

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.10.2018

ORDERS PRONOUNCED ON : 02.11.2018

CORAM:

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

W.P.No.9280 of 2015

N.Premnath

.. Petitioner

Vs.

1. District Collector (Revenue),
Department of Revenue & Disaster
Management,
Puducherry.

2. Tahsildar, Taluk Office,
Oulgaret, Puducherry.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the second respondent to issue Community Certificate to the petitioner to the effect that the petitioner belongs to Scheduled Caste category of Puducherry.

For petitioner : Mr.V.Ajayakumar

For respondents : Mr.A.Gandhi Raj,
Govt. Pleader (Puducherry)

ORDER

The present Writ Petition is filed for issuance of a Writ of Mandamus to direct the second respondent to issue Community Certificate to the petitioner to the effect that the petitioner belongs to Scheduled Caste category of Puducherry.

2. It is the case of the petitioner that his father and mother belong to Scheduled Caste category. The petitioner's mother is a native of Puducherry by birth and she was born at Bahourpet, Puducherry. The petitioner's father is a native of Poothurai, which is adjacent village to Puducherry, in Tamil Nadu. The petitioner's father got appointment in the year 1976

in the Food Corporation of India and was posted at Puducherry. The Transfer Certificate and other school records show that the petitioner's community is marked as Adi Dravida. In fact, the respondents have issued Community Certificate to the petitioner's brother Prasad on 11.07.1986 showing that he is a Scheduled Caste candidate of Puducherry. Since the petitioner was getting all the benefits of Scheduled Caste candidate for his studies on the basis of the entry in the school records, he did not apply for Community Certificate previously. He applied for Community Certificate on 28.01.2015 for submitting application for employment. The respondents have refused to accept the application form stating that the petitioner's father belongs to Scheduled Caste of Tamil Nadu and his mother's status cannot be considered for grant of Community Certificate at all. It is further stated by the petitioner that since he was born and brought up in Puducherry, he is entitled for Community Certificate, as his parents belong to Scheduled Caste category. Hence, the petitioner has come forward with the present Writ Petition for the relief stated supra.

3. Learned counsel for the petitioner submitted that the petitioner is a B.E. degree holder and his parents belong to Scheduled Caste category coming under the Presidential Order for Puducherry. The petitioner and his brother were enjoying the benefits of Scheduled Caste category. The petitioner's brother was issued with Community Certificate. Hence, the petitioner applied for Community Certificate on 28.01.2015 for employment, but the same was refused by the respondents stating that his father is a native of Poothurai, which is an adjacent village to Puducherry and it comes within the territorial jurisdiction of Tamil Nadu and the petitioner's father came to Puducherry only after 1964. As per law, the persons would be entitled to all the benefits extended to the Scheduled Caste persons who were "resident" on 05.03.1964 when the Presidential Notification giving the list of Scheduled Castes for the Union Territory of Puducherry, was issued.

4. Learned counsel for the petitioner further contended that though the father of the petitioner came to Puducherry after 1964, still the petitioner can be issued with Community Certificate, especially on the basis of the Government Order issued on 03.08.1995 in No.6175/C2/Rev/95, since as per Clause (c) of the above G.O., the Community Certificate can be issued if the applicant and either of the applicant's parents are residing in Puducherry since birth. Learned counsel for the petitioner also submitted that the Puducherry Administration has clearly emphasised that while deciding social status of Scheduled Caste/Scheduled Tribe persons of origin and migrated, it must be verified that the applicant and either of the applicant's parents are residing in Puducherry since birth.

After some time, a Circular was issued by the Government dropping Clause (c) of the above G.O. and it is stated that the applicant's father must be an origin of Puducherry. Learned counsel for the petitioner further submitted that since Clause (c) of the G.O. dated 03.08.1995 which says that, "the Community Certificate can be issued if the applicant and either of the applicant's parents are residing in Puducherry since birth", was dropped by Circular Memorandum No.9565/C2/Rev/2000 dated 10.11.2000, the said subsequent Circular was challenged in Writ Petition in W.P.No.30841 of 2002 filed before this Court. The learned Single Judge of this Court has allowed the said Writ Petition, against which, the Government of Puducherry filed Writ Appeal in W.A.No.1326 of 2005. In the said Writ Appeal, the Division Bench of this Court has discussed the judgments delivered by the Hon'ble Supreme Court in the following cases:

(i) 1990 (3) SCC 130 (Marri Chandrashekhar Rao Vs. Dean, Seth G.S.Medical College and others);

(ii) 1994 (5) SCC 244 (Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another Vs. Union of India and another);

(iii) 1997 (1) SC Service Law Judgments 236 (S.Nagarajan Vs. The District Collector, Salem and others);

(iv) AIR 2001 SC 393 (State of Maharashtra Vs. Milind and others);

(v) 2005 (3) SCC 1 (S.Pushpa and others Vs. Sivachanmugavelu.

5. Thus, the Division Bench dismissed the abovesaid Writ Appeal, confirming the order passed by the learned Single Judge and the Division Bench issued direction to the appellants/Puducherry Administration to issue Community Certificate to the applicant therein. Learned counsel for the petitioner further submitted that the issue in question is specifically decided by the Division Bench of this Court as noted above and that if either of the parents is native of Puducherry, the children are entitled to the benefit of reservation.

6. In support of his submissions, learned counsel for the petitioner relied on a judgment of the Supreme Court reported in 2005 (3) SCC 1 (S.Pushpa Vs. Sivachanmugavelu) and submitted that there is no distinction between migrated Scheduled Caste and Puducherry origin in the Union Territory of Puducherry, which was accepted by the three-Judge Bench of the Supreme Court in the said decision. The Supreme Court in the said decision held as follows:

"16. These documents show that Government of Pondicherry has throughout been proceeding on the basis that being a Union territory, all orders regarding reservation

for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration as well. Since all SC/ST candidates which have been recognized as such under the orders issued by the President from time to time irrespective of the State/Union territory, in relation to which particular castes or tribes have been recognized as SCs/STs are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry Administration. Consequently, all SC/ST candidates from outside the U.T. of Pondicherry would also be eligible for posts reserved for SC/ST candidates in Pondicherry Administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry Administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in Pondicherry Administration."

"17. We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in Marri Chandra Shekhar Rao (supra) (Marri Chandra Shekar Rao Vs. Dean, Seth G.S. Medical College - 1990 (3) SCC 130 : 1990 (14) ATC 671) cannot have application here as U.T. of Pondicherry is not a State. As shown above, a Union Territory is administered by the President through an Administrator appointed by him. In the context of Article 246, Union territories are excluded from the ambit of expression "State" occurring therein. This was clearly explained by a Constitution Bench in T.M. Kannian vs. Income Tax Officer - 1968 (2) SCR 103 : AIR 1968 SC 637). In New Delhi Municipal Council Vs. State of Punjab - 1997 (7) SCC 339, the majority has approved the ratio of T.M. Kannian and has held that the Union territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of Marri Chandra Shekhar Rao in setting aside the selection and appointment of migrant SC candidates."

"21. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of "backward classes of citizens" which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This Article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognized as backward classes of citizens and none else. If a State or Union territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the schedule to the Presidential Order issued for such Union territory. The U.T. of Pondicherry having adopted a policy of the Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST

candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law."

7. Learned counsel for the petitioner further submitted that as per the above dictum laid down by the Supreme Court, the petitioner is entitled to get Community Certificate, but the Government of Puducherry has deviated from the main issue involved in the case on hand, i.e. whether the children of the Scheduled Caste parents are entitled to get the benefit of reservation in the Union Territory of Puducherry, if either of the parents is a native of Puducherry. The Government of Puducherry has thus deviated from the issue and has taken the larger issue as to whether the migrated Scheduled Caste candidates are entitled to get the benefit of reservation or not, which is not the issue in the present case. Hence, for all these reasons, learned counsel for the petitioner prayed for allowing the Writ Petition by directing the second respondent to issue Community Certificate to the petitioner.

8. Countering the above submissions, learned Government Pleader (Puducherry) appearing for the respondents submitted that under law, the father of the petitioner can only claim all the benefits of SC community in the State of his origin, i.e. Tamil Nadu and not in the migrant State, i.e. Union Territory of Puducherry. Hence, the petitioner's father cannot claim the SC status in the Union Territory of Puducherry on the ground that the name of his caste is also found in the Scheduled Caste Notification of the Union Territory of Puducherry. Further, the Presidential Notification of SC and ST is made only in relation to a particular State, Union Territory or Regions. Learned Government Pleader (Puducherry) further submitted that the question as to whether a person can claim the SC status of his mother or the SC status of his father, is well settled by the Supreme Court in the decision reported in 2003 (8) SCC 204 (Punit Rai Vs. Dinesh Chowdhri), wherein, the Apex Court observed that a person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of intercaste marriage.

9. Learned Government Pleader (Puducherry) therefore submitted that the Supreme Court in the above decision made it clear that in the patriarchal society, children can be counted as members of father's caste and not a member of the mother's caste. The learned Government Pleader further submitted that the judgment of the Division Bench of this Court, relied on by the learned counsel for the petitioner in Writ Appeal No.1326 of 2005, dated 30.03.2010, directing the Puducherry Administration

to issue Community Certificate to the applicant therein, had been stayed by the Supreme Court in S.L.P.(C).No.22634 of 2010, by order dated 20.08.2010. In support of his submissions, learned Government Pleader also relied on a recent judgment of the Supreme Court reported in CDJ 2018 SC 896 (Bir Singh Vs. Delhi Jal Board and others) (in Civil Appeal No.1085 of 2013, etc., arising out of S.L.P.(C).No.36324 of 2017, dated 30.08.2018), rendered by the Constitution Bench comprising of five Honourable Judges and submitted that this judgment of the Supreme Court is also very clear that a person cannot claim the SC status based on the mother's SC status and the petitioner herein is entitled to derive the benefits only from the State of the father's origin. Therefore, for all these reasons, learned Government Pleader (Pondicherry) prayed for dismissal of the Writ Petition.

10. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have given our anxious consideration to the same and also perused the materials available on record.

11. It is the case of the petitioner that he belongs to Scheduled Caste category. His parents also belong to Scheduled Caste category. His mother is a native of Puducherry by birth and his father also belongs to Scheduled Caste, but is a native of Poothurari, which is adjacent village to Puducherry in Tamil Nadu. When the petitioner applied for issuance of Community Certificate to the respondents, the same was denied stating that the petitioner's mother's status cannot be considered for grant of Community Certificate. Hence, the petitioner prays for direction to the second respondent to issue Community Certificate to the petitioner to the effect that he belongs to Scheduled Caste category of Puducherry.

12. During the course of arguments, learned counsel for the petitioner contended that the petitioner can be issued with Community Certificate, if either of the parents is Scheduled Caste, especially on the basis of the Government Order issued on 03.08.1995 in No.6175/C2/Rev/95. Learned counsel for the petitioner further submitted that Clause (c) of the above G.O. states that the Community Certificate can be issued if applicant and either of the applicant's parents are residing in Puducherry since birth. Subsequently, Clause (c) was dropped and when the same was challenged before this Court, a learned Single Judge allowed the Writ Petition and directed the authorities to issue Community Certificate, which was also confirmed by the Division Bench in Writ Appeal filed by the Puducherry Administration, and the Writ Appeal was dismissed, by following various judgments of the Supreme Court, as discussed above.

13. That apart, in the decision relied on by the learned counsel for the petitioner in 2005 (3) SCC 1 (S.Pushpa Vs. Sivachanmugavelu), the Supreme Court considered the issue of conferring reservation benefits to the Scheduled Caste candidate who has migrated to Puducherry and hence, learned counsel for the petitioner submitted that a person can claim the Scheduled Caste status of his mother or father.

14. But the learned Government Pleader (Puducherry) appearing for the respondents submitted that the children can be considered for community status based upon the father's status and not on the mother's status. So far as the present case is concerned, the petitioner's father is a migrant and his origin is from the State of Tamil Nadu. Under law, the father of the petitioner can only claim all the benefits of the Scheduled Caste in the State of his origin, namely Tamil Nadu and not in the migrant State, i.e. Union Territory of Puducherry. Though the nomenclature of the caste of the petitioner's father and mother may be same, but each of them will be considered for the benefits in respect of their respective origin State/Union Territory and not in the migrant State/Union Territory. Therefore, as far as the present case is concerned, the community status of the father of the petitioner is notified as Scheduled Caste in Tamil Nadu, and therefore, the petitioner cannot claim the SC status in the migrant State, i.e. Union Territory of Puducherry on the ground that the petitioner's mother is notified as Scheduled Caste in the Union Territory of Puducherry. The expression "in relation to the State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India, must be given its full meaning and effect.

15. In the above context, it is appropriate to extract the recent judgment of the Supreme Court consisting of five Honourable Judges (Constitution Bench), reported in CDJ 2018 SC 896 (Bir Singh Vs. Delhi Jal Board and others) (cited supra), wherein it is held by the Apex Court as follows:

"25. In Marri Chandra Shekhar Rao (supra) (Marri Chandra Shekhar Rao Vs. Dean, Seth G.S.Medical College and others - 1990 (3) SCC 130), rejecting the contention that a member of Scheduled Castes/Scheduled Tribes should get the benefit of the status 'for the purpose of the Constitution throughout the territory of India', it was observed that if such contention is to be accepted the expression "in relation to that State" would become nugatory."

"26. Marri Chandra Shekhar Rao (supra) was followed by another Constitution Bench of this Court in Action Committee (supra) (Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another Vs. Union of India and another - 1994 (5) SCC 244). After referring to Articles 14, 15(1), 15(4), 16(4) and 19 and Part XVI of the Constitution of India and the decisions governing the field and also Articles 341 and 342, it was held as under:

"3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

.. .. .

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class

in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the consideration on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. ... "

"34. It is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential Orders under Article 341/342 is subject to alteration only by laws made by Parliament, operation of the lists of Scheduled Castes or Scheduled Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard, it must also be noted that the power under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an Executive Order issued under Article 166 of the Constitution. It will, therefore, be in consonance with the constitutional scheme to understand the enabling

provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential orders for a particular State/Union Territory within the geographical area of that State and not beyond. If in the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of Scheduled Castes/Scheduled Tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution could be a possible trigger point of constitutional anarchy and therefore must be held to be impermissible under the Constitution."

16. Further, in the decision reported in 2003 (8) SCC 204 (Punit Rai Vs. Dinesh Chaudhary), the Supreme Court observed as follows:

"27. The caste system in India is ingrained in the Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of intercaste marriage."

"41. Determination of caste of a person is governed by the customary laws. A person under the customary Hindu Law would be inheriting his caste from his father. In this case, it is not denied or disputed that the respondent's father belonged to a "Kurmi" caste. He was, therefore, not a member of Scheduled Caste. The caste of the father, therefore, will be the determinative factor in absence of any law. Reliance, however, has been placed upon a circular dated 3.3.1978 said to have been issued by the State of Bihar which is in the following terms:

"Subject: Determination of caste of a child born from Non-Schedule Caste Hindu father and Schedule Caste mother.

Sir,

In the aforesaid subject as per instruction I have to state for the determination of a child born from Non-Scheduled Caste father and a scheduled caste mother, upon deliberation it has been decided that the child born from such parents will be counted in the category of scheduled caste.

2. In such cases before the issue of caste certificate there will be a legible enquiry by the Block Development Officer / Circle Officer / Block Welfare Officer."

"42. The said circular letter has not been issued by the State in exercise of its power under Article 162 of the Constitution of India. It is not stated therein that the decision has been taken by the Cabinet or any authority authorized in this behalf in terms of Article 166(3) of the Constitution of India. It is trite that a circular letter being an administrative instruction is not a law within the meaning of Article 13 of the Constitution of India. (See Dwarka Nath Tewari and Others Vs. State of Bihar and Others AIR 1959 SC 249)."

17. Thus, it is clear that the Presidential Order can only be changed by the Parliament and not by way of Government Orders. Hence, the submission of the learned counsel for the petitioner based on G.O. dated 03.08.1995, has no significance in the matter.

18. Further, a Division Bench of this Court in W.P.No.12920 of 2004, by order dated 22.09.2017, has observed as follows:

"7. In view of the aforesaid legal position set out supra, the Writ Petition is disposed holding that persons who have been born and brought up in the Union Territory of Pondicherry whose caste have been notified as Scheduled Caste in the Constitution (Pondicherry) Scheduled Castes Order, 1964, would be entitled to obtain the Scheduled

Caaste Certificate from the prescribed authority of Union Territory of Pondicherry in terms of Letter No.BC-16014/1/82-SC & BCD-1, dated 22.02.1985 of the Government of India and that if their ancestors and forefathers had migrated to the Union Territory of Pondicherry only after 05.03.1964, they will be deemed to be a Scheduled Caste of the State of their origin and will be entitled to derive benefits from the State of their origin and not from the Union Territory of Pondicherry. No costs."

19. Thus, it is clear that all the above discussed case laws are holding the field, based upon which, in the present case, it has to be observed as follows:

(a) The father of the petitioner is entitled to reservation and other benefits of SC persons only in the State of his origin, i.e. Tamil Nadu, as the name of his caste is found in the Presidential Notification of Scheduled Castes for the State of Tamil Nadu.

(b) The mother of the petitioner can be considered to be a Scheduled Caste person only in the Union Territory of Puducherry, as her caste is notified in the Scheduled Caste list of Puducherry in the Presidential Order, 1964.

(c) Assuming without conceding that the nomenclature of the caste of the father and mother of the petitioner, is found in the Scheduled Caste lists of their respective States, even then the petitioner can only acquire the caste of his father and he can claim SC status only in Tamil Nadu and cannot acquire his mother's SC status in the Union Territory of Puducherry.

20. Thus, the prayer sought for by the petitioner in this Writ Petition is totally contrary to law and facts, and therefore, the respondents are not under legal obligation to issue Community Certificate to the petitioner. Hence, we are of the opinion that the writ petition is devoid of merits and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

CS

To

1. District Collector (Revenue),
Department of Revenue & Disaster Management,
Puducherry.
 2. Tahsildar, Taluk Office, Oulgaret, Puducherry.
- +1 cc to the Government Pleader, S.R.No.76186

Order
in
W.P.No.9280 of 2015

CNR(CO)
SSM(07/12/2018)