

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.16630 of 2006

ORDER:

This writ petition is filed questioning the proceedings issued by 2nd respondent dated 17.01.2005 and letter dated 04.02.2006 addressed to the 3rd respondent, by and under which, the 2nd respondent stated that the writ petitioner does not belong to Schedule Caste, and he belongs to Valmike Caste which comes under BC-A community.

2. Heard both sides and perused the material available on record.

3. According to the petitioner, he belongs to Scheduled Tribe and he was issued ST caste certificate by the Additional District Magistrate, Kurnool, dated 19.07.1976. Claiming as a candidate belonging to Scheduled Tribe, the petitioner got employment in South Central Railways, initially as Assistant Station Master on 12.06.1980. Thereafter, he was promoted as Dy.Station Superintendent, further as Station Master Grade-I and then as Station Superintendent. While so, the 3rd respondent issued a charge memo dated 27.07.2004 alleging that the petitioner got employment by producing fake caste certificate as ST (Valmiki). Questioning the same, the petitioner filed O.A.No.338 of 2005 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and the Tribunal, on merits, allowed the OA on 20.06.2005 and quashed the said charge memo, dated 27.07.2004, on the ground that unless and until the caste certificate of the petitioner is duly cancelled, no action can be taken by the employer.

4. The 3rd respondent, based on the impugned proceedings, issued by the 2nd respondent, issued a fresh notice of termination of service,

dated 01.08.2006, on which, the petitioner made a representation on 03.08.2006 requesting the 3rd respondent to furnish copy of the impugned proceedings dated 04.02.2006, under which, the caste certificate of the petitioner is said to have been cancelled. The petitioner verified the proceedings dated 04.02.2006 and it revealed that it is a letter addressed to the 3rd respondent, referring to the earlier proceedings dated 17.01.2005, stating that the petitioner does not belong to Schedule Tribe, as per the report of the Mandal Revenue Officer. The impugned proceedings are issued behind the back of the petitioner without any notice or any opportunity of being heard. The contention of the petitioner is that the 2nd respondent has no jurisdiction to cancel the caste certificate or declare his social status except in accordance with the provisions of the Act 16 of 1993 and the procedure prescribed under the rules framed therein vide G.O.Ms.No.58, dated 12.05.1997.

5. The 2nd respondent filed counter denying the contentions of the petitioner. He stated that whoever claims Valmiki-ST, he has to claim only on the basis of the presidential order, as per which, Valmiki community is treated as ST only in the agency track areas in Andhra Pradesh. The petitioner is not resident of agency area and he is resident of Kurnool District, which is not an agency area. The Mandal Revenue Officer, Kallur conducted enquiry and reported that the petitioner-G.Thimmappa was native of Ulindakonda village, Kalluru Mandal of Kurnool district and he belongs to Valmiki caste which comes under Sl.No.23 of BC-A caste. He do not belong to Valmiki (ST) caste as he claimed. Accordingly, he submitted a report to the 3rd respondent.

6. The 2nd respondent in his counter further stated that the case was referred to DLSC, Kurnool, subsequent to filing of this writ petition,

that too in the month of September, 2016. He stated that though number of times issued notices to the petitioner directing him to appear in person before the DLSC, Kurnool, he did not appear and therefore, the 2nd respondent, vide proceedings in Rc.C6/1125/M/2006, dated 17.04.2017, cancelled the Scheduled Tribe (Valmik) Certificate issued to the petitioner-G.Thimmappa by the P.A. to Collector and Additional District Magistrate, Kurnool, dated 19.07.1976.

7. Challenge in the present writ petition is against the action of the second respondent in addressing two letters to the employer of the petitioner namely, the South Central Railway on 17.01.2005 and 04.02.2006. Vide the impugned letters, the District Collector informed the third respondent that the enquiries by the Mandal Revenue Officer, Kallur, show that the petitioner belongs to Valmiki caste, which comes under Several.No.23 of BC-A caste and that he do not belong to Scheduled Tribe (Valmiki) as claimed by the petitioner.

8. There is no dispute that the petitioner got employment in the railways as long back as in the year 1980 based on the caste certificate dated 19.07.1976 certifying that the petitioner belongs to Scheduled Tribe (Valmiki). Nearly 24 years thereafter, the railways issued a charge memo to the petitioner alleging that he had produced a fake caste certificate fraudulently claiming that he belongs to Scheduled Tribe category. The petitioner challenged the said charge before the Central Administrative Tribunal by filing O.A.No.338 of 2005 and by Order, dated 20.06.2005, the Central Administrative Tribunal has quashed the said charge memo holding that till the certificate issued is cancelled in accordance with law, no action can be taken by the employer. The Tribunal has relied upon several authorities on this aspect and observed that the employer cannot

initiate disciplinary proceedings merely on the basis of a complaint till the certificate has been duly cancelled by the competent authority under the provisions of Act 16 of 1993 (The Andhra Pradesh (Scheduled Caste, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993). In the face of the order of the Tribunal, which was passed on being contested by the Railways, it appears that the third respondent addressed letter to the District Collector/the 2nd respondent to send a report about the claim of the petitioner that he belongs to Scheduled Tribe. The District Collector without following the procedure for cancellation of a Caste Certificate as per the provisions of Act 16 of 1993 addressed a letter to the third respondent informing that the enquiries by the Mandal Revenue Officer reveal that the petitioner do not belong to Scheduled Tribe and that his caste falls in Serial No.23 of BC-A Caste. Surprisingly, on the basis of such a letter, the Railways have once again initiated the disciplinary proceedings against the writ petitioner ignoring the fact that the Central Administrative Tribunal has specifically held that no disciplinary enquiry can be initiated on the basis of a complaint about the claim of an employee belonging to a particular caste cannot be initiated unless the said certificate is cancelled by a competent authority under the provisions of Act 16 of 1993. Section 5 of the Act lays down the detailed procedure to be followed by the authority in canceling the Caste Certificate which has been issued by a competent authority. Section 5 of the Act reads as under:-

“Cancellation of the false Community Certificate:- (1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself

or his children belongs to such Castes, Tribes or Classes, the District Collector may either suo motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation:

Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government.”

9. The procedure envisaged by the above provision was not followed by the second respondent and instead without conducting the detailed enquiry, addressed a letter to third respondent stating that the petitioner do not belong to Scheduled Tribe (Valmiki) community, on the basis of which the third respondent once again initiated disciplinary proceedings. These acts of the respondents are *prima facie* contemptuous and contrary to the rules and regulations which govern the field. The third respondent as also the second respondent exhibited scant respect to the orders of the Tribunal and also the provisions of the Act 16 of 1993.

10. When the above developments took place in the year 2006 and the writ petition was filed immediately, the second respondent filed the counter in August, 2017. The entire counter affidavit and the documents filed therewith are in respect of the acts of the authorities subsequent to March, 2011. The second respondent is conspicuously silent about the averments made by the writ petitioner in his affidavit filed in the year

2006 nor is there any averment made in the counter to justify the action of the second respondent in addressing two letters to third respondent stating that the writ petitioner do not belong to Scheduled Tribe (Valmiki) community without conducting the enquiry as contemplated under the Act. Only in the year 2011 and 2016, the enquiry as contemplated under the Act was initiated by the second respondent and ultimately as recently as on 17.04.2017, the District Collector cancelled the Caste Certificate issued to the petitioner on 19.07.1976 which declared him as belonging to Scheduled Tribe (Valmiki) community. If at all the third respondent want to initiate any action against the petitioner on the ground that he obtained the job on the basis of a false claim that he belongs to Scheduled Tribe (Valmiki), it is only after 17.04.2017 that action can be initiated but not prior thereto as has been held by the Central Administrative Tribunal as long back as on 20.06.2005.

11. There are several authorities on this aspect but suffice to refer to a recent observations of a Division Bench of our High Court made in W.P.No.6067 of 2004 dated 10.08.2017 which was a writ petition filed by the Railways on identical facts. The Division Bench observed that disciplinary proceedings can be initiated only after the competent authority cancelled the Caste Certificate and the said settled proposition of law was fairly conceded by Sri R.S.Murthy, learned Standing Counsel appearing for Railways in the writ petition before the Division Bench who is also appearing in the writ petition in hand.

12. Contrary to the above, the third respondent issued a show cause notice to the petitioner on 01.08.2006 calling upon him to show cause as to why his services should not be terminated and in the said show cause notice, the third respondent refers to the impugned letters of

the District Collector treating them as if those are the letters by and under which the Caste Certificate issued by the authorities in 1976 is cancelled. As already stated, the impugned letters do not declare that the Caste Certificate issued by the authorities in 1976 was cancelled but curiously the third respondent in the show cause notice dated 01.08.2006 states that:-

“..... On verification by the District Collector and District Magistrate, Kurnool District, it is revealed that, you have produced a false community certificate as Schedule Tribe fraudulently. An enquiry was made and it revealed that the caste certificate issued by the then Mandal Revenue Officer, Kallur Mandal, Kurnool District, is cancelled by the District Collector and District Magistrate, Kurnool District, vide proceedings No.L.Dis.C6/334/M/2006, dt.4.2.2006 stating the fraudulent ST (Valmiki) caste certificate issued in your favour by the then Mandal Revenue Officer, Kallur Mandal, Kurnool District is cancelled.”

13. At the cost of repetition, it may be stated that neither of the impugned letters say that the Caste Certificate has been cancelled. It is a clear case where the third respondent has mis-interpreted the two letters of the District Collector and issued the show cause notice stating that the services of writ petitioner would be terminated even without further enquiry if the explanation is not offered within two weeks from 01.08.2006.

14. In view of the foregoing discussion, I have no hesitation in holding that the two impugned letters issued by the District Collector are not in conformity with the provisions of Act 16 of 1993 and on the basis of such letters, the third respondent could not have issued the show cause notice. The writ petition is therefore liable to be allowed as prayed for.

15. It is also placed on record that the writ petitioner retired on superannuation long prior to the District Collector/2nd respondent issuing

the proceedings on 17.03.2017 cancelling the Caste Certificate of the writ petitioner.

16. Needless to say that it is open to the third respondent to initiate disciplinary proceedings against the petitioner pursuant to the proceedings of the District Collector dated 17.03.2017 and proceed with the enquiry strictly in accordance with law.

17. In the result, the Writ Petition is allowed, as prayed for. No order as to costs.

Pending miscellaneous applications, if any shall stand closed in consequence.

Date: 1st September, 2017
Dsr/smr

M.S.K.JAI SWAL, J

