

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.10142 of 2019

C.V.Ravi

.. Petitioner

Vs.

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

2.The Chief Engineer,
Civil Engineering Department,
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 Mandamus directing the respondents to pay the terminal benefits including gratuity, encashment of leave salary, Commutation of pension and full pension on attaining the age of superannuation on 28.02.2019 within a stipulated time.

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

For R1 and R2 : Mr.R.Karthikeyan

O R D E R

C.SARAVANAN, J.

The petitioner has filed the present writ petition for a direction to be issued to the respondents to settle his terminal benefits including gratuity, encashment of leave salary, commutation of pension and full pension.

2. The petitioner joined as a temporary timekeeper with the respondents on 22.09.1980 against the post reserved for candidates from schedule tribe community. The petitioner was also promoted upto a point of time.

3. At the time of appointment, the petitioner produced a "Konda Reddy" community certificate dated 12.08.1978 issued by the Tashildar, Attur Taluk. The said Community is a Scheduled Tribe community in the State of Tamil Nadu under the Constitution (Scheduled Tribes) Modification Order, 1956.

4. As early as 23.01.1991, the Collector, Salem confirmed that the said Community Certificate produced by the petitioner was bogus as the certificate neither had a serial number nor initial of the office clerk, "or signature of the Village Administrative Officer or that the Revenue Inspector.

5. On 20.11.1992, the Revenue Divisional Officer, Salem vide letter dated 20.11.1992 bearing reference No. Na.Ka.80/92/A4, addressed a communication to the District Adi-Dravidar Welfare Officer and informed that an enquiry was made to find out whether the petitioner working with the respondent actually belonged to the aforesaid community or not. The petitioner appeared for an enquiry on 01.06.1992.

6. Based on the personal enquiry and perusal of the documents, it was found that the petitioner belonged to Vairichettipalayam Village, Thuraiyur Taluk, Tiruchy District and that the Community Certificate dated 12.08.1978 produced by the petitioner purportedly issued by the Deputy Tashildar, Attur Taluk was a bogus Community Certificate.

7. The Collector of Salem Vide letter dated 15.03.1993 requested for a copy of the Community Certificate and asked for relevant particulars to take further action in this regard. It appears that the respondents also forwarded the required information on 12.08.1993. Therefore, no further promotions were given to the petitioner on account of this factor.

8. The petitioner claims to have sent representation on 11.08.2011 to promote him as a Senior Administrative Officer. Since, the petitioner has already retired on attaining the age of superannuation on 28.02.2019.

9. The respondent submitted that since petitioner's Community Certificate based on which he was appointed and was pending verification by State Level Scrutiny Committee, terminal benefits of the petitioner cannot be settled.

10. Earlier, the verification of the Community Certificate was done by the District Caste Scrutiny Committee. However, Scrutiny could not be carried out in view of the stay granted by this court in W.P.No.7900 of 2008. It is submitted that the

State Level Scrutiny Committee is now seized of the issue and therefore terminal benefits cannot be granted to the petitioner.

11. The exercise of verification of Community Certificate ought to have been completed before the employment, if not soon after by the State Level Scrutiny Committee was constituted as per the order of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241.

12. 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.

13. 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. The Court further held 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.

14. Finally court also held as follows:-

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;

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:

- (a) the issuance of caste certificates;
- (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;
- (c) the procedure for the conduct of investigation into the authenticity of the claim;
- (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;
- (e) 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
- (f) Prosecution for a criminal offence.

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.

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;

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;

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;

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;

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;

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;

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

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."

15. The decision of the Hon'ble Supreme Court relied in the affidavit does not come to the petitioner's rescue. Likewise, the decision of 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 also cannot come to the petitioner's rescue.

16. In the counter filed by the respondent it is also stated that the community certificate of the petitioner has been already cancelled.

17. It is intriguing as to why the respondents by letter dated 15.12. 2018 has sent a reminder to the State-Level Scrutiny Committee to verify the veracity of the community status of the petitioner if indeed the petitioner's community certificate had already been cancelled has been stated by the 2nd respondent in their counter.

18. If the Community Certificate was found to bogus, the respondents have wrongly allowed the petitioner to continue in service. The respondents should have indeed terminated the petitioner from service as soon as it came to light that the petitioner had produced a bogus community certificate and on its cancellation.

19. Mere denial of promotion to the petitioner was not sufficient as the petitioner's initial employment itself was fraudulent. However, there are no documents available before us to come to a conclusion that the Community Certificate has been cancelled barring averments of the 2nd respondent in paragraph No.5 of the counter affidavit.

20. If the community certificate has not been cancelled and not verified by the State Level Scrutiny Committee, it cannot be said to have attained finality in which the present Writ Petition is pre-mature Therefore, retiral benefits cannot be ordered to be released pending verification.

21. If the petitioner's community certificate had been indeed cancelled on an earlier occasion as has been stated by the 2nd respondent in the counter, enquiry should be ordered as to why the petitioner was allowed to continue in service till he attained the age of superannuation. In that case, appropriate steps should be taken forthwith to stop further payment of provisional pension to the petitioner.

22. In any event not maintain able for non-impleading of State Level Scrutiny Committee as the said community is seized of the issue.

23. In case, the petitioner's community had not been cancelled so far, liberty is given to the petitioner to approach this court for appropriate direction to the State Level Scrutiny Committee to dispose the verification of the petitioner's Community Certificate within a stipulated time.

24. Therefore, we are of the view that the present writ petition is liable to be dismissed. It is therefore dismissed with the above observation. 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 Engineer,
Civil Engineering Department,
Chennai Fort Trust,
Administrative Office,
Rajaji Salai, Chennai 600 001.

+2cc to Mr.D.Gunasekaran, Advocate Sr.No.77291

+1 cc to M/s.R.Karthikeyan, Advocate Sr.No.76937

AKM/03.10.19/7P-6C /

Order in
W.P.No.10142 of 2019