

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 02.08.2019

Order pronounced on : 19.08.2019

CORAM

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

Writ Petition No. 4198 of 2019
and
WMP No. 4716 of 2019

P. Vijaya Raghavan

...Petitioner

Versus

1. The Tamilnadu State Level Scrutiny Committee
rep. by its Chairman and Secretary to Government
Adi Dravidar and Tribal Welfare Department
Fort St. George
Chennai - 600 009

2. The Assistant Commissioner of Police
Social Justice and Human Rights Unit
District SC/ST Vigilance Cell
Office of the Director General of Police
Mylapore, Chennai - 600 004

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Order of the second respondent dated 30.01.2018 signed on 30.01.2019 in C.No.66 /ACP/SJ&HR/SC-ST/VC/Chennai/2017, quash the same and forbearing the second respondent to cause any further enquiry with regard to the community certificate issued to the petitioner dated 04.09.1995.

For Petitioner : Mr. R. Parthiban
For Respondents : Mr. V. Shanmuga Sundar
Spl. Government Pleader

ORDER

R. SUBBIAH, J

The petitioner has come up with this writ petition seeking to quash the proceedings dated 30.01.2018 of the second respondent and consequently forbearing the respondents from causing any further enquiry with respect to the community certificate issued to him on 04.09.1995.

2. As per the averments contained in the affidavit filed in support of the writ petition, the petitioner belongs to Konda Reddy community which is classified as Scheduled Tribe community and he has also obtained a certificate issued by the then Collector of Madras to that effect. On the basis of such certificate, the petitioner got admission under the Scheduled Tribe quota to pursue M.B.B.S. course for the academic year 2007-2008 in Madras Medical College. The petitioner also successfully completed the M.B.B.S. course and enrolled his name as a Medical Practitioner before the Tamil Nadu Medical Council in the year 2013. Thereafter, the petitioner pursued a Post Graduate Course - M.S. General surgery in the year 2014 and he completed the same in the year 2017. The petitioner was also selected in open category for pursuing M.CH in Paediatric Surgery during September 2019 and he is currently undergoing the said course.

3. It is the further case of the petitioner that earlier, when he was about to receive his degree, the Dean, Madras Medical College had sent a communication dated 12.04.2013 to the District Collector for causing a verification with respect to the genuineness of the community certificate produced by the petitioner. Questioning the same, the petitioner has filed WP No. 12680 of 2013 before this Court as against the (i) District Collector, Chennai and (ii) Dean of Madras Medical College to quash the order dated 12.04.2013 issued by the second respondent herein and consequently directing the respondents to issue provisional certificate - II for having completed MBBS Decree course, internship etc., This Court, by order dated 23.07.2013, allowed the writ petition, by setting aside the order dated 12.04.2013 issued by the Dean of Madras Medical College, with a direction to the respondents therein to issue provisional certificate and other certificates to the petitioner as per the Rules and Regulations. As per the direction of this Court, the petitioner was also furnished with all the testimonials and based on the same, he also pursued further studies, as mentioned supra. While so, once again, the second respondent herein has issued a notice dated 30.01.2018, signed on 30.01.2019, calling upon the petitioner to appear for an enquiry on 15.02.2019 at 10.30 am with available records to prove the community to which

the petitioner belonged to. Aggrieved by the same, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner would vehemently contend that the petitioner's mother was issued with a community certificate stating that she belong to Konda Reddy Community and such certificate was produced by her at the time of her employment in Indian Overseas Bank during the year 1985. While so, the District Collector, Tirunelveli sent a notice dated 11.07.1995 calling upon the petitioner's mother to appear for an enquiry with respect to verification of her community certificate. Challenging the same, the petitioner's mother filed WP No. 11139 of 1995 before this Court to forbear the respondents from conducting any enquiry. This Court, by order dated 16.12.1999, referred to the report of the first report dated 25.04.1990 wherein it was held that the community certificate issued to the petitioner's mother is genuine. Therefore, it was held by this Court in the order dated 16.12.1999 that the communication dated 11.07.1995, calling upon the mother of the petitioner's mother to appear for an enquiry, is not justified and accordingly allowed the writ petition.

5. It is further contended by learned counsel for the petitioner that the petitioner's father joined as Upper Division Clerk on 21.11.1982 in the Income Tax Department under Schedule Tribe quota and at the time of his appointment he produced the community certificate issued to him on 30.04.1983 by the Additional Tahsildar, Veerakeralampudur, Tirunelveli District. The petitioner's father was also promoted to the post of Head Clerk and subsequently as Inspector, however, his further promotion was deferred by citing the pendency of verification with respect to his communal status on the basis of the community certificate produced by him on 21.11.1982. Therefore, the petitioner's father filed O.A. No. 89 of 1998 before the Central Administrative Tribunal seeking to issue appropriate direction to the respondents therein to promote him to the post of Income Tax Officer. By order dated 17.04.2000 the Tribunal directed the Union of India to promote the petitioner's father to the post of Income Tax Officer. Challenging the order dated 17.04.2000 of the Tribunal, the Income Tax Department has filed WP No. 17747 of 2000 before this Court. In the meantime, the community certificate produced by the petitioner's father was referred to the District Collector, Tirunelveli by the Income Tax Department for an enquiry. The District Collector, Tirunelveli, after verification, informed the Income Tax Department by a communication dated 05.03.1997 that the community certificate produced by the petitioner's father at the time of his appointment is not genuine. Challenging the same, the petitioner's father filed WP No. 11629 of 1997 before this Court. The Division Bench of this Court, by order dated

27.06.2003 passed in WP No. 11629 of 1997 filed by the petitioner's father and WP No. 17747 of 2000 filed by the Income Tax Department concluded that the proceedings of the District Collector, Tirunelveli concluding that the community certificate produced by the petitioner's father is in-genuine cannot be sustained for the reasons recorded therein and accordingly allowed WP No. 11629 of 1997 filed by the petitioner's father. Consequently, the Division Bench dismissed WP No. 17747 of 2000 filed by the Income Tax Department and upheld the order passed by the Tribunal to confer promotion to the father of the petitioner. Pursuant to the order dated 27.06.2003 passed by the Division Bench of this Court in WP No. 11629 of 1997 and WP No. 17747 of 2000, the Income Tax Department promoted the father of the petitioner to the post of Income Tax Officer and further promoted him as Assistant Commissioner of Income Tax and as Deputy Commissioner of Income Tax.

6. By referring to the orders passed by this Court in the writ petitions filed by the mother and father of the petitioner, the learned counsel for the petitioner submits that when the parents of the petitioner were issued with community certificate and as the validity of the same was also upheld by this Court, the impugned communication dated 30.01.2018 of the second respondent, purportedly to cause an enquiry into the communal status of the petitioner is not warranted. According to the counsel for the petitioner, the issue relating to validity of the community certificate of the parents of the petitioner had reached a finality and therefore, it is no longer open for the respondents to cause any further enquiry into the same. The learned counsel for the petitioner therefore prayed for allowing the writ petition.

7. Per contra, the learned Special Government Pleader appearing for the respondents would only contend that the communication dated 30.01.2018, which is impugned in this writ petition, is only a notice calling upon the petitioner to appear for an enquiry. By virtue of the communication dated 30.01.2018, the respondents have not taken a final decision as regard the validity of the community certificate produced by the petitioner. While so, the prayer sought for in this writ petition need not be granted and he prayed for dismissal of the writ petition.

8. We have heard the counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents. At the time of admission of this writ petition, this Court granted interim stay on 28.02.2019 and the interim order was also subsequently extended from time to time, thereby the second respondent was restrained from conducting any enquiry, pending disposal of this writ petition.

9. Admittedly, the mother and father of the petitioner have filed writ petitions before this Court when the validity of the community certificate issued to them was sought to be verified and the writ petitions were allowed by this Court. Now, the second respondent had issued the notice dated 30.01.2018 calling upon the petitioner to appear for an enquiry purportedly to verify the community certificate issued to the petitioner, in terms of the direction issued by the first respondent. As rightly pointed out by the learned Special Government Pleader for the respondents, by virtue of the communication dated 30.01.2018, no final decision had been taken by the respondents with respect to the communal status of the petitioner. The petitioner was only called upon to appear for an enquiry. Therefore, at this stage, we are not inclined to set aside the communication dated 30.01.2018 of the second respondent, which is impugned in this writ petition. It is always open to the petitioner to appear before the second respondent and produce all the documentary evidence in support of his claim and it is for the second respondent to consider it and pass appropriate orders on merits and in accordance with law after affording an opportunity of hearing to the petitioner.

10. Subject to the aforesaid observation, we dispose of the writ petition. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1.The Chairman and Secretary to Government
Tamilnadu State Level Scrutiny Committee
Adi Dravidar and Tribal Welfare Department
Fort St. George
Chennai - 600 009

2. The Assistant Commissioner of Police
Social Justice and Human Rights Unit
District SC/ST Vigilance Cell
Office of the Director General of Police
Mylapore, Chennai - 600 004

+1 CC to Mr.R. Parthiban, Advocate sr 70152.

WP No. 4198 of 2019

RP(CO)

SP(28/08/2019)