

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2019

Pronounced on : 05.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10138 of 2019

K.A.Krishnan

.. Petitioner

Vs.

1.The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

2.The Chief Mechanical Engineer,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai 600 001.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of the 2nd respondent impugned order No.CME/BA1/1826/2016/MEE dated 21.04.2017 insofar as withholding the terminal benefits is concerned and quash the same and directing the respondents to pay the terminal benefits including Gratuity, Encashment of Leave Salary, Commutation of Pension and full pension and financial upgradation in lieu of promotion on attaining the age of superannuation on 30.04.2017 within a stipulated time.

For Petitioner : Mr.L.Chandrakumar for
Mr.D.Gunasekaran

For R1 and R2 : Mr.R.Karthikeyan

ORDER

C.SARAVANAN, J.

The petitioner has challenged the impugned communication dated 20.04.2017 bearing reference CME/BA1/1826/2016/MEE of the 2nd respondent. By the impugned communication, the 2nd respondent has informed the petitioner that he is permitted to retire on 30.04.2017 on attaining the age of superannuation and that all his terminal benefits except provisional pension will be

withheld till final orders are passed by the State Level Scrutiny Committee.

2. State Level Scrutiny Committee is presently seized of the issue as to whether the petitioner indeed belongs to 'Urali' (Scheduled Tribes) community as per Community Certificate dated 29.11.1982 issued by the Tahsildar.

3. Only Uraly community is recognised as a scheduled tribe community under the Constitution (Scheduled Tribes) Order, 1950 and Scheduled Castes And Scheduled Tribe (Amendment) Act, 1976.

4. The petitioner got employed with the respondents on the strength of the aforesaid community certificate in the year 1983 against the vacancy reserved for a person belonging to Scheduled Tribe.

5. Even as early as on 31.03.1986, explanations were called for from the petitioner by the Tahsildar, Manaparai Taluk, Tiruchirappalli as to why a community certificate produced by him as person belonging to Scheduled Tribe Community should not be cancelled on the ground that the said community was a backward class community. Later this community certificate was also cancelled on 01.06.1988.

6. The petitioner therefore filed W.P.No.7580 of 1988. By an order dated 26.03.1997, the above writ petition was allowed and the case was remitted back for fresh disposal by the District Collector, Tiruchirappalli. The District Collector, Tiruchirappalli was directed to dispose the case within a period of three months from the date of receipt of the said order. However, it appears no orders have been passed.

7. In 2003, the petitioner appears to have filed W.P.No.28303 of 2003 before this court to direct the respondent's herein to consider the petitioner's representation and reminders dated 19.2.2000 and 1.9.2002 respectively on merits and pass orders. The said writ petition was disposed at the time of admission on 10.10.2003.

8. The petitioner later filed W.P.No.15370 of 2005 and challenged G.O.2D/18 Adi Dravidar And Tribal Welfare (ADW2) Department dated 1.4.1997 issued by the Government of Tamil Nadu, Adi Dravida Tribal Welfare Department along with order dated 25.03.2005 bearing reference Na.Ka.Y7-149190-86 of the Chairman for the District Level Vigilance Committee for Community Certificate Verification, Tiruchirappalli. By an order dated 27.11.2018, a Division Bench of this Court set aside the said order dated 25.03.2005.

9. The said authority was directed to transmit the available papers to the State Level Scrutiny Committee within a period of six weeks with the consequential direction to the said Committee to dispose the case within a period of twelve weeks thereafter

after affording an opportunity of hearing to the petitioner. However, no orders have been passed.

10. In support of the present writ petition, the petitioner has relied upon the decision of this Court rendered in W.P.No.26741 dated 8.3.2019 wherein the writ petition filed by one M.Hema against the respondent was allowed. The said decision was based on the order dated 24.01.2019 of the Madurai Bench in W.P.(MD).No.7461 of 2017. In these cases, verification of Community Certificate was pending for more than eight years before the State Level Scrutiny Committee.

11. The 2nd respondent has stated that earlier verifications regarding the community status of the petitioner were based on a complaint received. It was also later confirmed that the petitioner did not belong to the village Thammappatti and people living there belong to upper class Reddiar community and the community certificate of the petitioner was recommended to be cancelled.

12. Heard the learned counsel for the petitioner and the respondents. We have considered the arguments of the learned counsel for both sides.

13. As per 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, it is mandatory to verify the community certificate of employees seeking employment and students' admission. The Court further observed that genuine candidates are denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate and ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee.

14. The Hon'ble Court also observed that the parent or the guardian may play fraud claiming false status certificate and therefore, it is necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. The Court also streamlined the procedure for the issuance of social status certificates and framed guidelines. 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 per the above decision of the Hon'ble Supreme Court, 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.

16. The Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India and Others vs. Jagdish Balaram Bahira and Others 2017 (8) SCC 670 has held that finality does not attach to a community certificate (or to claim the benefits) where the claim of the individual is yet to be verified by the scrutiny committee.

17. The Court further observed that when a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution. For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. For another this deprives a beneficiary who is genuinely entitled to receive those benefits of a legitimate entitlement. This constitutes an egregious constitutional fraud. It is a fraud on the statutes which implement the provisions of the Constitution. It is a fraud on State policy.

18. The Court further observed that "Usurpation of constitutional benefits by persons who are not entitled to them must be answered by the court in the only way permissible for an institution which has to uphold the rule of law. Unless the courts were to do so, it would leave open a path of incentives for claims based on fraud to survive legal gambits and the creativity of the disingenuous."

19. Finally court also held as follows:-

i. 69.1. The directions which were issued by the Constitution Bench of this Court in para 38 of the decision in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] were in pursuance of the powers vested in this Court under Article 142 of the Constitution;

ii. 69.2. Since the decision of this Court in Madhuri Patil [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] which was rendered on 2-9-1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for:

- (b) the issuance of caste certificates;
- (c) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;
- (d) the procedure for the conduct of investigation into the authenticity of the claim;
- (e) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;
- (f) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and
- (g) Prosecution for a criminal offence.

i. 69.3. The decisions of this Court in R. Vishwanatha Pillai [R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105 : 2004 SCC (L&S) 350] and in Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] which were rendered by Benches of three Judges laid down the principle of law that where a benefit is secured by an individual-such as an appointment to a post or admission to an educational institution-on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

ii. 69.4. The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

iii. 69.5. By Maharashtra Act 23 of 2001 there is a legislative

codification of the broad principles enunciated in Madhuri Patil [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] . The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates [Sections 6(2) and 6(3)]; cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

iv. 69.6. The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18-10-2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

v. 69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

vi. 69.8. The decisions in Kavita Solunke [Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609] and Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] of two learned Judges are overruled. Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3

SCC (L&S) 265] insofar as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

vii. 69.9. Mens rea is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

viii. 69.10. The judgment of the Full Bench of the Bombay High Court in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] is manifestly erroneous and is overruled; and

ix. 69.11. Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act 23 of 2001 holds the field."

20. At present the verification of the petitioner's community certified is pending before the State Level Scrutiny Committee to verify the genuineness of the petitioner's claim that he was a Schedule Tribe based on the aforesaid community certificate.

21. The privilege claimed by the petitioner community based on the community certificate produced by him is under cloud. The said certificate was cancelled earlier after due verification. However, the said cancellation was set aside by an order of this Court as mentioned above and the case was remitted back.

22. The petitioner has served in the respondent-Port Trust for another 20 years after his Community Certificate was cancelled before retiring on 30.04.2017. He has enjoyed benefits, perquisite and privileges available to a person belonging to the reserved category.

23. The respondent have sent several reminders to the State Level Scrutiny Committee to verify the community status of the petitioner and to give a report. However, the order has not been passed. In the facts of the present case, the status of the petitioner's community could not be verified due to several intervening factors. Therefore, no finality can be attached to a community certificate which has not been verified by the State Level Scrutiny Committee. Therefore, the decisions cited by the petitioner are not relevant.

24. The petitioner has also not impleaded the State Level Scrutiny Committee in the present writ petition and during the pendency of the proceedings/enquiry before the said State Level Scrutiny Committee, the present writ petition has been filed to render the scrutiny by the said Committee otiose.

25. It is noticed that the "Urali Gounder" (Community) (except Tiruchirapalli, Karur, Perambalur and Pudukottai District) Community) appears to be a Backward Community in Tamil Nadu as per Sl.No.127 of the web publication of the Department of Backward Classes and Most Backward Classes and Minorities Welfare. As per the Constitution (Scheduled Tribes) Modification Order, 1956, only "Uraly Community" is classified as Scheduled Tribes Community.

26. There are also indications from the discussions in the order passed in W.P.No.7580 of 1988 that the petitioner may belong to "Urali Gounder" Community based on the statements obtained from the petitioner's father and brother. However, this aspect requires to be considered and finally decided by the State Level Scrutiny Committee which is presently seized of the verification of the petitioner's status based on the community certificate.

27. Therefore, we are of the view that the present writ petition is liable to be dismissed as pre-mature and for non-impleading of State Level Scrutiny Committee. The petitioner is being given provisional pension pending verification by the State Level Scrutiny Committee. Therefore, no prejudice would be caused to the petitioner if the writ petition is dismissed.

28. Without expressing any opinion regarding the merits of the claim of the petitioner, we are of the view that the present writ petition is liable to be dismissed while giving liberty to the petitioner to approach the State Level Scrutiny Committee to complete the verification.

29. We are aware of the fact that the State Level Scrutiny Committee constituted pursuant to 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 is not sitting on a day-to-day basis to dispose the numerous

references that are made by various government/state employers and by the courts.

30. We hope the State Government takes note of the difficulties and takes step to ensure that there is a regular sitting of the State Level Scrutiny Committee so that there is a speedy and quick disposal of the verification of the Community Certificate.

31. In the light of the above discussions, the present writ Petition is dismissed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

2.The Chief Mechanical Engineer,
Chennai Port Trust,
Administrative Office,
Rajaji Salai, Chennai 600 001.

+2cc to Mr.D.Gnanasekaran, Advocate SR.No.76813
+1 cc to M/s.R.Karthikeyan, Advocate Sr.No. 76934

AKM/03.10.19/9P-6C /

सत्यमेव जयते

Order in
W.P.No.10138 of 2019

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