

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.08.2019

Pronounced on : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.11271 and 12290 of 2019

and WMP.Nos.11626 & 12577 of 2019

W.P.No.11271 of 2019

R.Anandha Krishnan

.. Petitioner

vs.

1.State Level Scrutiny Committee

represented by the Chairman &

Secretary to Government

Adi Dravidar and Tribal Welfare Department,

Secretariat, Chennai 600 009.

2.The Assistant Commissioner of Police,

SC/ST Vigilance Cell,

Office of the Director General of Police,

Mylapore, Chennai 600 004.

3. The Chief Manager,

Indian Overseas Bank,

Central Office, 763, Anna Salai,

Chennai 600 002.

4.The Chief Manager,

Indian Overseas Bank,

Tiruvannamalai Main Branch,

Tirvannamalai606601.

.. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents from verifying the petitioner's community certificate dated 16.03.1982 issued by the Tahsildar, Myalpore, Madras.

W.P.No.12290 of 2019
R.Anandha Krishnan

.. Petitioner

vs.

1.State Level Scrutiny Committee
represented by the Chairman &
Secretary to Government
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai 600 009.

2.The Assistant Commissioner of Police,
SC/ST Vigilance Cell,
263 B, IDPL Township,
Nandambakkam,
Chennai 600 089.

3. The Chief Manager,
Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai 600 002.

4.The Chief Manager,
Indian Overseas Bank,
Tiruvannamalai Main Branch,
Tirvannamalai606601.

.. Respondents

PRAYER . : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in the order bearing Na.Ka.No.65/ACP/SJ & HR/SC-ST/VC/Chennai 2017 dated 12.04.2019 passed by the respondent No.2 and quash the same.

For Petitioner :Mr.M.Radhakrishnan

For Respondents :Mr.V.Shanmuga Sundar

(In both W.Ps.) ***Special Government Pleader for
R1 and R2**

Mr.V.Kadhirvelu for R3 and R4

C O M M O N O R D E R

C.SARAVANAN, J.

By this common order we are disposing both the writ petitions.

2. W.P.No.11271 of 2019, has been filed for a Writ of Mandamus to forbear the respondents from verifying the petitioner's community certificate dated 16.03.1982 issued by the Tahsildar, Mylapore, Madras.

3. W.P.No.12290 of 2019 has been filed for a writ of certiorari to quash the order dated 12.04.2019 bearing Na.Ka.No.65/ACP/SJ&HR/SC-ST/VC/Chennai 2017 passed by the 2nd respondent, Assistant commissioner of Police .

4. The petitioner was employed as a Special Assistant with the Indian Overseas Bank, the 3rd and 4th respondents are herein. The petitioner joined the services of the 3rd and 4th respondents bank in the year 1982 against a post reserved for Scheduled Tribes.

5. At the time of joining employment, the petitioner had produced a Community Certificate dated 16.03.1982 which declared that he belonged to Hindu Kurumans Schedule Tribe Community.

6. In 1994, complaints were received by the petitioner's employer that the petitioner had wrongly obtained the aforesaid community certificate to claim reservation meant for persons belonging to Schedule Tribe community.

7. It appears that in the School Transfer Certificate, the petitioner had declared his community himself to be a person belonging to "Most Backward Community". The petitioner had given the name of father as Raju Gounder indicating that he belonged to the said "Gounder community" which has been classified as a "Most Backward Community".

8. However, in the transfer certificate issued by the Madras law college, the petitioner had declared that he belonged to Hindu Kurumans Scheduled Tribe Community.

9. Under the circumstances, the petitioner's employers had sent a representation dated 18.2.94 to the then Collector of Madras to verify and to give a report to enable them to decide the issue. The petitioner was asked to come for an enquiry before the authorities. The petitioner evaded enquiry.

10. Later the petitioner filed W.P.No.15061 of 2002 to stall enquiry by the District Vigilance Committee from verifying the said community certificate. Therefore, by an order dated 30.4.2002, the petitioner was dismissed by this court.

11. Aggrieved by the same, the petitioner filed W.A.No.2138 of 2002 before the Division Bench of this Court. By an order dated 19.4.2004, this Court had ordered reinstatement of the petitioner and directed the 1st respondent to verify the genuineness of the community certificate of the petitioner.

12. Pursuant to the order of this court, the petitioner was called upon to appear before the 1st respondent Committee on 18.10.2004. However, notice sent to the petitioner's permanent address was returned with an endorsement "no such person in the address".

13. The petitioner was thereafter called once again to appear for enquiry before the 1st respondent to be held on 1.11.2004th at 10:30 vide letter dated 20.10.2004.

14. However, the petitioner successfully managed to evade the enquiry and thereby ensured no enquiry was conducted with reference to his community certificate.

15. The petitioner has also since retired from service on 31.7.2014 as a Special Assistant therefore was no longer an employee of the 3rd and 4th respondents.

16. Learned counsel for the petitioner relied upon the Department of Personnel and A.R.No.36011/16/80-Estt (SCT) dated 27.2.1981 and another circular dated 24.4.1990 bearing reference Department of Personnel O.M.No.36012/6/88 Estt (SC/ST) dated 24.4.1990 to state that there are adequate guidelines as early as 1981 and 1990 in this regard and it was mandatory on the part of the employer to verify the status.

17. However, this was not done in time. He therefore submits that the respondents were harassing the petitioner even after his retirement. It was further stated that after retirement the employers have no interest in pursuing with the community status of the petitioner and therefore prayed for allowing the writ petitions.

18. The 1st respondent in the status report has stated that the verification of genuineness of the community certificate of the petitioner can be finalised only after the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Chennai gives a report as per the guidelines issued by the Hon'ble Supreme Court in Kumari Madhuri Patil versus Commr., Tribal Development, (1994) 6 SCC 241.

19. The 2nd respondent in the counter has stated that the petitioner has successfully evaded enquiry and in absence of the petitioner's statement, they were unable to gather further information.

20. We have heard the learned counsel for the petitioner and the Special Government Pleader for the respondents. We have also considered the status report filed by the 1st respondent - State Level Scrutiny Committee and counter of the 2nd respondent - Asst. Commissioner of Police inquiring into the claim of the petitioner that he belonged to the said community based on which he had got himself employed in the year 1982 with the 3rd and 4th respondents bank.

21. Verification of community status was made mandatory after the Hon'ble Supreme Court rendered its decision in Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 even though even prior to the said decision of the Hon'ble Supreme Court there were departmental guidelines issued to deal with the issue.

22. Dealing, the Hon'ble Supreme Court in Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 in para 13 observed as under:-

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. 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. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes

and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in

particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further

appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. 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 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.

23. It is evident that the conduct of the petitioner is not bonafide. The apprehension expressed by the Hon'ble Supreme Court in the above case 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" is applicable in the facts of the present case.

24. The petitioner has dodged the enquiry the right from 1994 and has successfully managed to remain in service by filing repeated proceedings. He has now retired from service.

25. Even after retirement, the petitioner wants to ensure that there is no further enquiry regarding its community status so that he can continue to draw pension in violation of all constitutional norms and in flagrant violations of several decisions of the Hon'ble Supreme Court.

26. The attempt of the petitioner in these two writ petitions is to thwart further enquiry regarding the genuineness of the claim of the petitioner that he belongs to the Hindu Kurumans Scheduled Tribe Community and thereby continue to draw pension having served up to the age of superannuation by ensuring no enquiry was completed earlier.

27. Now an attempt of the petitioner is to ensure that there is a closure to the issue regarding his community status based on the community certificate on the ground that he is no longer an employee of the 3rd and the 4th respondents bank.

28. We are of the view that the present writ petitions are not bonafide. It appears that the petitioner is evading enquiry perhaps apprehending that an adverse report will be given against him ultimately resulting in cancellation of the community certificate.

29. We are therefore of the view that one last chance can be given to the petitioner, in case he wishes to justify his status as a Hindu Kurumans Scheduled Tribe as per the Community Certificate.

30. The petitioner should therefore appear before the 2nd respondent for and enquiry for latter to forward a report to the 1st respondent to pass a final order regarding the genuineness of the claim of the petitioner that he belongs to aforesaid community based on which he got employed.

31. The petitioner is therefore directed to appear before the 2nd respondent. The 2nd respondent shall issue notice to the petitioner for an enquiry to be held and completed within a period of 45 days from the date of receipt of a copy of this order. Notice shall be sent to the petitioner in the address given in the affidavit filed in the present writ petition to the address in the service records furnished by the petitioner.

32. If, the petitioner fails to appear for an enquiry before the 2nd respondent, the 2nd respondent shall forward the report to the 1st respondent. The 1st respondent shall thereafter proceed to cancel the certificate without further delay.

33. In case the petitioner participates in the enquiry, 1st respondent shall pass appropriate orders following the decision of the Hon'ble Supreme Court in Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 within a period of three months from date of receipt of report of the 2nd respondent.

34. It is made clear that if the petitioner fails to participate or does not co-operate in the enquiry, the respondents can recommend for stoppage of pension to the petitioner with immediate effect after expiry of the date for the proposed enquiry before the 2nd respondent.

35. Both the writ petitions are dismissed with the above observations. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

***Corrected as per letter
dated 19/04/2021**

Sd/-

Assistant Registrar (CS-VII)

Dated: 30/04/2021

/true copy/

Sub Asst. Registrar

kkd

To

1.The Chairman &

Secretary to Government,
State Level Scrutiny Committee

Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai 600 009.

2.The Assistant Commissioner of Police,

SC/ST Vigilance Cell,

Office of the Director General of Police,
Mylapore, Chennai 600 004.

**To be substituted
the order already
despatched
on 28/11/2019**

3.The Assistant Commissioner of Police,
SC/ST Vigilance Cell,
263 B, IDPL Township,
Nandambakkam, Chennai 600 089.

4. The Chief Manager,
Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai 600 002.

5.The Chief Manager,
Indian Overseas Bank,
Tiruvannamalai Main Branch,
Tiruvannamalai 606 601.

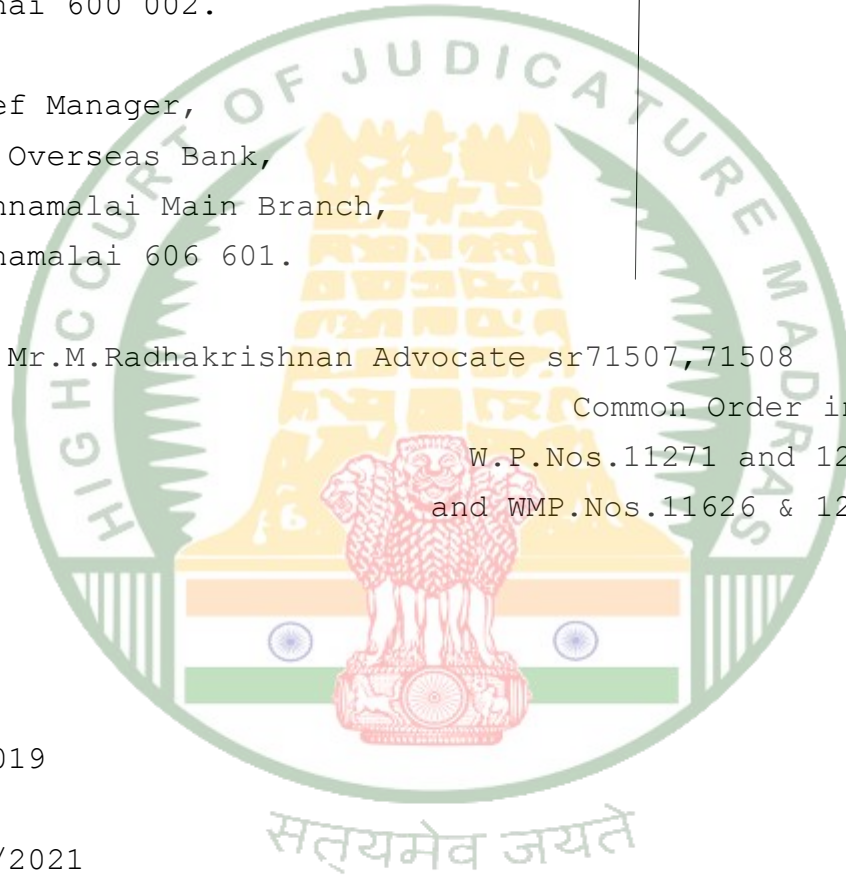
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Common Order in

W.P.Nos.11271 and 12290 of 2019
and WMP.Nos.11626 & 12577 of 2019

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