



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.06.2018

DELIVERED ON : 27.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN
and
THE HON'BLE MRS. JUSTICE T.KRISHNAVALLI

W.P.(MD)No.11535 of 2018
and
WMP.(MD).Nos.10506, 10507 of 2018

J.Vimala

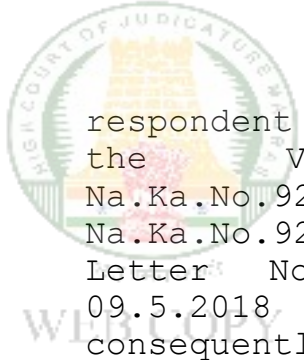
.. Petitioner

Vs.

- 1.The Tamilnadu State Level Scrutiny Committee,
rep. by its Chairman and Secretary to Government,
Adi Dravdar and Tribal Welfare Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Tribal Welfare Department,
Chepauk, Chennai - 600 005.
- 3.The Joint Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 4.The Deputy Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 5.The Deputy Superintendent of Police,
Social Justice and Human Rights Unit
District SC/ST Vigilance Cell,
Armed Force Compound,
Opp. New Bus Stand,
Pudukottai.

.. 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 order of the third respondent in Letter No.23322/CV-2/2010-4, dated 02.8.2012, Letters of the first respondent No.23322/CV-2/2010-8, dated 28.10.2015 and Letter No.23322/CV-2/2010-10, dated 05.02.2016 and Letter of the fourth



respondent D.O. Letter NO.23322/CV-2/2010-12, dated 16.05.2017 and the Vigilance Cell Enquiry Summon Letter Na.Ka.No.92/Sa.Nee.Ma.Vu.Pee/Pudhugai/2017, dated 12.8.2017, Letter Na.Ka.No.92/ Sa.Nee.Ma.Vu.Pee/Pudhugai/2017 dated 18.4.2018 and Letter No.Na.Ka.No.05/ Sa.Nee.Ma.Vu.Pee/ Pudhugai/2017, dated 09.5.2018 of the fifth respondent and to quash the same and consequently to declare the community status of the petitioner as Kattu Nayakkan schedule Tribe community based on the community certificate of the petitioner dated 23.07.1981 issued by the Head Quarters Deputy Tahsildar, Thirumayam Taluk, Pudukottai District and consequently forbear the respondents from re-opening the enquiry/re-verification pertaining to the permanent community certificate of the petitioner in the light of the Letter No.35404/ADW II/91, dated 16.9.1991 issued by ADTW Department and judgment reported in 1997 (7) Supreme Court Cases 505 (R.Kandasamy v. Chief Engineer, Port Trust).

For Petitioner : Mr.N.Naganathan

For Respondents : Mr.V.R.Shanmuganathan
Spl. Government Pleader

ORDER

[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

This writ petition has been filed by the petitioner seeking issuance of a writ of certiorarified mandamus to call for the records of the order of the third respondent in Letter No.23322/CV-2/2010-4, dated 02.8.2012, Letters of the first respondent No.23322/CV-2/2010-8, dated 28.10.2015 and Letter No.23322/CV-2/2010-10, dated 05.02.2016 and Letter of the fourth respondent D.O. Letter NO.23322/CV-2/2010-12, dated 16.05.2017 and the Vigilance Cell Enquiry Summon Letter Na.Ka.No.92/Sa.Nee.Ma.Vu.Pee/Pudhugai/2017, dated 12.8.2017, Letter Na.Ka.No.92/Sa.Nee.Ma.Vu.Pee/Pudhugai/2017 dated 18.4.2018 and Letter No.Na.Ka.No.05/ Sa.Nee.Ma.Vu.Pee/Pudhugai/2017, dated 09.5.2018 of the fifth respondent and to quash the same and consequently to declare the community status of the petitioner as "Kattu Nayakkan" Scheduled Tribe community based on the community certificate of the petitioner dated 23.07.1981 issued by the Head Quarters Deputy Tahsildar, Thirumayam Taluk, Pudukottai District and consequently forbear the respondents from re-opening the enquiry/re-verification pertaining to the permanent community certificate of the petitioner in the light of the Letter No.35404/ADW II/91, dated 16.9.1991 issued by ADTW Department and judgment reported in R.Kandasamy v. Chief Engineer, Port Trust, (1997) 7 SCC 505.

2. In the affidavit filed in support of the writ petition, it is averred that the petitioner belongs to "Kattu Nayakkan" community, which is classified as Scheduled Tribe community and to that effect, she obtained a community certificate from the Headquarters Deputy Tahsildar, Thirumayam on 23.7.1981. According



to the petitioner, her relatives were issued with "Kattu Nayakkan" community certificate. The said community certificate remains unchallenged till date and is in vogue.

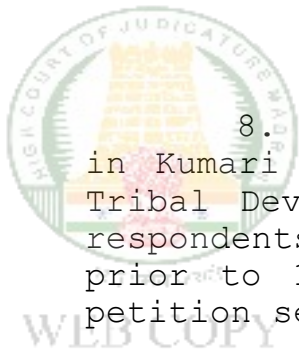
3. It is stated that the petitioner was appointed as Clerk in Southern Railway, Ponmalai Workshop, Trichy under the Scheduled Tribe quota and subsequently, she was promoted as Chief Officer Superintendent and had attained the age of superannuation on 30.4.2016. While the petitioner was in service, the Southern Railway, Trichy requested the Tahsildar, Thirumayam to enquire into the correctness of petitioner's community certificate. Since the Tahsildar, Thirumayam without affording an opportunity, conducted an enquiry, the petitioner filed O.S.No.201 of 1987 before the Sub-Court, Trichy for declaration and permanent injunction of her social status. Later, the said suit was transferred to the file of District Munsif Court, Trichy and re-numbered as O.S.No.786 of 1997 and the said suit was decreed on 24.2.2003.

4. Aggrieved by the decree and judgment passed in O.S.No.786 of 1997, the Southern Railway preferred A.S.No.157 of 2003 before the I Additional Sub Court, Trichy and the same was dismissed on 29.4.2004. Aggrieved by the decree and judgment of the First Appellate Court, the Southern Railway preferred Second Appeal being S.A.(MD) No.989 of 2005 before this Court and the same was allowed with a direction to the petitioner and the employer to approach the first respondent to decide the issue within a period of four months.

5. Pursuant to the order of this Court in S.A.(MD) No.989 of 2005, the petitioner submitted a representation dated 21.12.2010 to the first respondent to verify her social status. According to the petitioner, despite receipt of the representation, no action was taken by the first respondent.

6. The case of the petitioner is that the competent authority by letters dated 2.8.2012, 28.10.2015, 05.2.2016 and 16.5.2017 directed the fifth respondent to conduct an enquiry regarding the community certificate issued in favour of the petitioner. The Deputy Superintendent of Police, Madurai issued a communication dated 3.3.2016 calling upon the petitioner to appear before him for an enquiry. Though the petitioner submitted her reply as early as in 2016 stating that she belonged to "Kattu Nayakkan" community, without considering the same, the fifth respondent issued communication dated 12.8.2017, 18.4.2018 and 09.5.2018 calling upon her to appear before him for an enquiry based on G.O.Ms.No.50, dated 28.7.2017 issued for Adi Dravidar and Tribal Welfare Department.

7. It is averred that after her retirement, the petitioner was not paid any pensionary benefit and other retirement benefits due to pendency of verification of community certificate. According to the petitioner the community certificates issued prior to 11.11.1989 are valid as per the Circular dated 24.3.2008 of the Southern Railway.



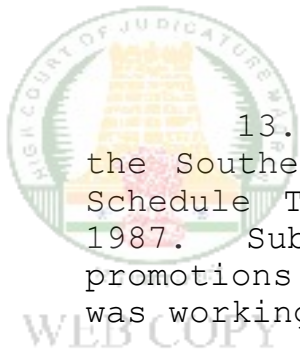
8. By relying upon the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and another v. Additional Commissioner of Tribal Development and others, reported in (1994) 6 SCC 241, the respondents are testing the veracity of the certificate obtained prior to 11.11.1989. Hence, the petitioner has filed the writ petition seeking the relief aforesaid.

9. I heard Mr.N.Naganathan, learned counsel appearing for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents and also perused the materials available on record.

10. The learned counsel appearing for the petitioner submitted that the petitioner is a retired employee of the Southern Railway and she was issued with "Kattu Nayakkan" community certificate on 23.7.1981. He submitted that after attaining the age of superannuation, the Southern Railway requested the Tahsildar, Thirumayam to verify the correctness of the community certificate of the petitioner. Challenging the same, the petitioner filed a civil suit, which went up to the High Court and the High Court, in its order dated 20.10.2010, directed the petitioner as well as the Southern Railway to approach the first respondent to decide the issue. He submitted that pursuant to the direction issued by this Court, the petitioner has made a representation dated 21.12.2010 to the first respondent and no action was taken on the same. However, the fifth respondent called upon the petitioner to appear before him.

11. The learned counsel argued that the respondents failed to consider the judgment of the Hon'ble Supreme Court in Kandasamy v. Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein the Hon'ble Supreme Court held that community certificates issued prior to 11.11.1989 are valid. He submitted that the proceedings of the respondents impugned in this writ petition are in flagrant violation of the decision of the Hon'ble Supreme Court in Kandasamy, supra. He argued that if the respondents are allowed to once again re-verify the status, it would tantamount to re-writing the findings and dictum of law settled by the judicial forum, which would not only result in multiplicity but also unsettle the settled issue.

12. The learned Special Government Pleader appearing for the respondents submitted that the impugned proceedings were issued as per the decision in Kumari Madhuri Patil and another v. Additional Commissioner of Tribal Development and others, reported in 1994(6) SCC 241, wherein the Hon'ble Supreme Court issued directions to streamline the procedure for issuance of social status certificate. He argued that the State Level Scrutiny Committee is empowered to verify the genuineness of the community certificate issued to the petitioner. The learned Special Government Pleader submitted that the proceedings impugned are issued only as per law and the same need not be interfered with.



13. It appears that the petitioner was appointed as Clerk in the Southern Railway, Ponmalai Workshop, Trichy on 17.4.1986 under Schedule Tribes quota and her service was confirmed in the year 1987. Subsequent to her confirmation, the petitioner got various promotions and when she was retired from service on 30.4.2016, she was working as Chief Officer Superintendent.

14. It appears that during the year 1987 when the petitioner was working, the Southern Railway, Trichy requested the Tahsildar, Thirumayam Taluk, Pudukottai District to enquiry into the correctness of her community certificate. When the Tahsildar proceeded to conduct enquiry, the petitioner filed O.S.No.201 of 1987 to declare that she belongs to "Kattu Nayakkan" community. Later the said suit was transferred to the file of the learned Principal District Munsif Court, Trichy and re-numbered as O.S.No.786 of 1997 and after trial, by judgment dated 24.2.2003, the suit was decreed in favour of the petitioner. Aggrieved by the judgment of the learned District Munsif Court, Trichy, the Southern Railway preferred A.S.No.157 of 2003 before the learned I Additional Sub-Court, Trichy and the same was dismissed vide judgment dated 29.4.2004. Thereafter, the matter was carried by the Southern Railway to the Madurai Bench of Madras High Court by filing Second Appeal being S.A.(MD) No.989 of 2005. By the judgment dated 20.10.2010, the learned Single Judge of this Court allowed the appeal preferred by the Southern Railway.

15. In the judgment in S.A.(MD) No.989 of 2005, dated 20.10.2010, the learned Single Judge observed as under:

"18. In this case, regarding the community status, only an enquiry is being conducted and based on the outcome of the enquiry only, the authority should decide about community status of the petitioner. Therefore, there cannot be any prohibition for the petitioner to support the Community Certificate already issued to her during verification. The verification is being conducted by the Authority as there are large number of cases of bogus Community certificates are produced and knocked away the benefits given to the suppressed and oppressed communities. The benefit should not land in the hands of already developed communities, whereas, the benefits which are aimed at under privileged, are not reaching them in view of bogus certificates. By obtaining false certificates advance sections of the Society are unjustly benefited and in that process an under privileged is being denied the concession given by reservation.

19. As rightly pointed out by Mr. Rajarajan, the learned Government Advocate, the Government has already constituted the State Level Scrutiny Committee to verify the genuineness of the community issued as Scheduled



Tribe. Therefore, the state level scrutinize committee alone has got jurisdiction to verify the community certificate issued to the first respondent.

20. Taking into consideration of the fact that the suit was filed in the year 1987 and passage of more than two decades, this Court refers the matter to State Level Scrutiny Committee, which is empowered to scrutinize the community certificate issued to the first respondent. The first respondent is also allowed to file a comprehensive representation along with supporting documents in his favour to the State Level Scrutiny Committee, within four weeks from the date of receipt of a copy of the judgment. After receipt of the records from this Court and first respondent's representation the State Level Scrutiny Committee is hereby directed to decide the issue with regard to the Community Certificate issued to the first respondent as per law expeditiously preferably within a period of four months.

21. With the above, the Second Appeal is allowed. Subsequently, a direction is given to the State Level Scrutiny Committee as stated above. No costs."

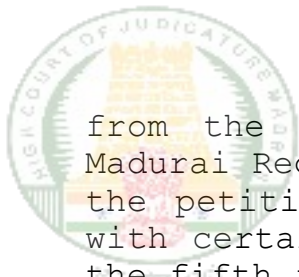
16. According to the petitioner, pursuant to the direction issued in S.A.(MD) No.989 of 2005, the petitioner submitted a representation to the first respondent on 21.12.2010 to verify her social status. However, no action was taken by the first respondent despite the request made by her as also the Southern Railway.

17. After two years, the third respondent issued a letter dated 2.8.2012 to the petitioner calling upon her to appear before the State Level Scrutiny Committee for enquiry on 16.8.2012 at 11.00 A.M. along with documents to substantiate the claim made by her.

18. On 28.10.2015, the Secretary to Government, Adi Dravidar and Tribal Welfare Department sent a letter to the petitioner calling upon her to appear before the State Level Scrutiny Committee for enquiry on 3.11.2015 at 10.00 A.M. along with documents in original to substantiate her claim.

19. Thereafter, on 05.2.2016, the Secretary to Government, Adi Dravidar and Tribal Welfare Department addressed a letter to the Deputy Superintendent of Police, SC/ST Vigilance Cell, Madurai Region to verify the genuineness of the Scheduled Tribe Hindu Kattunayakan community certificate issued to the petitioner by the Headquarters Deputy Tahsildar, Thirumayam, Pudukottai by making open inquiry in the presence of the individual and send a detailed report to the State Level Scrutiny Committee.

20. On 18.5.2017, the fourth respondent sent a D.O. Letter to the second respondent requesting to obtain the Vigilance Cell Report



from the Deputy Superintendent of Police, SC/ST Vigilance Cell, Madurai Region. Thereafter, the fifth respondent issued a letter to the petitioner calling upon her to appear before him on 18.8.2017 with certain documents. After nearly 8 months, again on 18.4.2018, the fifth respondent issued a letter to the petitioner directing her to appear on 26.4.2018. Finally, on 09.5.2018, the fifth respondent sent a letter to the petitioner stating that since she was native of Karuppulanpatti, Pudukottai District, she was directed to appear on 26.5.2018 at 11.00 A.M. All the aforesaid letters/communications have been challenged by the petitioner stating that the respondent authorities have no right to question the community certificate issued prior to 11.11.1989.

21. On a verification of the typed set of papers, I find that the petitioner was issued with community certificate dated 23.7.1981 by the Headquarters Deputy Tahsildar, Tirumayam stating that she belongs to "Kattunayakkan" community, which has been recognised as a Scheduled Tribe.

22. It is to be noted that in the Letter No.35404/ADW II/91-1, dated 16.9.1991 of the Secretary to Government, Adi Dravidar and Tribal Welfare (AD II) Department addressed to all Collectors, it has been stated as under:

"I am directed to state that the Tamil Nadu Kattunayakkan (Scheduled Tribe) Samooga Seerthirutha Sangam Nagapattinam has requested the Government among other things to validate the permanent community certificate issued to Scheduled Tribes prior to the issue of G.O.(Ms) 2137/AC & TW dated 11.11.89 by Tahsildar.

2. The Government have examined the request in detail in consultation with Special Commissioner and Commissioner of Revenue Administration and confirmed that the community certificates issued to the Scheduled Tribe Communities by Tahsildar prior to 11.11.89 will be valid. I am to enclose a copy of G.O. (Ms) No.2137 Adi Dravidar and Tribal Welfare dated 11.11.89 for guidance.

3. I am to request you to validate the community certificates issued to Scheduled Tribe Communities by Tahsildar prior to 11.11.89. In doubtful cases, I am to request that they may be verified as per Government orders in force."

(emphasis supplied)

23. Thus, as per the letter of the Secretary to Government, Adi Dravidar and Tribal Welfare (AD II) Department, community certificates issued to the Scheduled Tribe Communities by the Tahsildar prior to 11.11.1989 are valid.

24. It is beyond any cavil that community certificate was issued to the petitioner by the Headquarters Deputy Tahsildar,



Tirumayam on 23.7.1981 to the effect that she belongs to Kattunayakkan community and the same has not been cancelled by any authority till date.

25. Qua the competency of the Tahsildar to issue the said community certificates, it is apposite to refer to the decision of the Hon'ble Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein it is emphatically held as under:

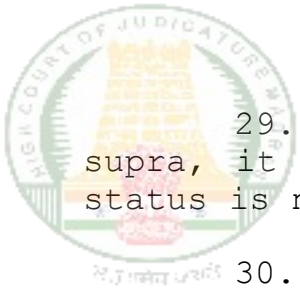
"6. In our opinion the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid community certificate for all purpose so long such as a certificate is not cancelled. The authorities cannot decline to take that into consideration."

26. In the light of the decision in R.Kandasamy, supra, the authorities have to take into consideration the community certificate issued prior to 11.11.1989 as a good and valid community certificate for all purposes, so long such certificate was not cancelled.

27. By judgment dated 20.10.2010 passed in S.A.(MD) No.989 of 2005, the learned Single Judge had directed the Committee to conclude the proceedings within four months. However, till date, the first respondent had not even taken steps to conduct a detailed enquiry, but for asking the petitioner to appear for enquiry. It is a sorry state of affairs. The first respondent, despite direction of this Court, had not chosen to expedite the process and because of the delay in compliance with the said order, the petitioner, who had since retired from service, is deprived of her statutory right of getting pension and other terminal benefits for the service rendered by her for years. The whys and wherefores for such delay are not explained by the respondent authorities.

28. Anent the non payment of retirement benefits due to the pendency of verification of communal status of an employee, a Co-ordinate Bench of this Court in W.P.No.5918 of 2016, dated 18.2.2016 (Union of India and another v. The Registrar, CAT, Madras Bench, Chennai-104), held as under:

" mere reference to the pendency of the verification of the community certificate of the second respondent before the State Level Scrutiny Committee is not a ground for the petitioners to deny the terminal benefits to the second respondent. As observed by the Division bench of this Court in the above referred to decision, in the event of the Scrutiny Committee cancelling the Community Certificate, the Railways can pass orders forfeiting the pension. Hence, the mere pendency of the proceedings before the Scrutiny Committee cannot impede the settlement of terminal benefits to the second respondent."



29. By virtue of the law enunciated in the decision, referred supra, it is clear that pendency of verification of the community status is no ground for denial of terminal benefits to the employee.

30. For the foregoing reasons, the following order is passed:

(a) the writ petition is allowed and the proceedings impugned in this writ petition are set aside;

(b) on production of a copy of this order, the employer of the petitioner shall forthwith release all pensionary and terminal benefits due and payable to the petitioner within a period of one month thereafter, without insisting on any further verification of the communal status by the first respondent;

(c) No costs. Consequently, W.M.P. (MD) Nos.10506 and 10507 of 2018 are closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Chairman and Secretary to Government,
Tamilnadu State Level Scrutiny Committee,
Adi Dravdar and Tribal Welfare Department,
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- 2.The Director of Tribal Welfare Department,
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- 5.The Deputy Superintendent of Police,
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District SC/ST Vigilance Cell,
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Opp. New Bus Stand, Pudukottai.

+1cc to M/S.N.Naganathan, Advocate SR.No. 70099

order made in
W.P.(MD) No.11535 of 2018
27.06.2018

VSV

<https://hcservices.ecourts.gov.in/hcservices/>

JM/SV/SAR 17/09.07.2018/9P/7C