

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	31/07/2017
PRONOUNCED ON	03/08/17

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
and
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

W.P.No.3604 of 2012

V.Kanchan Solanki

..... Petitioner

Vs.

1. The District Collector,
Madras.
2. The Tahsildar,
Egmore-Nungambakkam Taluk Office,
Chennai - 600 031.
3. The Union of India,
Rep by the Secretary to Government,
Social Justice and Empowerment,
Secretariat, New Delhi.
4. The Government of Tamil Nadu,
Rep by the Secretary to Government,
Personnel and Administrative Reforms,
Fort St. George, Madras - 9.

[Respondents 3 & 4 impleaded as per order of this court
dated 31.07.2017 made in M.P.No.1 of 2012]

..... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in E5/31281/2011 dated 2-11-2011 and quash the same as illegal and incompetent and without justification and further direct the 2nd respondent to issue the Community Certificate to the petitioner as one belonging to BC in accordance with the Government Gazette No.270 dated 06.12.1999.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.K.Venkataramani,
Additional Advocate General
Assisted by Mr.Elumalai,
Government Advocate
for R1, R2 and R4

Mr.J.Madanagopal Rao,
Senior Central Government
Standing Counsel Assisted by
Mr.A.P.Balasubramaniam, CGSC
for R3

O R D E R

P.D.AUDIKESAVALU, J.

The writ petition has been filed challenging the order E5/31281/2011 dated 2-11-2011 passed by the 2nd respondent / Tahsildar, Egmore-Nungambakkam Taluk as illegal and incompetent and without justification and further direct the 2nd respondent to issue Community Certificate to the petitioner as belonging to backward class in accordance with the Gazette Notification No.270 dated 06.12.1999 issued by the Ministry of Social Justice & Empowerment, Government of India.

2. It is the case of the petitioner as set out in the affidavit filed by her father Vijayaraj sworn in support of the writ petition, that the petitioner is residing at Shenoy Nagar, Chennai - 30 for the past 25 years with ration card at that address. Though the petitioner was born in Rajasthan, she was brought up from her birth at Madras and that she had school education in Chennai and higher studies in medicine in Salem. It is contended that the petitioner belongs to the Sirvi community which has been notified as a backward class community by the Government of Rajasthan and the Tahsildar, Desuri, Pali District, Rajasthan had issued a community certificate dated 16.06.2010 to that effect. However, when she had made an application to the Tahsildar, Egmore-Nungambakkam, Chennai district for issuance of backward community certificate for the purpose of employment in the State of Tamil Nadu, the same had been rejected by the order No.E5/31281/2011 dated 2-11-2011 stating that the Sirvi caste, which the petitioner claims to belong to does not find a place in the list of backward classes notified for the State of Tamil Nadu and hence, it was not possible to issue such a certificate sought by the petitioner. This order is impugned in this writ petition.

3. The 2nd respondent has filed his counter affidavit reiterating the reasons stated in the impugned order for rejecting her request to issue community certificate.

4. We have heard the learned counsel for the petitioner, the learned Additional Advocate General appearing for the respondents 1, 2 & 4, the learned Senior Central Government Standing Counsel appearing for the 3rd respondent and perused the records.

5. The issue involved in this writ petition is no longer res integra in view of the binding decision of the Hon'ble Supreme Court of India in Municipal Corporation of Delhi Vs. Veena and others reported in 2001(6) SCC 571. In that case the question that arose for consideration was whether the certificates of candidates belonging to backward classes in States other than Delhi could hold good for the purpose of recruitment to the post of Primary and Nursery Teachers in Municipal Corporation of Delhi in the National territory of Delhi. An ancillary question also arose as to whether Other Backward Classes (in short "OBCs") of the States other than Delhi can be treated as OBCs in Delhi and can be extended the benefit related thereto in Delhi. It was held therein as follows:-

6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.

In the same decision, it has been pointed out that the

Government of India has also issued instructions from time to time in this regard which indicated that a person belonging to OBC on migration from the State of his origin to another State where his caste was not in the OBC list was entitled to the benefits or concessions admissible to OBCs in his State of origin and the Union Government, but not in the State to which he has migrated.

6. The aforesaid binding decision squarely applies to the instant case and resultantly, the petitioner who belongs to 'Sirvi' caste which is notified as backward class in the State of Rajasthan cannot claim employment in posts reserved for candidates belonging to backward classes in the State of Tamil Nadu. Hence, the impugned order of the 2nd respondent refusing to grant backward class community certificate to the petitioner for appointment in posts reserved for backward classes in the State of Tamil Nadu, is justified and cannot be faulted.

7. In the result, the writ petition is dismissed. However, there is no order as to costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The District Collector, Madras.
2. The Tahsildar, Egmore-Nungambakkam Taluk Office, Chennai - 600 031.
3. The Secretary to Government, Social Justice and Empowerment, Secretariat, New Delhi.
4. The Secretary to Government, Personnel and Administrative Reforms, Fort St. George, Madras - 9.

Copy to:

The Registrar (Judicial), Madras High Court, Chennai.

+lcc to M/s.V.Raghavachari, Advocate sr.55360

+lcc to Government Pleader sr.56261

W.P.No.3604 of 2012

rr(co)
ss(28/8/2017)