

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 26.10.2018

Orders Pronounced on : 02.11.2018

CORAM:

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

W.P.No.32099 of 2017

K.Anitha

.. Petitioner

Vs.

1. The State Level Committee and
The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai-9.

2. The Revenue Divisional Officer,
Tirukoilur Taluk,
Villupuram District.

.. 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 first respondent, vide proceedings No.3692/CV-4(1)/2017-5, dated 25.09.2017 and to quash the same and consequently direct the second respondent herein to confirm the status of the petitioner herein as Member of Hindu Malakkuravan Community.

For petitioner : Mr.V.Vijaya Shankar
for Mr.S.Vijaya Kumar

For respondents : Mr.K.Rajendra Prasad, Addl.G.P.

R.SUBBIAH, J

ORDER

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the first respondent, vide proceedings No.3692/CV-4(1)/2017-5, dated 25.09.2017 and to quash the same and consequently direct the second respondent herein to confirm the status of the petitioner herein as Member of Hindu Malaikuravan Community.

2. It is the case of the petitioner that she belongs to Scheduled Tribe Hindu Malaikuravan Community. She joined in the Revenue Department as Typist through the Tamil Nadu Public Service Commission (TNPSC) Group-III on 23.05.2012 at Tirukoilur. Prior to the said appointment, the petitioner was appointed as Typist, Grade III in the Electrical Department, Corporation Commercial Complex, Dr.Nanjappa Road, Coimbatore-18, through the District Employment Exchange. During the course of employment, she has successfully cleared Group-IV, Special Competitive Examination, 2009 and was declared successful in the category of Scheduled Tribe Community. After declaration of the result by the TNPSC, she was called upon for Certificate verification on 23.02.2010 and she produced the Certificate on 11.01.2011 which was issued by the Revenue Divisional Office, Tirukoilur, the second respondent herein. Later, the State Level Scrutiny Committee called upon the petitioner to appear on 03.11.2011 for Certificate verification. In terms of the said direction, the petitioner appeared before the State Level Scrutiny Committee and produced the documents required by the respondents. Afterwards, on 26.04.2012, the petitioner was selected for the post of Typist under direct recruitment by the TNPSC. Consequently, on 23.05.2012, she was appointed as Typist in the Revenue Department and allotted to Villupuram District. Eversince the same, she had been discharging her duties without any complaints whatsoever.

3. While so, the first respondent issued a notice for enquiry in its Letter No.6/ADWS/2013-6, dated 07.06.2013 and called upon the petitioner to appear on 19.06.2013 for verification of records. The petitioner appeared before the Committee and produced all the documents to substantiate the genuineness of her community status. The Superintendent of Police, Villupuram also made enquiry in and around the vicinity of community in Villupuram and submitted his report to the Committee. While the petitioner was awaiting the order from the first respondent, she again received a notice, vide Letter No.06/CV-4/2013-10, dated 22.12.2014 and was called upon to appear before the State Level Scrutiny Committee on 05.01.2015. Though by the said letter, she was informed that the enquiry will be held on 05.01.2015, the same was received by the petitioner only on 06.01.2015. Hence, the petitioner approached the respondents and sought for correct date of personal hearing, as the date referred to therein was received subsequent to the date of hearing. Notwithstanding this, the respondents sought for explanation from the petitioner, and the Deputy Superintendent of Police, Vigilance Cell, Chennai region, held a discreet enquiry and submitted a report stating that the petitioner does not belong to the Hindu Malaikuravan Community, vide his letter No.06/CV-4/2011-11, dated 20.01.2015, which was received by the petitioner on 26.01.2015.

4. It is the further case of the petitioner that the enquiry was held by the Superintendent of Police behind the back and hence, she made a representation to the first respondent on 09.02.2015 with a request to confirm her community considering the various documents produced in support of her status. The first respondent again called upon the petitioner to attend an enquiry on 13.03.2015. Hence, as per the said notice, she appeared before the first respondent. But no explanation was forthcoming from the respondents in regard to the enquiry held to ascertain the status of community of the petitioner. Consequent upon the delay caused by the respondents in confirming the community status, her services in the Government had not been confirmed. Hence, the consequential benefits of service such as increment and promotion were denied on account of the investigation and hence, she lost her right of legitimate promotion to the next post.

5. It is further alleged by the petitioner that the investigation done by the first respondent is not in accordance with the well settled procedures for verification of the status of the community. In fact, with regard to the community status of petitioner's elder brother Balasubramanian who retired as Deputy Collector in the Revenue Department, similar objection was raised by the Department and consequent upon the same, an enquiry was held and the Tahsildar, Thirukoilur, by proceedings in Mu.Mu.6284/1984, dated 07.84, passed an order stating that the petitioner's father's caste has been registered as Kuravan instead of Malaikuravan. The said order further clarified that their grandfather Rangan is a Malaikuravan and therefore, the petitioner's father is also Malaikuravan. Based upon the same, Malaikurava Community Certificate was issued to the petitioner's brother, sister and herself. The petitioner's brother as well as her sister, are in Government service and their services were found to be proper and genuine by the Committee. When such is the position, it is inappropriate on the part of the respondents to prolong the investigation to deprive the legitimate right to claim the community status as Malaikuravan, which is treated as ST Community in Tamil Nadu. In fact, the State Level Scrutiny Committee examined the case of one Prakash, a member of Malaikuravan Community, and he is related to the petitioner.

6. The petitioner further stated that she filed W.P.No.11695 of 2015 to direct the respondents to confirm her status as a member of the Hindu Malaikuravan Community. The said Writ Petition was disposed of by this Court on 26.06.2015, wherein it has been held that the respondents have not taken any steps to pass orders on the reference made by the petitioner in respect of the issuance of Community Certificate and consequently, this Court directed the respondents to pass appropriate orders

within a period of two weeks. Since the said order was not complied with, the petitioner filed Contempt Petition in Cont.P.No.1518 of 2016. On receipt of the contempt notice, the respondents hurriedly passed orders on 26.10.2016, cancelling the petitioner's status as Hindu Malaikuravan Community. The only requirement for verification is to ascertain the relationship between the parties and nothing more.

7. It is further stated by the petitioner that the first respondent once again passed similar order without proper appreciation of the facts and had not even bothered to look into the documents submitted by the petitioner in support of her status as Malaikuravan Community. Ultimately, the first respondent, by order dated 12.04.2017, vide proceedings in No.3692/CV-4(1)/2017-2, rejected the claim as Malaikuravan Community and confirmed the cancellation of the Community Certificate issued to her. Aggrieved by the said order dated 12.04.2017, the petitioner filed W.P.No.12591 of 2017 to quash the said order dated 12.04.2017 and to direct the second respondent to confirm the status of the petitioner as a member of Hindu Malaikuravan Community. When the said Writ Petition was taken up for hearing, first respondent filed a Memo on 26.07.2017 seeking permission to withdraw the order passed by the State Level Scrutiny Committee, dated 12.04.2017 and liberty was sought to hold fresh enquiry as per the earlier order passed in W.P.No.40299 of 2016, dated 18.11.2016, on merits and in accordance with law. Thereafter, again when the petitioner was awaiting to receive favourable orders from the respondents, to the shock and surprise, the impugned order dated 25.09.2017 was passed by the first respondent-Committee, rejecting the documents and holding that Malaikuravan Scheduled Tribe Community Certificate issued to the petitioner on 20.04.1996, is not genuine and consequently it was observed that the order passed by the first respondent on 26.10.2016, holds good. Hence, aggrieved by the same, the present Writ Petition is filed for the relief stated supra.

8. When the Writ Petition is taken up for consideration, while adverting to the averments made by the petitioner in the affidavit, additional affidavit, reply affidavit, etc., learned counsel appearing for the petitioner submitted the first respondent-Committee issued show cause notice, dated 20.01.2015 along with a copy of the report submitted by the Vigilance Cell, dated 05.12.2014. However, only the report was furnished, but the annexure containing the materials, witnesses' statement and other documents, numbering about 131 pages, were not enclosed. Learned counsel further submitted that this Court has repeatedly held that it is mandatory on the part of the Vigilance Cell to furnish not only the report, but also the other materials/documents relied upon by it. In the present case, only

the report was furnished to the petitioner, but the enclosures running about 131 pages, were not supplied. Learned counsel further submitted that several of the petitioner's close relatives including her father, brother, sister and brother's sons and several of her cousin brothers, have been issued with Community Certificates by the Tahsildar/RDO. Further, in the case of Mr.K.Prakash, who is her cousin brother's son, the State Level Scrutiny Committee has confirmed his Community status, vide proceedings dated 17.02.2011. The petitioner has also enclosed the copies of the relativity certificate including genealogy table to establish as to how she is related to the said Prakash. Learned counsel further submitted that these are clinching documents which conclusively establish that the petitioner and her family members belong to Malaikuravan Community. Since the first respondent-Committee failed to take note of the above materials, learned counsel appearing for the petitioner prayed that the impugned order passed by the first respondent may be quashed and this Court may issue direction and confirm that the petitioner belongs to Malaikuravan Community. Hence, the learned counsel prayed for allowing the Writ Petition.

9. Learned Additional Government Pleader appearing for the respondents, by filing counter affidavit and additional counter affidavit, submitted that it is false to state that the petitioner was not furnished with the documents running about 131 pages. In fact, all the documents were furnished to the petitioner and detailed enquiry was conducted and appropriate orders are passed. Learned Additional Government Pleader further submitted that the petitioner submitted a representation, dated 07.08.2017 along with web copy of the order of this Court, dated 27.07.2017 in W.P.No.12591 of 2017 and requested the Principal Secretary, Adi Dravidar and Tribal Welfare Department to verify her community status as Hindu Malaikuravan, as ordered by this Court. Based on the order of this Court, the petitioner was called for to appear for the enquiry before the State Level Scrutiny Committee and the enquiry was held on 18.09.2017. Accordingly, she appeared for the enquiry and all the documents were verified by the Committee and it was found that she does not belong to Hindu Malaikuravan Community. Learned Additional Government Pleader further submitted that the Anthropologist of the State Level Scrutiny Committee verified the individual's unique customs and cultural traits and the Anthropologist gave a report stating that the individual (petitioner) does not establish her cultural traits and she has said that the community head-man is called as Bandigar, which is not correct. The statements given by the individual is contradictory to her claim as Hindu Malaikuravan and the Anthropologist's report concluded that the individual's claim for Scheduled Tribe Malaikuravan Community is not genuine.

10. Learned Additional Government Pleader further submitted that the State Level Scrutiny Committee has given enough opportunity to the petitioner to produce additional documents if any. But she did not submit any fresh documents in support of her claim. The Committee examined all the reports and documents. The only evidence produced by her is the first page of the Service Register of Thiru.G.Kottaiyan, who is the father of the petitioner, and it revealed that he belongs to Korava, which is not a Scheduled Tribe Community. Therefore, learned Additional Government Pleader appearing for the respondents submitted that the first respondent has come to a conclusion that the Community Certificate of the petitioner, dated 20.04.1996 is not genuine and it was further observed that the proceedings in No.06/CV-4(1)/2011-18, dated 26.10.2016 already issued holds good. Hence, for all the above reasons, learned Additional Government Pleader appearing for the respondents prayed to dismiss the Writ Petition.

11. In reply, learned counsel appearing for the petitioner, by producing bunch of documents before this Court, including the Community Certificates of the relatives like brother/sister/brother's son, etc., of the petitioner, submitted that those Certificates indicate the status of the Community as Malaikuravan Community, but, without considering those documents and other documents produced by the petitioner, the first respondent has passed the impugned order.

12. Irrespective of the submissions made by the learned counsel appearing for the parties before this Court, since according to the petitioner, the documents produced by her have not been considered, we are of the view that it would be appropriate to give an opportunity of hearing to the petitioner to put-forth her case and also permit her to examine/cross-examine the witnesses, if any. 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."

13. 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 or 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."

14. 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 non-consideration of documents produced by the petitioner and opportunity of hearing not being provided to her to examine/cross-examine the witnesses, if any.

15. Accordingly, the Writ Petition is allowed. The impugned order is set aside. The matter is remitted back to the first respondent-State Level Scrutiny Committee only for the abovesaid purpose. The first respondent-Committee is directed to give an opportunity of hearing to the petitioner for production of documents by her, if any and also to examine/cross-examine the witnesses, if any. The first respondent-Committee consider the documents produced by the petitioner and after examination of witnesses, if any, it shall conclude the enquiry within a period of four months from the date of receipt of a copy of this order or on production of a copy of this order by the petitioner, whichever is earlier. Thereafter, after taking into consideration the documents produced by the petitioner and also

based on the enquiry 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, the first respondent-Committee shall pass a reasoned order within a period of four weeks therefrom. It is made clear that the reinstatement of the petitioner into service will depend upon the outcome of the decision to be taken by the first respondent-Committee based on the directions issued above. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The State Level Committee and
The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai-9.
2. The Revenue Divisional Officer,
Tirukoilur Taluk,
Villupuram District.

+lcc to Mr.S.Vijaya Kumar, Advocate, S.R.No.75823

W.P.No.32099 of 2017

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