

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.Nos.18210 of 2001 and 33236/2017 &
W.M.P.Nos.36647, 37360 and 36567/2017 &
W.P.M.P.No.26806/2001 and W.V.M.P.No.2205/2005

V.Ravichandran .. Petitioner in both the WPs

Vs

1. Central Electronics Engineering Research Institute,
A unit of Council of Scientific and Industrial,
Research, CSIR Campus, Taramani,
Chennai - 600 113, ..1st & 2nd Respondent in wp 18210/2001
Rep. by its Administrative Officer.
2. The District Collector and Chairman,
District Level Vigilance Committee,
Dindigul District, Dindigul. ..Solo Respondent in wp 33236/17

PRAYER in W.P.No.18210 of 2001: Petition under Article 226 of the Constitution of India to issue a writ of Mandamus to forbear the first respondent from initiating any disciplinary proceedings against the petitioner until and unless an order is passed cancelling the petitioner's community certificate by a committee consisting of three member duly constituted as per the law laid down by the Supreme Court in Madhuri Patil case, AIR 1995 SC 94 and without holding any disciplinary proceedings.

PRAYER in W.P.No.33236 of 2017: Petition under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records relating to the proceedings bearing No.45352/99/H1, dated 25.09.2001 of the respondent and to quash the same.

For Petitioner : Mr.Yogesh Kannadasan

For Respondents : Mr.S.N.Parthasarathi
Government Advocate

For second respondent
in WP:18210/2001
and sole respondent
in WP:33236/2017

Mr.T.Ravikumar
ACGSC
For 1st respondent
In WP:18210/2001

COMMON ORDER

(Order of this Court was made by M.V.MURALIDARAN,J.)

While in W.P.No.18210 of 2001 the petitioner seeks a direction to forbear the first respondent/Institute from initiating any disciplinary proceedings against the petitioner until and unless an order is passed cancelling the petitioner's community certificate by a committee consisting of three members, duly constituted as per the law laid down by the Hon'ble Supreme Court in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development, AIR 1995 SC 94 and to withhold holding any disciplinary proceedings, in W.P.No.33236 of 2017, the petitioner seeks to quash the proceedings of the respondent/Committee dated 25.9.2001.

2. The issues involved in these writ petitions is intertwined and, therefore, they are taken up together.

3. The facts in a nutshell are as under: It is the case of the petitioner that he belongs to Hindu Kammara Community, which is a notified Scheduled Tribe Community. Pursuant to the sponsoring of his name by the District Employment Exchange, Chennai, under the quota reserved for Scheduled Tribes, the petitioner was selected and appointed in the first respondent/Institute as Mechanic with effect from 24.02.1983. At the time of appointment, it is claimed that the petitioner produced the Community Certificate dated 6.8.1976 issued by the Tahsildar, Palani, which, according to the petitioner, was issued after conducting enquiry and verification of records.

4. It is averred that based on a complaint made by third parties, in the year 2001, i.e., almost after putting in 18 years of service, an enquiry was commenced by the Revenue Divisional Officer, Palani, qua the social status of the petitioner. It is alleged that even though the petitioner produced all relevant documents, giving scant disregard to the same, the respondent/Committee in an arbitrary manner and in gross violation of the elementary principles of natural justice passed an order on 25.09.2001 cancelling the community

certificate issued to the petitioner.

5. Alleging that based on such cancellation of community certificate, the employer is terminating the service of many permanent employees and apprehending that his service would also be terminated by initiation of disciplinary proceedings, the petitioner has filed W.P.No.18210 of 2001, for the relief stated supra.

6. Pending the said writ petition, it is stated that the first respondent/Institute issued a charge memo dated 28.05.2013 and the petitioner ultimately attained superannuation on 30.11.2017. Exasperated by the proceedings dated 25.09.2001, in and by which, the respondent/Committee cancelled the community certificate issued to the petitioner, he has filed W.P.No.33236 of 2017.

7. The main contention of the learned counsel for the petitioner is that the respondent/Committee, which comprised only two members, has no jurisdiction to cancel the community certificate issued to the petitioner, as the same runs counter to the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil case, referred supra.

8. It is further contended that pursuant to orders passed by this Court in a series of cases, the State Government constituted a Three Member Committee vide G.O.Ms.No.111, ADW Department, dated 06.07.2005 and also another Three Member State Level Caste Scrutiny Committee vide G.O.(2D) No.108, ADW Department, dated 12.09.2007, and such Committees are only competent to conduct an enquiry as to the social status of the petitioner and the proceedings dated 25.09.2001 cancelling the community certificate of the petitioner is not valid in the eye of law, as the same has been passed by an authority which is not competent to conduct the enquiry. To buttress the said argument, he placed reliance on a decision of a Division Bench of this Court in V.Usharani v. The District Collector and Chairman, District Level Vigilance Committee [Order dated 10.8.2005 passed in W.P.No.10333 of 2000].

9. We have heard Mr.Yogesh Kannadasan, learned counsel for the petitioner and Mr.S.N.Parthasarathi, learned Government Advocate, for the 2nd respondent in WP.No.18210 of 2001 and sole respondent in WP.No.33236 of 2017, Mr.T.Ravikumar, learned ACGSC for the 1st respondent in WP.No.18210 of 2001 and perused the documents on record.

10. In the case on hand, concededly, the petitioner was appointed as a Mechanic in the respondent/Institute based on his social status, besides his educational qualification. The

community certificate to the effect that he belongs to Hindu Kammara Community, which is a Scheduled Tribe Community, was issued to him on 6.8.1976 by the Tahsildar, Palani.

11. Qua the competency of the Tahsildar to issue the said community certificates, it is apposite to refer to the decision of the Hon'ble Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein it is emphatically held as under:

"6. In our opinion the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid community certificate for all purpose so long such as a certificate is not cancelled. The authorities cannot decline to take that into consideration."

12. In the light of the decision, referred supra, the respondents are bound to take into consideration the community certificate issued to the petitioner by the Tahsildar, who is a competent authority, at the relevant time. In any event, such community certificate was issued to the petitioner prior to 11.11.1989 and when the authorities intend to cancel such community certificate, certainly the holder of the community certificate is entitled to an opportunity of hearing and the veracity of such community certificate should be considered by a competent committee.

13. A perusal of the decision in Kumari Madhuri Patil case, supra, makes it clear that a committee to verify the genuineness of Scheduled Tribe Community Certificate must consist of three members. A Vigilance Committee also must be formed to make full verification and file a report. If the report is adverse to the individual, then an opportunity must be given to the individual to substantiate the claim that he/she belongs to Scheduled Tribe and the certificate produced is genuine. In the present case, admittedly, only a Two Member Committee verified the genuineness of the community certificate produced by the petitioner.

14. In our firm view, the order passed by the District Level Vigilance Committee consisting of two members cannot be sustained in view of the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil case, supra. As a matter of fact, the said decision of the Hon'ble Supreme Court has been subsequently followed in a similar case by the Hon'ble Supreme Court in Baswant v. State of Maharashtra & Others, (2007) 12 SCC 800, wherein it was observed as follows:

"4. In the affidavit in reply filed by the respondents, it has been pointed out that respondent 1 firstly constituted Caste Certificate Scrutiny Committee consisting of two members only.

Hence, the constitution of the Committee was not in accordance with the decision rendered by this Court in Madhuri Patil (Kumari) V. Addl. Commissioner Tribal Development, (1994) 6 SCC 241. Thereafter, the State Government has constituted a new Committee consisting of three members. In this view of the matter, the impugned order passed by respondent 4, the Caste Certificate Scrutiny Committee is required to be set aside and is accordingly set aside."

15. In view of the aforesaid two decisions of the Hon'ble Supreme Court, there cannot be any doubt that the decision of the Two Member Committee cancelling the community certificate of the petitioner cannot be sustained.

16. Under identical circumstances, a Division Bench of this Court, in V.Usharani v. The District Collector and Chairman, District Level Vigilance Committee [Order dated 10.8.2005 passed in W.P.No.10333 of 2000], held as under:

"By order dated 30.5.2000, the first respondent herein cancelled the writ petitioner's community certificate. The first respondent Committee, consisting of two members alone, has no authority to verify the community status of the writ petitioner as per the law laid down by the Supreme Court in its judgment reported in AIR 1995 SC 94 (Kumari Madhuri Patil v. Additional Commissioner, Tribal Development).

2. In these circumstances, we have no hesitation in quashing the impugned order and it is accordingly quashed. We make it clear that this order will not come in the way of the writ petitioner's community certificate being verified by the Committee to be newly constituted as per G.O.Ms.No.111, Adi Dravidar and Tribal Welfare (ADW-10) Department, dated 6.7.2005. The writ petition is allowed."

17. When the Hon'ble Supreme Court and this Court has time and again held that Two Member Committee has no authority to verify the communal status of a candidate as the same is a far cry from the procedure laid down by the Hon'ble Supreme Court in Kumari Madhuri Patil case, supra, and based on such directions, the State Government formed a Three Member Committee vide the government orders, referred supra, the proceedings dated 25.09.2001 cancelling the community certificate of the petitioner by a Two Member Committee cannot be countenanced and the same is liable to be set aside.

18. That apart, in the case on hand, enquiry into the social status of the petitioner, who was appointed on 24.02.1983, was

initiated in the year 2001, nearly after 18 years, that too by a Two Member Committee. Moreover, the petitioner was served with a charge memo dated 28.05.2013 and he attained superannuation on 30.11.2017.

19. Considering the subsequent developments and in view of the observations made above, we are inclined to pass the following order:

a) W.P.No.18210 of 2001 is allowed and all proceedings initiated against the petitioner are set aside.

b) W.P.No.33236 of 2017 is allowed and the impugned proceedings bearing No.45352/99/H1 dated 25.09.2001 of the Two Member Committee is set aside, and it is always open to the Competent Committee consisting of Three Members to enquire into the social status of the petitioner, if so advised.

c) The first respondent/Institute is directed to pay all retirement benefits payable to the petitioner, if not already paid, within a period of eight weeks from the date of receipt of copy of this order.

No costs. Consequently, W.M.P.Nos.36647, 37360 and 36567 of 2017, W.P.M.P.No.26806 of 2001 and W.V.M.P.No.2205 of 2005 are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs
To

1.The Administrative Officer,
Central Electronics Engineering Research Institute,
A unit of Council of Scientific and Industrial,
Research, CSIR Campus, Taramani,
Chennai - 600 113.

2.The District Collector and Chairman,
District Level Vigilance Committee,
Dindigul District, Dindugul.

+2cc to Mr.Yogesh Kannadasan, Advocate, S.R.No.92320
+1cc to the Government Pleader, S.R.No.92471

W.P.Nos.18210 of 2001 and 33236/2017 &
W.M.P.Nos.36647, 37360 and 36567/2017 &
W.P.M.P.No.26806/2001 and W.V.M.P.No.2205/2005

SJ(CO)
RRK(22/01/2018)