

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	14.08.2019
Pronounced On	19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5607 of 2019

P.E.Shanmugam

...Petitioner

vs

1.The State Level Scrutiny Committee,
Represented by its Chairman,
Fort St. George, Chennai - 600 009.

2.The Chief Post Master General,
Anna Road, HPO, Chennai - 600 002.

3.The Superintendent RMS,
Postal Department,
Chennai Sorting Division,
Chennai - 600 008.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd and 3rd respondents to disburse the terminal benefits including DCRG, Commutation of Pension and retirement benefits on attaining the age of superannuation on 31.03.2017 with reasonable interest from the date on which the said amounts are due and payable to the petitioner within a stipulated time without reference to the proceedings pending before the 1st respondent.

For Petitioner : Mr.Naganathan.N

For R1 : Mr.Shanmuga Sundar,
Special Government Pleader

R2 & R3 : No appearance

O R D E R

C.SARAVANAN, J.

The petitioner has filed the present writ petition for a writ of Mandamus to direct the 2nd and 3rd respondents to disburse retirement/terminal benefits including DCRG, Commutation of Pension and retirement benefits to the petitioner within reasonable time with reasonable interest from the date on which the said amounts became due and payable to the petitioner.

2.The petitioner was appointed as a Sort Duty Sorter in the Postal Department in the year 1981 on a temporary basis. Later, the petitioner was appointed as a Sorter Assistant against the post reserved for Scheduled Tribe.

3.At the time of appointment, the petitioner had produced a "Konda Reddy" Schedule Tribe Community Certificate dated 12.08.1979 issued by the Tahsildar along with another Community Certificate dated 09.05.1980 in the prescribed format issued by the Tahsildar.

4.In 1996, the petitioner's employer Superintendent, RMS Postal Department addressed a communication to the Revenue Authorities to conduct verification of the petitioner's aforesaid community certificate. Later the said Community Certificate was cancelled vide proceeding No.Ni.Mu 38937/2005 (J3) dated 17.12.2005 by the District Level Vigilance Committee, Thiruvallur.

5.Aggrieved by the same, the petitioner had filed an appeal before the State Level Scrutiny Committee, the 1st respondent herein. By an order dated 27.03.2006 bearing reference Letter No. 3668/A.D.W-II/2006-2, the 1st respondent remitted the case back to the three-members, District Level Vigilance Committee, Thiruvallur.

6.Meanwhile, the petitioner's employer had issued a Charge Memo on 30.06.2006 pursuant to cancellation of the community certificate by the District Level Vigilance Committee, Thiruvallur which culminated in a Departmental proceeding initiated by the 3rd respondent. The petitioner was summoned for an enquiry on 06.11.2006.

7.The petitioner therefore challenged the Departmental proceeding in W.P.No.47610 of 2006 as the cancellation of the community certificate of the petitioner was set aside and case stood remitted back to the District Level Vigilance Committee, Thiruvallur pursuant to the order of the 1st respondent.

8.By an order dated 29.03.2010, this Court directed the 1st respondent to conduct enquiry and verify the genuineness of community certificate and ordered the Departmental proceedings to be kept in abeyance.

9.During the interregnum, the government also constituted a Vigilance Cell in terms of the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241.

10.On 06.07.2010, the District Collector, Thiruvallur was requested to transfer the original records i.e. issuance of Community Certificate to the 1st respondent. These files were transferred on 11.02.2011 by the District Adi Dravider and Tribal Welfare Officer. On 16.08.2012, the petitioner was asked to appear before the 1st respondent. However, the petitioner failed to appear before the 1st respondent.

11.The petitioner was once again asked to appear on 16.10.2014. However, the petitioner sent a representation dated 15.10.2014 and sought for extension of one month time to appear. On 14.11.2016 the case was referred to the Vigilance Cell vide Government Letter No. 8135/CV-4 (1)/2010-9.

12.Meanwhile, the petitioner attained the age of superannuation on 31.03.2017 and was therefore allowed to retire from service pending completion of the disciplinary proceedings initiated under Rule 14 of CCS (CCA) Rules, 1965 vide Memo No. PF/P.E.Shanmugam dated 13.06.2006 in terms of Rule 9 (2) (a) of the CCS (Pension) Rules, 1972 vide letter dated 29.3.2017.

13.The petitioner has relied upon the decision of this court in W.P.No. 599 of 2017 passed on 21.01.2019 wherein in a batch of writ petition filed by the General

Manager Bharat Sanchar Nigam Ltd wherein the order of Central Administrative Tribunal allowing payment of terminal benefits was challenged.

14. In the said order, the court directed completion of proceeding within a period of six months from the date of receipt of a copy of the order also ordered to release the benefits within a period of six weeks. Similar view was taken in W.P.No.31888 of 2017 and W.P.No.3896 of 2018 by this court on 28.01.2019.

15. The 1st respondent has filed a counter wherein it has been stated that the petitioner did not appear for enquiry on 16.08.2012. The petitioner was once again asked to appear for enquiry on 16.10.2014 but absented himself and failed to cooperate with the enquiry before the 1st respondent. The petitioner has also not replied to the show cause notice dated 18.03.2019 pursuant to enquiry conducted by the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Thiruvallur District.

16. Heard the learned counsel for the petitioner and the learned Government Pleader on behalf of the 1st respondent State Level Scrutiny Committee.

17. The relief claimed by the petitioner in the present writ petition for release of terminal benefits cannot be allowed pending enquiry before the 1st respondent State Level Scrutiny Committee. In fact, the Honourable Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241, has observed that "The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee." The Court further held that "It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude." The Hon'ble Supreme Court therefore streamlined the procedure for the issuance of social status certificates, their scrutiny and their approval.

18. In the facts of the present case, it is evident that the community certificate was earlier cancelled by the District Level Vigilance Committee. On further appeal before the 1st respondent, the case was remitted back to the District Level Vigilance Committee vide proceeding No. Ni.Mu 38937/2005 (J3) dated 17.12.2005.

19. Meanwhile, the case has been transferred back to the 1st respondent. The petitioner was required to appear before the 1st respondent. However, the petitioner did not participate with the enquiry. The petitioner also was issued with a show cause notice for which the petitioner has not given his reply and in the process has completed the period of service and has attained the age of superannuation without verification of his community certificate after getting a favourable order from this court on an earlier occasion. Thus, not only the departmental proceeding have been kept in abeyance pending verification of the community certificate by the 1st respondent but also the petitioner retired on and attaining the age of superannuation and is currently drawing provisional pension, while the verification of the community certificate remains incomplete.

20. We therefore do not find any merits in the present writ petition. The apprehension expressed by the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241 held that the ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee appears to be true in the facts of the present case.

21. Further, as per the decision of the Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India and Ors vs Jagadish Balaram Bahira and Ors, (2017) 8 SCC 670, no finality can be attached to certificate which has not been verified.

22. We are of the view that one last chance can be given to the petitioner to participate in the proceeding before the 1st respondent. Therefore, the petitioner is directed to participate and co-operate in the proceedings before the 1st respondent. In case the petitioner succeeds in proving the genuineness of the community status claimed in the community certificate, he should be given the benefits as prayed thereafter.

23.The 1st respondent is therefore directed to decide the genuineness of community status of the petitioner in the aforesaid community certificate within a period of six months from the date of receipt of a copy of this order. In case, the petitioner fails to co-operate with the enquiry before the 1st respondent, the 1st respondent shall pass appropriate orders based on the available records.

24.The present writ petition stands dismissed with the above observations. No cost.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chairman,
The State Level Scrutiny Committee,
Fort St. George, Chennai - 600 009.
- 2.The Chief Post Master General,
Anna Road, HPO, Chennai - 600 002.
- 3.The Superintendent RMS,
Postal Department,
Chennai Sorting Division,
Chennai - 600 008.

+1cc to Mr.Naganathan.N , Advocate SR.No. 80583
+1 cc to Government Pleader Sr.No. 81562

W.P.No.5607 of 2019

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A.SK(05/11/2019)

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