

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 27.09.2018

Orders Pronounced on : 04.10.2018

CORAM:

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

W.P.No.32360 of 2017
and
W.M.P.No.35650 of 2017

T.G.Sivakumar ... Petitioner
Vs.

The State Level Scrutiny Committee,
Rep. by its Chairman,
Adi Dravidar & Tribal Welfare Department,
Fort St.George,
Secretariat, Chennai-600 009. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the proceedings bearing No.5102/CV-4(1)/2014-14, dated 31.08.2017 of the respondent and quash the same.

For Petitioner : Mr.Yogesh Kannadasan
For Respondents : Mr.K.Rajendra Prasad, Addl.G.P.

ORDER

The present Writ Petition is filed for issuance of a Writ of Certiorari to call for the records relating to the proceedings bearing No.5102/CV-4(1)/2014-14, dated 31.08.2017 of the respondent and quash the same.

2. It is the case of the petitioner that he belongs to Konda Reddis Community, which is one of the Communities listed as a Scheduled Tribe Community under the Constitution (Scheduled Tribes) Order, 1950. He had obtained a valid Community Certificate, dated 15.04.1978 from the Tahsildar, Triplicane, in support of his claim that he belonged to Konda Reddis Community. He was selected and appointed as Lower Divisional Clerk in the Income Tax Department in the year 1983 under the quota reserved for Scheduled Tribes and was promoted as Upper Divisional Clerk

during 1989 and he is to reach the age of superannuation in 2020.

3. While so, to the shock and surprise, just before six years of his retirement, i.e on 15.09.2014, he received a communication from the respondent directing him to appear for enquiry on 26.09.2014, which was attended by him, after which, the respondent sent his case to Vigilance Cell. Based on the adverse report of the Vigilance Cell, the respondent had cancelled the Community Certificate of the petitioner, by the impugned order, even though the petitioner submitted 21 documents in support of his claim that he belonged to Konda Reddis Community. The petitioner also appeared for the enquiry held on 13.03.2015, on which date, he was issued with a Show Cause notice, vide Government Letter, dated 26.03.2015, without furnishing him a copy of the Vigilance Cell Report. He was also made to appear before the respondent on 08.08.2015, on which date only, based on the petitioner's request, he was issued with the Vigilance Cell Report. The petitioner, by letter dated 24.08.2015, requested to enquire him directly and he objected to the Vigilance Cell Enquiry Report, without giving any reply on the Show Cause Notice. The respondent, without affording proper opportunity, has passed the impugned order on the ground that his SSLC Book does not indicate his community and the Service Book of his father showed as if he belongs to Non-Brahmin Reddi. Inasmuch as the impugned order was passed based on the Anthropologist Report, but the report of the Anthropologist was not furnished, and hence, the action of the respondent in issuing the impugned order is arbitrary and the action of the respondent in issuing him the Show Cause Notice, dated 26.03.2015 (post-dated), on 13.03.2015, without furnishing the Vigilance Cell Report, clearly vindicates the attitude of the respondent in passing the impugned order, which is illegal. Based on the impugned order, the employer of the petitioner had passed an order of suspension, dated 25.10.2017. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

4. When the Writ Petition is taken up for consideration, learned counsel for the petitioner mainly submitted that the respondent ought to have afforded the petitioner an opportunity of being heard. Further, the respondent-State Level Scrutiny Committee has relied upon a statement recorded by the Vigilance Officer in his order, and the petitioner was not given an opportunity to cross-examine the witnesses, when the respondent-Committee has chosen to rely upon the statement recorded by the Vigilance Officer.

5. In view of the above submission, we have directed the learned Additional Government Pleader to produce the original

records to verify as to whether any request was made by the petitioner for providing him an opportunity to cross-examine the witnesses. Today, by producing the original records, learned Additional Government Pleader appearing for the respondent submitted that the letter dated 24.08.2015 sent by the petitioner is available in the records, but in the said letter which was received by the respondent on 27.08.2015, the petitioner has not asked for providing any opportunity to cross-examine the witnesses; on the other hand, the petitioner has stated that the enquiry should be conducted in his presence.

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 twelve 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.

No costs. Consequently, W.M.P. is closed.

cs

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Chairman,
State Level Scrutiny Committee,
Adi Dravidar & Tribal Welfare Department,
Fort St.George,
Secretariat, Chennai-600 009.

+1cc to Mr.Yogesh Kannadasan, Advocate S.R.No.68714

KR/31/10/18

W.P.No.32360 of 2017



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