community status.

ix.Extract of Birth Register of individual's Parents.

32.Further, the petitioner was also instructed to appear before the Committee for enquiry on 18.08.2014, but at that time also he was absent. Instead of appearing before the Committee the petitioner has filed the present writ petition, challenging the enquiry notice of the State Level Scrutiny Committee Letter No.6315/CVIII/2014 dated 08.05.2014.

33.The 1st respondent also states that the State Level Scrutiny Committee has been constituted as per the direction of the Hon'ble Supreme Court held in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94 for verification of genuineness of Scheduled Tribe Community Certificate referred by the Employer/Recruiting Agency. As per the procedure and guidelines formulated by the Hon'ble Apex Court, on receipt of the reference from employer/Recruiting Agency and after reeipt of the local enquiry in the residence and original place from which the candidates originally hailed from along with original issuance record, the State Level Scrutiny Committee called for personal enquiry along with the original documents.

34.When the notice was issued to the petitioner for the appearance that the said persons has to appear and produce the documents and the Committee after considering the said documents, if it feels that the social status is not genuine or doubtful and it may be referred to the concerned Deputy Superintendent of Police, Scheduled Caste/Scheduled Tribe Vigilance Cell constituted as per G.O.Ms.No.106 dated 15.10.2012. The 1st respondent also states that the reference to the Vigilance cell it is not automatic but only if the case is doubtful and this is done as per the amendment letter No.18922/CV1/2012 dated 11.12.2012 to the G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department dated 15.10.2012. The 1st respondent also states that instead of appearing before the

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State Level Scrutiny Committee, the petitioner has filed this writ petition challenging the enquiry notice calling him to appear before the State Level Scrutiny Committee. But, the petitioner himself wants to drag on the proceedings, since it is already the case of the petitioner is pending from 1994 onwards. Though the writ petitioner was called for personal enquiry on 14.05.2014 and 18.08.2014, all those days, the petitioner was not attending the enquiry, but he was absented himself. In stead of appearing before the Committee, he has filed the present writ petition, which is not at all maintainable and the 1st respondent prayed for dismissal of the writ petition.

35.We heard Mr.R.Parthiban, learned counsel appearing for the petitioner, Mr.Dhanachezhian, learned Additional Government Pleader appearing for the respondents 1 and 4 and Mr.P.D.Audikesavalu, learned counsel appearing for the respondents 2 and 3.

36.It is the case of the petitioner is that he belongs to the Kondareddy Community, which was classified as Scheduled Tribe and the certificate was issued by the Tahsildar, Thuraiyur, Trichy District on 24.08.1977. When the petitioner was entered into service in the respondent/State Bank of India on 17.01.1979 and later on the said appointment was confirmed on 17.06.1979, he has produced the said certificate and appointed in the vacancy exclsively reserved for the Scheduled Tribe only on the basis of the Scheduled Tribune community certificate.

37.Originally, an enquiry was conducted and report was submitted on 05.02.1992 and thereafter on the request made by the petitioner, the District Collector, Trichy by a letter dated 15.12.1994 directed for fresh enquiry by the Sub Collector, Musiri, Trichy District. Accordingly, the detailed enquiry was conducted.

38.Based on the report given by Revenue Divisional Officer, Musiri, Trichy District, the District Collector in his letter in RC.No.25/129491/89 dated 15.02.1994 states that the petitioner not belongs to Kondareddies Scheduled Tribe community, but he actually belongs to Reddiar community, which is a forward community and that his original community certificate has been sent for cancellation.

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39.Pursuant to the above letter dated 15.02.1994, the respondent/bank also initiated disciplinary action against the petitioner and by issuing charge memo dated 15.11.1995, the respondent/bank also sought for explanation in this regard from the petitioner. The respondent also states in the said charge memo dated 15.11.1995 directed the petitioner to produce the community certificate issued by the District Collector, within a period of 30 days. But, after the reply obtained from the petitioner, the respondent/bank has initiated disciplinary proceedings dated 20.02.1998.

40.The charge memo dated 15.11.1995 and the disciplinary proceedings dated 20.02.1998 was challenged by the writ petitioner by way of filing the writ petitions in W.P.Nos.4618 and 4619 of 1998 before this Court. While the said writ petitions were allowed by this Court holding that the validity of community certificate issued by the authority empowered to issue such certificates should be decided by the disciplinary authority namely, the State Level Scrutiny Committee as per the judgment rendered by the Hon'ble Supreme Court in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94.

41.After the order passed by this Court in the above writ petitions, the respondent/bank has sent a request to the District Collector, Trichy on 24.11.2003, but no action was taken. Hence, the respondent/bank has sent a reminders on 21.05.2004 and 14.10.2004.

42.In fact, as per the suggestions of the Hon'ble Division Bench of this Court, the Government of Tamilnadu has re-constituted the District Level Vigilance Committee vide G.O.Ms.No.111 dated 06.07.2005 whereby an Anthropologist was co-opted as the third member and the Hon'ble Division Bench has specifically record that the State Level Scrutiny Committee aone having power to pass such orders as per the orders of the Hon'ble Supreme Court held in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94.

43.After the request made by the respondent/bank on 24.11.2003 for expeditious verification of the community status of the petitioner to enable the respondent/bank to proceed in determnation of the employment of the petitioner and periodic reminders were sent by the respondent/bank on 10.07.2006, 12.10.2007, 13.02.2008, 11.05.2009, 19.12.2010, 07.04.2011, 28.07.2011, 28.10.2011, 20.11.2012, 13.02.2013, 19.07.2013, 03.09.2013 and 20.03.2014. Finally on 17.04.2014, the respondent/bank also sent a reminder to the State Level Scrutiny Committee for determining the validity of the status of the petitioner's community.

44.We also came to know that from 24.11.2003 onwards till 17.04.2014, this respondent/bank were taken steps by sending several reminders to the State Level Scrutiny Committee for verification of the status of the petitioner's community. But, on the other hand, the petitioner has not taken any steps by wayof sending any single letter to the State Level Scrutiny

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Committee for verification of his community status. Finally, the State Level Scrutiny Committee vide letter No.6315/CVIII/2014-1, dated 08.05.2014 calling the petitioner to attend the enquiry on 14.05.2014 but the petitioner himself was absented, but on the other hand, he requested the committee by in his letter dated 20.05.2014 to the Secretary to Government, Adi Dravidar and Tribal Welfare Department, Government of Tamilnadu, made request to postpone the enquiry to another date citing medical grounds.

45.When the peitioner's service was ended on 31.05.2014 and he should be relieved from the service, but till that day, the respondent/bank has not received any information from the State Level Scrutiny Committee. Therefore, the Assistant General Manager, State Bank of India, Pondicherry by letter dated 19.05.2014 informed the petitioner that the verification of his community certificate status by the appropriate authority is not completed before 31.05.2014, the payment of his terminal benefits is kept in abeyance and he was requested to arrange for verification and confirmation of the same immediately. But, the petitioner was not cooperated the earlier enquiry letter from the State Level Scrutiny Committee. Therefore, the petitioner was retired on 31.05.2014 and the employee's contribution Provident Fund amount of Rs.9,96,769/- alone was paid to the petitioner on 02.06.2014 and the payment of all other terminal benefits is entirely dependent upon the oucome of the verification of the community certificate status. As an interim measure, the gratuity amount of Rs.10,00,000/- and the employer's contribution of Rs.10,29,524/- to provident fund have been invested in the interest fetching fixed deposits bearing Account Nos.33869806031 and 3386986531 respectively and the monthly pension is being credited into a recurring deposit bearing Account No.33973442438 for the time being.

46.But, the writ petitioner filed the above writ petition, challenging the order dated 08.05.2014 and 19.05.2014 by stating that without giving any opportunity an enquiry was conducted on 15.11.1995 and show cause notice was given. The writ petitioner also raising the grounds stating that for the past 12 years the respondent/bank was not taken any action till his retirement on 31.05.2014.

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47.Apart from this, the petitioner also raising the ground by saying that the first respondent conducting an enquiry after delaying 35 years is arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution and he has also raising a ground by stating that as per Rule 19(3) of the State Bank of India Officers' Service Rules, no disciplinary proceedings initiated against the petitioner. Therefore, he sought for the quashing of the said order is not at acceptable one by this

Court.

48.The petitioner was joined in the service on 17.01.1979 based on the community certificate issued on 24.08.1977 by the Tahsildar, Thuraiyur. But, as per the judgment rendered by the Hon'ble Supreme Court in Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94, the Scheduled Tribe Community certificate issued by the Tahsildar, Thuraiyur to be verified by the Revenue Divisional Officer, Musiri. On 15.02.1994, the District Collector, Trichy also sent the certificate of the petitioner to the Revenue Divisional Officer, Musiri for verification. Later on, as per G.O.Ms.No.111 dated 06.07.2005, pursuant to the orders of the Hon'ble Division Bench of this Court in W.A.No.1645 of 2001 etc., batch dated 22.07.2005, the State Level Scrutiny Committee alone having power to decide the Scheduled Tribe community certificate. Accordingly, on 31.12.2005, the respondent/bank has sent a reference to the State Level Scrutiny Committee for verification and thereafter on several reminders cited supra sent by the respondent/bank, but no reply has been received, since the petitioner himself has not at all shown his interest to complete the enquiry by the State Level Scrutiny Committee.

49.Due to the non receipt of the said verification of the petitioner's community by the State Level Scrutiny Committee, which was requested by the respondent/bank on 31.12.2005, the respondent/bank without any other alternatives relieved the petitioner on 31.05.2014 by the impugned order dated 19.05.2014 and the payment of terminal benefits also kept in abeyance, but the petitioner was paid the employee's contribution provident fund amount of Rs.9,96,769/- and other amount the gratuity of Rs.10,00,000/- and employe's contribution provident fund of Rs.10,29,524/- have been deposited in the fixed deposit in the name of the petitioner and the monthly pension also to the credited into a recurring deposit bearing Account No.33973442438, which is well consider order.

50.The Hon'ble Apex Court has categorically held that in the case of Kumari Madhuri Patil v. Additional Tribal Commissioner reported in AIR 1995 SC 94 as follows:

> "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

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

51.The Hon'ble Apex Court in various judgments clearly held that where a Government servant hs no right to a post or a particular staus, 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 apointed to the post or given the particular status.

52.Apart from this, the Hon'ble Apex Court 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. Therefore, it is absolutely correctness of the respondent/bank that it is not possible to disburse the withheld terminal benefits of the petitioner without first determining the correctness and validity of his initial appointment in the services of the State Bank of India, for which the outcome of the decision of the State Level Caste Scrutiny Committee on the Scheduled Tribe Community certificate of the petitioner is awaited. Therefore, it is absolutely correct that the impugned orders of the State Bank of India, who is employer of the petitioner, which is in accordance with law, based upon the relevant considerations and absolutely justified, cannot be assailed in any respect. Therefore, this writ petition is not maintainable.

53.It is our absolute view that when the petitioner status of the community was under the consideration of the State Level Scrutiny Committee, this writ petitioner ought to have wait till the outcome of the status of the petitioner and the order of the respondent/bank for the payment of the writ petitioner's terminal benefits kept in abeyance is absolutely correct and the writ petitioner filed by the writ petition is liable to be dismissed. The impugned letter dated 08.05.2014 by the first respondent directing the petitioner to appear an enquiry and it is bounden duty of the petitioner to appear and produce all the relevant records for deciding his community status by the State Level Scrutiny Committee.

54.In the result:

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(a) the writ petition is dismissed by confirming the order in Proceedings No.6315/CV.III/2014-1 dated 08.05.2014 passed by the first respondent and consequential order of the second respondent in Proceedings No.AGM/BR/37 dated 19.05.2014;

(b) the State Level Scrutiny Committee is hereby directed to complete the enquiry and submit its report to the respondents 2 and 3 by giving fair opportunity to the petitioner within a period of three months from the date of receipt of a copy of this order and the petitioner is also hereby directed to cooperate for the enquiry with the State Level Scrutiny Committee;

(c) on receipt of the status report of the petitioner's community from the State Level Scrutiny Committee, the respondent/bank is hereby directed to pass appropriate orders for disbursing the terminal benefits of the writ petitioner within a period of two months thereafter.

55.With the above observations, the writ petition is dismissed. There is no order as to costs. Consequently connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Assistant General Manager,
State Bank of India,
15, Rue Suffren,
Pondicherry - 605 001.

3.The Deputy General Manager,
State Bank of India, Chennai Local Head Office,
College Lane, Nungambakkam,
Chennai - 600 006.

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4.The Secretary to Government,
State Level Scrutiny Committee,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Chennai - 600 009.

+1cc to Mr.R.Parthiban, Advocate SR.No.16983
+2cc to Mr.R.D.Audikesavelu, Advocate SR.No.15509
+1cc to Government Pleader, Sr.No.17343

W.P.No.15666 of 2014
and
M.P.Nos.1 to 3 of 2014

SCD(CO)
GN(04/04/2017)

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