

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2019

PRONOUNCED ON : 26.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.949 of 2015
and M.P.No.1 of 2015

The Oriental Insurance Co., Ltd.,
Represented by its Deputy General Manager,
Regional Office, UIL Building,
Esplanade, Chennai 600 108. Appellant/1st Respondent

.Vs.

1. P.Vijayalakshmi1st Respondent/Petitioner

2. Dr.R.H.Kalyanasundaram
Deputy Manager and Inquiry Officer,
Regional Office, UIL Building,
Esplanade, Chennai - 600 108.

(2nd respondent given up as unnecessary
in Writ Appeal)

... 2nd Respondents/2nd Respondent

Prayer :-

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 09.03.2015 made in W.P.No.3899 of 2013.

WP.No.3899 of 201:-

Petition filed under Article 226 of the Constitution of
India calling for the records relating to the order bearing
Ref.No.Nil dt.11.06.2012 passed by the 2nd respondent and to
quash the same as being illegal arbitrary and contrary to the
order passed by this Honourable Court in W.A.No.876 of 2000
dt 07.08.2009 and W.P.No.21133 of 2000 dt.10.12.2009 and
consequently direct the respondents to exonerate of the charges
levelled against the petitioner.

For Appellant : Mr.N.Vijayaraghavan

For 1st Respondent : Mr.N.G.R.Prasad for
M/s.Row & Reddy

J U D G M E N T

C.SARAVANAN, J.

The appellant is aggrieved by the impugned order dated 9.3.2015 passed by the learned single judge in W.P.No.3899 of 2013. By the impugned order, the learned single judge has allowed W.P.No.3899 of 2013 filed by the 1st respondent.

2. W.P.No.3899 of 2013 was originally filed by the 1st respondent to quash order bearing reference No.Nil dated 11.6.2012 passed by the 2nd respondent as illegal without any basis arbitrarily and contrary to the order dated 07.08.2009 passed in W.P.No.876 of 2000 and order dated 10.12.2009 in W.P.No.21133 of 2000 and consequently direct the appellant to settle all terminal benefits due to the 1st respondent within a time frame.

3. The 1st respondent later filed M.P.Nos1 to 5 of 2013 in the above writ petition. M.P.No.2 of 2013 to amend the prayer to issue a Writ in the nature of Writ of Certiorarified mandamus after calling for the records relating to the order bearing ref.No.Nil dated 28.02.2013 passed by the 1st respondent and Report dated 11.06.2012 submitted by the 2nd respondent and to quash the same as being illegal, arbitrary without any basis and contrary to the order passed by this Court in W.A.No.873 of 2000 dated 07.08.2009 and W.P.No.21133 of 2000 dated 10.12.2009 and consequently direct the respondents to settle all the terminal benefits due to the petitioner's superannuation within a time frame to be fixed by this Court.

4. However, the writ petition was allowed without passing any order in M.P.No.2 of 2013 to amend the prayer. Be that as it may, we shall proceed to pass order in the present appeal on merits.

5. The 1st respondent belongs to Vanniya Kula Shatriya Community, a Backward class Community in the State of Tamil Nadu. The 1st respondent married Mr S.B.Palani on 03.06.1977, a person belonging to Hindu Adi Dravida Scheduled Caste Community. The 1st respondent thereafter obtained a Hindu Adi Dravida Scheduled Caste Community certificate dated 02.12.1977 from Tahsildar., Fort Tondiarpet for herself.

6. Later, 1st respondent applied for the post of an Assistant (Typing) with the appellant against post reserved for persons from Schedule Castes/Scheduled Tribe Community. In the application for the aforesaid post, the 1st respondent declared that she belonged to Hindu Adi Dravidar Scheduled Caste Community and had produced the above community certificate.

7. The Tahsildar, Fort Tondiarpet vide letter dated 13.11.1978 in a reply to a query from the District Employment Officer vide letter dated 12.12.1977 had confirmed that the Hindu Adi Dravida Scheduled Caste Community was issued to the 1st respondent in line with the order in Government Letter No. MS 493/BCI/76 dated 11.6.1976.

8. In Government Letter No. MS 493/BCI/76 dated 11.6.1976 issued by the Secretary to the Government, Madras Collectorate, Madras 1, it was clarified that social status of a male/female member of a forward community will not change merely because his or her marriage to a person from backward or scheduled caste community.

9. It was opined that the crucial test was whether the married couple were accepted by the member of that caste to which they claim to belong and this can be proved by showing inter-marriage, inter-dining community or workshop and dress, residence in a particular place and the like.

10. In Government Letter No. MS 493/BCI/76 dated 11.6.1976, the Government was concerned with the community status of one Thirumathi K.S.Ameena Shapir (formerly K.S Meenakshi, a member of Hindu forward community) pursuant to her marriage to person belonging to backward class Labbai Muslim Community in Tamil Nadu.

11. The 1st respondent was later appointed by the appellant vide appointment order dated 22.1.1979. There was no suppression of facts by the 1st respondent either in applying for the community certificate or while getting employed against the post reserved for a person belonging to reserved community.

12. Later, a show cause notice dated 25.9.1990 was issued by the Collector, Chennai to cancel the 1st respondent's community certificate. In her reply, the 1st respondent claimed that she obtained Hindu Adi Dravida Scheduled Caste Community in view of her marriage to her husband S.B. Palani who belongs to the aforesaid community.

13. According to the 1st respondent, the aforesaid community certificate was issued to her in view of Government Letter No. MS 493/BCI/76 dated 11.6.1976. The community certificate of the 1st respondent was later cancelled on 20.8.1991 by the Collector in his proceeding bearing reference Rc.C3/75 796/88 dated 20.08.1991.

14. The 1st respondent thereafter preferred an appeal against the cancellation of the community certificate before the Special Commissioner. Aggrieved by the order upholding cancellation of the community certificate, the 1st respondent filed W.P.No.19469 of 1992.

15. Meanwhile, a Charge Memo dated 28.10.1992 bearing reference No. H.O/Pers/CDA/105 was issued to the 1st Respondent. Following three charges were framed against the 1st respondent vide Annexure I :-

Articles - I : You had got appointed to the category of Asst.(Typing) against a vacancy reserved for Scheduled Caste and Scheduled Tribe candidates in accordance with the rules and regulations by producing a legally invalid and factually incorrect community certificate issued by Thasildar Fort- Tondiarpet, Madras under Ref.D.Dis.No.35984/78 dated 9.11.1978 that you belong to Hindu Adi Dravidar, a scheduled caste community. You failed to produce documentary evidence to establish your claim that you belong to Adi Dravidar Community in the verification inquiry initiated by the Collector of Madras.

Articles II : You had, while working as Assistant (Typing) by making representation that you belong to Adi Dravidar on the basis of invalid, incorrect certificate that you belongs to that community, appeared for competitive examination to the cadre of Asst. Administrative Officer in 1984 availing all the concession and benefits and handicaps applicable to a genuine Scheduled Caste employee and got promotion as Asst. Administrative Officer against vacancy reserved for Schedule Caste and Schedule Tribe.

Article III :- On verification proceeding initiated by the Collector of Madras, you could

not establish your claim as Adi-Dravidar. Hence, it is clear from the foregoing that you had made false claim that you belong to Adi-Dravidar Community and made representation furnishing false information germane to the employment, for employment and during the course of employment for promotions. Thus, you had exhibited lack of integrity and conduct unbecoming of a public servant contravening Rules 3(1)(i)(iii) & 4 (4), (5), (20) of General Insurance (Discipline, Conduct and Appeal) Rules, 1975.

16. Relevant portion of Annexure II Statement of imputation of Misconduct in respect of Articles of charge framed against Smt.P.Vijayalakshmi reads as under:-.

From the said incorrect, wrong legally invalid Community Certificate dated 9.11.1978 you made representation that you belong to an Adi Dravidar Community when you were not an Adi Dravidar and got the appointment against a post of Asst.(Typing) reserved for SC and ST Candidates. But for your producing incorrect certificates you would not have been appointed as an Asst.(Typing)

Further your promotion to AAO was again considered based on your false claim that you were a Scheduled Caste eligible for consideration against vacancies reserved for Scheduled Caste and Scheduled Tribe.

In your application for employment you have signed a declaration that if any of the information in the application is found to be materially wrong, you shall be liable to such disciplinary action including summary dismissed as the management may choose to take against you. You are therefore, liable to be proceeded under Rule 3(1)(i) (iii) & 4 (4) (5) (20) of General Insurance (Conduct, Discipline, Appeal) Rule 1975.

17. W.P.No.19469 of 1992 was dismissed by an order dated 28.4.2000. The 1st respondent therefore preferred W.A.No. 873 of 2000 before the Division Bench of this Court.

18. By an order dated 7.8.2009, W.A.No. 873 of 2000 was disposed with the observation that the state had no jurisdiction to declare that non-SC/ST on marriage SC/ST will deemed to be SC/ST after marriage.

19. Thus, the status of the 1st respondent as a person not belonging to SC Adi Dravida Community stands confirmed.

20. The court also held that the 1st respondent cannot claim to have acquired the status of a scheduled caste by her marriage to a person belonging to the aforesaid community and therefore cannot derive any advantage from circular dated 11.6.1976 of the government.

21. While dismissing the above W.A.No.873 of 2000, the court in its order dated 07.08.2009 also observed that the 1st respondent has not committed any fraud or misrepresented at the time of appointment with the appellant.

22. Therefore, the Court left the issue open to be decided by competent authority as to whether the 1st respondent can be held guilty of any misrepresentation and whether proceedings initiated can be dropped. In view of the above development, the disciplinary proceeding initiated in 1992 were revived.

23. The 1st respondent therefore filed W.P.No. 21133 of 2000 to quash charge memo dated 28.10.1992 bearing reference No. H.O/Pers/CDA/105. W.P.No. 21133 of 2000 was disposed by an order dated 10.12.2009 stating that the 1st respondent can submit an explanation and prove innocence and therefore no writ can be issued at the enquiry stage.

24. While disposing W.P.No. 21133 of 2000, the learned single judge had also observed that both the enquiry officer as well as the disciplinary authority should consider the explanation and the circumstances leading to the issue of community certificate and the report submitted by the Tahsildar on 13.11.1978 which indicates that the subject community certificate was issued as per the prevailing guidelines by the Government by virtue of circular dated 11.6.1976.

25. The enquiry officer vide his enquiry report dated 11.6.2012 concluded that the 1st respondent was guilty of hiding material facts at the time for her appointment and failed to inform the office regarding cancellation of community

certificate. This enquiry report dated 11.6.2012 came to be impugned in W.P No.3899 of 2013.

26. The enquiry proceeding was thereafter completed on 4.2.2013. The Deputy General Manager of the appellant as the disciplinary authority passed an order dismissing the 1st respondent from service vide order dated 28.2.2013. It is under these circumstances, the 1st respondent filed M.P.Nos.2 of 2013 to amend the prayer to quash the order dismissal of the 1st respondent from service.

27. Meanwhile, the 1st respondent also attained the age of superannuation on 28.03.2013 and was therefore informed that all her entitlement such as gratuity, provident fund, leave encashment et cetera will be paid subject to outcome of W.P.No.3988 of 2013.

28. By an order dated 09.03.2015, the learned Single Judge has allowed W.P No. 3899 of 2013 which is impugned before us. The operative portion of para 21, the impugned order reads as follows:

21. The case of the petitioner should be considered in the light of the peculiar background facts. The petitioner married a person belonging to Scheduled Caste Community. The marriage was solemnized on 3 June 1977 and registered on 10 August 1977. The petitioner was accepted as a member of Scheduled Caste Community. The Tashildar, Fort Tondiarpet, after conducting multi-level enquiry besides discreet enquiry, issued a community certificate to the petitioner in accordance with letter dated 11 June 1976 issued by the Government of Tamil nadu. The petitioner has not committed any kind of misconduct by producing the said certificate before the first respondent for appointment against a post reserved for members of the Schedule Caste Community. The petitioner is therefore perfectly correct in her contention that there was no misrepresentation at all on her part. The first respondent failed to consider all these vital factors before passing the order of dismissal. In fact, the first respondent even omitted to consider the direction issued by this court in its order

dated 7 August 2009 and 10 December 2009 in W.A.No.873 of 2000 and W.P.No.21133 of 2000 respectively. There is absolutely no basis for the adverse finding recorded by the Enquiry Officer. The first respondent failed to address the issues raised by the petitioner in the light of the direction given by this Court in W.A.No.873 of 2000 and W.P.No.21133 of 2000. I am therefore of the view that the petitioner must succeed.

29. Heard the learned counsel for the appellant and the 1st respondent. Learned counsel for the appellant submits that the impugned order is liable to be set aside as the 1st respondent was not entitled to claim employment against positions meant for persons belonging to SC/ST Community.

30. Learned counsel for the 1st respondent submits that there was no misrepresentation by the 1st respondent while applying for the post as the community certificate was issued based on the prevailing understanding of law in 1976-77 when the government had itself issued clarified and it was pursuant to the aforesaid clarification dated 11.6.1976 bearing reference MS 493/BCI/76, the community certificate was granted to the respondent. It is therefore submitted that the present appeal is liable to be dismissed.

31. We have considered the arguments advanced on behalf of the appellant and the 1st respondent. The Honourable Supreme Court in *Kumari Madhuri Patil v. Commr. Tribal Development*, (1994) 6 SCC 241 has framed guidelines. In some of the States, Legislations have been passed. For the purpose of disposing the present writ petition, following three guidelines namely 3, 14 and 15 in the above case which are reproduced below:-

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an

offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

32. Criminal proceedings can be initiated and if the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament but also the appointing authority, should cancel the admission/appointment without any further notice.

33. As per the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil v. Commr. Tribal Development, (1994) 6 SCC 241, application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

34. In the present case, verification was done even before the 1st respondent was appointed. The Tahsildar, Fort Tondiarpet vide letter dated 13.11.1978 in a reply to a query from the District Employment Officer vide letter dated 12.12.1977 had also confirmed that the Hindu Adi Dravida Scheduled Caste Community was issued to the 1st respondent in line with the order in Government Letter No. MS 493/BCI/76 dated 11.6.1976. This verification was done prior to the appointment of the 1st respondent by the Appellant during 1977. The 1st respondent was thereafter appointed later vide letter of appointment dated 22 1.1979.

35. Therefore, there was no necessity to cause re-verification of the community certificate once the issue had attained finality. However, re-verification was done which unfortunately led to cancellation of the community certificate on 20.08.1991 by the Tahsildhar, Fort-Tondiarpet Taluk.

36. Subsequent, the appeal was also rejected on 18.07.1992 by the Special Commissioner in W.P.No.19469 of 1992 and the W.A.No.873 of 2000 against the cancellation were also unfortunately dismissed by vide Order dated 28.4.2000 and on 7.8.2009 though with few favourable observation were made in favour of the 1st respondent by the Division Bench of this Court.

37. As per the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil v. Commr. Tribal Development, (1994) 6 SCC 241, the 1st respondent was no longer entitled to remain in service. The community certificate was cancelled as early as 20.08.1991. The 1st respondent has managed to work till the age of superannuation. She has enjoyed the benefit of reservation which was not available to her.

37. In R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105, the appellant there had been appointed in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that the appellant did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. The Hon'ble Supreme Court held that his appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final.

38. By changing one's faith or by marrying a person belonging to another community, one does not change his or her community.

The Court further observed that "The position, therefore, is that the appellant has usurped the post which should have gone to a member of the

Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

40. In Food Corporation of India v. Jagdish Balaram Bahira, (2017) 8 SCC 670 the Hon'ble Supreme Court in paragraph 65 observed as under:-

65. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that the Government is bound by its own circulars is well settled but it cannot apply in a situation such as the present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the

reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.

41.The above passage of the Hon'ble Supreme Court is clearly against the 1st respondent. The certificate was obtained based on a clarification of the State Government which has been held to be not applicable to the 1st respondent.

42.Though, the 1st respondent has not played fraud while obtaining the aforesaid community certificate, the fact remains that she is not a person who was eligible for appointment against post reserved for Scheduled case/Scheduled Tribe. Scheduled Case Adi Dravidar Community certificate ought not to have been issued to the petitioner by the Tahsildar Tandiarpet Taluk.

43.We are therefore unable to come to the rescue of the 1st respondent. After cancellation of the community certificate, the 1st respondent could not have continued to be in service.

44.Therefore, the 1st respondent cannot take advantage of the interpretation prevailing in 1977-1978 to her benefit in the light of the observation of the Hon'ble Supreme Court in para 65 of Food Corporation of India v. Jagdish Balaram Bahira, (2017) 8 SCC 670.

45.We are of the view that the order passed by the learned Single Judge is liable to be interfered. Accordingly, the present Writ Appeal is allowed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

kkd/jen

To

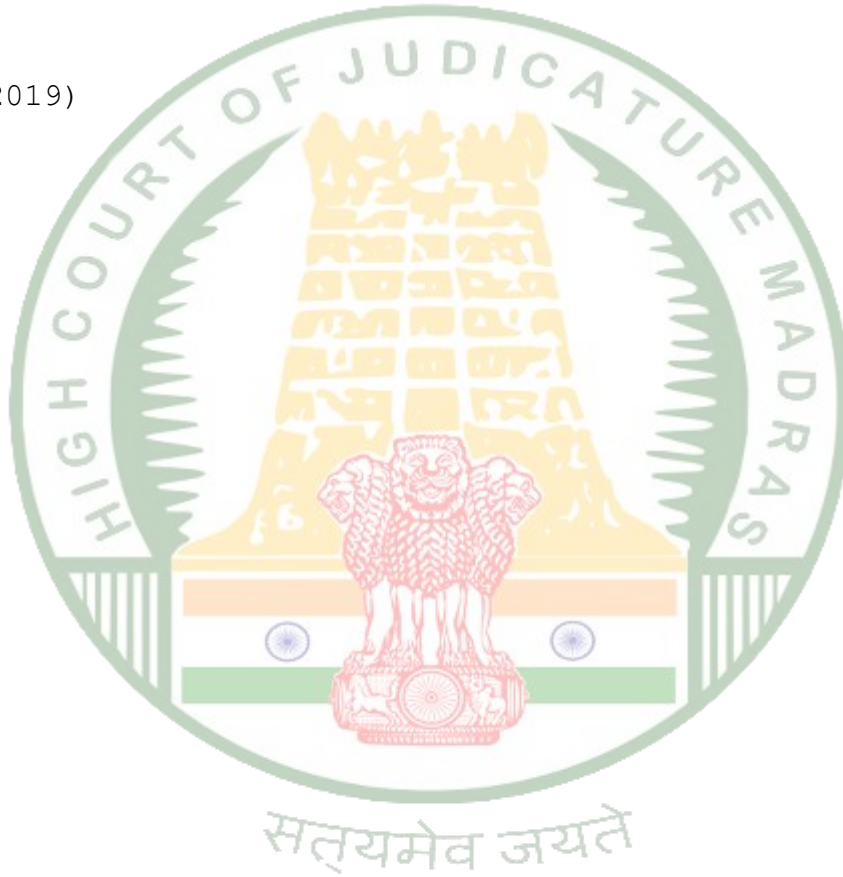
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W.A.No.949 of 2015

VP(CO)
CS(18/10/2019)



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