

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.10.2018

Orders Pronounced on : 12.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.5990 of 2018
and
W.M.P.No.7372 of 2018

G.Lingannan

Vs.

.. Petitioner

1. The Secretary,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

2. State Level Scrutiny Committee,
Rep. by the Chairman and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the order bearing No.SCT2/968/02/GA, dated Nil.02.2018 passed by the respondent No.1 and quash the same and to direct the respondent No.1 to treat the petitioner to be belonging to Kurumans (Scheduled Tribe) for all purposes of his service in the Chennai Port Trust and forbear the respondent No.2-Committee from verifying the Community status of the petitioner at any time.

For petitioner : Mr.M.Radhakrishnan

For respondents : Mr.R.Karthikeyan for R-1

Mr.K.Rajendra Prasad, Addl.G.P. for R-2

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records in the order bearing No.SCT2/968/02/GA, dated Nil.02.2018 passed by the respondent No.1 and quash the same and to direct the respondent No.1 to treat the petitioner to be belonging to Kurumans (Scheduled Tribe) for all purposes of his service in the Chennai Port Trust and forbear the respondent No.2-Committee from verifying the Community status of the petitioner at any time.

2. It is the case of the petitioner that he joined the services in the first respondent-Port Trust as Assistant Shed Master on 08.11.1990, was promoted as Shed Master in the year 1998 and was further promoted as Section Superintendent with effect from 29.03.2004 and since then, he has been working as such. It is his further case that he is a member of Scheduled Tribe. As early as on 30.03.2007, he was declared to be a member of Scheduled Tribe by the competent Caste Scrutiny Committee, viz., District Vigilance Committee. Further, as per G.O.(2D). No.108, dated 12.09.2007 of the Adi Dravidar and Tribal Welfare Department, the decision taken by the three-member District Vigilance Committee with regard to the community status of the members of the Scheduled Tribe upto the date of issuance of the said G.O., is final. The decision dated 30.03.2007 of the three-member District Vigilance Committee, declaring that the petitioner belongs to Kurumans (Scheduled Tribe) Community, Chennai is final. This has been approved by a Division Bench of this Court, vide order dated 10.07.2015 in W.P.No.2532 of 2015.

3. While so, the first respondent-Port Trust has recently sent a communication, dated Nil.2.2018 to the second respondent-Committee enclosing the petitioner's Community Certificate for verification of his community status. As early as on 30.03.2007 itself, the petitioner was declared to be belonging to Kurumans Community by the District Vigilance Committee. When that being the position, the community status of the petitioner has become final. The first respondent has no authority to verify the community status of the petitioner again. Hence, the petitioner has come forward with the present Writ Petition for the relief stated supra.

4. Opposing the petition, the learned counsel for the first respondent, by filing counter affidavit, submitted that the writ petitioner was appointed as Shed Assistant Master in the year 1990 by the first respondent under the vacancy reserved for ST based on the copy of the Community Certificate, dated 16.07.1977 issued by the Tahsildar, Tirupattur Taluk, the then North Arcot

District, to the effect that he belongs to Kurumans ST Community. When the first respondent requested to produce the original Community Certificate, the petitioner has produced another Community Certificate, dated 30.10.1990 issued by the Tahsildar, Purasawalkam, Perambur Taluk, Chennai. Based on the complaint, both the copies of the ST Community Certificates were referred to the District Vigilance Committee, Chennai on 09.05.2005 with a request to verify and send a report on the petitioner's community status. The District Vigilance Committee, Chennai, by proceedings dated 15.07.2005, concluded that the Community Certificate issued by the Tahsildar, Purasawalkam, Perambur Taluk, Chennai, is not a valid one and it was further observed that the Community Certificate issued by the Tahsildar, Tiruppattur is also not valid as per the order of the Government of Tamil Nadu in No.748, Social Welfare Department, dated 27.10.1977. Further, the Committee advised the matter for cancellation of the Community Certificate.

5. While so, learned counsel appearing for the first respondent-Port Trust submitted that the petitioner filed W.P.No.25164 of 2005 seeking mandamus to forbear the first respondent-Port Trust from terminating the services of the petitioner pursuant to the order dated 15.7.2005 passed by the District Vigilance Committee, Chennai. This Court, by order dated 05.11.2013, dismissed W.P.No.25164 of 2005 as having become infructuous, since it was represented that by then, the petitioner was already terminated from service, which was challenged in another Writ Petition. In the meantime, the first respondent, by letter dated 12.08.2005, to the District Collector, Vellore, referred the matter to the District Collector, requesting him to make discreet enquiry about the genuineness of the Community Certificate of the petitioner. The District Vigilance Committee issued enquiry notice and the enquiry was conducted on 21.02.2007. The District Vigilance Committee, Chennai (three-member), by proceedings dated 30.03.2007, concluded that the employee-writ petitioner belongs to Tribal Kurumans Community, and that the individual should obtain and produce Community Certificate from the Revenue Divisional Officer, Tiruppattur, in the current prescribed format, who is the competent authority.

6. It is further stated by the learned counsel for the first respondent that the petitioner has applied to the RDO, Tiruppattur on 21.05.2007 for issuance of a fresh Community Certificate. The petitioner has also filed W.P.No.35564 of 2007, in which, a Division Bench of this Court, by order dated 03.12.2007, directed the RDO to consider the petitioner's application and pass appropriate orders in accordance with law and in the meantime, until the RDO passes final orders on the application of the petitioner, no action should be taken by the first respondent-Chennai Port Trust against the petitioner on

the ground of lack of community certificate. Based on the above order of this Court, the Sub-Collector, Tiruppattur, vide letter dated 18.01.2011, after detailed enquiry, has categorically stated that the petitioner does not belong to Kurumans ST Community. Accordingly, the petitioner was terminated from the first respondent's service on 19.03.2011, against which, the petitioner filed Writ Petition before this Court in W.P.No.7587 of 2011, in which, this Court, by order dated 11.04.2011, along with W.P.No.9261 of 2011, set aside the orders, dated 18.01.2011 and 19.03.2011 and remitted the matter back to the RDO, Tiruppattur, for fresh consideration and the first respondent-Chennai Port Trust should take appropriate action depending upon the order to be passed by the RDO.

7. It is also the submission of the learned counsel for the first respondent-Port Trust that after enquiry, the RDO, Tiruppattur refused to issue the Community Certificate with ST status, since the employee/writ petitioner belongs to Kuruma-Backward Community and the ST Community Certificate of the petitioner, dated 16.07.1977 is still in force and not yet cancelled, and hence, that being the position, it is not appropriate for the RDO to issue another Certificate. However, as per G.O.(2D).No.108, dated 12.09.2007, only the State Level Scrutiny Committee is the competent authority to verify the genuineness of ST Certificate already issued to the petitioner. This Court, by order dated 20.09.2011 in W.P.No.20941 of 2001, directed the first respondent-Port Trust to await such order that may be passed by the RDO, Tiruppattur. As per the Court order dated 11.04.2011 in W.P.Nos.7587 and 9261 of 2011, the petitioner was requested to produce a fresh Community Certificate, vide Memo, dated 24.05.2012. Subsequently, another Writ Petition was filed in W.P.No.15901 of 2012 on the ground that no fresh Community Certificate can be demanded/directed to be produced and this Court, by order dated 22.06.2012, granted interim stay of the said Memo and this Writ Petition was dismissed for default, as there was no representation for the petitioner.

8. In the meanwhile, the learned counsel for the petitioner issued notice, dated 23.12.2013 not to terminate the petitioner from service, as it would amount to contempt of order of this Court in pursuant to the order dated 11.04.2011 in W.P.Nos.7587 and 9261 of 2011. It is further stated by the learned counsel for the first respondent-Port Trust that the matter has been taken up to the State Level Scrutiny Committee during the year 2012, which is still pending before the three-member State Level Scrutiny Committee, which has requested a copy of the Community Certificate, and the same has also been forwarded on 06.02.2018. Hence, as per G.O.(2D).No.108, dated 12.09.2007, the issue was referred to the State Level Scrutiny Committee for verification and that the final report is still awaited from the State Level

Scrutiny Committee. Hence, the learned counsel for the first respondent-Port Trust submitted that the contention of the petitioner that the first respondent has no authority to verify his community status again and that the second respondent-Committee has no jurisdiction to verify the community status, is incorrect.

9. Learned counsel appearing for the first respondent further contended that when the petitioner is already in possession of a Community Certificate, it is not appropriate for the RDO to issue another Certificate, when the matter is referred to State Level Scrutiny Committee as per G.O.(2D). No.108, dated 12.09.2007. That being the position, the petitioner, in the present Writ Petition, has challenged the communication sent by the Port Trust to the State Level Scrutiny Committee to expedite their action, which is only a communication and not an order, and hence, this impugned communication cannot be challenged/quashed. Therefore, the contention of the petitioner that the first respondent-Port Trust has no authority to verify the community status again and the second respondent-Committee has no jurisdiction to verify the community status, is incorrect.

10. By way of reply, learned counsel for the petitioner submitted that since, already the District Vigilance Committee has verified and issued the Community Certificate, now the first respondent-Port Trust cannot again refer the Certificate for verification by the second respondent-State Level Committee.

11. Heard both sides and perused the materials available on record.

12. We find that in W.P.Nos.7587 and 9261 of 2011, a Division Bench of this Court, by order dated 11.04.2011, has observed and directed as follows:

"10. In our opinion, the impugned order passed by the Revenue Divisional Officer dated 18.1.2011 is liable to be set aside on the sole ground that he has not applied his mind to the earlier proceedings of the District Level Vigilance Committee dated 30.03.2007. In this context, we made earlier reference to the prayer of the petitioner when he approached before this Court by filing Writ Petition in W.P.No.35564 of 2007 wherein he has sought for a writ of mandamus directing the Revenue Divisional Officer to consider the application in the light of the proceedings of the District Level Vigilance Committee, dated 30.03.2007. Of course, while considering the request, the Division Bench

had directed the Revenue Divisional Officer to consider the application of the petitioner and pass appropriate orders in accordance with law. While that direction was specific, the Revenue Divisional Officer ought to have applied his mind to the proceedings of the District Level Vigilance Committee, dated 30.03.2007. As he has not adverted to the said report at all in the said impugned order, the same cannot be sustained and accordingly, the same is liable to be set aside.

11. In view of the above reasons, the impugned order is set aside and the matter is now remitted back to the Revenue Divisional Officer for fresh consideration. Keeping the observations made in this order, such an order shall be passed by the Revenue Divisional Officer within a period of one month from the date of receipt of a copy of the order from the Registry or from the petitioner.

12. In view of the fact that we have set aside the order of the Revenue Divisional Officer/Sub-Collector, Tirupattur dated 18.01.2011 and remitted back to him for fresh consideration, the impugned order passed by the Chennai Port Trust dated 19.03.2011 which is based on the order of the Revenue Divisional Officer/Sub-Collector, Tirupattur, dated 18.01.2011 is also liable to be set aside and accordingly, the same is set aside. We make it clear that the order setting aside the proceedings of the Chennai Port Trust dated 19.03.2011 shall not stand in the way. Chennai Port Trust should take appropriate action depending upon the order of the Revenue Divisional Officer.

13. Both the writ petitions are allowed subject to the above observations. No costs. Consequently, connected miscellaneous petitions are closed."

13. Thus, in the abovesaid order, this Court has clearly observed that depending upon the outcome of the order to be passed by the RDO, the first respondent-Chennai Port Trust can take appropriate action. In the instant case, the RDO has come to the conclusion that the petitioner does not belong to Kurumans Community. Under such circumstances, we do not find any infirmity in the reference made by the first respondent-Port

Trust to the second respondent-State Level Committee requesting the Committee to expedite the process, and as it is only a communication, it cannot be the subject matter of challenge.

14. Hence, we do not find any merits in this Writ Petition, which is accordingly dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Chennai Port Trust,
Rajaji Salai, Chennai-600 001.
2. The Chairman and Secretary to Government,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.70959
+1cc to Mr.M.Radhakrishnan, Advocate, S.R.No.71247
+1cc to the Government Pleader, S.R.No.71449

W.P.No.5990 of 2018

VGII(CO)

rrs 14/11/2018

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