

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24.10.2018

Orders Pronounced on : 02.11.2018

CORAM:

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

W.P.No.23101 of 2018

P.Jayaprakash

.. Petitioner

Vs.

1. The Executive Director (Personnel),
Zonal Manager,
Disciplinary Authority,
Life Insurance Corporation of India,
L.I.C. Building, 12th Floor, Anna Salai,
Chennai-600 002.

2. The Revenue Divisional Officer and
Sub-Divisional Magistrate,
Tiruttani Division,
Tiruvallur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to reinstate the petitioner into service as per the fresh Community Certificate obtained by the petitioner in proceedings No.R.Dis.431/A4/2018, dated 11.04.2018 by the Revenue Divisional Officer, Tiruttani.

For petitioner : Mr.S.Doraisamy

For respondents: Mr.R.S.Anandan for R-1

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

R.SUBBIAH, J

ORDER

The present Writ Petition is filed praying for issuance of a Writ of Mandamus to direct the respondents to reinstate the petitioner into service as per the fresh Community Certificate obtained by the petitioner in proceedings No.R.Dis.431/A4/2018, dated 11.04.2018 by the Revenue Divisional Officer, Tiruttani.

2. It is the case of the petitioner that he belongs to Konda Reddi Community, which is a Scheduled Tribe Community. He obtained Certificate from the Deputy Tahsildar, Pallipat on 02.08.1982. In the year 1986, the first respondent called for an interview for the post of Assistant. The petitioner was selected by the first respondent under the ST category and was appointed as Assistant on 16.07.1986 and his service was confirmed on 16.10.1986 after satisfying his Community status. He was promoted as Higher Grade Assistant on 22.10.1989.

3. It is further stated by the petitioner that the first respondent, in his letter dated 27.10.1990, directed the petitioner to produce a fresh Community Certificate in the permanent card system. Accordingly, the petitioner preferred an application on 13.12.1990 to the Revenue Divisional Officer, Thiruvallur, which was rejected, against which, the petitioner filed a Writ Petition in W.P.No.15968 of 1991, in which this Court set aside the above rejection order, with liberty to the RDO to conduct fresh enquiry. Though the order was passed in 1991, the District Adi Dravidar Welfare Officer, Tiruvallur, in his letter dated 04.11.1999, directed the petitioner to appear for an enquiry before the Collector to be held on 22.11.1999. Accordingly, the petitioner appeared before the Collector, Tiruvallur District on 22.11.1999 and produced 26 documents in support of his claim. But the Collector had not given any personal hearing to the petitioner and directed the Assistant in the Collector's Office to collect all the documents produced by the petitioner. However, the two-member District Level Vigilance Committee, without any enquiry, passed an order on 31.07.2000, cancelling the petitioner's Community Certificate.

4. Challenging the abovesaid cancellation of Community Certificate, the petitioner filed a Writ Petition before this Court in W.P.No.13865 of 2000, which was disposed of by this Court on 16.08.2000, directing the petitioner to file appeal before the State Level Scrutiny Committee and this Court further directed the first respondent not to take any action on the basis of the order dated 31.07.2000. But the first respondent hurriedly passed an order on 10.08.2000, terminating the service of the petitioner on the basis of the said order dated 31.07.2000, against which, the petitioner filed W.P.No.17534 of 2000, in which, this Court, by order dated 18.10.2001, set aside the order of termination. In spite of the same, the petitioner was not reinstated.

5. The petitioner further states that the State Level Committee, in its order dated 23.08.2001, passed an order confirming the order of cancellation of the petitioner's Community Certificate, dated 31.07.2000, against which, the petitioner preferred W.P.No.16684 of 2001, in which, this Court,

by order dated 13.09.2001, dismissed the said Writ Petition, against which, the petitioner preferred a Writ Appeal in W.A.No.2678 of 2001. This Court, while admitting the above Writ Appeal, stayed all further proceedings of the State Level Committee, dated 23.08.2001. Thereafter, the petitioner was reinstated into service by the first respondent. Subsequently, when the Writ Appeal came up for hearing on 31.07.2014, the same was dismissed for non-prosecution. Thereafter, the first respondent, by order dated 28.08.2014, passed an order of dismissal from service of the petitioner. At this stage only, the petitioner came to know about the abovesaid order of dismissal of the Writ Appeal. Immediately, the petitioner preferred a petition in C.M.P.No.347 of 2014 to restore the above Writ Appeal, in which a Division Bench of this Court passed order on 30.10.2014 restoring the Writ Appeal. Thereafter, the Writ Appeal was taken up for hearing on the same day and it was allowed by setting aside the order of the State Level Scrutiny Committee dated 23.08.2001 and remitted the matter back to the State Level Committee for fresh enquiry and to conclude the same within three months. However, the State Level Committee so far had not proceeded with the enquiry.

6. Thereafter, the petitioner preferred a miscellaneous petition in W.A.M.P.No.15 of 2015 in W.A.No.2678 of 2001 for a direction to the first respondent to restore the service of the petitioner, in which, this Court passed the following order on 09.10.2015:

"2. The termination of the services of the appellant is based only on the issue of caste certificate not being genuine. The learned Senior Counsel for the fourth respondent/LIC states that if favourable decision is rendered by the Committee, the appellant can be restored in service with all benefits. Thus the solution lies in, actually, the Committee deciding the matter for which the time fixed by this Court elapsed long back.

3. We put the learned Government Pleader to notice that the authorities are in breach of the order and they are liable to be proceeded for contempt. Thus, the remedial action should be taken forthwith, otherwise in any proceedings filed by the appellant for contempt, the authorities would be in difficulty."

7. Thereafter, the petitioner filed another Writ Petition in W.P.No.4075 of 2016, in which, a Division Bench of this Court passed the following order on 22.03.2016:

"9. In view of such legal position, when the petitioner was appointed on the basis of the community certificate issued by the competent officer, which was subsequently rejected by the State Level Scrutiny Committee, the petitioner cannot be terminated from service on this ground. However, the petitioner will not be entitled to any benefit under reserved category.

10. Accordingly, the impugned order dated 28th August, 2014 is set aside. The first respondent is directed to reinstate the petitioner into service. However, the petitioner will not be entitled to any benefit as admissible to the employees appointed under the reserved category. The petitioner shall be treated as general candidate for all purposes.

11. Resultantly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed."

8. It is the grievance of the petitioner that even thereafter, the petitioner was not reinstated into service within the prescribed time. Hence, the petitioner filed a Contempt Petition in Cont.P.No.1714 of 2016 against the first respondent for disobeying the order of this Court, dated 22.03.2016 passed in W.P.No.4075 of 2016. While the said Contempt Petition is pending, as against the order passed on 22.03.2016 passed in W.P.No.4075 of 2016, the first respondent moved the Supreme Court in S.L.P.(C).....CC.No.16810 of 2016 and by order dated 03.10.2016, the Supreme Court passed an order of interim suspension of the operation of the order under appeal therein.

9. Subsequently, the petitioner preferred an application to the Revenue Divisional Officer, Tiruttani, requesting to issue Community Certificate to the petitioner and his children, namely (i) J.Karthika and (ii) J.Vigneshwaran to the effect that they belong to Konda Reddi (ST) Community. Along with the said application, the petitioner enclosed necessary documents in support of his claim. The Revenue Divisional Officer, Tiruttani, who is the authority for issuing the Community Certificate, conducted enquiry and passed an order, granting Community Certificate to the petitioner and his children on 11.04.2018, stating that the petitioner belongs to Konda Reddi Community. Hence, according to the petitioner, as on date, he has a valid Community Certificate issued by the concerned authority.

10. The petitioner further alleges that earlier, as stated above, he was removed from service by the first respondent on the ground that his earlier Community Certificate was found to be bogus by the State Level Scrutiny Committee and the finding of the State Level Scrutiny Committee was set aside by this Court as noted above and the matter was remitted back to the State Level Scrutiny Committee for fresh enquiry, which is still pending. However, the petitioner had obtained a fresh Community Certificate from the competent authority, which could be taken into consideration by the first respondent to reinstate the petitioner into service. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

11. Heard the learned counsel for the petitioner, who made his submissions adverting to the averments made in the affidavit.

12. Learned counsel appearing for the first respondent-LIC, by filing counter affidavit, stated that the petitioner was promoted as Higher Grade Assistant in the vacancy meant for Scheduled Tribe category. He was not only appointed under the vacancy pertaining to ST, but also obtained his promotion under the vacancy meant for ST. Even though the office of the first respondent has been following-up with the petitioner to produce the Community Certificate, he has not informed them that his application has been rejected by the RDO. This came to the notice of the first respondent only after receipt of the Court order in W.P.No.15968 of 1991, dated 15.11.1991. As per the communication received from the District Collector on 08.08.2000, the petitioner was dismissed from service on 10.08.2000, but the order of this Court, dated 16.08.2000 in W.P.No.13865 of 2000 was received by the first respondent only on 24.08.2000, i.e. only after passing of the dismissal order on 10.08.2000. Hence, it is stated by the first respondent that action was taken even before the order was passed by this Court and the Corporation cannot be found fault for the same.

13. It is further stated by the learned counsel for the first respondent that the first respondent's office was in receipt of the letter dated 31.07.2000 from the District Collector regarding the cancellation of the Community Certificate and requesting to terminate the petitioner from the post, and hence, it cannot be contended by the petitioner that the order of dismissal had been passed in a hurried manner. The State Level Committee, by order dated 23.08.2001, found that the petitioner does not belong to Konda Reddy Community. Though this Court, in W.P.No.17534 of 2000, by order dated 18.10.2001, set aside the termination order, in the meantime, the State Level Committee, by order dated 23.08.2001, cancelled the Community Certificate issued to the petitioner. Since the connected Writ Appeal in W.A.No.2678 of 2001 was dismissed for non-prosecution

by this Court on 31.07.2014, the first respondent dismissed the petitioner from service on 28.08.2014. The learned counsel for the first respondent also drew the attention of this Court to various proceedings initiated by the petitioner before this Court and also the authorities.

14. Learned counsel for the first respondent further alleged that the Revenue Divisional Office, Tiruttani, has no jurisdiction to issue fresh Community Certificate to the petitioner, when the matter is sub-judice before the State Level Community Certificate. Further, the petitioner himself accepted that he relied on his Community Certificate to obtain fresh Community Certificate. When his Community Certificate is under question before the State Level Committee, the second respondent-RDO has no jurisdiction to issue fresh Community Certificate. It is not known as to whether the petitioner has brought to the knowledge of the second respondent-RDO about the pendency of the enquiry before the State Level Scrutiny Committee. Therefore, the Certificate issued by the second respondent cannot be relied on when the issue is pending before the State Level Committee. Without approaching the State Level Committee to speed up the enquiry, the petitioner has obtained fresh Certificate from the RDO, which is not binding upon the first respondent. Moreover, the genuineness of the fresh Community Certificate also has to be verified by the State Level Committee.

15. It is further stated by the learned counsel for the first respondent that the Divisional Committee and Zonal Committee has cancelled the earlier Community Certificate of the petitioner by scrutinising evidence produced by the petitioner. The Zonal Committee made scrutiny of many records and arrived at a conclusion that the petitioner does not belong to Konda Reddi Community and his Community Certificate has been cancelled. As per the order of this Court, the matter has once again been remitted to the State Level Committee and the same is pending before the State Level Committee. Further, it is for the second respondent-RDO to explain as to how the fresh Community Certificate was issued to the petitioner, when the Certificate issued to him was under scrutiny by the State Level Committee. The present Writ Petition is not maintainable, as the same has been filed based on the fresh Certificate obtained by the petitioner. The petitioner has to approach the Apex Court for a direction based on the fresh Certificate obtained by him, as the abovesaid SLP is pending before the Apex Court and also when the enquiry is pending before the State Level Committee against the Community Certificate already relied on by the petitioner. Hence, the first respondent prayed to dismiss the Writ Petition.

16. On the above aspects, this Court also heard the submissions of the learned Additional Government Pleader appearing for the second respondent.

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

18. From the events narrated above and also from the submissions made by learned counsel on either side, it is clear that the petitioner's earlier Community Certificate was referred to State Level Scrutiny Committee and the proceedings are pending before the said Committee. When that being the position, it is a surprise as to how the Revenue Divisional Officer concerned has issued the fresh Community Certificate. In fact, this Court, earlier, by order dated 22.03.2016 in W.P.No.4075 of 2016, has directed the first respondent to reinstate the petitioner into service and this Court also observed that he will not be entitled to any benefit as admissible to the employees appointed under the reserved category and the petitioner shall be treated as general candidate for all purposes. The said order of this Court dated 22.03.2016 is suspended by the Supreme Court in S.L.P.(C).No.....C.C.No.16810 of 2016 on 03.10.2016. This being the position, when the order of reinstatement passed by this Court is suspended by the Supreme Court, there is no question of again reinstating the petitioner and moreover, the reinstatement does not arise based on the said fresh Community Certificate issued by the RDO, more particularly when the matter is sub-judice before the Supreme Court.

19. For the reasons stated above, absolutely, we do not find any merit in the Writ Petition, which is accordingly dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Executive Director (Personnel),
Zonal Manager,
Disciplinary Authority,
Life Insurance Corporation of India,
L.I.C. Building, 12th Floor, Anna Salai,
Chennai-600 002.

2. The Revenue Divisional Officer and
Sub-Divisional Magistrate,
Tiruttani Division,
Tiruvallur District.

+ 1 cc to Mr. R.S. Anandan, Advocate SR.75819
+ 1 cc to Mr.S. Doraisamy, Advocate Sr.76131
+ 1 cc to Government pleader sr.78292

W.P.No.23101 of 2018

CS(CO)
EU(05/12/2018)



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