

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.27115 of 2014

ORDER:

The petitioner prays for a mandamus declaring the proceedings, dated 18.06.2014 *vide* C3/5308/2012-2 and the consequent notification, dated 18.06.2014, of the 1st respondent as illegal, unconstitutional and contrary to the order, dated 20.09.2013, in W.P.No.27351 of 2013; and, the order, dated 27.12.2013, of this Court in Rev.W.P.M.P.No.45648 of 2013. The petitioner further prays for a consequential direction for appointment to the post of School Assistant (Maths) with all consequential benefits.

2. I have heard the submissions of Sri J. Nagaraja Rao, learned counsel appearing for the petitioner, of the learned Special Government Pleader for Social Welfare appearing for the respondents 1, 2 & 4; and of the learned Government Pleader for Education appearing for the 3rd respondent. I have perused the material record.

3. The case of the petitioner, in brief, is this: - 'The petitioner belongs to Scheduled Tribe (Gond). She is a native of Mallapur village of Indravelly mandal, a notified agency area, in Adilabad District. She applied, to the Mandal Revenue Officer, for a comprehensive certificate of Community, Nativity and date of birth. The MRO, in accordance with the Rules, had given the necessary certificate *vide* certificate No.SSID:C/2228/08, dated 21.08.2008. The said certificate confirms that the petitioner belongs to Gond tribe and is a resident of Mallapur village, Indravelly Mandal, Adilabad District. She possessed the

necessary qualifications for appointment as School Assistant (Maths). A notification (Spl.DSC 2012) was issued in the year 2012 for appointment to the post of School Assistant (Maths). The petitioner applied for the said post and was selected by the selection committee. At the time of verification of the certificates for issuance of appointment order, the petitioner's entitlement to apply for the said post was examined by the District Collector, 1st respondent herein. However, though the agency area certificate obtained and produced by the petitioner was genuine, the impugned proceedings were issued by the 1st respondent holding that the agency area certificate issued to the petitioner by the office of the Tahasildar, Indervelly, is not genuine. By the said proceedings, the certificate issued by the Tahasildar was cancelled and it was declared that the petitioner does not belong to agency area. The 1st respondent also directed for publication of a notification to that effect. Thereafter, the notification, which was also impugned, was issued. The reasons stated in the impugned proceedings are not correct and valid. The said reasons are flimsy. The impugned proceedings were issued in a routine manner without application of mind. The impugned proceedings and the notification which is an offshoot of the impugned proceedings are unsustainable under facts and in law. The proceedings as well as the notification are liable to be set aside in view of the order, dated 20.09.2013, in W.P.No.27351 of 2013; and, also the order, dated 27.12.2013, of this Court in Rev.W.P.M.P.No.45648 of 2013.'

4. The case of the respondents as stated in the affidavit of the Deputy Director (TW), Integrated Tribal Development Agency, Utnoor,

Adilabad, 2nd respondent, in brief, is this: - 'As per the notification for appointment to the posts of various cadres of teachers in tribal welfare department, Adilabad District, including the subject post, which was notified, and for which the petitioner had applied for appointment, the local scheduled area tribe candidates are only eligible for selection. The Government Order in that regard is meant for appointment of local scheduled tribe candidates in the local area. The production of local scheduled tribe candidate certificate is one of the checks for selection and appointment. The said certificate is in addition to the certificate of caste, nativity and date of birth certificate. Generally nativity certificate is issued to a person who is a native of such village or Mandal for more than seven years in view of residing there for a period of more than seven years. Before issuance of local scheduled tribe certificate, the competent authority shall see that the candidate or his/her forefathers or his/her family were and are continuously residing in the agency area from 26.01.1950 onwards. The District Collector, Adilabad, 1st respondent, constituted a committee for scrutiny of the certificates of the candidates and referred the certificates to revenue department for appropriate hearings and verifications. The scrutiny committee has given ample opportunity to the petitioner to prove the genuineness of her certificate. The burden of proof is upon the petitioner who has relied upon the certificate. Despite appearing at several hearings and promising to establish the genuineness of the certificate, the petitioner failed to fulfil her promise and establish the genuineness of her certificate. She could not produce reliable evidence to prove continuous

residence of her family in the agency area since 26.01.1950 as per terms of G.O.Ms.No.3 Social Welfare (TW-EDN.II) Department, dated 10.01.2000. In that view of the matter, the scrutiny committee has no other option but to conclude that the petitioner failed to produce necessary evidence in support of her claim. Hence, the Local Scheduled Area Candidate Certificate of the petitioner is considered as not reliable and a recommendation was made for its cancellation. Based on the report of the scrutiny committee, the District Collector issued the impugned proceedings and directed for publication of a notification accordingly. All the contra allegations made by the petitioner are false and incorrect. The orders of this Court being relied upon by the petitioner are relevant to the writ petitioners in those cases and the orders in the writ petitions shall be confined to the cases of the parties therein. The petitioner is wrongly relying upon the orders of this Court which are not applicable to the case of the petitioner. The writ petition is not maintainable and is liable to be dismissed.'

5. At the hearing, learned counsel for the petitioner and learned Special Government Pleader reiterated the cases of the parties, which are stated supra, in detail. Learned counsel for the petitioner also referred to the order of the Supreme Court in Special Leave Petition No.8206 of 2014 filed against the revisional order, dated 27.12.2013 in Rev.WPMP.No.45648 of 2013 in WP.No.27351 of 2013, dated 20.09.2013, and also the order, dated 04.04.2018, of this Court in W.P.No.22910 of 2014 and batch and contended that the petitioner is also entitled to the same relief which was granted to the various writ

petitioners. He contended that the case of the petitioner is squarely covered by the terms of the various above stated orders which have attained finality.

6. Learned Government Pleader tried to distinguish the orders relied upon by the petitioner by contending that the premise on which the orders were passed is that there is no guideline or that the nativity certificate issued is also still in force. According to the submissions of the learned Government Pleader, once the jurisdiction of the 1st respondent is accepted in implementing the objective for which Local Scheduled Tribe Candidate Certificate requirement is insisted, the direction in favour of non local scheduled tribe ought not to be given. He further submitted that the petitioner failed to satisfy the requirement of the residence with effect from 26.01.1950 and, therefore, neither the proceedings nor the notification impugned need not be interfered with and set aside. He alternatively contended that liberty may be left open for framing rules and/or regulations as is deemed fit, if the Government desires to provide for recruitment only to the candidate satisfying the local tribe requirement.

7. I have given earnest consideration to the facts and submissions.

8. In the first place it is pertinent to refer to, *infra*, the relevant portions in various orders.

W.P.No.27351 of 2013:

“The 2nd respondent proceeded as though the certificate, dated 03.02.2006 was issued under the Act and the Rules and accordingly adopted the procedure prescribed thereunder. The matter was referred to the committee and on the basis of the

report submitted by the committee, the order, dated 01.09.2013 was passed cancelling the said certificate. The Tribunal took the view that the petitioner has to avail the remedy of appeal under the Act and the Rules.

It is no doubt true that in case, the certificate is issued under the Act and the Rules and the same is cancelled by the District Collector, after following the procedure prescribed, the only remedy for the aggrieved party is to prefer an appeal. It has already been mentioned that the only certificate that can be traced to the Act and the Rules is the one, dated 28.05.2001. No one has expressed any doubt about the genuineness of that certificate. The doubt was expressed only about the certificate, dated 03.02.2006, which did nothing more than reflecting a small facet of what is already contained in the certificate, dated 28.05.2001. There was no basis or justification for the 2nd respondent in referring the matter to the committee, when the certificate, dated 03.02.2006 was not at all referable to the Act and the Rules. The whole exercise was arbitrary and a genuine Scheduled Tribe was unlawfully denied the opportunity of being appointed.

Therefore, the writ petition is allowed and the order, dated 12.09.2013 passed by the Tribunal in O.A. No. 4057 of 2013 is set aside. Further, the proceedings, dated 01.09.2013 issued by the 2nd respondent are set aside and the resultant notification is cancelled. The DSC and the appointing authority therein shall consider the case of the petitioner by treating him as Scheduled Tribe and native of Uttoor village and Mandal and finalise the matter within a period of four weeks from the date of receipt of a copy of this order. In case, the petitioner is issued orders of appointment, his appointment shall date back from the date on which others have been appointed, for the purpose of seniority but not for emoluments.”

W.P.No.27118 of 2014:

“11. Further, no basic guidelines/requirements were either framed or formulated by the Government so as to enable the petitioner to show that either herself or her parents were residing in agency area since 1950. In other words, the G.O. is silent as to the documents which are required to be produced. Without prescribing the basic requirements, the action of the authorities in rejecting the request of the petitioner on the ground that no proof is produced showing her residence since 1950 in the same area cannot be accepted. On the other hand, the record shows

that documents which were produced to show her stay in the agency area were not considered by the respondents.

12. In the absence of any guidelines being prescribed with regard to the documents to be submitted showing proof of their residence in the agency area since 26th January, 1950 and having regard to the orders passed by the Division Bench of this Court and also in the review petition, the writ petition is allowed setting aside the order dated 18.06.2014 in Rc.No.C3/4889/2012-14 and cancelling the resultant notification. Further the appointing authority shall consider the case of the petitioner, by treating her to be from agency area and finalise the matter within a period of four to six weeks from the date of receipt of a copy of this order. In case, the petitioner is issued with orders of appointment, her appointment shall date back from the date on which others were appointed, for the purpose of seniority, but not for the emoluments...”

W.P.No.22931 of 2014 & batch:

“When the matters are taken up, it is submitted by the learned counsel for the petitioner that the issue involved in all these writ petitions is squarely covered by the order of this court in W.P.No.22951 of 2014, dated 27.04.2017. A copy of the said order is placed on record. The said statement is not disputed by the learned Government Pleaders for Social Welfare and Medical and Health. The operative portion of the said order reads as under:

“In the absence of any guidelines being prescribed with regard to the documents to be submitted showing proof of their residence in the agency area since 26th January, 1950, and having regard to the orders passed by the Division bench of this Court and also in the review petition, the writ petition is allowed setting aside the order dated 14.01.2014 in Rc.No.C3/4580/2012-3 and cancelling the resultant notification. Further, the appointing authority shall consider the case of the petitioner, by treating him to be from agency area and finalise the matter within a period of four to six weeks from the date of receipt of a copy of this order. In case, the petitioner is issued with orders of appointment, this appointment shall date back from the date of which others were appointed, for the purpose of seniority, but not for the emoluments. No costs.”

Following the above said order, these writ petitions are also allowed in terms thereof. Registry is directed to enclose a copy

of the above said order along with this order. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.”

W.P.No.22910 of 2014 & Batch

This Court to avoid repetition of a few reasons which weighed for setting aside similar proceedings impugned in the writ petition does not prefer to reiterate these reasons once again. Challenge to similar proceedings was laid in several writ petitions. Firstly in most of the proceedings which were impugned in the writ petitions, the reasoning is substantially same and similar and also the conclusions i.e. setting aside the Local Scheduled Tribe Certificate issued by the Tahasildar. The certificate issued by the Tahsildar, even if set aside through impugned proceedings still the comprehensive certificate on community, nativity, date of birth etc. issued in favour of respective candidates is in force. The certificate since is in force and the respondents cannot refuse to treat the petitioner as not satisfying Local Scheduled Tribe Candidate requirement. In addition to the reasons already excerpted, this Court is not convinced to draw distinction sought to be made by the learned Government Pleader.

9. Having regard to the facts & submissions and for the reasons alike as were mentioned in the aforestated series of orders, this writ petition deserves to be allowed.

10. In the result and in view of the afore referred orders, particularly of the Division Bench, which had attained finality and which was followed by this Court in the batch of writ petitions referred to supra, this Writ Petition is ordered in terms of the order of the Division Bench as follows: - “The DSC and the appointing authority shall consider the case of the petitioner by treating the petitioner as Scheduled Tribe and native of Mallapur village, Indervelly Mandal, Adilabad District and finalise the appointment within four (04) weeks from the date of receipt of a copy of this order. The appointment shall be given effect from the date on which others under the same DSC had been appointed for the

purpose of seniority alone and not for emoluments and for other attendant benefits.’

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

06.06.2018

Vjl

