

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.10.2018

Orders Pronounced on : 02.11.2018

CORAM:

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

W.P.No.16315 of 2018
and
W.M.P.No.19463 of 2018

P.I.Ashokaraamasekar ... Petitioner

Vs.

1. The Chairman-cum-District Magistrate,
Collectorate, Revenue Department,
Puducherry.
2. Tahsildar,
Villianur Taluk Office,
Villianur, Puducherry.
3. The Secretary to Government,
Housing, Chief Secretariat,
Puducherry.
4. The Chairman,
Puducherry Housing Board,
Puducherry.
5. The Secretary,
Puducherry Housing Board,
Puducherry.

(Respondents 3 to 5 impleaded as
per order dated 06.07.2018 in
W.M.P.No.20003 of 2018 in W.P.No.16315 of 2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the first respondent with No.3270/DRDM/C2/SC/2013, dated 13.06.2018 and to quash the same.

For petitioner: Mr.P.S.Raman,
Senior Counsel for Mr.V.Ajayakumar

For respondents: Mr.A.Gandhi Raj,
Govt. Pleader (Pondicherry) for RR-1 to 3
Mr.T.M.Naveen for RR-4 and 5

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorari to call for the records of the first respondent with No.3270/DRDM/C2/SC/2013, dated 13.06.2018 and to quash the same.

2. The facts as culled out from the affidavit and other materials available on record, are as follows:

(a) The petitioner belongs to Scheduled Caste category of Puducherry. He obtained Community Certificate on 17.05.1994 indicating that he belongs to Scheduled Caste (Adi Dravidar). The petitioner's father married the petitioner's mother, who was a native of Poothurai, Vanur, Tamil Nadu, which is an adjacent village to Puducherry. Since the petitioner's father belonged to a very poor family, he was forced to live in the in-law's house after marriage in Poothurai and was cultivating the property belonging to the petitioner's mother. Subsequently, the petitioner's father also married his mother's sister. The entire property belongs to the two sisters, i.e. two wives of the father of the petitioner.

(b) The petitioner's father shifted his residence with wife and children to his native place Puducherry and was residing along with the other brothers in Kalmedupet, since the petitioner's father and his forefathers were natives of Puducherry. Though the petitioner's father shifted to Puducherry along with the petitioner's aunt in 1962, the petitioner stayed with his mother in Poothurai and completed his schooling. After completion of schooling, the petitioner joined Diploma Course in Puducherry and stayed with his father and on the basis of the father's status and residence, the petitioner was granted Community Certificate. It is stated by the petitioner that initially, he was issued with the Community Certificate in the year 1984, 1985, 1992, etc., to the effect that he is a Scheduled Caste of Puducherry. The petitioner was appointed as Technical Assistant in Puducherry Housing Board in 1988 and subsequently he got his services regularised as Junior Engineer in 1991. The petitioner is a Degree holder in Engineering and by virtue of merit, under the Degree quota and seniority, he was promoted as Assistant Engineer in 2001 and the promotion was not

under reservation quota.

(c) Till 2000, the Puducherry Administration was not making any distinction between the Scheduled Caste candidate of Puducherry and those who came to Puducherry and the issue was settled by the Supreme Court through order in 2005 in Pushpa's case (S.Pushpa Vs. Sivachanmugavelu - 2005 (3) SCC 1). When the said issue of migration and Puducherry origin had cropped up, the petitioner's juniors working in Housing Board and who belong to Forward Community and OBC, have started creating trouble to the petitioner by challenging the Community Certificate stating that the petitioner came to Puducherry for studying Diploma without considering and concealing the fact that the petitioner's father is a native of Puducherry and that he returned to Puducherry in 1962 itself without any reason at all.

(d) One Mr.Artchounane, who is junior to the petitioner in the Engineering cadre in Housing Board, wanted to get promotion to the post of Executive Engineer in the petitioner's place by throwing the petitioner out. Hence, the said Artchounane as well as at his instance, certain other persons, have been filing cases against the petitioner challenging the Community Certificate with a view to get promotion to the post of Executive Engineer by pulling the petitioner down, whereas the petitioner was promoted to the post of Assistant Engineer by virtue of the merit and seniority and also to the post of Executive Engineer on the basis of merit and seniority and did not obtain any benefit out of the Community status at all.

(e) Even then, with a view to harass the petitioner due to personal animosity, the said Mr.Artchounane and at his instance, the other Forward Community candidates filed several cases against the petitioners, the details of which are as follows:

Sl. No.	Case Number	Filed by	Result
1	W.P.No.4017 1 of 2006	R.Subramanian (Secretary, Most Backward and Other Backward Class Employees Union)	Dismissed by this Court on 19.10.2006 (single Judge)
2	W.P.No.4038 4 of 2006	D.Ravi (Executive Member, Most Backward and Other Backward Class Employees Union) and S.N.Chandirasekaran	Dismissed as withdrawn on 11.09.2009 (single Judge)

Sl. No.	Case Number	Filed by	Result
3	W.P.No.3722 6 of 2007	Rathina Subramanian (Secretary, MBC and other BC Employees Union)	Dismissed by a Division Bench of this Court on 05.10.2009
4	W.P.No.3452 of 2009	Thiru.Artchounane (Vice President, MBC and other BC Employees Union)	Dismissed as withdrawn on 07.09.2009 (single Judge)
5	O.S.No.1253 of 2012	Thiru.V.Artchounane	Plaint was rejected by I Addl. District Munsif, Puducherry, on 21.12.2017
6	Cr.No.160 / 2013	De-facto complainant V.Artchounane	on the file of Orleanpet Police Station, Puducherry and the matter is challenged in Crl.O.P.No.25188 of 2013 pending before this Court.

(f) Though all the cases filed by the said Artchounane as well as his friends at his instigations, were dismissed by this Court as well as Civil Court at Puducherry, inspite of the dismissal of the said cases, the said Artchounane was continuously writing complaints against the petitioner's Community Certificate. Finally, on the basis of the complaints made by the said Artchounane continuously, the Housing Board referred the petitioner's Community Certificate and Birth Certificate to the Revenue Authorities and Registrar of Birth and Death and the Revenue Authorities and the said Authorities declared that the petitioner's Community Certificate and Birth Certificate are in order.

(g) In such a situation, the petitioner's son completed his +2 course in 2013 and for the purpose of submitting his application for professional courses, the Community Certificate in the prescribed format was needed, for which the petitioner made an application along with the format, requesting the Revenue Authorities to issue the petitioner a Community Certificate in the prescribed format. The Revenue Authorities did not respond and did not issue the Community Certificate and with-held the application without any reason. The petitioner came to know that immediately before submitting the application, the said Artchounane in the name of MBC and BC Employees Union

in the Housing Board, which is an Association not in existence, gave a letter to the Tahsildar, insisting not to give Community Certificate to the petitioner's son. Hence, the Community Certificate was denied to the petitioner's son. Therefore, the petitioner approached this Court in W.P.No.16658 of 2013 for a direction to the Revenue Authorities to issue Community Certificate and also another Writ Petition in W.P.No.19368 of 2013 for a direction to admit the petitioner's son to the professional courses.

(h) The Revenue Authorities rejected the application submitted by the petitioner's son for grant of Community Certificate during the pendency of the Writ Petition filed by the petitioner's son, which was dismissed granting liberty to file an appeal against the order passed by the Revenue Authorities. Even though the petitioner's son filed appeal, no action was taken by the respondents and instead of considering the appeal filed by the petitioner's son for grant of Community Certificate, they have issued Memo to the petitioner stating that the petitioner's Community Certificate issued in 1992 is going to be cancelled, whereas the representation submitted by the petitioner was not considered by the Cancellation Committee and by order dated 24.07.2014, the District Collector-cum-District Magistrate, Puducherry, cancelled the certificates issued to the petitioner and his son prior to the year 2000, and it was also observed therein that the petitioner and his son are entitled only to the Scheduled Caste (migrant) Certificate.

(i) Aggrieved by the cancellation of the Community Certificate, the petitioner filed W.P.No.20559 of 2014, and this Court, by order dated 28.04.2017, while disposing of W.P.No.20559 of 2014 along with other connected cases, allowed all the Writ Petitions. Immediately, the Revenue Authorities have passed another order cancelling the Community Certificate issued to his son earlier and the son has also filed a Writ Petition before this Court. The only ground taken by the authorities in cancelling the petitioner's Community Certificate is that he did not produce any record to show that the petitioner's father was having property in Puducherry before 1964, i.e. the petitioner was not eligible for issuance of Scheduled Caste (origin certificate) under the Constitution of (Pondicherry) Scheduled Castes Order, 1964, as his father and his parents have migrated to Puducherry only in 1970. But the Revenue Authorities did not consider the fact that the petitioner's father and forefathers were native of Puducherry and were residing in Natham Poramboke in Kalmedupet.

(j) Hence, challenging the order of cancellation of the Community Certificate, the petitioner earlier filed W.P.No.20559 of 2014, which was allowed by this Court on 28.04.2017, as stated above, by setting aside the cancellation of the Community Certificate of the petitioner, with a direction to the Revenue Authorities to conduct fresh enquiry and pass orders on or before 29.09.2017. But the Revenue Authorities did not conduct

enquiry within the time frame and prolonged the same and passed the impugned order dated 13.06.2018 after more than nine months after the deadline fixed by the Division Bench of this Court in the said order dated 28.04.2017 in W.P.No.20559 of 2014, etc. batch. Hence, challenging the said cancellation order of the Community Certificate of the petitioner, the present Writ Petition is filed for the relief stated supra.

3. Learned Senior Counsel appearing for the petitioner submitted that the petitioner's father and his forefathers were native of Puducherry and residing in Natham Poramboke in the Scheduled Caste hamlet in Kalmedupet, Puducherry. The petitioner's father was an agricultural coolie and was not having any property in his own name. His father married the petitioner's mother Indirani, who is a native of Poothurai, Vanur, which is only less than 2 Kms. from Kalmedupet hamlet. Subsequently, the petitioner's father also married the sister of his mother and both the wives were having landed property in Poothurai, which is inherited by them from their parents. The petitioner's father started to live in Poothurai with two wives and used to go to Puducherry and stayed there in the hut in which he was residing previously. Learned Senior Counsel appearing for the petitioner further submitted that the petitioner's father completely shifted his residence to Puducherry along with his wife and children in 1962, i.e. even prior to 05.03.1964 when the Constitution (Pondicherry) Scheduled Castes Order, 1964, came into force. The petitioner's father Mr.Perumal and the petitioner's father's brother Muthaiyan were also granted free "Manai" patta in Kalmedupet in Puducherry in the Scheduled Caste hamlet through which the hut in which the petitioner's father was residing, became his own property in 1978. The said free Manai patta had been given to them, i.e. the petitioner's father and the brother of the petitioner's father, since they were residing in the said property for the last minimum 30 years, which is accepted by the Cancellation Committee.

4. Learned Senior Counsel appearing for the petitioner further submitted that since the Community Certificate was refused to be issued to one Chandiran of Kalmedu, Muthirayarpalayam, Puducherry, who is the son of the petitioner's sister Devaki, he filed W.P.No.17864 of 2003. Pursuant to the direction given by this Court, enquiry was conducted and the Village Administrative Officer of Poothurai, in his report, stated that the petitioner's father along with his wife and daughter, shifted to Puducherry Kalmedu in 1962 and started to live in the original hut in the Scheduled Caste hamlet when the daughter was four years old, i.e. the petitioner's sister. In this regard, learned Senior Counsel appearing for the petitioner invited the attention of this Court to the said report of the VAO, dated 21.01.2004. It is further stated in the said report that the mother of the said Chandran, namely Devaki was working in Puducherry. Further, the

Certificate, dated 15.07.2004, issued by the Principal, Perunthalaivar Kamaraj Krishi Vigyan Kendra, Kurumbapet, Pondicherry, shows that the date of birth of the said Devaki is 01.06.1958, which clearly shows that Perumal (petitioner's father) came back to Puducherry with family in 1962 itself, i.e. even when the petitioner's sister was four years old.

5. Learned Senior Counsel appearing for the petitioner further submitted that the petitioner stayed with his grandmother in Poothurai when he was going to School and studied upto 10th Std. there because of the inability of his father to send him to school. In 1985, the petitioner joined Diploma Course in Puducherry and in 1988, he joined in the Puducherry Housing Board as Technical Assistant on daily wage basis and got regular appointment as Junior Engineer in 1991 and further promotion as Assistant Engineer in 2001 and further promotion as Executive Engineer in 2009, by virtue of his seniority and merit. While so, the petitioner's subordinate and colleagues filed cases against the petitioner and complaints have also been lodged by V.Artchounane on the instigation of various persons and as well as his friend, all of which ended in vain. Resultantly, the Community Certificate of the petitioner was cancelled on 24.07.2014, which was challenged by the petitioner in W.P.No.20559 of 2014. Earlier, this Court, on 04.08.2014, granted interim stay of the order of cancellation of the Community Certificate of the petitioner, and the Pondicherry District Collector and others filed counter affidavit stating that the petitioner's father moved to Puducherry only after 1967, but the VAO, Vanur Division in his report as early as in 2004, stated that the petitioner's father returned to Puducherry in 1962 itself. Finally, this Court has given a direction in W.P.No.20559 of 2014 filed by the petitioner, which was disposed of by the Division Bench of this Court, along with connected petitions in W.P.Nos.18027, 21443 of 2014 and 33021 of 2016 by giving various directions on 28.04.2017. Since it is contended that the petitioner's Community Certificate was cancelled without following the procedures expected to be followed as per G.O.Ms.No.152, dated 24.11.2005 on the file of the Department of Revenue and Disaster Management, Puducherry, the petitioner in W.P.No.20559 of 2004, prayed to set aside the cancellation order of the Community Certificate. Accordingly, this Court allowed the said batch of Writ Petitions and issued various directions including the one directing the District Committee to pass orders on or before 29.09.2017.

6. Learned Senior Counsel appearing for the petitioner further submitted that before the District Committee, the petitioner has produced all the Caste Certificates issued to his relatives and himself. Learned Senior Counsel also invited the attention of this Court to the various Caste Certificates issued to the petitioner and his relatives. A close reading of the relevant documents clearly shows that the respondents are giving different dates regarding the return of the petitioner's father

and his family to Puducherry. Learned Senior Counsel also invited the attention of this Court to the report of the Tahsildar, in which it has been stated that the petitioner's father came back to Puducherry even in 1970. Further, the petitioner's father, as noted above, was issued with free Manai patta in 1978. He further contended that the impugned order dated 13.06.2018 had been issued without conducting enquiry properly. However, earlier, this Court has set aside the cancellation order of Community Certificate dated 24.07.2014 in W.P.No.20559 of 2014, etc. batch, with certain directions, as stated supra.

7. Learned Senior Counsel appearing for the petitioner also submitted that the Cancellation Committee did not consider the fresh evidence which was produced by the petitioner, and the statement was prepared by the Vigilance Officer and the signature was obtained from the native people of Poothurai/Kalmedupet and their evidence shows that they know the petitioner and his father who came back to Kalmedupet, Puducherry and he was residing in Poothurai/Kalmedu. Another ground raised by the Cancellation Committee is that the petitioner did not produce any property document to prove that the petitioner's forefathers were native of Puducherry and the petitioner's mother is having property in Vanur. It is incorrect to state that the petitioner is a native of Vanur. The petitioner's father is an agricultural coolie and got property in his name only in 1978 by way of free patta. Further ground taken by the Committee is that the name of the petitioner's father is not included in the Voter's list in Puducherry.

8. Assailing the findings of the Cancellation Committee and the impugned order, learned Senior Counsel appearing for the petitioner submitted that the findings of the first respondent in passing the impugned order are totally contrary to the documents produced by the petitioner. Moreover, the Tahsildar came to the conclusion that the petitioner's father and his family came to Puducherry only after 1970 ignoring the report of the Vanur VAO in 2004 that the petitioner's father and his family came back to Puducherry in 1962 itself. Thus, it is clear that the enquiry was not conducted properly. The impugned order is passed without application of mind of various facts. Since the petitioner could not produce evidence to the effect that his father was having landed property in Puducherry, the petitioner's Community Certificate was cancelled without considering the fact that the petitioner's father, his brother and grandparents were native of Puducherry. Learned Senior Counsel further submitted that after closing the enquiry proceedings, the first respondent-District Collector has called for report from the Tahsildar, Vanur and these reports are mainly relied upon to pass the impugned order, without giving any opportunity to the petitioner to cross-examine the Tahsildar, nor the persons who have given such statement to the Tahsildar.

9. Learned Senior Counsel appearing for the petitioner further contended that the first respondent is not justified in cancelling the Community Certificate issued to the petitioner right from 1984 onwards, in view of the stand taken by the Government that the Community Certificate issued prior to 2000 before cropping up of the issue of migration, are considered to be valid for all purposes. The petitioner obtained promotion in his service only based on merit and seniority and did not utilise the Community Certificate for getting promotion after 2000. Further, even if the petitioner's Community Certificate is cancelled, the complainant-Artchounane cannot get promotion to the post of Executive Engineer, since he was not qualified for holding the post as per the Recruitment Rules when the Departmental Promotion Committee was convened, at whose instance, the entire exercise was conducted by the Tahsildar in connivance with the said Artchounane, and relying upon the report of the Tahsildar, the first respondent passed the original order of cancellation. For all the above reasons, learned Senior Counsel appearing for the petitioner prayed to allow the Writ Petition and restore the Community Certificate of the petitioner.

10. Countering the above submissions, learned Government Pleader (Puducherry) appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 4 and 5, by filing counter affidavit of the first respondent, submitted that the petitioner has not produced not even a single document to show that his father was a native of Puducherry and was a permanent resident of Kalmedupet, Puducherry on or before the cut-off date, 05.03.1964. The petitioner studied from I Std. to SSLC in Tamil Nadu and was staying with his mother at Poothurai Village in Tamil Nadu. His name is found in the electoral list of 2012 of Poothurai Village. In this regard, learned counsel for the respondents also invited the attention of this Court to the registered settlement deed, dated 11.07.1977, wherein Mrs. Indirani, wife of Perumal, was described to be residing at Poothurai Village, Tindivanam Taluk. In another registered sale deed, dated 23.11.1949 of late Mr. Perumal, father of the petitioner, it was described as Perumal, son of Kathan Harijan, agriculturist of Poothurai Village, Tindivanam Taluk. These registered documents and electoral roll of 2012 of Vanur Assembly Constituency would be material evidence under Sections 46 to 51 of the Indian Evidence Act to show that the father of the petitioner, namely Perumal, was residing at Poothurai Village, Tindivanam Taluk, Tamil Nadu, from 1949 to 1978.

11. In the above context, learned counsel for the respondents also invited the attention of this Court to the Presidential Order - "Constitution (Pondicherry) SC Order, 1964", which was published under the Ministry of Law Notification No.G.S.R.419, dated 05.03.1964, which came into force on the same date, i.e. 05.03.1964 with the names of 16 Scheduled Castes. Under Clause 2 of the Constitution

(Pondicherry) Scheduled Caste Order, 1964, the persons belonging to the Union Territory of Pondicherry with respect to 16 castes, are deemed to be Scheduled Castes in relation to the Union Territory of Pondicherry so far as regards the members thereof being resident in the Union Territory and proviso to Clause 2 states that no person who professes the religions of Hinduism, Sikhism or Bhuddism, are deemed to be a member of a Scheduled Caste persons. But, absolutely, no evidence is produced by the petitioner to show that his father was residing in Puducherry prior to 05.03.1964. The petitioner is a Scheduled Caste person in Tamil Nadu. Those persons are entitled to the benefits of reservation in the State from where they have migrated to Puducherry and therefore, there is no question of considering them as Scheduled Castes in relation to the Union Territory of Puducherry in view of their migration after the cut-off date.

12. In support of their contentions, learned counsel for the respondents drew the attention of this Court to an order passed by the Supreme Court in S.L.P.No.27612 of 2015, dated 24.09.2015, which was dismissed, confirming the order passed by the Division Bench of this Court, dated 04.09.2015 passed in W.A.No.1225 of 2015, wherein a Division Bench of this Court discussed the law in detail by following various Supreme Court decisions and held that there is no question of considering the persons as Scheduled Castes in relation to the Union Territory of Puducherry, in view of their migration after the cut-off date. The Division Bench reiterated the legal position that where a Scheduled Caste person migrates from one State or Union Territory to another, he can claim belonging to the Scheduled Caste or Scheduled Tribe only in relation to the State/Union Territory from which he has migrated. The Division Bench observed that the Union Territory of Puducherry by adopting a policy in the light of Article 341 of the Constitution of India and the Constitution (Pondicherry) Scheduled Castes Order, 1964, and in accordance with the Law declared by the Constitution Benches of the Supreme Court in Marri Chandra Shekhar Rao Vs. Dean, S.G.S.Medical College (1990 (3) SCC 130) and Action Committee on Issue of Caste Certificate to SC/ST in the State of Maharashtra and another Vs. Union of India and another (1994 (5) SCC 244), has not committed any illegality by restricting the benefits of reservation in education to the Scheduled Castes of Puducherry.

13. Learned counsel for the respondents also relied on a judgment of the Supreme Court reported in 2014 (9) SCC 236 (Puducherry SC People Welfare Association Vs. Union Territory of Puducherry) and submitted that as per the said judgment, it is clear that the Government Order or Notification cannot alter or change any of the Presidential Notification, dated 05.03.1964. In the instant case, the petitioner was appointed as Junior Engineer in the Puducherry Housing Board under SC quota and was promoted and his seniority was fixed as Junior Engineer under SC category and was placed under Sl.No.7 in the final seniority

list declared on 05.02.1992. He belongs to Adi Dravida Community and his appointment was placed under SC quota. He was promoted as Assistant Engineer with effect from 11.01.2002 after relaxing the required service condition because he is under SC category. He was thereafter promoted as Executive Engineer with effect from 20.08.2009 on the basis of SC quota. While so, the AG Audit gave a finding that there were procedural lapses and violation of the Pondicherry Housing Board Service Rules, 1985, in the promotion given to the petitioner as Executive Engineer. On the basis of the Audit Report, the Housing Board/Government directed the petitioner to produce fresh Community Certificate to ascertain as to whether he belonged to Scheduled Caste category of Union Territory of Puducherry, by letter dated 27.11.2006. The petitioner gave reply on 29.11.2006, which was received by the Housing Board on 05.12.2006. The petitioner alleged that the Housing Board is taking revenge upon him because he belonged to SC category. Again, by letter dated 25.07.2013, the petitioner wrote a letter to the Secretary of the Puducherry Housing Board and intimated them that he will take action against them under the Protection of Civil Rights Act, for directing him to produce the Community Certificate.

14. Learned counsel for the respondents further submitted that, in the meanwhile, the Departmental Enquiry was ordered against the petitioner on 27.04.2015 and he was protecting himself from the departmental and other actions under the umbrella of several Court orders of this Court. The petitioner produced his Birth Certificate indicating his date of birth as 07.07.1969, registered at Villianur Commune Panchayat, dated 17.11.2011. The entries in the said Birth Certificate further disclosed that the Registration Number of the Birth Certificate is U/1995/00212, with Date of Registration as 28.12.1995, which is false for the reason that the entry was made 26 years after the date of Birth. Even though the said Birth Certificate of Villianur disclosed that he was born at Kalmedupet (Pondicherry) to Mr.Perumal and Mrs.Indiraniammal, unless the petitioner produces evidence to show that himself and his parents moved to Puducherry prior to 05.03.1964, the petitioner is not entitled for issuance of Community Certificate with the origin of Puducherry. Hence, according to the learned counsel for the respondents, the petitioner cannot sustain the impugned order of cancellation of Community Certificate. Hence, the learned counsel for the respondents prayed for dismissal of the Writ Petition.

15. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have carefully perused the records.

16. Though very many contentions have been raised in this Writ Petition with regard to the earlier proceedings in respect of the Community Certificate issued to the petitioner, the only question that has to be decided in this case is as to whether it is established by the petitioner that his father is a resident

of Puducherry prior to 05.03.1964 when the Constitution (Pondicherry) Scheduled Castes Order came into force and if this question is answered, that would suffice to decide the issue involved in this Writ Petition.

17. It is the case of the petitioner that his father was a native of Puducherry and his mother belongs to Poothurai, which is just 2 Kms. away from Puducherry. The petitioner's father has also married the petitioner's mother's sister. After marriage, his father settled down with his two wives in Poothurai Village. The petitioner's mother and aunt and the petitioner's father were carrying on agricultural operations. After some time, according to the learned Senior Counsel appearing for the petitioner, the petitioner's father shifted to Puducherry in 1962 with wife and children, whereas the petitioner stayed along with his grandmother in Poothurai and after completing his schooling, the petitioner joined with his father and studied Diploma Course in MNGP, Puducherry in 1985. In 1988, the petitioner joined in the Puducherry Housing Board as Technical Assistant on daily wage basis and got regular appointment as Junior Engineer in 1991 and further promotion in 2001 as Assistant Engineer and in 2009 as Executive Engineer by virtue of seniority and merit.

18. In order to show that the petitioner's father shifted along with wife and children to Puducherry, the petitioner relied upon the report of the Village Administrative Officer, Poothurai, dated 21.01.2004, which came into existence pursuant to the direction given by this Court in the Writ Petition in W.P.No.17864 of 2003 filed by the son of the petitioner's sister, namely B.Chandran for issuance of Community Certificate of Puducherry origin, which was refused to him. In the said report of the VAO, it is stated that the said Chandran's mother, namely Devaki, i.e. sister of the writ petitioner herein, came to Puducherry when she was approximately four years old. In this regard, learned counsel for the petitioner also produced a copy of the Certificate dated 15.07.2004 issued by the Principal of Perunthalaiwar Kamaraj Krishi Vigyan Kendra, Kurumbapet, Pondicherry, in which, the said Devaki's date of birth is shown as 01.06.1958. Thus, learned counsel for the petitioner submitted that the petitioner's sister was aged about four years old in 1962, since in the said VAO's report, it is stated that the petitioner's father shifted to Puducherry when the petitioner's sister was four years old. This, according to the learned Senior Counsel appearing for the petitioner, gives clear impression that the petitioner's father came and settled at Puducherry in the year 1962 itself.

19. That apart, learned Senior Counsel appearing for the petitioner also relied upon the free Manai Patta given to the petitioner's father in the year 1978 and the said free Manai Patta was issued since they were residing in Puducherry for more than 30 years.

20. The abovesaid two documents cannot be said to be direct

documentary evidence. Except the abovesaid two documents, namely VAO report and free Manai Patta, no other direct documentary evidence is produced by the petitioner to show that his father was a native of Puducherry prior to 05.03.1964. On the other hand, in order to establish that the petitioner's father was only a migrant from Tamil Nadu, learned Government Pleader (Puducherry) appearing for the respondents 1 to 3 and the learned counsel for the respondents 4 and 5 produced number of documents, and among them, the Birth Certificate is produced in respect of one of the sons of the petitioner's father, i.e. Ashokaraman, i.e. the brother of the petitioner, who was born on 20.07.1967 at Poothurai Colony and the said Birth Certificate was issued by Sub-Registrar, Vanur (Tamil Nadu). In order to show that the petitioner was born only at Puducherry, learned Senior Counsel appearing for the petitioner produced a copy of the Birth Certificate issued by Villianur Commune Panchayat, Puducherry, which shows that the petitioner was born at Kalmedupet on 07.07.1969, i.e. after 05.03.1964. This Birth Certificate of the petitioner was issued on 17.11.2011. Therefore, no significance could be attached to the said Birth Certificate produced by the learned Senior Counsel appearing for the petitioner.

21. Further, the learned Government Pleader (Puducherry) produced the Electoral list of Vanur Assembly Constituency of Poothurai Village, which shows that the family of the petitioner/petitioner's father was residing in Vanur Assembly Constituency in Door No.174/19.

22. Moreover, learned Government Pleader (Puducherry) also produced documents of the year 1949 and 1977 on the file of Sub-Registrar, Vanur, which shows that the petitioner's father has purchased a property in 1949 at Poothurai in Tamil Nadu and in the sale deed, the address of the petitioner's father was shown at Vanur. Likewise, in the settlement deed executed in favour of the mother of the petitioner in the year 1977, the address of the mother was shown as Poothurai. Thus, it is admitted that prior to 1964, the petitioner has no direct documentary evidence. Unless it is established by direct document evidence that the petitioner's father came from Vanur to Puducherry, and as such, he is a resident of Puducherry as on 05.03.1964 being the date when the Constitution (Pondicherry) Scheduled Castes Order came into force, the petitioner cannot succeed in this Writ Petition. In fact, all the documents produced on the side of the respondents, show that the petitioner and his family members were only natives of Vanur Village of Tamil Nadu.

23. It is yet another submission of the learned Senior Counsel appearing for the petitioner that the Union Territory of Puducherry is administered by the President of India under Articles 239 and 239-A of the Constitution of India, and therefore, the Scheduled Caste persons of all States should have the Scheduled Caste status in Puducherry. Since Puducherry being

a Union Territory, it cannot be equated with that of a State. But we are not inclined to accept this submission of the learned Senior Counsel appearing for the petitioner. In this regard, it would be appropriate to refer Articles 341 and 342 of the Constitution of India, which reads as follows:

"Article 341: (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

"Article 342: (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

24. Articles 341 and 342 of the Constitution of India specifically include the Union Territory along with other States. There cannot be any distinction between State and Union Territory for the Presidential Order of Scheduled Castes under Article 341 of the Constitution of India. The argument that Presidential proclamation of Scheduled Caste under Article 341 can be made by the President for the State alone and not for the Union Territory, is fallacious and contrary to Articles 341 and 342 of the Constitution of India.

25. It is pertinent to note that a Division Bench of this Court in W.A.Nos.1225 and 1257 of 2015 and W.P.No.19558 of 2015, by judgment dated 04.09.2015, between Pondicherry Scheduled Caste People's Welfare Association Vs. Union Territory of Puducherry, has elaborately discussed the issue of migrated Scheduled Castes and the Scheduled Caste persons of origin and the Division Bench held as follows:

"23. The appellants having got the benefits of reservation in Government service on account of the concession given by the Government of Pondicherry, now wanted even benefits like admission in educational institutions, which is earmarked exclusively for the Scheduled Castes of the Union Territory.

24. The individual appellants and members of the association are all Scheduled Castes belonging to the State of Tamil Nadu. They are entitled to the benefits of reservation in the State from where they have migrated to Pondicherry. There is no question of considering them as Scheduled Castes in relation to the Union Territory of Pondicherry, in view of their migration after the cut off date. Even if the Government of Pondicherry wanted to extend other benefits to those who have migrated to the Union Territory from other States, it would be possible only by way of passing appropriate legislation as indicated in Marri Chandra Shekhar Rao. Such extension of benefits should not affect prejudicially the rights of Scheduled Castes of Pondicherry. Nobody can compel the Government to initiate such legislation."

26. Further, in the above judgment of the Division Bench of this Court, in paragraph 17, the Division Bench relied on a decision of the Supreme Court reported in 2009 (15) SCC 458 (Subash Chandra Vs. Delhi Subordinate Service Selection Board) and the Division Bench observed as follows:

"C. Subhash Chandra Vs. Delhi Subordinate Services Selection Board :

(1) The Supreme Court in Subhash Chandra held that Article 16(4) of the Constitution cannot be made applicable for granting the benefits of reservation to the Scheduled Castes/Scheduled Tribes, who have migrated to another State or Union Territory.

(ii) The Supreme Court in Subhash Chandra while following Marri Chandra Shekhar Rao and Action Committee made the following observation with regard to the views expressed in S.Pushpa.

"63. Can it be said that Marri Chandra Shekhar Rao does not apply to Union Territory? The answer thereto, in our opinion, is a big emphatic "no". Both Articles 341 and 342 not only refer to the State but also to the Union Territory."

"110. Should we consider Pushpa to be an obiter following the said decision is the question which arises herein. We think we should. The decisions referred to hereinbefore clearly suggest that we are bound by a Constitution Bench decision. We have referred to two Constitution Bench decisions, namely Marri Chandra Shekar Rao and E.V.Chinnaiah (E.V.Chinnaiah Vs. State of A.P. - 2005 (1) SCC 394), Marri Chandra Shekhar Rao had been followed by this Court in a large number of decisions including the three-Judge Bench decisions. Pushpa, therefore, could not have ignored either Marri Chandra Shekhar Rao or other decisions following the same only on the basis of an administrative circular issued or otherwise and more so when the constitutional scheme as contained in clause (1) of Articles 341 and 342 of the Constitution of India putting the State and Union Territory in the same bracket. Following Dayanand (Official Liquidator Vs. Dayanand - 2008 (10) SCC 1), therefore, we are of the opinion that the dicta in Pushpa is an obiter and does not lay down any binding ratio."

The above referred judgment of the Division Bench of this Court, i.e. in W.A.No.1225 of 2015, etc., dated 04.09.2015, was upheld by the Supreme Court in S.L.P.No.27612 of 2015, by order dated 24.09.2015. Therefore, the judgment is binding precedent for all.

27. Further, the Supreme Court, in the judgment reported in 2014 (9) SCC 236 (Puducherry SC People Welfare Assn. Vs. UT of Pondicherry) with regard to Articles 341 and 342 of the Constitution of India, held as follows:

"13. It is important to bear in mind that it is by virtue of the notification of President under Article 341(1) that the Scheduled Castes come into being. The members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of Presidential Order. Clause (2) of Article 341 empowers Parliament alone by law to include or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) by the President. By no executive power, amendment, modification, alteration or variance in the Presidential Order is permissible. It is not open to the executive to do anything directly or indirectly which may lead to any change in the Presidential Order. Once Presidential Order has been issued under Article 341(1) or Article 342(1), any amendment in the Presidential Order can only be made by Parliament by law as provided in Article 341 (2) or Article 342(2), as the case may be, and in no other manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order."

28. Therefore, it is clear that any Government Order (G.O) or notification cannot alter or change any of the Presidential Notification, dated 05.03.1964. So far as the petitioner is concerned, he has miserably failed to establish that his father is a resident of Puducherry. Under such circumstances, we do not find any infirmity in the impugned cancellation of Community Certificate by the first respondent.

29. Moreover, as contended by the learned Government Pleader (Puducherry) appearing for the respondents 1 to 3, there is an appeal provision as against the impugned order of cancellation of Community Certificate, without availing which, this Writ Petition is filed by the petitioner. When there is effective alternative remedy of appeal against the impugned order of cancellation of Community Certificate of the petitioner, the petitioner ought to have availed of the same before-ever filing

this Writ Petition. Filing this Writ Petition under the guise of appeal, is not permissible, and the Writ Petition is liable to be dismissed on that ground also.

30. For all the reasons stated above, we are of the opinion that there is no merit in this Writ Petition, which is accordingly dismissed. No costs. Consequently, W.M.P. is closed.

-s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

cs
To

1. The Chairman-cum-District Magistrate,
Collectorate,
Revenue Department,
Puducherry.
2. Tahsildar, Villianur Taluk Office,
Villianur, Puducherry.
3. The Secretary to Government,
Housing, Chief Secretariat,
Puducherry.
4. The Chairman,
Puducherry Housing Board,
Puducherry.
5. The Secretary,
Puducherry Housing Board,
Puducherry.

+1 CC to Government Pleader cum Public prosecutor for
Pondicherry, sr 76185.

+1 CC to Mr.V.Ajayakumar, Advocate sr 76037.

WEB COPY

W.P.No.16315 of 2018

RJ(CO)
SP(20/11/2018)