



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

W.P(MD) .No.650 of 2015

WEB COPY

P.Vasantha

... Petitioner

-vs-

1. The Secretary to Government
Adi Dravidar and Tribal Welfare (ADW7) Department
Chennai-9.
 2. The Commissioner
Adi Dravidar Welfare Department
Chennai-5.
 3. The District Adi Dravidar and Tribal Welfare Officer,
Kanyakumari District,
Nagercoil.
- ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Proceedings of the 1st respondent in G.O. (2D) No. 64 Adi Dravidar and Tribal Welfare (ADW7) Department dated 13.10.2014 and quash the same to the extent objected herein and direct the respondents to pay the back wages to the petitioner during the period 09.04.1987 to 16.09.2009 and also pay the difference in arrears of salary after deducting the consolidated salary paid from the regular salary for the period 17.09.2009 to 30.11.2011.

For Petitioner

:Mr.C.Godwin

For Respondent

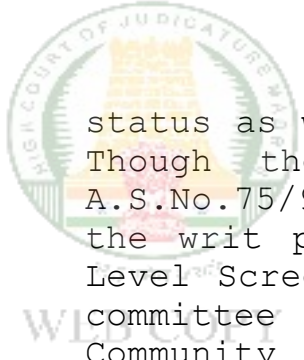
:Mr.A.Muthukaruppan

Addl. Govt. Pleader

for RR-1 to 3

ORDER

The writ petitioner herein while serving as Secondary Grade Teacher in the Government Tribal Residential Higher Secondary School, was dismissed from service, based on the complaint given by her relative regarding her Community and the consequential enquiry report. The petitioner herein has challenged the cancellation of her Community Certificate by filing a suit in O.S.No.579 of 1987 on the file of the District Munsif Court, Padmanabhapuram. The suit was dismissed on 30.06.1992 holding that Civil Court has no jurisdiction to decide the community status. However, the petitioner has succeeded in her appeal preferred by her in A.S.No.75/1992 before the Sub-Court, Padmanabhapuram. The first appellate court declared her community



status as well as held that her dismissal from service is illegal. Though the decree passed by the First Appellate Court in A.S.No.75/92 has attained finality and no appeal was preferred, the writ petitioner herein was asked to appear before the State Level Screening Committee for verification of her community. The committee vide proceedings dated 30.07.2009 found that the Community Certificate issued in her favour by the Deputy Tahsildar, Kalkulam is genuine and the writ petitioner belongs to 'Malai Pandaram' Scheduled Tribe Community. This has led to the consequential relief of reinstatement of the writ petitioner. She joined duty on 17.09.2009 and retired from service on 30.11.2011 and on attaining superannuation, her services was extended by way of reemployment till the end of academic year i.e 31.05.2012.

2.The contention of the writ petitioner is that since her termination from service vide order dated 08.04.1987 was illegal and later set right and got reinstated in service on 16.09.2009, her period of absence shall be considered as duty as she must be given all attendant benefits and backwages.

3.Though the Commissioner for Adi Dravidar Welfare Department has recommended for backwages and attendant benefits, taking into account the period of her removal of service and reinstatement i.e 09.04.1987 to 16.09.2009, the first respondent has considered the said period as non-duty. Deprived of her backwages, the present writ petition is filed seeking a writ of certiorari mandamus to quash the order passed by the first respondent and direct the respondents to pay the back wages to the petitioner during the period 09.04.1987 to 16.09.2009 and also pay the difference in arrears of salary after deducting the consolidated salary paid from the regular salary for the period 17.09.2009 to 30.11.2011.

4.The learned Additional Government Pleader, who has filed a counter on behalf of the respondents, would submit that the writ petitioner herein was dismissed from service for furnishing false Community Certificate. Later, it was found to be genuine, after scrutinizing the said certificate by the three member State Level Committee constituted in accordance with the guidelines issued by the Hon'ble Supreme Court in **Madhuri Patil's** Case, reported in **1997 (5) SCC 437**. Since the petitioner was not in service for the period between 09.04.1987 and 16.09.2009, her absence is to be considered as non-duty period and by applying the principle 'No work No pay'. Therefore, she has not been paid any backwages.

5.The learned counsel appearing for the writ petitioner would submit that this issue is no more *res integra*, in the light of the judgment passed by the Division Bench of this court in **M. Raja vs. The General Manager, Canara Bank, Circle Office, Madurai and Others** in W.P.(MD).Nos.666 and 1731 of 2014.



6. In the above judgment and the earlier judgment of the Division Bench of this Court rendered in **Vallinayagam Vs Government of Tamil Nadu and 4 others**, reported in 2006-1-L.W.492, law is well-settled that whenever an employee suspected to have produced ingenuine Community Certificate and removed from service, if reinstated after scrutiny of Community Certificate, he is entitled for the backwages with all attendant benefits. In the earlier judgment of this Court rendered in **Vallinayagam Case**, a Division Bench of this Court held that pending disposal of the scrutiny by the State Level Screening Committee, the tainted employees be permitted to join duty and draw the last drawn wage till the disposal of the enquiry by the State Level Screening Committee. If they were found eligible for the community which they claim, their service has to be regularized. If the certificate is found to be fake, their service has to be terminated.

7. In the light of the above said interim arrangement, the issue came to be decided again after few years. This Court in **M.Raju case** has made it clear that in case of reinstatement of the employee, whose service was terminated due to cancellation of Community Certificate, the said employee is entitled for continuity of service and other consequential benefits. This principle squarely apply to the writ petitioner herein.

8. In the light of the above judgment, this Court directs the respondent herein to treat the period between termination and reinstatement i.e 09.04.1987 to 16.09.2009 as period of duty and calculate her wages and other attendant benefits accordingly. The learned counsel for the writ petitioner would also submit that even after reinstatement, the writ petitioner has not paid full pay. If it is so, the respondents are directed to pay the difference in her salary. The first respondent is hereby directed to pass orders, as per the above direction within a period of 12 weeks. If there is any failure in compliance, even after expiry of 12 weeks from the receipt of the order, the petitioner shall be entitled for interest at the rate of 9% per annum from the expiry of 12 weeks till the date of payment.

9. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)



To

1. The Secretary to Government
Adi Dravidar and Tribal Welfare (ADW7) Department
Chennai-9.

2. The Commissioner
Adi Dravidar Welfare Department
Chennai-5.

3. The District Adi Dravidar and Tribal Welfare Officer,
Kanyakumari District,
Nagercoil.

+1cc to Mr.C.Godwin, Advocate Sr.No.94871
+1cc to Spl.Government Pleader Sr.No.94959

VS

VB/SKN/SAR1/27.11.2018/4P/6C

**ORDER MADE IN
W.P (MD) .No.650 of 2015
12.11.2018**