



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.11.2018

DELIVERED ON : 18.12.2018
CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P(MD)No.2163 of 2017
and
W.M.P(MD)Nos.1797 to 1799 of 2017

M.Natarajan (Deceased)

C.N.Malar ... Petitioner

**[Name of the petitioner is substituted as L.R., of
the deceased sole petitioner, vide order of this
Court dated 11.04.2018 made in W.M.P(MD)No.7113 of
2018 in W.P(MD)No.2163 of 2017.]**

Vs.

1.The Tamil Nadu State Level Scrutiny Committee,
represented by its
Chairman,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai, 3rd Floor,
Secretariat,
Chennai - 600 009.

2.The Principal Chief Commissioner of Income Tax,
No.121, Mahathma Gandhi Road,
Nungambakkam,
Chennai - 41.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the first respondent in proceedings No.5715/CVIII/2011, dated 05.12.2016 and quash the same.

For Petitioner : Mr.D.Sivaraman
For Respondents : Mr.M.Jeyakumar
Additional Government Pleader for R.1
Mr.V.Vijay Shankar for R.2

ORDER

R. SUBBIAH, J.

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

This writ petition has been filed seeking a writ of Certiorari to call for the records of the first respondent in proceedings



No.5715/CVIII/2011, dated 05.12.2016 and quash the same.

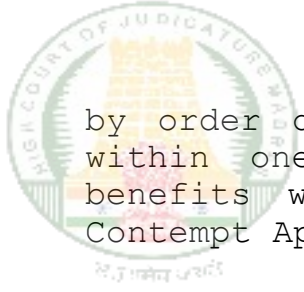
2. Facts-in-nutshell leading to the filing of the present writ petition are as follows:

2.1. According to the petitioner, he belongs to Hindu Konda Reddis Community which is a Scheduled Tribe. After due verification and enquiry, he was issued with a community certificate on 26.11.1977 to that effect. He joined the second respondent Department as Inspector of Income Tax in the year 1982 and later, he got promotion as Income Tax Officer and finally, as Deputy Commissioner of Income Tax and reached the age of superannuation on 31.08.2010.

2.2. Earlier, the petitioner filed W.P.(MD)No.5172 of 2011 challenging the order of the District Level Vigilance Committee, Trichy, dated 30.08.2010, in and by which, the community certificate issued in favour of the petitioner was cancelled. This Court, by order dated 09.03.2011, set aside the order of the District Level Vigilance Committee and directed the first respondent - State Level Scrutiny Committee to hold a fresh enquiry. As per G.O.Ms.No.108, dated 12.09.2007 and G.O.Ms.No.106, dated 15.10.2012, it is mandatory for the first respondent to conduct an enquiry through Vigilance Cell and hence, the matter was referred to the Vigilance Cell for conducting a discreet enquiry and accordingly, the Vigilance Cell forwarded a report to the first respondent stating that the petitioner did not belong to the Hindu Konda Reddis Community.

2.3. Meanwhile, the Director of Tribal Welfare, vide proceedings dated 11.05.2016, called upon the petitioner to show cause and submit his explanation in that regard. Hence, the petitioner filed W.P.No.29395 of 2016 and this Court, by order dated 23.08.2016, quashed the show cause notice issued by the Director of Tribal Welfare and directed the first respondent to issue a fresh show cause notice and proceed with the matter after furnishing the copies of the reports, documents and all other statements and also after affording opportunity of cross-examination to the petitioner.

2.4. Thereafter, the first respondent issued a notice dated 05.10.2016 calling upon the petitioner to appear for enquiry on 20.10.2016, but there was no reference about the order passed by this Court in W.P.No.29395 of 2016. While so, the petitioner moved the Central Administrative Tribunal, Chennai Bench, by filing O.A.No.89 of 2012 seeking pension and other terminal benefits and the said O.A.No.89 of 2012 came to be allowed, directing the second respondent to pay the entire pension, gratuity and all other terminal benefits to the petitioner. However, the said order was not implemented by the second respondent and hence, the petitioner also filed M.A.No.310/00374/2016 in O.A.No.89 of 2012 and the Tribunal,



by order dated 15.04.2016 directed to settle the entire benefits within one month. Despite the same, the pension and terminal benefits were not given to the petitioner and hence, he filed Contempt Application No.110 of 2016 before the Tribunal.

2.5. In the meanwhile, based on the pressure of the second respondent, the first respondent, without issuing any fresh show cause and also without supplying any of the documents to the petitioner, passed the impugned order, dated 05.12.2016, cancelling the community certificate of the petitioner and thus, the petitioner is before this Court.

3. During the pendency of this writ petition, the petitioner - M.Natarajan died on 10.07.2017 and hence, his wife, namely, C.N.Malar got substituted herself as the petitioner in this writ petition as per the order of this Court dated 11.04.2018 made in W.M.P(MD)No.7113 of 2018 in W.P(MD)No.2163 of 2017.

4. When the matter is taken up for hearing, the learned Counsel for the petitioner submitted that in spite of the direction given by this Court in W.P.No.29395 of 2016 to furnish the copies of the reports and documents and all other statements to the petitioner, the husband of the petitioner was not furnished with the same and without doing so, the impugned order came to be passed and hence, prayed for allowing this writ petition. In support of his submissions, the learned Counsel for the petitioner also relied on the judgment of this Court in R.Vimala v. The Chief General Manager, State Bank of India, First Line Bench, Chennai and another [W.P.No.19615 of 2008, decided on 03.11.2011].

5. Per contra, the learned Additional Government Pleader appearing for the first respondent, reiterating the averments in the counter affidavit filed by the first respondent, contended that all the documents and reports sought for by the husband of the petitioner were furnished to him and after affording reasonable opportunity to the husband of the petitioner, passed the impugned order and hence, it warrants no interference at the hands of this Court and thus, prayed for the dismissal of this writ petition.

6. We have carefully considered the submissions of the learned Counsel for the parties and perused the materials available on record.

7. It is relevant to refer to the judgment of the Division Bench of this Court in G.Venkitasamy and another v. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department reported in (2016) 1 MLJ 606, wherein a similar issue arose for consideration and in paragraph 29, it is held as under:



identify and conduct the enquiry in the following manner:

i. The authority competent to issue the community certificate, on receipt of the application, shall investigate the application in an open and transparent fashion, affording opportunity of hearing.

ii. The candidate shall have full liberty to explain the documents placed by him or collected by the investigating agency and he shall have opportunity to cross examine the witnesses, if required. The entire exercise shall be completed at the earliest, preferably, within a period of three months.

iii. On receipt of the community certificate issued by the competent authority, the candidate or any other party interested therein may refer the matter to the State Level Scrutiny Committee for verification.

iv. On receipt of the application for verification, the State Level Scrutiny Committee shall refer the matter to the Vigilance Cell for enquiry.

v. The Vigilance Cell, as constituted, shall investigate into the social status claim of the applicant, visiting the local place of residence and original place from which the candidate hails and usually resides. The Vigilance Officer, assisted by the Inspector of Police, shall verify all the documents and collect relevant facts in an open and transparent manner from all the relevant places such as school, locality, etc. and persons such as parents and close relatives and also examine the school officials, parents/guardians and other close relatives of the concerned caste. The Vigilance Cell shall also record the anthropological and ethnological traits and rituals, customs, mode of marriage and other ceremonies of the community claimed by the candidate. Thereafter, on receipt of explanation from the candidate, on a proper examination of the same, a reasoned report shall be submitted to the State Level Scrutiny Committee.

vi. The State Level Scrutiny Committee, on receipt of the Vigilance Cell report, if it is found adverse, shall issue a show cause notice to the candidate with a copy of the report and all the documents submitted by the Vigilance Cell to the concerned candidate, calling upon him to file his reply/explanation/representation and also express his intention to examine witnesses, if necessary. In the event, the report supports the claim of the candidate, the State Level Scrutiny Committee shall not proceed further, but, to pass the order.



vii. The State Level Scrutiny Committee, on completion of the enquiry, shall send a copy of the proceedings/order to the candidate within a period of two weeks.

viii. Such verification shall be completed within a period of two months, after receipt of the Vigilance Cell report, preferably, by day-to-day proceedings [See paragraph 13(9) of Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development and others (AIR 1995 SC 94)]."

8. Keeping in mind the aforesaid judgment and also on a careful scrutiny of the materials available before us, we find that during the pendency of the enquiry before the first respondent, the husband of the petitioner requested to furnish the copies of the documents and reports to him and accordingly, they were given to him and after affording due opportunity to him, the first respondent found that the husband of the petitioner does not have any valid document to prove his community as Konda Reddis and came to the conclusion that he does not belong to Hindu Konda Reddis - Scheduled Tribes Community and thus, passed the impugned order cancelling the community certificate obtained by the husband of the petitioner.

9. Insofar as the claim of the husband of the petitioner with regard to non-disbursement of pension and terminal benefits, we find that the Central Administrative Tribunal, vide order dated 15.04.2016, passed in M.A.310/00374/2016 in O.A.No.89 of 2012, directed the second respondent to release the pensionary and retirement benefits to the husband of the petitioner within a period of one month from the date of receipt of a copy of the order. Alleging non-compliance of the said order, the husband of the petitioner also filed Contempt Application No.110 of 2016 before the Tribunal.

10. It is also seen that pursuant to the order dated 23.08.2016 passed in W.P.No.29395 of 2016, the husband of the petitioner was requested to appear before the first respondent for enquiry on 30.12.2011, 28.02.2012, 27.03.2012, 13.11.2013, 14.05.2014, 26.09.2014, 08.08.2015, 18.08.2016, 20.10.2016 and 29.11.2016, however, he was absent on the aforesaid dates except on 27.03.2012 and 08.08.2015. On 27.03.2012, the husband of the petitioner appeared before the first respondent and requested for grant of one month time to collect the relevant documents in support of his claim and during the enquiry on 08.08.2015, he appeared and requested for the copies of certain documents and they were furnished to him on that day itself and after considering the report of the Revenue Divisional Officer, Musiri, dated 15.03.1989 and the finding of the District Level Vigilance Committee, the first respondent came to the conclusion that the husband of the petitioner does not belong to Konda Reddis community and accordingly, cancelled the community certificate issued to him. Therefore, we do not find any valid reason to interfere with the impugned order passed by the



first respondent and thus, this writ petition fails.

11. In the result, this writ petition stands dismissed, however, granting liberty to the petitioner herein, namely, C.N.Malar, to work out the remedy with regard to the disbursement of pension and terminal benefits of the husband of the petitioner in the light of the orders passed by the Central Administrative Tribunal in M.A.No.310/00374/2016 in O.A.No.89 of 2012, dated 15.04.2016. No costs. Consequently, the connected writ miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar(cs-III)

To

1.The Chairman,

Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai, 3rd Floor,
Secretariat,
Chennai - 600 009.

2.The Principal Chief Commissioner of Income Tax,
No.121, Mahathma Gandhi Road,
Nungambakkam,
Chennai - 41.

+1cc to Mr.D.Sivaraman Advocate in SR.No.100966
+1cc to Special Government Pleader, SR.No.101036
+1cc to Mr.V.Vijay Shankar Advocate in SR.No.100885

PRE-DELIVERY ORDER MADE IN

W.P (MD) No.2163 of 2017

and

W.M.P (MD) Nos.1797 to 1799 of 2017

18.12.2018

RSB

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