



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 01.06.2018

DELIVERED ON : 27.06.2018

WEB COPY

CORAM

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

W.P.(MD) No.11554 of 2018
in
WMP.(MD).Nos.10522 & 10523 of 2018

Vijayakumari

.. Petitioner

Vs.

1. The Tamil Nadu State Level Scrutiny Committee
Rep. By its Chairman and Secretary to Government
Adi Dravidar and Tribal Welfare Department
Fort St. George, Chennai - 600 009.

2. The Director of Tribal Welfare Department
Chepauk, Chennai - 600 005.

3. The Deputy Superintendent of Police
Social Justice and Human Rights Unit
District SC/ST Vigilance Cell
Armed Force Compound
Opp. to 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 records of the first respondent in Letter No.12661/CV-2/2011-8, dated 10.5.2016 and the consequential Vigilance Cell Enquiry Summon Letter Na.Ka.No.06/Sa.Nee.Ma.Vu.Pee/Pudhugai/2017, dated 05.01.2018, Letter Na.Ka.No.92/Sa.Nee.Ma.Vu.Pee/Pudhugai/2017, dated 18.4.2018 and Letter Na.Ka.No.06/Sa.Nee. Ma.Vu.Pee/Puthugai/2017, dated 9.5.2018 of the third respondent 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 in C.C.No.1736 of 1981, dated 23.7.1981 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 the ADTW Department and judgment reported in 1997 (7) SCC 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.]

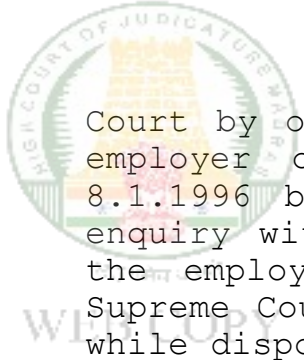
The petitioner has filed this writ petition seeking issuance of a writ of Certiorari Mandamus to call for records of the first respondent in Letter No.12661/CV-2/2011-8, dated 10.5.2016 and the consequential Vigilance Cell Enquiry Summon Letter Na.Ka.No.06/Sa.Nee.Ma.Vu.Pee/Pudhugai/2017, dated 05.01.2018, Letter Na.Ka.No.92/ Sa.Nee.Ma.Vu.Pee/Pudhugai/2017, dated 18.4.2018 and Letter Na.Ka.No.06/Sa.Nee. Ma.Vu.Pee/Puthugai/ 2017, dated 9.5.2018 of the third respondent 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 in C.C.No.1736 of 1981, dated 23.7.1981 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 the ADTW Department and judgment in R.Kandasamy v. Chief Engineer, Port Trust, (1997) 7 SCC 505.

2. The facts in a nutshell are as under: According to the petitioner she belongs to "Kattu Nayakkan" Community, which is a notified Scheduled Tribe Community. It is stated that based on the strength of the community certificate dated 23.7.1981 issued to her by the Head Quarters Deputy Tahsildar, Thirumayam Taluk, Pudukottai District, who was the competent authority at the relevant time, the petitioner was appointed as Clerk-cum-Cashier in the State Bank of India, Thiruvarur on 7.4.1983 and thereafter, her service was confirmed.

3. It is stated that at the time of appointment, she was directed to produce the community certificate in the prescribed format and, therefore, the petitioner produced the community certificate dated 6.3.1982 issued by the Tahsildar, Pudukottai.

4. It is stated that the employer of the petitioner requested the District Collector, Pudukottai District to enquire into the veracity of the community certificate of the petitioner and the said authority is alleged to have conducted an enquiry behind the back of the petitioner, without giving her due opportunity, and ultimately cancelled the community certificate issued to the petitioner by proceedings dated 26.10.1992.

5. Assailing the said order, the petitioner filed a writ petition, being W.P.No.17370 of 1992, which was allowed by this



Court by order dated 24.2.1995. The writ appeal preferred by the employer of the petitioner was disposed of by judgment dated 8.1.1996 by directing the District Collector to conduct a fresh enquiry within six months. Calling into question the said order, the employer of the petitioner filed a SLP before the Hon'ble Supreme Court. By order dated 8.8.1997, the Hon'ble Supreme Court while disposing of a batch of petitions, being SLP (Civil) Nos.16491 of 1996, etc., batch, remanded the matter, including the case of the petitioner, for fresh consideration by this Court.

6. It is stated that thereafter this Court, by order dated 13.6.2011 passed in W.P.No.17370 of 1992, set aside the order of the District Collector, Pudukottai and referred the case of the petitioner to the first respondent with a direction to pass orders within a period of two months in view of G.O.(2D) No.108, dated 12.9.2007 issued by the Adi Dravidar and Tribal Welfare Department. However, it is alleged that the first respondent did not take any action pursuant to the same.

7. It is further stated that there was no break in the service of the petitioner and due to the pendency of the proceedings, the petitioner was denied promotion. It is alleged that after nearly 5 years, the first respondent, by letter dated 10.5.2016, directed the Deputy Superintendent, SC/ST Vigilance Cell, Madurai Region, to conduct an enquiry regarding the community certificate issued to the petitioner. Even though the petitioner submitted her reply way back in the year 2016, it is alleged that without considering the said reply, the third respondent by the proceedings dated 5.1.2018, 18.4.2018 and 9.5.2018 directed the petitioner to appear for an enquiry based on G.O.Ms.No.50, dated 28.7.2017 issued by the Adi Dravidar and Tribal Welfare Department.

8. In this background, the present writ petition is filed for the relief stated supra.

9. The main plank of the argument advanced by the learned counsel for the petitioner is that the proceedings of the respondent authorities does not disclose any valid reason for reopening the enquiry pertaining to the community certificate, when the same was issued admittedly by the competent authority prior to 11.11.1989 and are valid in the light of the decision of the Hon'ble Supreme Court in R.Kandasamy v. Chief Engineer, Madras Port Trust, reported in (1997) 7 SCC 505.

10. It is further submitted that inasmuch as the communal status of the petitioner had attained finality by virtue of the decision of the Hon'ble Supreme Court in R.Kandasamy, supra, and the Letter No.35404/ADW II/91, dated 16.9.1991 issued by the Adi Dravidar and Tribal Welfare Department, the re-opening of enquiry is vitiated in law.



11. Per contra, the learned Special Government Pleader appearing on behalf of the respondent reiterated the reasons that weighed with the respondent authorities in passing the impugned proceedings and prayed for dismissal of the writ petition.

12. 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 perused the documents available on record.

13. In the case on hand, the petitioner had been issued the community certificate by the Head Quarters Deputy Tahsildar, Tirumayam on 23.7.1981 to the effect that the petitioner belongs to "Kattu Nayakan" Community, which is a recognized Scheduled Tribe Community.

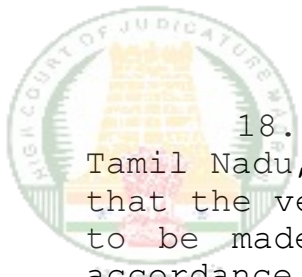
14. A perusal of the Letter No.35404/ADW II/91-1, dated 16.9.1991 of the Secretary to Government, Adi Dravidar and Tribal Welfare (AD II) Department, shows that the community certificates issued to the Scheduled Tribe Communities by the Tahsildars prior to 11.11.1989 will be valid. It is to be noted that the petitioner has been issued with the community certificate on 23.7.1981 to the effect that she belongs to "Kattu Nayakan" community, which is classified as Scheduled Tribe Community.

15. 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."

16. In the light of the decision, referred supra, the respondents are bound to take into consideration the community certificate issued to the petitioner by the Tahsildar, who is a competent authority, at the relevant time.

17. In the case on hand, pursuant to the direction issued by the Hon'ble Supreme Court, the writ petition, being W.P.No.17370 of 1992, was heard by a Division Bench of this Court. The Division Bench, by order dated 13.6.2011, taking note of the fact that the community certificate of the petitioner was cancelled without affording fair opportunity to the petitioner, set aside the order passed by the District Collector and directed the first respondent herein to pass orders within a period of two months in the light of G.O.(2D) No.108, dated 12.9.2007 issued by the Adi Dravidar and Tribal Welfare Department.



18. By G.O.(2D) No.108, dated 12.09.2007, the Government of Tamil Nadu, Adi Dravidar and Tribal Welfare (CV-1) Department stated that the verification of Scheduled Tribe Community certificates have to be made by the State Level Scrutiny Committee constituted in accordance with the directions of the Hon'ble Supreme Court in Kumari Madhuri Patil, supra.

19. Even though a Division Bench of this Court by order 13.6.2011 made in W.P.No.17370 of 1992, directed the first respondent to pass orders within two months, the first respondent after nearly five years, by letter dated 10.5.2016, directed the Deputy Superintendent, SC/ST Vigilance Cell, Madurai Region, to conduct an enquiry regarding the community certificate issued to the petitioner and only in the year 2018, the third respondent issued notice to the petitioner calling her to appear for an enquiry. Till date, the first respondent had not taken any concrete 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 been denied the promotions due to her. The whys and wherefores for such delay are not explained by the respondent authorities.

20. The respondents authorities were completely ignored the orders of this Hon'ble Court and the orders of the Hon'ble Supreme Court and not completed the enquiry proceedings within the time limit. That would clearly shown that the respondents are not into proceed the enquiry expeditiously and to complete the same, but only to harass this petitioner had taken the action after nearly five years.

21. For the foregoing reasons, we pass the following order:

(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 pass appropriate orders granting promotion to the petitioner retrospectively with all benefits, without insisting on any further verification of the communal status of the petitioner.

(c) No costs. Consequently, W.M.P. (MD) Nos.10522 and 10523 of 2018 are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar



To:

1. The Chairman and Secretary to Government
Tamil Nadu State Level Scrutiny Committee
Adi Dravidar and Tribal Welfare Department
Fort St. George, Chennai - 600 009.

2. The Director of Tribal Welfare Department
Chepauk, Chennai - 600 005.

3. The Deputy Superintendent of Police
Social Justice and Human Rights Unit
District SC/ST Vigilance Cell
Armed Force Compound
Opp. to New Bus Stand
Pudukottai.

+1cc to M/S.N.Naganathan, Advocate SR.No. 70100

order made in
W.P. (MD) No.11554 of 2018
27.06.2018

VSV

JM/SV/SAR 1/10.07.2018/6P/5C