BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.(MD) No.16298 of 2013
and M.P.(MD) No.1 of 2013

S.Elangovan .. Petitioner

vs

1. State Bank of India,
   rep. by its Circle Development Officer (Personal),
   College Road, Chennai - 600 006.

2. State Bank of India,
   rep. by its Assistant General Manager,
   Tiruchirapalli Branch,
   Mc.Donalds Road,
   Cantonment,
   Tiruchirapalli - 620 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records pertaining to the order passed by the second respondent in his Proceedings Misc.140 dated 31.08.2013 and quash the same, and direct the respondents to settle all the terminal benefits to the petitioner such as retired employees medical benefit scheme, management provident fund, gratuity, encashment of earned leave and pension with interest @ 18% per annum from the date of due till the date of payment.

For Petitioner : Mr.V.Panneerselvam
for M/s.C.S.Associates

For Respondents : Mr.S.Sethuraman (for R2)
No Appearance (for R1)

* * * * *

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of certiorarified mandamus to call for the records of the second respondent dated 31.08.2013 and quash the same and to direct the respondents to settle all the terminal benefits to the petitioner such as retired employees medical benefit scheme, management provident fund, gratuity, encashment of earned leave and pension with interest at the rate of 18% per annum from the date of due till the date of payment.

2. The case of the petitioner is that he belongs to Konda Reddy community, which comes under the Scheduled Tribe. The petitioner was appointed as clerk-cum-typist in the respondent bank on 02.09.1978 under S.T. category through an employment exchange. At the time of joining, the respondent Bank verified the community certificate of the petitioner issued by the Tashildar, Thuraiyur. While the petitioner was working, he was asked to produce the community certificate issued by the District Collector. A doubt was entertained as to whether the community certificate issued before 11.11.1989 by the Tahsildar was valid or not.

3. According to the petitioner, the Government, vide their letter dated 3.4.1991 informed all the District Collectors of various Districts of Tamil Nadu that the community certificate issued in respect of Scheduled Tribe by the Tahsildar upto 11.11.1989 was valid. Accordingly, the petitioner informed the respondent bank that the community certificate issued to him by the Tahsildar was valid and there is no need to get fresh community certificate again from the District Collector. The petitioner states that in fact he had tried to obtain the community certificate from the Revenue Divisional Officer, who is the competent authority and the said fact was also informed to the respondent Bank. Thereafter, the petitioner was promoted as Senior Assistant and again was promoted as Special Assistant and he was allowed to retire on 31.08.2013.

4. While things stood thus, by the impugned order dated 31.08.2013, the petitioner was informed by the second respondent that terminal benefits except contribution of provident fund will be kept in interest bearing account and ultimately on the basis of the order issued by the competent authority confirming the community certificate, terminal benefits will be paid by the respondent Bank. Challenging the same, the petitioner has filed this writ petition.

5. Resisting the writ petition, the respondents filed the counter stating that the petitioner himself admitted that the community certificate issued to him was referred to the Revenue Divisional Officer in March 1993. The writ petition is liable to be dismissed on the ground of non-joinder of necessary party i.e., the Revenue Divisional Officer. Though the Revenue Divisional Officer called for an enquiry, the petitioner has failed to produce any proof to show that what had happened in the enquiry.

It is stated that whether the petitioner belongs to ST category was under dispute. The petitioner has not made out any specific averments with regard to the outcome of the enquiry. If the Revenue Divisional Officer is impleaded as a party, then the result of the enquiry will be made public. It is also stated that even after a lapse of 20 years, till his retirement, the petitioner was unable to get his certificate showing that he belonged to S.T. category. The allegation of the petitioner that as if the respondent bank slept over the matter is totally incorrect and without application of mind. Since the status of the petitioner was in doubt, only the provident fund amount alone has been paid. Hence, prayed for dismissal of the petition.

6. I heard Mr.V.Panneer Selvam for M/s.C.S.Associates, learned counsel for the petitioner and Mr.S.Sethuraman, learned counsel appearing for the 2nd respondent bank. Perused the materials available on record. No representation on behalf of the 1st respondent.

7. The learned counsel for the petitioner submitted that the petitioner belongs to Scheduled Tribe community and the same was evidenced by the community certificate issued by the Tahsildar, which was also earlier verified by the respondent bank at the time of initial appointment. So long as the community certificate stands, the respondent bank cannot deny the benefits, which accrued in the career of the petitioner. Therefore, the impugned order is without jurisdiction and liable to be set aside. He submitted that after having served for about 35 years, when the petitioner got family obligations to be discharged, his terminal benefits are being denied on the ground that the community certificate has to be confirmed which they have slept over for all these years. According to the learned counsel, once a person allowed to retire from service, thereafter, no employer and employee relationship exist. The action of the respondent bank is causing great hardship to the petitioner.

8. Relying upon the decision of the Hon'ble, Division Bench of this Court in *W.P.No.23638 of 2008, dated 23.07.2009 (Usharani Sukumar v. Chief General Manager, State Bank of India)*, the learned counsel for the respondent bank submitted that when the genuineness of the community certificate is pending consideration, the contribution of the provident fund alone has to be paid and the other amounts shall be disbursed only if the certificate is found to be true. He submitted that in this case, admittedly, the petitioner has not produced the community certificate issued by the competent authority till his retirement and the petitioner has also not interested in proving his social status. Therefore, the impugned order does not suffer from any infirmity and the same need not be quashed.

9. The point that arises for consideration is whether the

respondent bank was right in withholding the terminal benefits due to him for the reason of non-production of the social status certificate issued by the competent authority.

10. It is to be noted that the learned counsel for the petitioner made a detailed argument by adverting to the averments made in the affidavit filed in support of the writ petition. He relied upon the decision of the Hon'ble Division Bench of this Court in *W.P.No.19234 of 2014, dated 07.07.2015 (Union of India and others v. Central Administrative Tribunal and others)* and vehemently submitted that while dealing with an identical issue, the Hon'ble Division Bench of this Court directed the petitioner therein i.e., the Railway Administration to pay the terminal benefits to the employee. Strongly relying upon the said decision, the learned counsel for the petitioner submitted that following the above said decision, similar order may be passed in this writ petition.

11. The respondent bank opposed the writ petition by contending that it is the duty of the petitioner to prove his social status by way of community certificate issued by the competent authority. Unless and until, the petitioner produced the community certificate issued by the competent authority, he cannot entitled to get the terminal benefits as stated in the impugned order.

12. It is not disputed by the respondent bank that the petitioner was appointed as clerk cum typist under the Scheduled Tribe category through an employment exchange on 02.09.1978. At the time of appointment, the petitioner has produced the community certificate issued by the Tahsildar to the respondent bank. The respondent bank has not raised any objection as to the social status of the petitioner or questioned the community certificate issued by the Tahsildar, who was the competent authority then in issuing the community certificate in the case of Scheduled Tribe when the petitioner was initially appointed. On the other hand, while the petitioner was working, the respondent bank directed the petitioner to produce the community certificate issued by the District Collector.

13. It appears that the Government had issued orders in G.O.Ms.No.2137, dated 11.11.1989 that the community certificate for the communities included in the list of Scheduled Tribe for the purpose of appointment shall hereinafter be issued by the Revenue Divisional Officer. Therefore, the respondent bank has raised a doubt whether the community certificate issued by the Tahsildar prior to 11.11.1989 was valid. It also appears that by a letter dated 03.04.1991, the Government clarified that the community certificate issued in respect of the Scheduled Tribe by the Tahsildar upto 11.11.1989 was valid. When that being the position, the respondent bank has no right to question the

validity of the community certificate, which was issued by the Tahsildar prior to 11.11.1989.

14. As rightly argued by the learned counsel for the petitioner only by way of abundant caution, the petitioner applied the community certificate from the Revenue Divisional Officer. Though the Revenue Divisional Officer conducted an enquiry, he has not send any adverse report against the petitioner, which shows that the petitioner was belonging to Scheduled Tribe community. The respondent has not made any attempt to get the report from the Revenue Divisional Officer to know about the social status of the petitioner.

15. It is pertinent to note that the petitioner was retired from service on 31.08.2013 and on the date of retirement only, the respondent bank issued the impugned order, which reads as under:

> *"With reference to the above, we have been advised by the Appropriate Authority that your terminal benefits, except your contribution of Provident Fund, will be kept in the interest bearing account and ultimately if the Appropriate Authority confirms your community status then all the terminal benefits can be paid to you by the bank."*

From the perusal of the impugned order, I find that which authority advised the second respondent bank to withhold the amount has not been clearly stated. The counter-affidavit of the respondent bank is also silent whether anybody has questioned the social status of the petitioner or any objection received from the society that the petitioner does not belong to Scheduled Tribe. As stated supra, nothing prevented the respondent bank to enquire from the Revenue Divisional Officer to know about the social status of the petitioner. To show that the respondent bank tried to get the social status of the petitioner, they have not produced any piece of material.

16. It is pertinent to point out that after having served for about 35 years in the respondent bank and when the petitioner has got family obligations to be discharged, it is not fair on the part of the respondent bank to withhold the terminal benefits on the ground that he has not proved his social status by way of community certificate issued by the competent authority. The community certificate issued by the Tahsildar to the petitioner was still in force. In the absence of any rebuttal evidence from the side of the respondent bank and in view of the Government Order dated 11.11.1989 referred above, it is to be presumed that the community certificate issued by the Tahsildar was a valid one.

17. In W.P.No.19234 of 2014, supra, the Division Bench of this Court held as under:

> *"36. That leaves us with one last question as to what would happen if the State Level Scrutiny*

Committee eventually holds that the 2nd respondent does not belong to the Scheduled Tribe. We cannot shirk this question, but the answer is too obvious. The right of a person to receive pension continues until his final departure. Even after his departure, his family become entitled to Family Pension. Therefore, if the State Level Scrutiny Committee eventually cancels the Community Certificate of the 2nd respondent, the petitioner can always pass orders forfeiting the pension as well as the Family Pension.

37. The Railway Administration cannot raise a question as to how they will recover the terminal benefits that they will be now compelled to pay, as that is a very moot question. Logically, another question would also arise as to how they would recover the salary paid for the past 30 years. For both questions, there cannot be an answer in law. So long as the Rules contemplate a particular position, it is not only the 2nd respondent, but also the Railway Administration which is bound by the Rules. The interpretation given to the Rules by various Benches of this Court and of the Supreme Court, in State of Jharkhand v. Jitendra Kumar Srivastava are very clear. Therefore, the Tribunal did not commit any error in law warranting interference by this Court. Hence, the Writ Petition is dismissed. The petitioner-Railway Administration shall settle the terminal benefits within a period of eight weeks from the date of receipt of a copy of this order. The 3rd respondent-State Level Scrutiny Committee is directed to complete the proceedings, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs"

18. Similarly, in *W.P.No.25554 of 2015, dated 14.09.2015 (Union of India and others v. Sowbagiammal and another)*, a Division Bench of this Court held as follows:

"19. It is worth while to extract the decisions of the Hon'ble Apex Court in Dr.Uma Agarwal v. State of U.P., reported in (1999) 3 SCC 438, wherein it is held as follows :

"....grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases

where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each case."

In the reported case, of the Hon'ble Supreme Court in S.K.Due v. 15 State of Haryana reported in 2008 (3) SCC 44, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

A Hon'ble Division Bench of this Court following the above cases in Government of India vs. M. Devasigamani, reported in 2009 (3) MLJ, held as follows :

"7. .. In view of the judgment of the Hon'ble

Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he claim for interest, under Part III of the Constitution, relying on Articles 14, 19 and 21 of the Constitution."

20. In the light of the above decisions and discussion, the Writ Petitioners have not made out a case and hence the Writ Petition is dismissed and the order made in O.A. No. 738 of 2013 dated 30.10.2014 is sustained. Consequently, the writ petitioners are directed to make payment of the monthly pension including the arrears due, with interest, within three months from the date of receipt of a copy of this order."

19. Following the aforesaid decisions of the Division Bench, in *W.P.No.28362 of 2016, dated 18.11.2016 (P.Sovaraj v. The General Manager, Human Resources Wing, Canara Bank, Head Office, 112, J.C.Road, Bengaluru and others)*, the learned Single Judge of this Court held as follows:

"12. As state earlier, so far as the case on hand is concerned, as on date, the issue with regard to the community status of the petitioner is still pending before Scrutiny Committee. Therefore, the judgment relied upon by the learned counsel for the respondent reported in AIR 2004 SC 1469 (1) (R.Viswanatha Pillai v. State of Kerala and others) wherein the issue with regard to the community certificate of the employee therein was settled, cannot be made applicable to the present facts of the case. Therefore, I am of the opinion that the petitioner is entitled to the relief as prayed for in the present writ petition.

Accordingly, the writ petition is allowed as prayed for. The respondents are directed to disburse the terminal benefits and arrears due, with interest, to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, the respondents are at liberty to move before the Scrutiny Committee for early completion of the proceedings pending before it with regard to the community status of the petitioner. Consequently, connected Miscellaneous petition is closed. No costs."

20. The aforesaid decisions are squarely apply to the case on hand. The petitioner has make out his case before this Court and the petition is liable to be allowed and the respondents are

duty bound to pay the terminal benefits with appropriate interest to the petitioner.

21. Following the aforesaid decisions:

(a) the writ petition is allowed and the impugned order of the second respondent in his proceedings Misc.140 dated 31.08.2013 is quashed;

(b) the respondents are hereby directed to settle all the terminal benefits such as Retired Employees Medical Benefit Scheme, Management Provident Fund, Gratuity, Encashment of earned leave and Pension with 9% interest per annum to the petitioner;

(c) the said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.(MD) No.1 of 2013 is closed.

Sd/-
Vacation Officer(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Circle Development Officer (Personal),
   The State Bank of India,
   College Road, Chennai - 600 006.

2. The Assistant General Manager,
   State Bank of India,
   Tiruchirapalli Branch,
   Mc.Donalds Road,
   Cantonment,
   Tiruchirapalli - 620 001.

+ 1 cc TO Mr.S.Sethuraman , Advocate in SR No. 50073
+ 1 cc TO M/S.C.S.Associates , Advocate in SR No. 50260

vs
AE/KKR/SAR1/14.05.2018/9P/5C

order made in
W.P.(MD) No.16298 of 2013
and
M.P.(MD)No.1 of 2013
04.04.2017