IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 28.02.2017

Delivered on :: 18.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.39053 OF 2016

1 Union of India owning Southern Railway Reptd. by the Deputy Chief Personnel Officer/ Gazetted Headquarters office Personnel Branch Southern Railway Chennai-03 ... petitioner

versus

1 The Tamil Nadu State Level Scrutiny Committee Rep. by Chairman Adi Dravidar & Tribal welfare Dept. Namakkal Kavignar Maligai Secretariat Chennai-09

2 Mr.D.Gopi ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records of the 1st respondent under his proceedings No.6962/ CV II/ 2008-11 including the order dated 20.03.2015 and quash the same and further direct the 1st respondent to conduct a due and proper enquiry into the community status of the 2nd respondent.

For petitioner : Mr.R.Thyagarajan, Senior Counsel, for Mr.V.G.Suresh Kumar

For Respondents: Mr.A.N.Thambidurai, Spl.G.P.,for R-1
Mr.V.Vijay Shankar, for R-2

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

K.K.SASIDHARAN, J.

The Union of India owning Southern Railway has come up with this Writ Petition challenging the order passed by the Tamil Nadu State Level Scrutiny Committee, Adi Dravidar and Development Welfare Department, Chennai, on the ground that string of documents produced to demonstrate that the second respondent is not a member of Schedule Tribe Community and that he is a member of backward community, as per the service records of his father and school records of his children, the Committee placing reliance on the certificate of a relative of the second respondent, declared his Schedule Tribe community status. In short, failure to consider the voluminous documents produced by the Railways, before the statutory Committee for deciding the community status of the second respondent made the employer to challenge the order declaring his status as a schedule tribe.

The facts:-

2. The second respondent while joining the service of Railways, produced a Schedule Tribe community certificate dated 7 April 1979 issued by the Tahsildar, Sri Kalahasthi, Andhra Pradesh. The second respondent produced another community certificate dated 14 December 1982 issued by the Tahsildar, Arakkonam, indicating that he belongs to Kammara Community, which is a notified schedule tribe. Subsequently, the Railways found that Sri.R.Duraisamy Achari, father of the petitioner worked as a Kalasi and he claimed that he belongs to Achari community, which is not a Schedule Tribe Community. The Railways verified the community status of the two children of the second respondent who were then studying at the Cambridge Matriculation Higher Secondary School. The school authorities informed the Railways that as per the available records, the children belong to Achari community, which is a backward community. The Railways therefore sent the community certificate produced by the second respondent for verification, to the District Collector. The initiation of scrutiny proceedings by the District Level Committee was challenged by the second respondent before the High Court in W.P.No.4126 of 2005 on the ground that two member Committee was not competent to verify the genuineness of the community certificate of schedule tribes. The High Court by order dated 30 October 2009 directed the Chairperson, District Level Vigilance Committee to forward the papers to the State Level Scrutiny Committee for verification. The State Level Committee by order dated 20 March 2015, upheld the claim made by the second respondent that he belongs to schedule tribe. The petitioner approached the State Level Scrutiny Committee to review its order. The petitioner was informed that the remedy is only to file a Writ Petition. Feeling aggrieved by the order

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

passed by the State Level Scrutiny Committee, the Railways is before this Court.

Rival submissions:-

3. The learned Senior counsel for the Railways by placing reliance on the documents available on record submitted that father of the petitioner declared that he belongs to Achari community, which is a backward community. Even the second respondent declared the community status of his children as Achari. Even though Railways produced several documents indicating that the petitioner does not belong to Schedule Tribe, none of those materials were considered by the State Level Scrutiny Committee. According to the learned Senior counsel, the State Level Scrutiny Committee confirmed the community status only on the basis of the educational certificate of Tmt.G.Punitha, who is stated to be the cousin of the second respondent. The learned Senior counsel contended that the Railways should not be treated as a thirty party to the scrutiny proceedings. According to the learned Senior counsel, in case the order passed by the State Level Scrutiny Committee dated 20 March 2015 is not subjected to judicial review, public interest would suffer inasmuch as even the children of the second respondent henceforth would claim Schedule Tribe status. It was further contended that the Railways has no other interest in the subject matter except to cite the attention of this Court with respect to the non consideration of materials by the State Level Scrutiny Committee. It is for this Court to satisfy as to whether relevant materials were considered by the Statutory Committee.

4. The learned counsel for the second respondent challenged the maintainability of the Writ Petition at the instance of the employer. According to the learned counsel, the State Level Scrutiny Committee considered all the materials, including the report submitted by the Vigilance Cell. Therefore, it cannot be said that there are no materials before the State Level Scrutiny Committee to arrive at a decision with regard to the community status claimed by the second respondent. The learned counsel contended that the father of the second respondent also belongs to Schedule Tribe and a request was made earlier to verify his community status. The argument advanced on the side of the petitioner that even today, the children of the second respondent are described as belonging to Achari Community, is countered by the learned counsel on the ground that the second respondent was not interested to cause trouble to his children and that was the reason for declaring that they do not belong to Scheduled Tribe. The learned counsel contended that in case Writ Petition of this nature is entertained, it would open floodgates of litigation.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Analysis:-

5. The second respondent claimed that he belongs to Kammara Community, which is notified as a Schedule Tribe. The second respondent produced a community status certificate before the Railways to prove his community status. According to the Railways, vigilance wing conducted verification process with regard to the community status of the officials working in the office of Chief Personnel Officer and at the office of the Deputy Chief Engineer, Engineering Workshop, Arakkonam. The vigilance wing suspected the genuineness of the community certificate produced by the second respondent on a comparison of the service certificate issued by the Deputy Chief Engineer Arakkonam, that his father Thiru.R.Veluchami Achari belongs to Achari community which is a backward community. The Railways, as part of the ongoing verification proceedings, conducted verification of the school records relating to the two children of the second respondent. The school authorities informed that the children were described as belonging to Achari community.

6. The petitioner, with a view to verify the genuineness of the community certificates produced by the second respondent, took up the issue with the jurisdictional District Collector. The two member committee at the District level finally cancelled the certificate. The second respondent challenged the order cancelling his community certificate before the High Court in W.P.No.4126 of 2005. Since two member committee at the District Level was not competent to verify the genuineness of the community certificate issued to the members of schedule tribe, the order was set aside and the matter was transferred to the State Level Scrutiny Committee. It was only thereafter, the State Level Scrutiny Committee took up the verification process.

7. The petitioner produced several documents before the State Level Scrutiny Committee so as to enable the statutory committee to take a decision on merits.

8. The order passed by the State Level Scrutiny Committee does not contain any reference about the documents produced by the petitioner. There was no consideration of the community status of the father of the second respondent as indicated in his service records. Similarly, there was no consideration about the certificates produced by the petitioner before the school authorities to prove that the children of the petitioner belong to Achari community. The State Level Scrutiny Committee placed reliance on the school transfer certificate and the secondary school cumulative record of Tmt.G.Punitha, who is stated to be the cousin of the second respondent to confirm his community

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

status.

9. The petitioner on receipt of a copy of the order dated 20 March 2015, on the file of Tamil Nadu State Level Scrutiny Committee, requested the committee to review its decision by considering the documents produced earlier. The State Level Scrutiny Committee declined to entertain the review petition on the ground that the remedy is only to file a Writ Petition before the High Court under Article 226 of the Constitution of India. It was only thereafter, the Southern Railway filed this Writ Petition.

The issue:-

10. The core question that arises for consideration is whether the Writ Petition challenging the proceedings of the State Level Scrutiny Committee confirming the community status of the second respondent is maintainable at the instance of the employer.

11. The second respondent claimed that he belongs to Kammara Community, which is a notified schedule tribe. The second respondent wanted to enjoy the benefits of reservation. The service records of Thiru.R.Duraisami, father of the second respondent shows that he belongs to backward community. The certificates relating to the children of the second respondent also shows that they are from a backward community.

12. The State Level Scrutiny Committee entrusted with the task of deciding the community status of a person must analyze all the materials available on record, irrespective of the fact as to whether it was produced by the concerned person, his employer or third parties.

13. The State Level Scrutiny Committee was constituted pursuant to the direction of the Hon'ble Supreme Court in Kumari Maduri Patil and another vs. Additional Commissioner, Tribal Development and others, 1994(6) SCC 241. The Supreme Court in Kumari Madhuri Patil found that father of the appellant has failed to satisfy the crucial affinity test which is relevant and germane one. The Supreme Court further found that the entires in school and college registers indicating that the appellant belongs to Hindu Koli, disproved his claim and social status as a Schedule tribe.

14. Even though there are similar features in the subject case, the State Level Committee failed to address the issue and declared the community status of the second respondent in a very casual manner.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. The State Level Scrutiny Committee failed to consider any of the documents produced by the petitioner before confirming the community status claimed by the second respondent. The status was declared solely on the strength of the school certificates of his cousin Mrs.G.Punitha. In fact, there was no evidence produced to show the relationship with Mrs.G.Punitha.

16. The order passed by the State Level Scrutiny Committee, if not subjected to review would become final. In the present case, if the order is not challenged, the second respondent would change the community status of his children from backward community to Schedule Tribe. This process would continue and the next generation will also claim the schedule tribe community status. In case, the second respondent is only a backward class and his claim is false, it would be a fraud on the constitution. The benefits earmarked for the downtrodden communities like Schedule Caste and Schedule Tribes should reach the genuine candidates of that community.

17. The appointments secured on the basis of false community certificates would deprive the genuine schedule tribes of the benefits conferred on them by our constitution. Therefore, in a matter of this nature, the Court should not apply the acid test of maintainability.

18. The Railways in the subject case acted as an informant, citing the attention of the Court that the State Level Scrutiny Committee abruptly decided the claim made by the second respondent with regard to his community status without looking into the materials produced to negative the claim.

19. The Hon'ble Supreme Court in Kumari Madhuri Patil very clearly held that the order passed by the committee shall be final and conclusive, subject to the proceeding under Article 226 of the Constitution of India.

20. The Supreme Court in Dayaram vs. Sudhir Batham and others, 2011(11) Scale 448, indicated the rationale behind the directions issued in Kumari Madhuri Patil in the following words:-

> "12. The directions issued in Madhuri Patil were towards furtherance of the constitutional rights of scheduled castes/scheduled tribes. As the rights in favour of the scheduled castes and scheduled tribes are a part of legitimate and constitutionally accepted affirmative

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

action, the directions given by this Court to ensure that only genuine members of the scheduled castes or scheduled tribes were afforded or extended the benefits"

21. While negativing the contention that the denial of the right to approach the civil court and restricting the remedy to only writ proceedings by the Supreme Court in Kumari Madhuri Patil would cause severe miscarriage of justice, the Hon'ble Supreme Court in Dayaram (cited supra), indicated the scope of judicial review in matters relating to community status.

The Supreme Court said :-

> 20. ... It was submitted that not only the decision of the scrutiny committee is given finality on questions of fact, but even the power of judicial review is sought to be curtailed by the aforesaid observation in Madhuri Patil. It is pointed out that if the scrutiny committee wrongly holds a genuine caste certificate is to be a false certificate, and the certificate holder is prevented from approaching the civil court, such erroneous findings of fact by the committee which is a non-judicial body would attain finality, without any remedy to the certificate holder. It was therefore submitted that denial of the right to approach the civil court and restricting the remedy to only writ proceedings, in the anxiety to provide speedy remedy, has the potential of causing severe miscarriage of justice.
>
> 21. The assumption that para 15 of Madhuri Patil extracted above curtails the power of judicial review under Article 226 is not correct. It is inconceivable to even think that this Court, by a judicial order would curtail or regulate the writ jurisdiction of the High Court under Article 226.All that para 15 of Madhuri Patil does is to draw attention to the settled parameters of judicial review and nothing more. We make it clear that nothing in para 15 of the decision in Madhuri Patil shall be construed as placing any fetters upon the High Court in dealing with writ petitions relating to caste certificates.
>
> 22. ... Like any other decisions of administrative authorities, the orders of the scrutiny committee are also open to challenge in proceedings under Article 226 of the Constitution.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

22. The order to be made final and conclusive should be subjected to judicial review. Since the status claimed is one granted by the constitution, the Courts should be very vigilant. This is not an adversarial litigation. The petitioner only wanted this Court to verify and satisfy as to whether the Tribunal was correct in its decision making process. When there are prima facie materials produced by the petitioner to show that documents indicating a different community status were not considered by the State Level Scrutiny Committee, the Court cannot be a silent spectator. The Courts must discharge its constitutional function. The Writ Petition of this nature is not liable to be dismissed solely on the ground of maintainability. The Court should exercise its constitutional function notwithstanding the fact that the Writ Petition was at the instance of the employer. The employer in a case of this nature is like a petitioner in a contempt petition, citing the attention of the Court with regard to the contempt committed by the opposite party. Thereafter, the issue of contempt would be between the Court and the contemnor. The present Writ Petition filed by Railways should be considered only in the said line. It is for this Court to consider the materials and arrive at a decision as to whether the State Level Scrutiny Committee was correct in upholding the community status claim of the second respondent, notwithstanding the contra materials produced by the Railways.

23. The documents available on record clearly show that the service records of the father of the second respondent and the certificates issued by the school authorities, relating to his children were very much available with the Scrutiny Committee. The Scrutiny Committee was expected to scan those materials to arrive at a finding as to whether the status claimed by the second respondent was genuine. However, no such attempt was made by the State Level Scrutiny Committee. The matter was decided in a summary manner by accepting the school certificate of the alleged cousin of the second respondent. It is worth mentioning here that there was no community certificate produced by the second respondent to show that Mrs.Punitha, his cousin, obtained a community certificate indicating that she belongs to Kammara Community. The self serving statement made in the transfer certificate on the basis of the declaration given by the candidate was taken as the basic material to decide the community status of the second respondent. The State Level Scrutiny Committee failed to exercise its statutory function in the light of the guidelines issued by the Hon'ble Supreme Court in Kumari Madhuri Patil and reiterated in Dayaram. We are therefore of the view that the impugned order is liable to be set aside.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

24. In the result, the order dated 20 March 2015 is set aside. The matter is remitted to the Tamil Nadu State Level Scrutiny Committee for fresh consideration. The committee is directed to issue notice to the Railways and the second respondent and consider all the materials, including the service certificates of Thiru.R.Duraisami and the school records of the children of the second respondent, and arrive at an independent decision with regard to the community status claimed by the second respondent. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

25. In the upshot, we allow the Writ Petition. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tarj

To
1. The Deputy Chief Personnel Officer
/ Gazetted Headquarters
The Southern Railway
Personnel Branch Southern Railway
Chennai-03

2. The Chairman Adi Dravidar & Tribal welfare Dept.
Tamil Nadu State Level Scrutiny Committee
Namakkal Kavignar Maligai,
Secretariat Chennai-09

+1cc to Mr.Vijay shankar, Advocate, S.R.No.23567
+1cc to Mr.Suresh kumar, Advocate, S.R.No.23198
+1cc to the Government Pleader, S.R.No.23545

WEB COPY

SR(CO)
RS(26/04/2017)

https://hcservices.ecourts.gov.in/hcservices/