

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.04.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.Nos.11300 to 11302 of 2011

S.K.Srinivasan ..Petitioner in W.P.No.11300/2011

K.Ratharani ..Petitioner in W.P.No.11301/2011

E.Chandramathi ..Petitioner in W.P.No.11302/2011

vs.

***1.The Regional Manager,
Competent/Disciplinary Authority
United India Insurance Company Limited,
72, West Velli Street
Madurai**

2.The Deputy General Manager,
United India Insurance Co.Ltd.,
Head Office, Chennai

3.The Tamil Nadu State Level Scrutiny Committee,
Rep.by its Chairman,
Adi Dravidar and Tribal Welfare Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009. ..Respondents in all WPs.

Third respondent impleaded as per
the order of this Court dated 27.04.2019
in W.M.P.Nos. 12999, 13000 and 13003 of 2019.

Prayer in W.P.No.11300/2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the proceedings of the 1st respondent in CBE:RO:PER:225:2010 dated 07.05.2010, as confirmed on appeal by the 2nd respondent in HO:HRM:OO:0:2011, dated 14.01.2011 (Received on 19.02.2011) and quash both the orders and direct the respondents to reinstate the petitioner with all attendant benefits including salary and all other allowances.

Prayer in W.P.No.11301/2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the proceedings of the 1st respondent in MDU:RO:PER:011:2010 dated 07.05.2010 as confirmed on appeal by the 2nd respondent in HO:HRM:00:0:2011 dated 14.01.2011 and quash both the orders and direct the respondents to reinstate the petitioner with all attendant benefits including salary and all other allowances.

Prayer in W.P.No.11302/2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the proceedings of the 1st respondent in CBE:RO:PER:224:2010 dated 07.05.2010 as confirmed on appeal by the 2nd respondent in HO:HRM:00:0:2011 dated 14.01.2011 (Received on 24.02.2011) and quash both the orders and direct the respondents to reinstate the petitioner with all attendant benefits including salary and all other allowances.

For Petitioners .. Mr.L.Chandrakumar
for M/s.N.Naganathan in all WPs.

For Respondents .. Mr.J.Ramesh
Additional Government Pleader for R3
Mrs.Chitra Sampath, Senior Counsel for
M/s.T.S.Baskaran for R1 & R2
in all WPs.

Common Order

Since the issue raised in all the writ petitions are common and the order proposed to be passed by this court is also going to be common in respect of all the writ petitions, the same are taken up together for common disposal as under.

2.The circumstances and the facts necessitating the filing of the writ petitions are briefly stated hereunder.

(a) All the petitioners were employed as Assistants in the respondent Insurance Company. They were appointed in the year 1989/1990 against the quota reserved for Scheduled Tribe Community. Subsequent to their initial appointment, their services were also regularized. According to the petitioners their caste status was supported by certificates issued by the School Authorities and also Community Certificates issued by the Revenue Divisional Officer, Mettur Dam, in October 1988.

(b) In 1993, a charge memo was issued to all the three writ petitioners stating that they had produced bogus Community Certificates and secured employment fraudulently. Three writ petitions, viz., W.P.Nos.7995 to 7997 of 1993 were filed before this Court in regard to the action taken against them by issue of charge memorandum. Those writ petitions came to be dismissed by this Court, against which W.A.Nos. 1002 to 1004 of 2001 were filed. A Division Bench of this Court, by judgment dated 06.12.2006 disposed of the appeals by directing the respondents to conduct an enquiry, after affording suitable and proper opportunity to the petitioners. According to the judgment in the appeals, the enquiry proceedings to be completed within a period of four months.

(c) In pursuance of the directions issued by the Division Bench of this Court in the aforementioned writ appeals, a fresh enquiry had commenced in April 2007 and according to the petitioners the enquiry was not conducted in a fair manner. The petitioners were denied proper opportunity in the enquiry and also their request for supply of documents was not acceded to. According to the petitioners, on the whole the enquiry was conducted in a partisan manner.

(d) On conclusion of the enquiry proceedings, the Enquiry Officer submitted his report on 25.02.2009 holding the charges proved against the petitioners. At this stage, the petitioners once again approached this Court in W.P.Nos.14952 to 14954 of 2009. The writ petitions were filed principally on the ground that the disciplinary proceedings were unduly delayed and did not comply with the time stipulated by the Division Bench of this Court, viz., four months. Though the writ petitions were initially admitted and interim orders were passed, however, by final order dated 23.02.2010, this Court disposed of all the writ petitions by directing the Disciplinary Authority to consider the objections to be made by the petitioners and directed that the final order should be passed within six weeks. In pursuance of the directions, the petitioners submitted their reply to the enquiry report and pointed out that the enquiry was conducted in a partisan manner and they were denied reasonable opportunity of explaining themselves.

(e) While so, by proceedings dated 07.05.2010, the first respondent, viz., the Disciplinary Authority imposed the penalty of 'dismissal from service' on the petitioners. According to the petitioners the Disciplinary Authority had not taken into consideration the objections raised by them against the enquiry report and the same were not reflected in the order of dismissal from service imposed by the Disciplinary Authority.

(f) Thereafter, an appeal was filed in 2010 and since their appeal was not disposed of in time, the petitioners were once again constrained to approach this Court in W.P.Nos.26083 to 26085 of 2010, which writ petitions were disposed of by this Court on 01.12.2010 by directing the appeal to be considered and orders to be passed within eight weeks from the date of copy of the said order.

(g) Later, by order dated 14.01.2011 the second respondent, viz., the Appellate Authority has rejected the appeal.

(h) In these circumstances, the present writ petitions have been filed by the writ petitioners assailing the orders passed by the first respondent dated 07.05.2010 and the second respondent dated 14.01.2011, questioning their dismissal from service.

3. Mr. L. Chandrakumar, the learned counsel appearing for the writ petitioners, would at the outset submit that the enquiry proceedings were not conducted in tune with the established principles of natural justice and the enquiry officer had come to the conclusion without any supporting material against the petitioners. Unfortunately, on the basis of the findings of the Enquiry Officer, the Disciplinary Authority imposed the penalty of 'dismissal from service', which was also mechanically confirmed in the appeal by the Appellate Authority, the second respondent herein.

4. According to the learned counsel for the writ petitioners, despite the fact that the Revenue Divisional Officer, Mettur Dam, had issued Scheduled Tribe Certificates even prior to 1990, the same were not taken into consideration and the authorities have merely concluded only on the basis of the official witness from the RDO office (MW2) that issuance of Community Certificate by the RDO of Mettur Dam was available only from 1990 and not prior to the said date. The learned counsel would submit that there was evidence to show that such certificates were issued by the RDO, Mettur Dam, even prior to 1990, as he would draw the attention of this Court to Ex.DEX.9, Dated 25.05.1990. The said document dated 25.05.1990 was issued by the RDO confirming that a certificate of Scheduled Tribe was issued on 27.10.1988 to one Scheduled Tribe candidate. Though the said letter of the RDO was marked, the Enquiry Officer has miserably overlooked to refer to the same, which was in favour of the petitioners. Further, the learned counsel for the petitioners would submit that in the proceedings, MW2 the only official witness, who was competent to depose about the validity of the Community Certificate, had not given proper answer when he was particularly asked to produce relevant register prior to 19.03.1990. In fact, in the proceedings it was one sidedly

concluded that a portion of register prior to 19.03.1990 was not relevant, though it was the most relevant document in order to prove the case of either the prosecution or the defence.

5.The learned counsel would also rely on CBCID enquiry, in which a detailed report has been submitted by the Inspector of Police CBCID, dated 30.12.1993, wherein it was observed by the CBCID Official that there was a conclusive and authenticated proof for the existence of 'Konda Reddies', in Mettur Taluk, particularly around Kolathur and therefore, no question of tarnishing the claim of their caste status will arise. The report of the CBCID in turn conclude that the possession of Konda Reddy Certificates by the individuals against whom complaint was lodged, need not be acted upon in the form of criminal prosecution and no further enquiry need to be conducted against them. The proceedings of the RDO and the report of the CBCID Official would clinchingly establish the defence of the petitioners against the charges, but unfortunately, these most crucial documents were not taken into consideration by the Enquiry Officer nor by the Disciplinary Authority as well as the Appellate Authority. In the said circumstances, the learned counsel would submit that the entire action initiated against the petitioners has no legs to stand on and the ultimate order of 'dismissal from service' cannot be either countenanced in law or on facts. He would therefore implore this Court to allow the writ petitions by setting aside the impugned orders of dismissal from service.

6.Per contra, the learned Senior Counsel Mrs.Chitra Sampath appearing for the respondent Insurance Company would submit that it was a serious case of fraud committed by the petitioners by securing employment with the respondent Insurance Company on the basis of bogus certificates, which were never issued by RDO, Mettur Dam. According to the learned Senior Counsel, the Official witness, who was examined as MW2, in the enquiry proceedings had clearly deposed to the effect that the office of the RDO, Mettur dam started issuing Scheduled Tribe Certificates only from 19.03.1990, which means that no certificate was issued prior to the said date. Therefore, the certificates produced by these petitioners dated October, 1988 were forged and fabricated and the employment secured on that basis had to be terminated. The learned Senior Counsel for the respondent Insurance Company would also submit that once the official witness had deposed clearly about the non-issuance of certificates prior to 19.03.1990, the case against the petitioners stood established with all force and therefore, their retention in service was against public interest and in the said circumstances, the Disciplinary Authority took a decision to impose the maximum penalty of dismissal from service. Once it was established that the employment was secured

on the basis of bogus claim, the appointment of these petitioners in the respondent Insurance Company become non-est in the eye of law and therefore, their services were dismissed rightly.

7. During the course of the hearing of these cases, this Court felt that ultimately there is a shadow of doubt as to the conclusion reached by the Enquiry officer regarding the genuineness of the certificates produced by the writ petitioners in support of their community status. This was because the RDO, Mettur Dam, in this letter dated 25.05.1990, which was marked as Ex.DEX.9, on behalf of the defence in the enquiry proceedings, confirmed the issuance of certificate of Konda Reddy dated 27.10.1988 to a candidate. This would obviously support the case of the defence since this was not referred to by the Enquiry Officer unfortunately nor was taken into consideration by the Disciplinary Authority. This letter by the RDO, Mettur dam, is very crucial, as the same would dilute any conclusion against the petitioners on the certainty of bogus claim or otherwise. Moreover, the CBCID report dated 30.12.1993, unquestionably and unequivocally confirm that the certificates issued by the RDO, Mettur Dam, were authenticated and genuine, since there were many Konda Reddy people living in and around Mettur dam, particularly in Kolathur. In view of these two important documents, it would be not fair and reasonable to hold one way or the other as to the genuineness of the documents produced by the petitioners. In the said circumstances, this Court has ordered impleadment of third respondent, viz., the Tamil Nadu State Level Scrutiny Committee, which is entrusted with the task of scrutinizing all the certificates in doubt in regard to the Scheduled Tribe Communities. The third respondent has been impleaded by the order of this Court dated 27.04.2019.

8. Having considered the submissions made by the learned counsel for the petitioners and the learned Senior Counsel for the respondent Insurance Company and also having considered the pleadings and documents relied on by the parties, this Court is unable to sustain the orders passed by the respondents only on the ground that the charges as against the petitioners cannot be conclusively established in view of the two important documents as named above, viz., the RDO's letter dated 25.05.1990 (Ex.DEX.9) and the CBCID report dated 30.12.1993. Since there appears to be some force in the contention put forth on behalf of the petitioners that the conclusion reached by the Enquiry Officer against the petitioners may not be supported by unimpeachable documents, this Court has to necessarily strike a fine balance between the interest of the respondent Insurance Company as well as the rights of the petitioners. If the certificates produced by the

petitioners are found to be bogus with unimpeachable evidence, then the action taken by the respondent company under no circumstances can be faulted with. But, at the same time if the extreme penalty of 'dismissal from service' is on the basis of doubtful conclusion reached by the Enquiry Officer, this Court cannot remain a silent spectator and allow the punishment befall on the petitioners.

9. In the above circumstances, in order to secure the ends of justice, as an exceptional case, the writ petitions are allowed and the impugned orders in CBE:RO:PER:225:2010; MDU:RO:PER:011:2010; and CBE:RO:PER:224:2010; dated 07.05.2010 of the 1st respondent and the order of the second respondent in HO:HRM:00:0:2011, dated 14.01.2011 are hereby set aside. However, in view of the doubt about the genuineness of the documents, which is still unclear, the issues are referred to the third respondent for scrutiny by the Committee.

10. The third respondent on receipt of the records from the Court, shall issue notices to the parties concerned and call them for enquiry. The third respondent thereafter is directed to scrutinize the genuineness of the certificates produced by the petitioners in support of their claim and pass a detailed order within a period of six months from the date of receipt of copy of this order.

11. As far as the petitioners are concerned, though the orders of the respondents are set aside, in public interest they shall not be reinstated in service, but shall be kept under suspension till a final order is passed by the third respondent Committee.

12. During the period of suspension, the petitioners shall be paid the minimum subsistence allowance, payable under the Rules, as per the service conditions of the petitioners. The third respondent is directed to adhere to the time limit prescribed by this Court, as the issue is pertaining to the Disciplinary action initiated against the petitioners as early as in the year 1993.

13. The respondent Insurance Company shall pass orders of suspension within a period of four weeks from the date of receipt of copy of this order. It is also made clear that the petitioners as well as the respondents shall place all the materials and any appeal papers before the third respondent for expeditious decision of the Committee, by determining the caste status of the petitioners. It is also made clear that in case, any adverse orders are passed by the third respondent Committee the petitioners are not entitled to any further opportunity of being heard in the matter.

14.All the writ petitions are disposed of accordingly.
However, there shall be no order as to costs.

15.The Registry is directed to forward the papers
relating to the writ petitions to the third respondent Committee
at the earliest.

Sd/-
Assistant Registrar(CO)

***amended as per order
dated 03.12.2020 made herein
-s/d-
Assistant Registrar(CCC)
dt 04/12/2020**

//True copy//

Sub Assistant Registrar

msh/pns

To

***1.The Regional Manager,
Competent/Disciplinary Authority
United India Insurance Company Limited,
72, West Velli Street
Madurai**

2.The Deputy General Manager,
United India Insurance Co.Ltd.,
Head Office, Chennai.

To be Substituted order
already despatched on

14/10/2019

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

Copy To

1. The Section Officer,
Writ Section,
High Court, Madras.
2. The Section Officer,
ER Section,
High Court, Madras.

WEB COPY

+1cc to Mr.N.Naganathan, Advocate SR.No.***38846**

+3cc to Mr.T.S.Baskaran, Advocate SR.No.***38849**

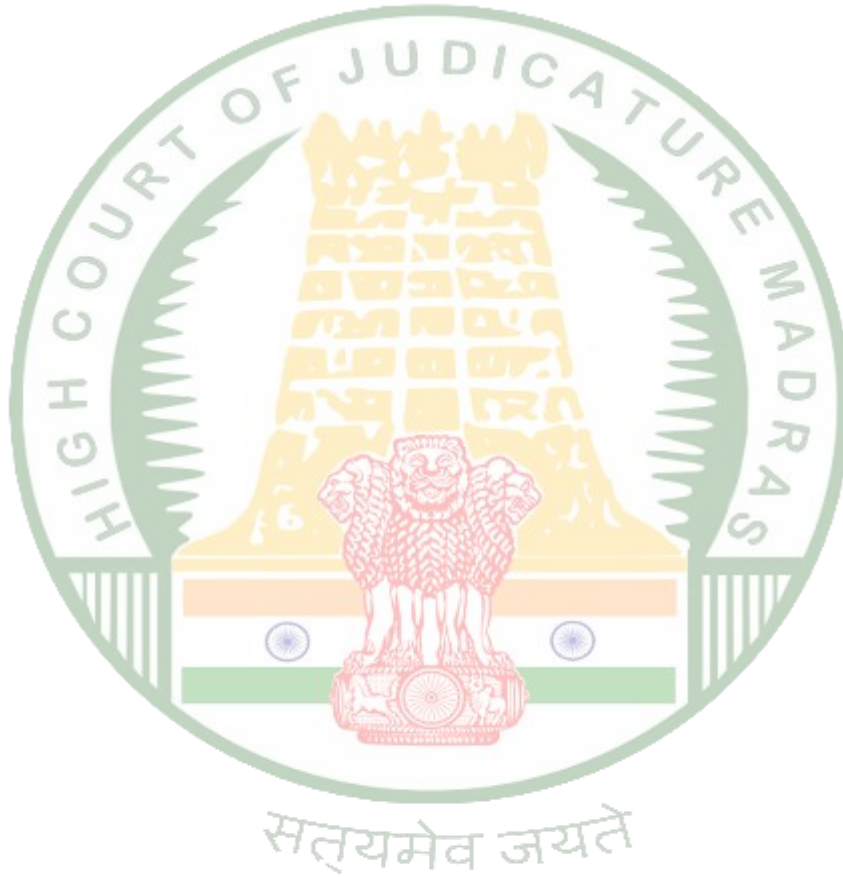
+1cc to Government Pleader, High Court, Madras SR.No.41306

W.P.Nos.11300 to 11302 of 2011

CA (CO)

GMV (02/08/2019)

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