

IN 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.22446 of 2018
and W.M.P.No.26305 of 2018

A.Sukumar ... Petitioner

Vs.

1.The Director of Tribal Welfare
and Member Secretary,
State Level Scrutiny Committee,
Chepauk, Chennai - 600 005.

2.The Asst. Commissioner of Police,
Social Justice (&) Human Rights,
SC/ST Vigilance Cell,
No.263-B, IDPL Township,
Nandambakkam, Chennai 600 089.

3.The Chennai Port Trust,
rep., by its Chairman,
No.1, Rajaji Salai,
Chennai 600 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to direct the third respondent/employer to disburse all terminal benefits such as pension, gratuity, commutation etc., in the light of the judgment rendered by the Hon'ble Supreme Court and this Hon'ble Court, inasmuch as his Community Certificate is not canceled and valid in law till date, by the issue of Writ of Mandamus.(Prayer amended vide order 22.03.2019 made in WMP.No.9140 of 2019 in WP.No.22446 of 2018)

For Petitioner : Mr.Yogesh Kannadasan

For R1 & R2 : Mr.V.Shanmuga Sundar,
Spl.Government Pleader.

For R3 : Mr.Karthikeyan

ORDER

C.SARAVANAN, J.

The petitioner has challenged the impugned Communication dated 01.06.2018 bearing reference No. Na.Ka.No.P.May/A2/3286/2017 issued by the 1st respondent in this writ petition. The petitioner seeks to direct the 3rd respondent/employer to disburse all retirement and terminal benefits such as pension, gratuity, commutation, etc..

2.The petitioner had joined as a Fireman under the quota reserved for Scheduled Tribe with the 3rd respondent department in the year 1978. In the course of time, the petitioner was also promoted. The petitioner finally retired as Fire Officer & Assistant Safety Officer on 31.01.2018 on attaining the age of superannuation.

3.At the time of appointment the petitioner had produced a "Hindu Konda Reddy" Community Certificate dated 17.06.1976 issued by the Tahsildar, Mambalam-Guindy Taluk.

4.Earlier, a complaint dated 12.10.2010 was received by the 3rd respondent from the National Commission for SC & ST. Under these circumstances, the certificate produced by the petitioner at the time of his appointment was sent for verification to the 1st respondent State Level Scrutiny Committee. The said verification is pending as on date.

5.Therefore, all retirement and terminal benefits of the petitioner have been withheld though the petitioner superannuated on 31.01.2018 pending verification by the 1st respondent State Level Scrutiny Committee.

6.Meanwhile, the 1st respondent State Level Scrutiny Committee has asked the 2nd respondent Vigilance Cell to verify and give a report. On 01.06.2018, the 2nd respondent Vigilance Cell and ST Cell has conducted an enquiry and has come to a conclusion that the petitioner indeed did not belong to the aforesaid community.

7.A report dated 22.03.2018 was generated by the 2nd respondent wherein it has been concluded that the petitioner does not belongs to "Hindu Reddy" Community. The petitioner was asked to give a written representation and appear for an enquiry vide letter dated 10.04.2018.

8.The petitioner has been called upon to submit a reply/explanation in response to the report submitted by the 2nd respondent and explain why his claim that he belongs to "Konda Reddy" Scheduled Tribes Community should not be rejected.

9. Instead of co-operating with the 1st respondent, the petitioner filed the above writ petition to quash the impugned communication. The petitioner has been asked to give his reply to enquiry report of the 2nd respondent dated 22.03.2018 pursuant to letter dated 19.04.2018 of the 1st respondent enclosing a copy of the said enquiry report.

10. Though the petitioner had originally filed the present writ petition to call for the records pertaining to the impugned communication bearing in Na.Ka.No.P.May/A2/3286/2017 dated 01.06.2018 of the 1st respondent and quash the order passed therein in the light of the favourable finding already arrived at by the competent authority and thereby restrain the 1st respondent from conducting/re-opening the enquiry regarding my community status and consequently direct the 3rd respondent to disburse all my terminal benefits such as pension, gratuity, commutation, etc., by the issue of a Writ of Certiorarified Mandamus. Later the petitioner filed W.M.P.No.9140 of 2019 to amend the prayer to direct the 3rd respondent/employer of the petitioner to disburse terminal benefits such as pension, gratuity, commutation, etc., in the light of the judgment of the Hon'ble Supreme Court on the ground that the petitioner's community certificate has not been cancelled till date.

11. The amendment to the prayer of the above writ petition was made in the light of the decision of the Hon'able Supreme Court in Chairman and Managing Director, Food Corporation of India and others vs Jagdish Balaram Bahira and others, (2017) 8 SCC 670.

12. The above amendment was allowed and thereafter the present writ petition has been taken up for final disposal. In support of the present writ petition, the petitioner has relied upon several decisions of the Hon'ble Supreme Court and that of this court. Particular reference was drawn to the decision rendered in Shakthi Devi SP vs Collector of Salem, 98 Law Weekly 105; State of Jharkhand vs Jitender Kumar Srivastava (2013) 13 SCC 210 and the decision of the Hon'ble Supreme Court in Dr.Uma Agarwal vs State of U.P., (1993) 3 SCC 438.

13. The main contention of the petitioner in the present Writ Petition is that 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 67 has allowed withdrawal of the benefits only where community certificate has been cancelled. However, the Community Certificate issued to the petitioner has not been cancelled. Therefore, the 3rd respondent cannot be retain the terminal/retirement benefits and should be directed to settle all terminal dues of the petitioner.

14.The 1st and 3rd respondents have filed their counter. It is stated that the 2nd respondent called upon the petitioner to appear for Vigilance enquiry as per the Government order issued in G.O.(Ms).No.106 dated 15.10.2012 pursuant to the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others (1994) 6 SCC 241; AIR 1995 SC 94 and other decisions of this Court in W.P.No.20277 of 2011, W.P.No17002 of 2011, W.P.No.25148 of 2011 and W.P.No.16325 of 2012.

15.The 1st respondent has called upon the petitioner to give his reply to the enquiry report submitted by 2nd respondent and to forward his submission to the State Level Scrutiny Committee to verify the genuineness of the Community Certificate of the petitioner. Instead of giving his reply, the petitioner rushed to the court.

16.The 3rd respondent in their counter submitted that a complaint dated 12.10.2010 was received from the National Commission for ST and from one Kuppu Swamy, Marine Department against the petitioner questioning the genuineness of the 'Konda Reddy' Community Certificate produced by the petitioner.

17.Under these circumstances, the investigation was taken up as early as 22.12.2010 and a letter was sent to the State Level Scrutiny Committee with a request to send a report on the veracity of Community Certificate based on the complaint received in the year 2010.

18.According to the respondents, no finality can be attached to the Community Certificate as per the decision of the Hon'ble Supreme Court in Chairman & Managing Director, Food Corporation of India and Ors vs Jagdish Balaram Bahira and Ors, (2017) 8 SCC 670.

19.Heard learned counsel for the petitioner and the respondents. As per the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others (1994) 6 SCC 241; AIR 1995 SC 94, it is mandatory to verify the community certificate of a person claiming reservation based on the community status whether as an employee or as a student.

20.The Hon'ble Supreme Court has further held that 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.

21.The Court further observed that genuine candidates are also denied of 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.

22.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.

23.The exercise of verification of Community Certificate ought to have been completed at the time of 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.

24.The Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India and Ors vs Jagdish Balaram Bahira and Ors, (2017) 8 SCC 670, it was 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.

25.Further the Hon'ble Supreme Court 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.

26.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. Confronted with this problem, the legislatures have intervened with statutory instruments while the executive has, in implementation of law, set down administrative parameters and guidelines to prevent the usurpation of benefits. 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.

27. Finally, The Hon'ble Supreme Court has 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."

28. Therefore, there is no finality attached to the community certificate and if benefits have been wrongly availed, the State resources cannot be strained to release terminal benefits to an employee who has wrongly claimed reservation.

29. The petitioner's claim that he belongs to "Hindu Konda Reddy" Scheduled Tribes Community is under cloud not only because of complaint but also on account of the enquiry conducted by the 2nd respondent.

30. There are indications to show that the petitioner's claim based on the community certificate may not be genuine as complaints also have been received and therefore matter has been referred to the 1st respondent for enquiry.

31. The anxiety of the petitioner in trying to get all the terminal benefits is understandable as report/enquiry by 1st and 2nd respondents may possibly result in stoppage/withdrawal of all benefits to the petitioner if indeed the petitioner had wrongly claimed the benefit.

32.However, we cannot grant relief to the petitioner at this stage as the 1st respondent State Level Scrutiny Committee is seized of the issue. Therefore, we are of the view that the present Writ Petition is liable to be dismissed.

33.Further, no prejudice will be caused to the petitioner as the petitioner is receiving provisional pension. In case, the claim of the petitioner is genuine that he belongs to "Hindu Konda Reddy" community, he can bring a closure to the issue before 1st respondent. He should therefore co-operate with the 1st and 2nd respondents to get aforesaid said community certificate cleared.

34.We therefore find no merits in the present writ petition. 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. The community certificate of the petitioner without verification by the appropriate authority cannot be said to have attained finality.

35.Though, the petitioner's employers should have completed the exercise long before the petitioner was permanently absorbed or during the course of his employment, nevertheless in the peculiar facts and circumstances of the case as there was no prior verification of the community certificate of the petitioner, it needs to be verified at least at the time of retirement so that there is no further drain to the exchequer, if indeed there was a fraud played by the petitioner in securing the community certificate to wrongly claim the benefit of reservation. We are also of the view that present Writ Petition is pre-mature as the 1st respondent is seized of the issue.

36.Therefore, without expressing our opinion regarding the genuineness of the claim of the petitioner, we are dismissing the present writ petition while giving liberty to the petitioner to approach the State Level Scrutiny Committee to complete the verification.

37.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 numerous references that are made by various government/state employers and by the court. This has led to pendency and delay in disposal of the reference.

38.We hope the State Government takes note of the above difficulties faced by employees and the employers 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 Certificates.

39.In the light of the above discussion, we are of the view that the present Writ Petition cannot be allowed. Therefore the present Writ Petition is dismissed while giving liberty to the petitioner to approach this Court for appropriate direction against the State Level Scrutiny Committee to dispose the verification the genuineness of the Petitioner's Community Certificate.

40.In view of the above, the present writ Petition stands dismissed. No cost. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Director of Tribal Welfare
and Member Secretary,
State Level Scrutiny Committee,
Chepauk, Chennai - 600 005.
- 2.The Asst. Commissioner of Police,
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SC/ST Vigilance Cell,
No.263-B, IDPL Township,
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- 3.The Chairman,
Chennai Port Trust, No.1, Rajaji Salai,
Chennai 600 001.

+1 cc to M/s.Yogesh Kannadasan, Advocate Sr.No. 76807
+1 cc to Mr.R.Karthikeyan, Advocate Sr.No.76933

AKM/03.10.19/10P- 6C /

Order
in
W.P.No.22446 of 2018
and W.M.P.No.26305 of 2018