

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.10.2018

Orders Pronounced on : 26.11.2018

CORAM:

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

W.P.No.14906 of 2018

M.Tamizharasu

.. Petitioner

Vs.

1. The Tamil Nadu State Level Scrutiny Committee,
Rep. by its Chairman and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai-600 009.

2. The Bank of Baroda,
Rep. by its Deputy General Manager,
Regional Office (Coimbatore),
3rd Floor, No.82, Bank Road,
Coimbatore-641 018.

.. 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 relating to the order of termination in Proceedings No.RO:CBE:HRM:52:2962, dated 03.02.2017 on the file of the second respondent, on quash the same and direct the second respondent to reinstate the petitioner into service with all benefits in view of the order of cancellation of Community Certificate of the petitioner by the State Level Scrutiny Committee is set aside in W.P.No.9550 of 2017, dated 17.11.2017.

For petitioner : Mr.S.Doraisamy

For respondents : Mr.Rajendra Prasad,
Addl.G.P. for R-1

Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co. for R-2

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorari Mandamus to call for the records relating to the order of termination in Proceedings No.RO:CBE:HRM:52:2962, dated 03.02.2017 on the file of the second respondent, quash the same and direct the second respondent to reinstate the petitioner into service with all benefits in view of the order of cancellation of Community Certificate of the petitioner by the State Level Scrutiny Committee is set aside in W.P.No.9550 of 2017, dated 17.11.2017.

2. The case of the petitioner is that he belongs to Hindu, Konda Reddis Community, which is a Scheduled Tribe as per the Constitution (Scheduled Tribes) Order. He was issued with a Community Certificate on 14.09.1978 by the Tahsildar. He joined service in the second respondent-Bank on 04.01.1990 as Clerk-cum-Cashier. The petitioner's services were confirmed and lastly he was working in the Bhavani Branch of the second respondent-Bank as Single Window Operator-A. The verification process of the petitioner's Community status was initiated by the first respondent-Committee in the year 2011. On the basis of the Vigilance Cell, the first respondent-Committee issued show cause notice to the petitioner on 10.09.2015 enclosing the copy of the Vigilance Cell report. On 20.10.2016, the first respondent-Committee directed the petitioner to appear for enquiry and he appeared and reiterated his request for supply of copies and statements contained/enclosed in the Vigilance Cell report. The first respondent-Committee received the petitioner's letter and however, without furnishing the copy of the statements contained in report of the Vigilance Cell, etc., he appeared for the enquiry by the first respondent on 29.11.2016 and reiterated his request made earlier. Without conducting proper enquiry, the first respondent-Committee passed order on 03.01.2017 finding that the petitioner's Community Certificate is not genuine and thus cancelled the Community Certificate obtained by the petitioner, dated 14.09.1978. Hence, the petitioner filed a Writ Petition before this Court in W.P.No.9550 of 2017, challenging the said order of the first respondent-Committee. But due to over-sight, he did not challenge the order of termination. This Court, after hearing the parties, by order dated 17.11.2017, in the said Writ Petition, set aside the order of the first respondent-Committee.

3. In the meanwhile, the second respondent-Bank had abruptly terminated the services of the petitioner by order dated 03.02.2017. The said order of termination was passed solely on the basis of the order of the first respondent-Committee. Since the order of the first respondent-Committee had been quashed by

this Court in the said Writ Petition, as a natural and logical consequence, the order of termination passed by the second respondent-Bank no longer survives and the second respondent-Bank ought to have reinstated him forthwith. Hence, the petitioner has filed this Writ Petition for the relief stated supra.

4. When the Writ Petition is taken up for hearing, the only submission made by the learned counsel for the petitioner is that this Court has set aside the order of the first respondent-Committee, dated 03.01.2017 and resultantly, the termination order passed by the second respondent-Bank no longer holds good and in such circumstances, he is entitled for reinstatement. Furthermore, though the Division Bench of this Court, in the said Writ Petition in W.P.No.9550 of 2017, has granted three months time to the first respondent-Committee to complete the enquiry, till date, the enquiry was not completed. In such circumstances, the learned counsel for the petitioner submitted that a direction may be issued to the second respondent-Bank to reinstate the petitioner.

5. Heard the learned counsel appearing for the second respondent-Bank and the learned Additional Government Pleader appearing for the first respondent on the above aspects and perused the materials available on record.

6. We are of the opinion that the petitioner was out of employment from 03.02.2017. At this juncture, it is not appropriate to reinstate the petitioner. In this regard, it is useful to refer the following order passed by this Court in W.P.No.32360 of 2017, dated 04.10.2018 :

"6. Irrespective of the wordings in the said letter of petitioner, we are of the opinion that petitioner has made a request to the respondent/Committee on 24.08.2015 and from the records/files, it is seen that the respondent-Committee has chosen to rely upon the statement recorded by the Vigilance Officer for passing the impugned order. Under such circumstances, we are of the view that it would be appropriate to give an opportunity of hearing to the petitioner to cross-examine the witnesses. Hence, the impugned order is liable to be set aside and the matter is to be remitted back to the respondent. At the same time, we are also of the opinion that for the above purpose of remanding the matter, the petitioner need not be reinstated into service. In this regard, it would be appropriate to rely upon

the judgment of a Division Bench of this Court in W.P.No.19151 of 2017, dated 24.8.2017 (D.Jayam Vs. The District Collector, Kanchipuram District, Kanchipuram and another), in which, in paragraph 14, it has been observed as follows:

"14. In the present case, there exists a serious dispute regarding the issuance of the Scheduled Tribe Community Certificate itself by the Revenue Divisional Officer, which was the basis for the petitioner to be appointed to a post against a vacancy exclusively reserved for persons belonging to Scheduled Tribe. Further, as already pointed out a combined reading of the directions, particularly Clauses 3, 10 and 15 therein, issued in Kumari Madhuri Patil and another Vs. Additional Commissioner [(1994) 6 SCC 241], contemplate that the process of verification of Community Certificate should be ordinarily completed before appointment and only when there is delay in finalising those proceedings, the candidate could be provisionally permitted to join duty subject to swearing an affidavit of undertaking to that effect. Inasmuch as the appointment of the petitioner has taken place after 02.09.1994 when the regime under the directions issued in Kumari Madhuri Patil and another Vs. Additional Commissioner [(1994) 6 SCC 241], have come into force, it is rather a fortuitous circumstance that the petitioner was permitted to join duty before her Scheduled Tribe Community status had been verified, which cannot be perpetuated. That apart in Director of Tribal Welfare Vs. Laveti Giri [AIR 1995 SC 1506] it has been categorically held that the burden of proof of social

status is always on the person who profess it to seek constitutional socio-economic advantages and it is no part of the duty of the State to disprove or otherwise. Having regard to these facts and circumstances of the case in hand, we are of the considered view that it would be neither prudent nor in the interest of justice to permit the petitioner to rejoin the duty till the verification of Scheduled Tribe Community Certificate is completed by the State Level Scrutiny Committee. However, in order to balance equities, it is made clear that the petitioner would be entitled to continuity of service with all attendant and consequential monetary benefits on her reinstatement in service in the event of the State Level Scrutiny Committee confirming her Scheduled Tribe Community status, subject to the deductions to the extent of the remuneration earned by her through gainful employment, if any, in the interregnum."

7. Apart from the above judgment of this Court, the Supreme Court, in S.L.P.No.18353 of 2005, by order dated 05.01.2007 (State Bank of India and another Vs. T.Kasinathan and others), held as follows:

"Heard counsel for the parties.

While counsel for the petitioners contends that several similar matters have been admitted for hearing, counsel for the respondents brings to our notice an order passed in one such matter where the Special Leave Petition was dismissed. However, in view of the fact that several matters have been admitted for hearing, we direct that these matters be also tagged with other matters where appeals have been admitted.

The reinstatement of the

respondents in the appeals admitted before this Court have been stayed. We are informed that a fresh Committee has since been appointed which will go into the matter and decide the issue.

We grant stay of reinstatement but subject to the condition that in case the freshly constituted Committee holds in favour of the respondent, regardless of any writ petition or Appeal being filed by the petitioner, he shall be reinstated in service forthwith and not later than 15 days from the date of the order of the Committee."

8. Therefore, at this stage, there is no need to reinstate the petitioner into service, since we are setting aside the impugned order on the sole ground of opportunity not being provided to him to cross-examine the witnesses. Accordingly, the Writ Petition is allowed and the matter is remitted back to the respondent only for the said purpose. The respondent-Committee is directed to give an opportunity of hearing to the petitioner for production of documents by him, if any and also to cross-examine the witnesses and thereafter, the respondent-Committee shall pass reasoned order, on merits and in accordance with law, and also taking note of the relevant Government Orders issued from time to time and also the decision of the Supreme Court in the case of *Kumari Madhuri Patil Vs. Additional Commissioner*, reported in AIR 1995 SC 94 = 1994 (6) SCC 241, which has been subsequently clarified by the Supreme Court in the decision reported in 1997 (5) SCC 437 (*Kumari Madhuri Patil Vs. Addl. Commnr., Tribal Development*). The respondent-Committee shall pass orders as directed above, preferably within a period of eight weeks from the date of receipt of a copy of this judgment or on production of a copy of this judgment by the petitioner, whichever is earlier. The reinstatement of the petitioner into service will depend upon

the outcome of the decision to be taken by the respondent-Committee based on the directions issued above.

7. Following the abovesaid order of this Court in W.P.No.32360 of 2017, it has to be held that there is no need for reinstatement of the petitioner at this stage. This Court however directs the first respondent-State Level Scrutiny Committee to conduct enquiry with regard to the validity of the Community Certificate issued to the petitioner by the Tahsildar, dated 14.09.1978 and pass appropriate orders, on or before 31.01.2019. If the first respondent-Committee holds in favour of the petitioner, the second respondent-Bank shall reinstate the petitioner into service not later than two weeks from the date of the order that will be passed by the first respondent-Committee as directed above.

8. With the above observations, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cs

To

The Chairman and Secretary to Government,
The Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.80626
+1cc to Mr.S.Doraisamy, Advocate, S.R.No.80982

W.P.No.14906 of 2018

MP(CO)
CS/11/12/2018

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