

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.34194 of 2017  
and WMP No.38073 of 2017

P.Shanmugam ..... Petitioner

vs.

1. State of Tamil Nadu  
represented by the Principal Secretary to Government,  
Adi Dravidar and Tribal Welfare  
(CV.4) Department,  
Secretariat, Chennai - 600 009.

2. The General Manager (TN),  
Food Corporation of India,  
Chetpet,  
Chennai - 600 031.

3. The Deputy Superintendent of Police,  
Social Justice and Human Rights,  
SC/ST Vigilance Cell,  
Collectorate,  
Kancheepuram District.

.... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records in the order bearing Letter No.12620/CV.IV/2017-1 dated 16.08.2017 passed by respondent No.1 and quashing the same and directing respondent No.2 to treat the petitioner as a member of Scheduled Tribes for all purpose of service in respondent No.2 Food Corporation of India.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.J.Ramesh (for R1 & R3)  
Mr.M.Imthias (for R2)

## ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Material on record discloses that earlier, when the Chairman, District Vigilance Committee, District Collector, Tiruvallur, passed an order dated 20.06.2007, stating that the appellant belongs to "Hindu Kuravar" and not "Hindu Kurumans" community, based on the said order, the General Manager (South), Food Corporation of India, Regional Office, Chennai, passed an order dated 07.09.2007, cancelling the appointment of the petitioner.

2. Being aggrieved by the order dated 20.06.2007, passed by the Chairman, District Vigilance Committee, District Collector, Tiruvallur, petitioner has filed W.P.No.30927 of 2007 to quash the same. After advertng to the rival submissions, a Hon'ble Division Bench of this Court at paragraph No.8 to 14, in W.P.No.30927 of 2007 dated 08.01.2008, ordered as hereunder

"8. Having heard the learned counsel for the respective parties and perusing the impugned order as well as the counter affidavits filed by the first and second respondents, we are of the view that the impugned order cannot be sustained. As rightly contended by the learned counsel for the petitioner except the Ipse dixit of the first respondent in stating that the petitioner did not belong to "Kurumans" Community, absolutely, no reason was adduced in the impugned order to state as to how such a conclusion was validly reached by the first respondent. Going by the statement of the father of the petitioner, the first respondent Committee confirmed that for generations, the petitioner's family was involved in the avocation of scavenging in the Madras Corporation. Such statement would only confirm the position that the petitioner belongs to Scheduled Tribe. The further fact that the neighbours of the petitioner's family used to treat them as members of the lower strata of the society by calling them as "Kurappaiya" strengthens the case of the petitioner that he belongs to the "Kurumans" community, who were for generations engaging themselves in the avocation of 'scavenging' which is commonly called as "Thotti".

9. It is not the case of the first respondent that there were any other records to show that the petitioner belongs to some other Hindu Community other than the "Hindu Kurumans" Community in order to

state that the claim of the petitioner that he belongs to "Hindu Kurumans" Community, cannot be accepted.

10. The further fact that the passing of the order by the first respondent without affording any opportunity to the petitioner, especially when, the action of the first respondent would decide the fate of the petitioner's future, would also vitiate the order impugned in this writ petition. It cannot be said that the appearance of the father of the petitioner in the enquiry can be taken to have satisfied the principles of natural justice.

11. Having regard to all the above factors, we are convinced that the impugned order of the first respondent is wholly illegal and there was no iota of justification for the first respondent to order for the cancellation of the community certificate, dated 10.8.1989 issued to the petitioner by the Tahsildar, Sriperumbudur. The impugned order is, therefore, hereby set aside.

12. As we have set aside the order of the first respondent, dated 20.6.2007, the consequential orders of the second respondent, dated 7.9.2007 and 12.9.2007 cannot also stand.

13. Invariably, in such matters, where the cancellation of the community certificate is effected at the instance of either the State Level or the District Level Vigilance Committee, the employer immediately take steps to pass orders terminating the service of the concerned individual. Though such actions resorted to by the employers cannot be frowned upon, we feel that before passing such orders of termination, the employee concerned should at least be put on notice as to the order of cancellation of the community certificate by furnishing a copy of such order and it will be more appropriate, if any order of termination/dismissal on the basis of the cancellation of the community certificate is to be passed, the same shall be passed, at least, after four weeks from the date of issuance of such notice by the employer.

14. In as much as we have held that the order of the first respondent, dated 20.6.2007, is invalid in law, the consequential orders passed by the second respondent, dated 7.9.2007 and 12.9.2007 have no legs

to stand and that the petitioner shall always be deemed to be in the service of the second respondent without any interruption. Therefore, the second respondent is directed to restore the service of the petitioner as it existed as on 7.9.2007 within four weeks from the date of receipt of a copy of this order and confer all service and other benefits entitled to him in such employment.

With the above directions, the writ petition stands allowed. No costs. All the connected M.Ps. are closed. "

3. After the quashing of the order dated 20.06.2007 of the Chairman, District Vigilance Committee, District Collector, Tiruvallur, on 24.04.2017, the General Manager (TN) Food Corporation of India, Chetpet, Chennai, in his letter Ref.No.Estt.1/3(2)/2011 dated 24.04.2017, has requested the State Level Scrutiny Committee to verify the genuineness of the Scheduled Tribes Community Certificate of the petitioner. Pursuant to which, the Principal Secretary to the Government, Adi Dravidar and Tribal Welfare (CV.4) Department, Chennai, has sent a letter to the Deputy Superintendent of Police, Social Justice and Human Rights, SC/ST Vigilance Cell Collectorate, Kancheepuram District (w.e.), to verify the genuineness of "Hindu-Kurumans" Scheduled Tribes Community Certificate issued to the petitioner by a open enquiry. Copy of the letter dated 16.08.2017 of the Principal Secretary to Government, Adi Dravidar and Tribal Welfare (CV.4) Department, Chennai, has also been marked to the petitioner.

4. Instant writ petition has been filed to quash the letter dated 16.08.2017, of the Principal Secretary to the Government, Adi Dravidar and Tribal Welfare (CV.4) Department, Chennai. Consequently petitioner has prayed to direct the General Manager (South), Food Corporation of India, Regional Office, Chennai, the 2nd respondent, to treat the petitioner as a member of Scheduled Tribes for all purpose of service in Food Corporation of India, the 2nd respondent.

5. Prima facie satisfied with the material available on record and in particular, the decision of the Hon'ble Division Bench in W.P.No.30927 of 2007 dated 08.01.2008, quashing the order dated 20.06.2017, passed by the Chairman, District Vigilance Committee, District Collector, Tiruvallur and the consequential direction issued by the Hon'ble Division Bench that the petitioner shall always be deemed to be in service of Food Corporation of India without any interruption and to confer all service and other benefits entitled to him in such employment. On 26.03.2018. when the instant W.P.No.34194 of 2017, filed challenging the order dated 16.08.2017, of the

Principal Secretary to Government, Adi Dravidar and Tribal Welfare (CV.4) Department, Chennai, came up for admission, we ordered notice to the General Manager (South), Food Corporation of India, Regional Office, Chennai, the 2nd respondent. We directed Mr.Manoharan, learned Government Advocate to take notice and granted interim stay of the operation of the letter dated 16.08.2017, of the Principal Secretary to Government, Adi Dravidar and Tribal Welfare (CV.4) Department, Chennai.

6. On this day, when the matter came up for further hearing Mr.Imthias, learned counsel for Food Corporation of India, Chennai, 2nd respondent submitted that inadvertently, alongwith other matters, a request was made to the State Level Scrutiny Committee to verify the genuineness of the Scheduled Tribes Community Certificate of the petitioner. Learned counsel admitted that department had failed to notice the order made by the Hon'ble Division Bench in W.P.No.30927 of 2007 dated 08.01.2008.

7. Mr.J.Ramesh, learned Additional Government Pleader, submitted that decision made in W.P.No.30927 of 2007, would govern the case of the writ petitioner, wherein, a Hon'ble Division Bench has already declared that order dated 20.06.2007 of the Chairman, District Vigilance Committee, District Collector, Tiruvallur, declaring the petitioner as Hindu-Kurumans, as invalid. Submission of the learned Additional Government Pleader is placed on record.

8. Mr.Imthias, learned counsel for Food Corporation of India submitted that request dated 24.04.2017 to the State Level Scrutiny Committee, to verify the genuineness of the Scheduled Tribes Community Certificate of the petitioner would be withdrawn, Submission is placed on record.

9. Decision made in W.P.No.30927 of 2007 dated 08.01.2008, covers the issue as to whether the petitioner belongs to Hindu-Kurumans Community or not and the same has reached finality. No further enquiry is required. Therefore, the letter dated 16.08.2017, of the Principal Secretary to Government, Adi Dravidar and Tribal Welfare (CV.4) Department, Chennai, is set aside and the instant writ petition is allowed. No costs. Consequently, the connected writ Miscellaneous Petition is closed.

sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,  
Adi Dravidar and Tribal Welfare (CV.4) Department,  
Secretariat, Chennai - 600 009.

2. The General Manager (TN),  
Food Corporation of India,  
Chetpet,  
Chennai - 600 031.

3. The Deputy Superintendent of Police,  
Social Justice and Human Rights,  
SC/ST Vigilance Cell,  
Collectorate,  
Kancheepuram District.

+1cc to Mr.M.Imithias, Advocate SR.No.31124

+1cc to Mr.M.Radhakrishnan, Advocate SR.No.30878

+2cc to Government Pleader SR.No.31288, 31746

W.P.No.34194 of 2017  
and WMP No.38073 of 2017

PPA (CO)  
GN(04/05/2018)



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