

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2017

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1771 OF 2017

M.Karunagaran .. Petitioner

-vs-

- 1.The Secretary
Chennai Port Trust
Administrative Office
Rajaji Salai, Chennai 600 001.
 - 2.State Level Scrutiny Committee
rep. By the Chairman &
Secretary to Government
Adi Dravidar and Tribal Welfare Department
Secretariat, Chennai 600 009.
 - 3.The Director (Vigilance 2)
Government of India
Ministry of Personnel,
Public Grievance and Pensions
Department of Personnel and Training
North Block, New Delhi 110 001.
- .. Respondents

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of mandamus to forbear the respondents 1 & 2 from verifying the community certificate of the petitioner dated 22.12.1983 issued by the Tahsildar, Tirupattur, Vellore District.

For Petitioner : Mr.M.Radhakrishnan

For Respondents: Mrs.A.Sri Jayanthi -R2
Spl.Govt. Pleader

O R D E R

NOOTY.RAMAMOHANA RAO, J.

This Writ Petition is instituted by an employee of the Chennai Port Trust, seeking for issuance of a writ of mandamus to forbear the respondents 1 & 2 from verifying his community certificate dated 22.12.1983, issued by the Tahsildar, Tirupattur, Vellore District.

2.The first respondent to the Writ Petition is the Secretary to Chennai Port Trust, while the second respondent is the State Level Scrutiny Committee, constituted by the State Government for verification of the claims relating to the Scheduled Castes and Scheduled Tribes.

3.The case of the writ petitioner is that he was appointed as Assistant Technician (Mechanical) on 12th January, 1983, in the Chennai Port Trust, against a vacancy reserved for candidates belonging to scheduled tribes. The following is statement mentioned in paragraph No.2 of the affidavit filed in support of the writ petition:

"2....I was appointed to the said post against a vacancy reserved for Scheduled Tribes on the basis of the my community certificate dated 22.12.1983 issued by the Tahsildar, Tirupattur, Vellore District, to the effect that I belong to Kurumans community which is a Scheduled Tribe..."

4.The petitioner is presently working as Technician HS Gr.I (Mechanical). It appears that on 28th September, 2016, the State Level Committee, has taken up the verification of the genuineness of the scheduled tribe certificate produced by the writ petitioner, pursuant to requests made by the Chennai Port Trust on 25th April, 2013 and 27th June 2013. It is, hence, the present Writ Petition came to be instituted.

5.Heard Mr.M.Radhakrishnan, learned counsel for the writ petitioner.

6.The learned counsel for the petitioner would urge that prior to 1990, it is not necessary for the candidates to produce community certificates from the Revenue Officials concerned and that it would be sufficient for the purpose of employment to produce the school records, such as Pass Certificate of S.S.L.C., wherein the community to which the student belonged is recorded. Even otherwise, pursuant to the Judgment rendered by the Hon'ble Supreme Court in th case of KUMARI MADHURI PATIL AND ANR v. ADDL. COMMISSIONER, TRIBAL

DEVELOPMENT AND OTHER [(1994) 6 SCC 241], a scheme has been put in place by the Department of Personnel and Training, Government of India, New Delhi, on 25th May 2005, requiring all Chief Vigilance Officers of the Ministries/Departments as well as the Public Sector Undertakings to verify the genuineness of the claims made by the members belonging to scheduled castes/scheduled tribes. Therefore, such of those candidates who have been appointed prior to 25th May 2005, cannot be subjected to any verification by a Scrutiny Committee with regard to the claims made by them that they either belong to scheduled caste/scheduled tribe.

7.The learned counsel for the petitioner would urge that the scheme enunciated pursuant to the Judgement of the Hon'ble Supreme Court in KUMARI MADHURI PATIL, amounts to a statutory scheme and when once the scheme has not been expressly brought into force with retrospective effect, it is not open to undertake verification of the claims made by candidates belong to SC/STs made prior to 25th May 2005. The learned counsel for the petitioner would also place reliance upon the Judgement of the Hon'ble Supreme Court in DAYARAM v. SUDIR BATHAM [(2012) 1 SCC 333], and also upon the Office Memorandum dated 24th April 1990, issued by the Central Government of India, Department of Personnel and Training of the Central Government in support of the above plea.

8.The writ petitioner has claimed that he belongs to a particular community, which is a notified community of scheduled tribes in the State of Tamil Nadu. On the strength and basis of such a claim, he was admittedly appointed in the then Madras Port trust, as an Assistant Technician (Mechanical) on 12th January, 1983. It is also not in dispute that he has produced the necessary certificate from the Tahsildar, Tirupattur, Vellore District, on 22nd December, 1983, vouching for the fact that he belongs to 'kumuman's" caste, which is recognised as a scheduled tribe. It is this certificate, the genuineness of which is sought to be got verified now.

9.For historical reasons, members belonging to SC/STs have been put to great hardships, in this Country. As a result, members belonging to the said communities have not made a decent progress, while the other communities have. To remove this inequivalency in the Society and with a view to provide a stable platform over which development can be architected, a scheme for providing reservation in favour of SC/ST has been undertaken by the State. It was considered as a measure which would provide a fair and sure chance for progress of the society. However, lately, it was realised that the benefits which have been set apart and made available exclusively for the genuine members of SC/STs were knocked away by the members who do not belong to such communities. This resulted in grave injustice to

the cause of the genuine members, who belonged to the SC/STs. Simultaneously, draining out the resources of the State, resulting in delay of establishing an equally positioned Society.

10. Firstly, members who belong to SC/ST categories will be denied the fruits which have been contemplated and provided for their progress. As a result, they continue to languish below the minimum assured developmental line. While simultaneously, persons who are not justified to knock them away, are getting unjustly enriched at the instance of the deserving poor. With a view to address this malady and to ensure that only genuine members of SC/STs avail all the benefits put in place for them, verification of the claims so made is undertaken. This is one of the measures for weeding out those who have wrongfully gained.

11. The Hon'ble Supreme Court in KUMARI MADHURI PATIL's case had noticed the ill effects of wrongful gain by some people and hence considered it appropriate to streamline the procedure for issuing the social status certificates and later on undertaking the scrutiny and approval. The necessary principles have been culled out in paragraph No.13 of the said Judgement and it would be apt for us to quote the said paragraph herein below:

"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 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 be, 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 pro forma, 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/Additional 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."

12. Nowhere, we find any direction issued in the above Judgement that the scrutiny or verification of the genuineness of the claims so made, in cases where benefits of reservation for SC/STs either in the matter of admission or employment so obtained on or after 2nd September, 1994, the date on which the Judgement in KUMARI MADHURI PATIL case was rendered alone should be undertaken. On the other hand, the directions contained in KUMARI MADHURI PATIL's case are directions for all concerned to be alive to the danger posed by the usurpers of the benefits meant for SC/STs. The Judgment rendered by the Hon'ble Supreme Court in KUMARI MADHURI PATIL's case is a direction to the States concerned to act swiftly and to put in place an institutional mechanism whereby the claims can be got verified

and ascertained and ensure that the genuine candidates alone would derive the benefits meant for SC/STs and the others will not be allowed to knock away such benefits.

13.The sustainability of the direction issued in KUMARI MADHURI PATIL's case has come to be doubted later on and consequently, the matter was referred for consideration of a Larger Bench. Accordingly, in DAYARAM v. SUDIR BATHAM [(2012) 1 SCC 333], the matter was considered once again by a Bench comprising of three Judges and speaking through Justice R.V.Raveendran, the Hon'ble Supreme Court has formulated the questions to be answered by them in paragraph No.9 of the Judgement.

14.Taking up the first question relating to sustainability of the directions contained in KUMARI MADHURI PATIL's case, the answer has been provided in paragraph No.22 of the Judgement rendered in DAYARAM, in the following words:

"22.Therefore, we are of the view, that Directions 1 to 15 issued in exercise of power under Articles 142 and 143 of the Constitution, are valid and laudable, as they were made to fill the vacuum in the absence of any legislation, to ensure that only genuine Scheduled Caste and Scheduled Tribe candidates secured the benefits of reservation and the bogus candidates were kept out. By issuing such directions, this Court was not taking over the functions of the legislature but merely filling up the vacuum till the legislature chose to make an appropriate law."

Therefore, it is beyond any pale of doubt that the Hon'ble Supreme Court while dealing with the case of KUMARI MADHURI PATIL, has not entered upon the legislative field at all. On the other hand in DAYARAM's case, the Hon'ble Supreme Court has understood its earlier Judgement in KUMARI MADHURI PATIL, that it was merely filling the vacuum till the legislature makes an appropriate law.

15.The settled legal principle is that if an earlier Judgement of the Supreme Court has been understood in a particular manner, by a subsequent Judgment of the Hon'ble Supreme Court, all other Courts are required to understand the earlier Judgement of the Hon'ble Supreme Court in that particular manner only, but, not otherwise. Bound as we are by the Judgement rendered by the Hon'ble Supreme Court in DAYARAM and also on the first principle, we are of the opinion that the question urged before us as to whether the directions issued by the Hon'ble Supreme Court in KUMARI MADHURI PATIL, would amount to framing a statutory scheme by the Court and as to whether the same will have retrospective effect or not, as urged by Sri.Radhakrishnan, learned counsel for the writ petitioner

before us, are absolutely redundant questions. In view of the answer furnished in paragraph 22 in DAYARAM's case, the proper way to understand the principles enunciated in KUMARI MADHURI PATIL, is that all the State Governments and the Union of India should adopt the positive action mode contemplated by the Hon'ble Supreme Court for putting in place a fair and reasonable mechanism for the purposes of verifying the claims of SC/STs and in that process to weed out the non-genuine/bogus claims.

16.The Office memorandum dated 25th May, 2005, issued by the Department of Personal and Training, Government of India, is a mere follow up directives to the Judgement rendered in Civil Writ Appeal in 5976 OF 2003, by the Delhi High Court. Therefore, the directions contained in Office Memorandum dated 25th May 2005 are also required to be understood, as laying down for 'a compulsory verification mechanism' for the purpose of weeding out the improper or bogus claims. There is no way that the said Office Memorandum should be understood as putting an embargo from undertaking verification of the genuineness of the claims of SC/ST, who gained employment at any time, prior to 25th May 2005. We are, therefore of the opinion that the Office Memorandum dated 25th May, 2005, will be of no avail to the case of the writ petitioner.

17.That takes us to the another Office Memorandum 36012/88-Estt (SCT) dated 24th April 1990, issued by the Department of Personnel and Training, Government of India. In paragraph No.2 of the said Office Memorandum, it is spelt out that hitherto the Matriculation or School Leaving Certificate or Birth Certificate giving the caste particulars of the community of the candidate and the place of his residence was considered and accepted by the appointing authorities, as sufficient proof in support of the candidate's claim as belonging to SC/ST. It was hence decided that the certificates mentioned in paragraph No.2 of the said Office Memorandum should not be accepted as proof of caste at the time of initial appointment and the Caste/Tribe certificate issued by the Officer mentioned therein, such as the District Magistrate/ Additional District Magistrate/ Collector/ Deputy Commissioner/ Additional Deputy Commissioner/ Deputy Collector/ Ist Class Stipendiary Magistrate/ Sub Divisional Magistrate/ Taluk Magistrate/ Executive Magistrate/ Extra Assistant Commissioner, Chief Presidency Magistrate/ Revenue Officer not below the rank of Tahsildar, are required to be produced in the form prescribed in Appendix 14 of the Broacher on Reservation for Scheduled castes/Scheduled Tribes (Seventh Edition). In paragraph No.4 of the said Office Memorandum, the following caveat was also asked to be incorporated in every offer of appointment made to the members belonging to Scheduled Castes/Scheduled Tribes. Thus, a strict compliance regime of verification of claims made by members as

belonging to Scheduled Caste or Scheduled Tribe has been put in place by the Office Memorandum, dated 24th April 1990.

18. In our opinion, this Office Memorandum has conceived and contemplated a strict regime to be adopted and followed invariably while making appointments against the quota meant for Scheduled Castes and Scheduled Tribe candidates. There is no way, the verification of the claims of the Scheduled Caste and Scheduled Tribes be refrained thereafter. Therefore, in our opinion, the Office Memorandum dated 24th April, 1990, also would not lend support, much less a justifiable one to the cause or claim of the writ petitioner.

19. The Writ Petitioner is the one who made a claim that he belonged to Scheduled Tribe. It is he who has staked a claim for appointment in the Madras Port Trust against a post reserved for Scheduled Tribe category candidate. May be at the initial stage, there may not have been any occasion for the State or anyone on their behalf to suspect that the claim made by the writ petitioner is not a genuine one. But, if at any subsequent stage, should any such occasion arise, the question would be, should the employer enquire any such claim or refrain itself from getting the claim made by the writ petitioner verified? In our opinion, the answer is in a firm negative.

20. The writ petitioner is still in service of the Chennai Port Trust. May be, if he were to be found to have made a wrongful claim, as to how the case of the writ petitioner should be dealt with at that stage, would be a matter which the Chennai Port Trust will have to deal with. Before any such aspects are dealt with by it, it needs a reasonable authentic platform and basis to undertake any such exercise. Hence, it is obvious, referred the certificate produced by the petitioner on 22nd December, 1983, issued by the then Thasildar, Tirupattur, Vellore District, for verification. It is not as if that the writ petitioner's claim as a member belonging to Scheduled Tribe would be automatically shut out. The Scrutiny Committee is bound to put him on notice, which they have done already. The writ petitioner is entitled to produce the materials which are available in his support. If he can satisfy the Scrutiny Committee that his claim is a genuine one, there is nothing more for the writ petitioner to prove thereafter. If on the contrary, it emerges that he made a wrongful claim and on that basis secured any special benefits, it would be for his employer to deal with him thereafter. Therefore, there is no way, he can seek for issuance of a writ of mandamus, to refrain/forbear the respondents 1 & 2 from verifying the genuineness of his claim.

21. In fact no such writ could be issued under the guise of the directions issued by the Hon'ble Supreme Court in

KUMARI MADHURI PATIL, and DAYARAM cases. Any such direction, if were to be erroneously issued, would run counter to the judgments rendered by the Hon'ble Supreme Court, consistently.

22.For the aforesaid reasons, we find no merit in the Writ Petition and hence we dismiss it. We also impose token costs of Rs.500/- on the petitioner to be deposited with the High Court Legal Services Authority, within a period of thirty days from today.

23.After we have dictated our Judgment in the Open Court today (25.01.2017), Shri.M.Radhakrishnan, learned counsel for the writ petitioner seeks leave to Appeal to the Hon'ble Supreme Court.

24.Since, we have not found any substantial question of general importance arising for consideration in this case, we decline to grant the Certificate.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rpa

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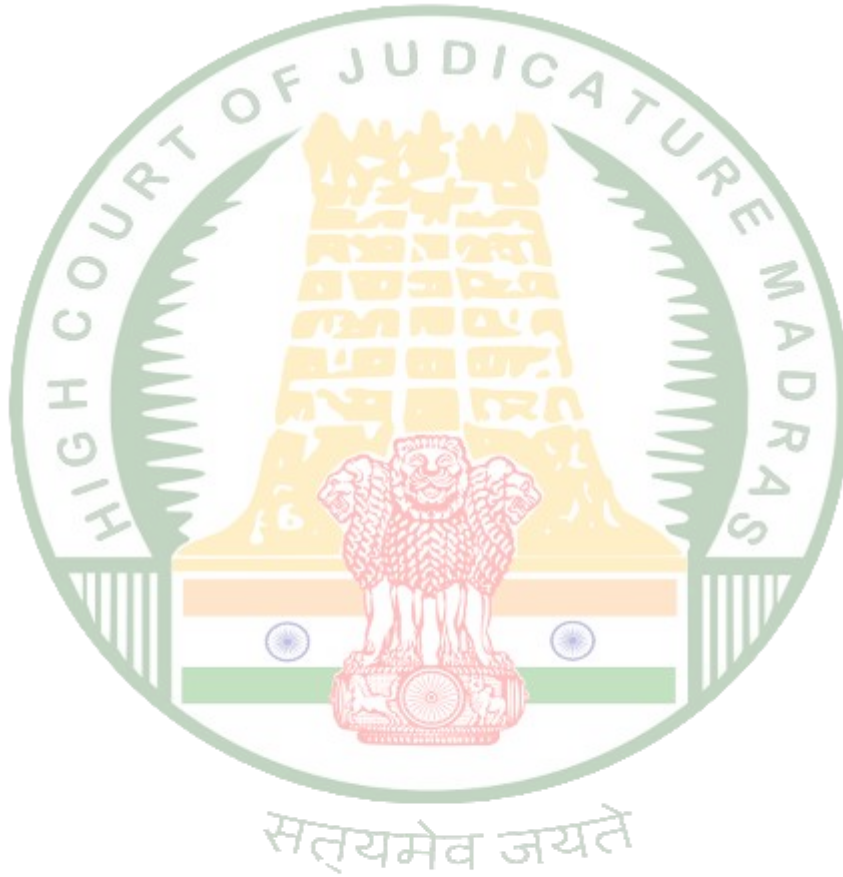
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4.The Member Secretary, High Court Legal Services Authority,
High Court, Madras.

+lcc to Mr.M.Radhakrishnan, Advocate sr.4963

W.P.No.1771 OF 2017

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