

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 21.06.2018

Delivered on : 06.07.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.7210 of 2016 and
W.M.P.No.6402 of 2016

N.Ezhilmani

... Petitioner

Vs

1.The Secretary,
Chennai Port Trust,
Chennai.

2.The Chief Mechanical Engineer,
Chennai Port Trust,
Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in its No.CME/BA1/2769/2014/MEE dated 27.05.2015 and quash the same and consequently, direct the respondent to sanction pension including commutation, gratuity, Earned leave encashment and all other admissible terminal benefits.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.M.Palanimuthu

O R D E R

Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mr.M.Palanimuthu, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in its No.CME/BA1/2769/2014/MEE dated 27.05.2015 and quash the same and consequently, direct the respondent to sanction pension including commutation, gratuity, Earned leave encashment and all other admissible terminal benefits."

3. The case of the petitioner is as follows:-

The petitioner was recruited as Special Mechanic in 1978 against open category (OC category). He was promoted as Supervisor-Grade II once again under open category in May 1980. The petitioner had also completed his B.E. (Part time) in November 1982 and applied for direct recruitment to the

post of Assistant Controller of Stores in the respondent Organisation. The petitioner was also appointed as Assistant Controller of Stores against the quota reserved for ST Community. In support of his community status, he also obtained community certificate from the Sub-Collector, Chengalpet, on the ground that he belonging to Konda Reddis community (ST). The certificate was obtained by the petitioner for securing the appointment as Assistant Controller of Stores in June 1983.

4. While so, his service as Assistant Controller of Stores came to be terminated without any enquiry in 1985, on the basis of the communication from the Collector that the petitioner did not belong to Konda Reddis community. The said termination order was put to challenge in W.P.No.11851 of 1985. This Court by order dated 16.04.1986, had set aside the order passed by the Collector on the ground that the principles of natural justice were not followed while passing adverse order against the petitioner and also directed the respondent Organisation to restore the service of the petitioner with the respondent organisation and discretion was given to the Organisation that which post he should be reinstated with.

5. In pursuance of the above orders passed by this Court, the petitioner was reinstated in the post of Supervisor Grade II which position held before his appointment as Assistant Controller of Stores vide proceedings dated 06.05.1986. The post of Supervisor Grade II was subsequently re-designated as Junior Engineer(Mechanical/Electrical) in 2004. On continuing the same position of Supervisor Grade II/Junior Engineer, the petitioner stood retired from service on attaining the age of superannuation on 31.05.2015. On the eve of his retirement, the respondent Organisation informed the petitioner vide communication dated 27.05.2015, the terminal benefits which were otherwise payable to the petitioner to be withheld until final orders to be passed in regard to the veracity of the community certificate. The said communication is being assailed in the present writ petition.

6. The learned counsel for the petitioner would at the outset submit that the withholding of terminal benefits due to the petitioner is per se illegal and unsustainable in law, in the teeth of the fact that the petitioner was allowed to continue in his old position viz., Supervisor Grade II which position he had secured not on the basis of any community status, but, against the open category. According to the learned counsel, it is an admitted position that the original appointment as Special Mechanic was against open category as evidenced by appointment letter dated 07.04.1978. The promotion as Supervisor Grade II was also against open category, once again as evidenced from the promotion communication dated 05.02.1980. It is also admitted that in pursuance of the directions passed by this Court dated

16.04.1986 in W.P.No.11851 of 1985, the petitioner came to be reinstated only as Supervisor Grade II vide proceedings dated 06.05.1986 and thereafter, he continued as such and retired on 31.05.2015. That being the case, the withholding of terminal benefits due to the petitioner on the ground that the community status of the petitioner was being verified, cannot be countenanced both in law and on facts. Once the petitioner was permitted to retire and no judicial or departmental action is pending against him under the service regulations, the terminal benefits cannot be withheld.

7. The learned counsel for the petitioner would submit that the pending verification of the community status may have relevance if only the petitioner had been restored to service as Assistant Controller of Stores and not as Supervisor Grade II. Admittedly, when the petitioner had secured appointment as Special Mechanic, thereafter, promoted as Supervisor Grade II / Junior Engineer against open category and not availed any concession in community terms, he cannot be denied his retirement benefits on his superannuation.

8. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit.

9. The learned counsel appearing for the respondent Organisation would submit that the petitioner has not produced any community certificate even at the time of his promotion as Assistant Controller of Stores. He had only produced a copy of the certificate and not the original, said to have been issued by the Sub-Collector, Chengalpet. According to the learned counsel for the respondent Organisation, when discrete enquiry was made by the Revenue Divisional Officer, it was found that the petitioner belong to Reddiyar community which was not classified as ST Community. According to the learned counsel, there exist a prima facie case of misrepresentation by the petitioner and therefore, the terminal benefits have been withhold pending finalisation of the community status of the petitioner by the competent Committee. Therefore, he would request this Court not to entertain this writ petition as no relief could be granted to the person who has come up with false claim of belonging to ST community.

10. The learned counsel for the petitioner would also rely on the decision in the case of S.Ramasamy Vs. Chairman, Chennai Port Trust, Chennai and others, reported in (2014) 2 MLJ 14, wherein, the learned Division Bench of this Court has held that unless or until there was any judicial or departmental proceedings are pending, the pensionary benefits cannot be withheld. He would draw the attention of this Court to paragraph Nos.9 and 10 of the order passed by the learned Division Bench which are extracted below:-

"9. In the case on hand, admittedly, there is no departmental or judicial proceedings pending

against the petitioner and there is no order holding him guilty of grave misconduct or negligence during his service. Therefore, the decision of the Supreme Court in State of Jharkhand and others V. Jitendra Kumar Srivastava and Another (supra), is squarely applicable to the facts of the present case.

10. The genuineness of the community certificate of the petitioner had already undergone a test earlier and it was found in favour of the petitioner. Unless and until there is a clear finding that the community certificate produced by the petitioner is invalid, the regulations cannot be pressed into service."

11. The learned counsel appearing for the petitioner would therefore submit that in this case, the community status of the petitioner has not attained finality for several decades now and that cannot be a reason cited by the respondent Organisation for denying the terminal benefits of the petitioner. In any event, he would submit that the terminal benefits what is being claimed is only for the post secured and held by the petitioner against open category and therefore, the verification of his community status may not have any adverse impact on such claim.

12. This Court has given its anxious consideration to the rival submissions of the learned counsel appearing for the parties and perused the pleadings and materials placed on record. From the materials produced before this Court, it is clear that the petitioner has originally secured his appointment with the respondent Organisation as Special Mechanic only against open category and also secured his further promotion to the post of Supervisor Grade II against open category. In between, it appears that the petitioner had secured promotion as Assistant Controller of Stores under the quota reserved for ST community for which the community certificate appeared to have been produced. Later on, it was found to be not genuine and on the basis of which, his service came to be terminated.

13. However, when the order passed by the Collector and the termination of his service came up for consideration before this Court in the earlier proceedings in W.P.No.11851 of 1985, this Court has intervened with the action taken against the petitioner and found that the discrete enquiry conducted behind the back of the petitioner by the Revenue Divisional Officer without notice to the petitioner, was incorrect and the same could not be relied upon.

14. This Court further directed the respondent Organisation herein to restore the petitioner to service in whichever position it deemed it fit. Thereafter, admittedly,

the respondent Organisation reinstated the petitioner as only as Supervisor Grade II vide order dated 06.05.1986 and allowed him to continue only in that position till his retirement on 31.05.2015. That being the case, the claim of the petitioner for terminal benefits in regard to his period of employment as Special Mechanic and Supervisor Grade II, cannot be denied under any circumstances, unless there was any judicial or departmental proceedings pending against him. Admittedly, no such proceeding is pending against the petitioner, in such view of the matter, the impugned order passed by the respondents, withholding terminal benefits, is without the authority of law and the same cannot stand the test of judicial scrutiny.

15. As rightly contended by the learned counsel for the petitioner that the issue of verification of the community status, if had thus can have any influence, only if the petitioner was restored to duty as Assistant Controller of Stores and allowed to continue as such till his retirement. In this case, the petitioner was reinstated only as Supervisor Grade II in 1986 and what emerges from the facts of the case is that from the date of his appointment till the date of his retirement, the petitioner had worked only in two positions viz., Special Mechanic and Supervisor Grade II/Junior Engineer, which position, he had admittedly secured not on the basis of his community status, but, on the basis of his own merit against open category.

16. Further, it has to be seen that once the petitioner was allowed to retire without any pendency of judicial or disciplinary proceedings, there cannot be an embargo put against in claiming retirement benefits, which are otherwise due to the petitioner. Such contingency of withholding of increments in the absence of judicial or departmental proceedings, is not envisaged in any service regulations, particularly, no such regulation has been relied upon by the respondent Organisation. सत्यमेव जयते

17. It is represented by the learned counsel appearing for the parties that the enquiry in regard to the community status of the petitioner has still not attained finality. In any event, the outcome of the enquiry in regard to the community status of the petitioner may have other consequences against the petitioner, but, this Court is of the considered view that the said enquiry may not have any bearing on the claim of retirement benefits of the petitioner herein, for the service he had rendered as Special Mechanic and Supervisor Grade II/Junior Engineer in the respondent Organisation.

18. In view of the above conclusion, this Court has no hesitation in allowing the writ petition. The impugned proceedings passed by the 2nd respondent in its No.CME/BA1/2769/2014/MEE dated 27.05.2015, is hereby set aside and the respondents are directed to release the terminal benefits which are otherwise admissible to the petitioner

without waiting for the final outcome with regard to the enquiry of the community status. The direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

19. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk
To

1.The Secretary,
Chennai Port Trust,
Chennai.

2.The Chief Mechanical Engineer,
Chennai Port Trust,
Chennai.

+1cc to Mr.V.Vijayshankar, Advocate SR.No.44395

MR(CO)
sm:25.7.2018

W.P.No.7210 of 2016

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