

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2019

Pronounced on : 02-08-2019

CORAM

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

Writ Petition No. 5363 of 2019

K. Sugumar ... Petitioner

Versus

1. The Tamilnadu State Level Scrutiny Committee
represented by its Chairman
Fort St. George
Chennai - 600 009
2. The Union of India
represented by its Chief Secretary
Government of Puducherry
3. The Secretary to Government
Personnel and Administrative Reforms
Secretariat, Puducherry
4. The Under Secretary to Government
Department of Personnel and Administrative Reforms
Personnel Wing
Government of Puducherry
5. The Deputy Secretary to Government (ESTT.)
Office of The Chief Secretariat (ESTT)
Government of Puducherry ... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the entire records of the fifth respondent's impugned order No.10281/F2/A2/2010 dated 02.03.2018 and quash the same and directing the respondents to pay Full Pension, Commutation, Gratuity, Earned Leave Encashment, UTEGIS and other consequential benefits and arrears on attaining the age of superannuation on 28.02.2017 along with reasonable

interest from the date of retirement to till the date of final payment for the delayed period within a stipulated time.

For Petitioner : Mr. N. Naganathan

For Respondents : Mr. V. Shanmuga Sundar
Special Government Pleader for R1

Mr. A. Gandhiraj
Government Pleader (Puducherry)
for RR2 to 5

ORDER

R. SUBBIAH, J

The petitioner has come forward with this writ petition challenging the order dated 02.03.2018 of the fifth respondent, wherein and whereby, the fifth respondent refused to disburse the terminal benefits payable to the petitioner on his retirement on 28.02.2017, pending final orders to be passed by the first respondent in the enquiry contemplated with respect to the communal status of the petitioner.

2. As per the affidavit filed in support of the writ petition, the petitioner was appointed as Lower Division Clerk in the office of the third respondent on 05.02.1976 in the reserved quota meant for Schedule Tribe candidate. The service of the petitioner was regularised and he was also promoted to the post of Upper Division Clerk on 23.08.1983. On 30.04.1988, the petitioner was promoted to the post of Assistant and on 26.06.1994, he was further promoted to the post of Superintendent Grade-II. Subsequently, on 13.01.1999, the petitioner was promoted to the post of Superintendent Grade I (Group B Gazetted) which is also the feeder category post to the entry grade post of Pondicherry Civil Services. On 28.02.2017, the petitioner retired from service on attaining the age of superannuation. According to the petitioner, while he was working as Superintendent Grade-I a petition was submitted against him by the Pondicherry State SC/ST Employees Welfare Association based on which a vigilance enquiry was conducted. The report of the Vigilance Officer dated 27.09.2002 was furnished to the petitioner and he has also submitted his explanation on 25.09.2003 denying that he had produced bogus community certificate at the time of his appointment. In spite of such explanation, the respondents 2 to 5 did not proceed further for about 13 years. However, on 10.05.2014, the fourth respondent passed an order dismissing the petitioner from service. Challenging the order of dismissal dated 10.05.2014, the petitioner filed O.A. No. 731 of 2014 before the Central

Administrative Tribunal, Chennai. Initially, the Tribunal granted an interim order on 28.05.2014. However, since the petitioner was not reinstated in service pursuant to the interim order of the Tribunal, he filed a Contempt Application No. 86 of 2014. However, the Original Application itself was allowed on 10.03.2015 on the ground that unless and until the community certificate of the petitioner is cancelled by a competent authority, the respondents 2 to 5 has no jurisdiction to take any disciplinary proceedings against the petitioner. As the Original Application filed by the petitioner itself was allowed, the petitioner withdrew the Contempt Application No. 86 of 2014. Pursuant to the order passed by the Tribunal, the petitioner was reinstated in service on 24.07.2015. However, the petitioner was denied promotion by citing the enquiry pending against him before the first respondent. The petitioner submitted a representation dated 05.08.2016 to confer him promotion, but there was no action taken thereof. The petitioner therefore once again filed O.A. No. 1256 of 2016 seeking for a direction to the respondents 2 to 5 to consider his representation dated 05.08.2016. After filing O.A. No. 1256 of 2016, the representation dated 05.08.2016 of the petitioner was rejected on 23.09.2016. Therefore, the petitioner once again filed O.A. No. 1701 of 2016. During the pendency of O.A. No. 1701 of 2016, the petitioner reached the age of superannuation and he was also permitted to retire from service on 28.02.2017. However, after his retirement, the respondents did not settle the terminal benefits payable to him, therefore, he submitted a representation dated 10.05.2017 to the third respondent to disburse the terminal benefits. As there was no response, the petitioner once again filed O.A. No. 1062 of 2017 before the Central Administrative Tribunal and the Tribunal, by order dated 10.07.2017, directed the respondents 2 to 5 to consider the representation dated 10.07.2017 of the petitioner within two months. Thereafter, on 02.03.2018, the fifth respondent passed the order dated 02.03.2018 rejecting the representation dated 10.07.2017 of the petitioner by citing the pendency of enquiry before the first respondent. Hence, the petitioner has filed this writ petition.

3. When the writ petition is taken up for hearing, the learned counsel for the petitioner would contend that the petitioner is a native of Tindivanam and he belong to 'Kattu Nayakkan' community which is recognised as Schedule Tribe caste. The petitioner was also issued with a community certificate by the Tahsildar, Tindivanam on 23.12.1975, which the petitioner had produced at the time of his appointment as Lower Division Clerk. The said community certificate is validly obtained and it has not been cancelled as on this date. Further, the complaint, based on which disciplinary proceedings were initiated against the petitioner, was lodged after 23 years of the petitioner

joining the service. Even though the complaint was lodged in the year 2003, till this date, the enquiry with respect to his communal status has not been completed. For the delay attributable on the part of the authorities concerned, the petitioner should not be made to suffer. Even though the respondents disbursed minimum pension to the petitioner after his retirement, the terminal benefits payable to him have been withheld. In any event, causing a verification into the communal status of the petitioner, after forty years of issuance of such certificate, is not warranted especially after the retirement of the petitioner from service. According to the learned counsel for the petitioner, the respondents 2 to 5 did not initiate any disciplinary proceedings against him and he was also allowed to retire from service. While so, withholding the terminal benefits payable to the petitioner is unjust and arbitrary. The learned counsel for the petitioner therefore prayed for allowing the writ petition.

4. Countering the submissions of the counsel for the petitioner, the learned Government Pleader (Puducherry) appearing for the respondents 2 to 5 would contend that during the course of employment of the petitioner, the respondents 2 to 5 received a complaint complaining that the petitioner did not belong to Schedule Tribe community, but he belongs to Schedule Caste (Kuravar) community and had produced false community certificate for the purpose of securing employment. On the basis of such complaint, a preliminary enquiry was conducted by the Chief Vigilance Officer of Puducherry and the enquiry reveals that there is a prima facie evidence available to proceed against the petitioner. The petitioner was therefore issued with a charge memo on 08.06.2001. Even though the disciplinary proceedings initiated against the petitioner culminated in passing an order of dismissal on 10.05.2014, it was set aside by the Tribunal on 10.03.2015. As per the directions of the Tribunal, the petitioner was reinstated into Government service on 24.07.2015. As far as the verification of the community certificate produced by the petitioner, a letter dated 04.03.2016 was sent to the Chairman, State Level Scrutiny Committee for concluding the enquiry. Thereafter, two more letters dated 30.08.2016 and 30.09.2016 were also written to the first respondent to conclude the enquiry. In response, the first respondent, by letter dated 01.08.2018, informed that final orders would be passed after obtaining a report from the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Villupuram District as per the guidelines issued by the Honourable Supreme Court in Kumari Madhuri Patil's case. Further, in terms of Rule 69 (1) of Central Civil Services (Pension) Rules, minimum pension is being paid to the petitioner, however, before conclusion of the enquiry against the petitioner with respect to his communal status, the terminal

benefits payable to him cannot be sanctioned. Therefore, the learned Government Pleader would contend that subject to the conclusion of the enquiry on the file of the first respondent, with respect to the communal status of the petitioner, the respondents 2 to 5 are ready to disburse the terminal benefits and all other benefits payable to the petitioner. The learned Government Pleader therefore prayed for dismissal of the writ petition.

5. Keeping the submissions made by the counsel for both sides, we have gone through the materials on record. It is no doubt true that the petitioner, who hails from Tindivanam, within the State of Tamil Nadu, was appointed as Lower Division Clerk in the year 1976 and posted in the office of the third respondent. According to the respondents 2 to 5, at the time of such appointment, the petitioner has produced a community certificate to the effect that he belonged to Schedule Tribe community. However, during the year 2003, a complaint was received against the petitioner stating that the petitioner in fact belonged to Schedule Caste (Kuravar) community and that the petitioner had obtained the employment by deceitful means. It is also an admitted fact that the enquiry with respect to the genuineness of the community certificate produced by the petitioner is pending on the file of the first respondent. Undoubtedly, there is a delay in conclusion of the enquiry by the first respondent, however, such delay cannot be a ground to direct the respondents 2 to 5 to settle the terminal benefits, as prayed for in this writ petition. Having regard to the above position, taking note of the pendency of the enquiry on the file of the first respondent with respect to the genuineness of the community certificate produced by the petitioner, particularly when the petitioner had retired from service even on 28.02.2017, we direct the first respondent to complete the enquiry against the petitioner on merits and in accordance with law, after affording him sufficient opportunity of hearing, within a period of four months from the date of receipt of a copy of this order. It is made clear that if the petitioner succeeds in establishing that the community certificate he had produced at the time of his employment is bonafide and genuine, the respondents 2 to 5 shall settle the terminal benefits payable to the petitioner forthwith.

6. With the above direction, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Tamilnadu State Level Scrutiny Committee
Fort St. George
Chennai - 600 009
2. The Chief Secretary,
Union of India,
Government of Puducherry
3. The Secretary to Government
Personnel and Administrative Reforms
Secretariat, Puducherry
4. The Under Secretary to Government
Department of Personnel and Administrative Reforms
Personnel Wing
Government of Puducherry
5. The Deputy Secretary to Government (ESTT.)
Office of The Chief Secretariat (ESTT)
Government of Puducherry

+1cc to Mr. N. Naganathan, Advocate sr.66243
+1cc to Government Pleader(Puducherry) sr.66274

WP No. 5363 of 2019

rsv(co)
nr 24/09/2019

सत्यमेव जयते

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