

In the High Court of Judicature at Madras

Reserved on	12.02.2019
Pronounced on	26.02.2019

Coram:

The Hon'ble Mr. Justice M.VENUGOPAL
and
The Hon'ble Mr. Justice P.RAJAMANICKAM

W.P.No.1411 of 2018 and
W.M.P.No.1789 of 2018

1. Union of India Rep. By
The Accountant General [G&SSA]
361, Anna Salai,
Teynampet, Chennai ..Petitioner

Vs.

1. R.Renganathan
2. The Registrar,
The Central Administrative Tribunal,
Chennai Bench,
Chennai - 600 104Respondents

Prayer: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorari by calling for the records of the 2nd Respondent / Tribunal relating to the order dated 13.04.2016 [Annexure - 12] made in O.A.No.368 of 2016 and quash the same.

For Petitioner : Mr.T.Ravikumar

For First Respondent : Mr.N.Naganathan

For Second Respondent : Tribunal

O R D E R

M.VENUGOPAL, J.

The Petitioner has preferred the instant Writ Petition seeking to call for the records on the file of the 2nd Respondent / Central Administrative Tribunal, Chennai Bench pertaining to the order dated 13.04.2016 made in O.A.No.368 of 2016.

2. Heard both sides.

3. According to the Petitioner, the 1st Respondent / Applicant was appointed as Clerk with effect from 23.11.1978 against Scheduled Tribe Vacancy. He produced Caste Certificates dated 18.10.1978 and 20.11.1978 issued by Headquarters, Deputy Tahsildar, Kumbakonam and Tahsildar, Kumbakonam respectively in proof that he belongs to 'Scheduled Tribe Konda Reddy' Community. In terms of the Attestation Form attached to the appointment order, the 1st Respondent / Applicant's service would be liable to be terminated, if a false information was given by him or that there was suppression of any factual information in the attestation form, which comes to the notice of the Department at any time during the service of a person.

4. It is represented on behalf of the Petitioner that the vacancies earmarked for Scheduled Caste / Scheduled Tribe Candidates should be made available only to such of those candidates, who belong to that community. In fact, once an Employment is provided based on the community certificate submitted by the candidate, the same is to be forwarded to the competent authority for verification of its genuineness, in this regard, the District Collector, Thanjavur was addressed in Letter dated 10.12.1985 followed by Demi Official Reminder dated 13.02.1986 seeking verification of the community of the 1st Respondent / Applicant and repeated reminders to the concerned authorities of the State Government were issued with a view to obtain the report on Genuineness of the Community Certificate issued.

5. The stand of the Petitioner is that the District Vigilance Committee, Thanjavur under the Chairmanship of District Collector, incharge of verification of community certificate through its order dated 09.06.2002 had reported that the 1st Respondent / Applicant had not appeared before the Committee for an 'Enquiry', inspite of opportunity is being provided and it is clearly proved that he had no evidence to establish that he belong to Scheduled Tribe Konda Reddy Community and therefore, ordered that he belong to the community 'Reddiars' and the District Vigilance Committee granted him 30 days time to file an appeal against the order before the State Level Scrutiny under the Chairmanship of Secretary to Government, Adidraavidar and Tribal Welfare Department.

6. It comes to be known that the 1st Respondent / Applicant filed W.P.No.32811 of 2002 before this Court challenging the order of the District Vigilance Committee dated 09.06.2002 and on 14.08.2002, this Court, had directed to maintain status quo and also directed the 1st Respondent to file an appeal before the 'State Level Caste Committee' and that the 1st Respondent preferred an appeal with the said Scrutiny Committee.

7. When the order of the State Level Caste Scrutiny Committee on the Appeal preferred by the 1st Respondent was awaited, the Government of Tamilnadu, Adidraavidar and Tribal Welfare Department in Letter dated 05.04.2013 issued instructions that the verification of the genuineness of the Scheduled Tribe Certificate issued by the competent authority was to be done only by the State Level Scrutiny under the Chairmanship of the Secretary, Adi Dravidar and Tribal Welfare Department. Therefore, a D.O. Letter dated 06.06.2013 was addressed to the Secretary to the Government of Tamilnadu, Adidraavidar Tribal Welfare Department and further reminders were also issued. As a matter of fact, the Tamilnadu State Level Scrutiny Committee through proceedings dated 22.06.2015 arrived at a willingness decision that the 1st Respondent / Applicant did not belong to Hindu Konda Reddy Scheduled Tribe Community, but belong to 'Reddiyar Community'. Indeed, the State Level Scrutiny Committee had determined that the Community Certificate issued by the Head Quarters Deputy Tahsildar, Kumbakonam dated 18.11.1978 was not genuine and consequently instructed for cancellation of the Hindu Konda Reddy Scheduled Tribe Community Certificate.

8. The plea of the Petitioner is that since the community certificate produced by the 1st Respondent based on which he was appointed to the Government service against the reserved quota was declared false by the Competent Scrutiny Committee, the 1st Respondent / Applicant had no right to hold the post, as such, in accordance with the conditions specified in the attestation form attached to the appointment order, the Government of India Instructions of 1993 and as per directives of the Hon'ble Supreme Court in Kumari Maduri Patil and Another V. Additional Commissioner, Tribal Development and others reported in [1994] 6 Supreme Court Cases at page 241, the 1st Respondent was dismissed from service by an order dated 29.06.2015 issued by the 'Appointing Authority' and the order was served on the 1st Respondent on 30.06.2015.

9. On behalf of the Petitioner, it is brought to the notice of this Court that the 1st Respondent filed W.P.No.19076 of 2015 before this Court seeking to quash the proceedings of the Tamilnadu State Level Scrutiny Committee dated 22.06.2015 on the ground that he was not issued with a show cause notice along with the copy of the Vigilance Report by the Directorate, Vigilance cell on his social status not being found genuine in the Vigilance Report. This Court on 27.08.2015 passed orders in the Writ Petition by setting aside the order of the Tamilnadu State Level Scrutiny Committee dated 22.06.2015 and remanded back the matter to the State Committee to reconsider the matter afresh after affording proper opportunity of hearing on the Vigilance report to the 1st Respondent.

10. Added further, the Committee was further obliged to examine all aspects of the matter in approve with experts in the field and such an exercise was to be completed within a period of six weeks from the date of receipt of copy of the order.

11. After receipt of the copy of the order dated 27.08.2015 passed by this Court in W.P.No.19076 of 2015, the Petitioner communicated the said order to the State Level Caste Scrutiny Committee with the request to comply with the order of the High Court in a time bound manner. The Committee in its letter dated 18.12.2015 had intimated the 1st Respondent / R.Renganathan that the State Level Caste Scrutiny Committee carefully examined the documents / records and Vigilance Cell report and came to the conclusion as to why the Community Certificate as Hindu Konda Reddies should not be cancelled for the reasons (i) The Deputy Superintendent of Police, Vigilance cell, Trichy, Region had mentioned in his report that the 1st Respondent did not belong to the said community (ii) The 1st Respondent had not produced any valid documents for supporting his Communal Claim. Further, the Committee had requested the 1st Respondent to submit his reply within 30 days from the date of receipt of communication so that the Committee may consider the same and pass orders accordingly. The State Level Caste Scrutiny Committee had also informed that if the 1st Respondent failed to submit any valid documents within the prescribed time, the Committee would proceed to pass final orders based on available evidences and merits of the case.

12. Being dissatisfied with the order of dismissal dated 29.06.2015 passed by the Petitioner, the 1st Respondent filed O.A.No.368 of 2016 before the 2nd Respondent/ Tribunal with the prayer to quash the dismissal order and permit him to retire with all terminal benefits. A reply statement was filed denying the allegations made in the Original Application. However, the 2nd Respondent / Tribunal without properly appreciating the facts and on erroneous view of facts came to a wrong conclusion and allowed the original application through its order dated 13.04.2016 and the said order is assailed in the present Writ Petition.

13. The Learned Counsel for the Petitioner submits that the Impugned Order dated 13.04.2016 in O.A.No.368 of 2016 passed by the 2nd Respondent / Tribunal is neither in conformity with Law nor on facts and as such, they are liable to be set aside in the interest of justice.

14. The Learned Counsel for the Petitioner contends that the Appointment was given by the Petitioner's Office on the basis of the Community Certificate furnished by the 1st Respondent / Applicant in respect of a 'Reserved Post'. Further, it is the stand of the Petitioner that when the Scrutiny Committee had

found the community certificate is not a genuine one, the committee is empowered to verify the community status and that the 1st Respondent had no right to hold the post.

15. The Learned Counsel for the Petitioner refers to the D.O.P.T. Official Memorandum 11012 /7 /91 Estt. A dated 19.05.1993 in and by which the Government Servant, who is not qualified or eligible in terms of the Recruitment Rules etc., for initial recruitment in service or had furnished false information or had produced a false certificate with a view to secure an appointment, he ought not be retained in service. In this regard, the Petitioner places reliance on the decision of Hon'ble Supreme Court between Kumari Maduri Patil and Another V. Additional Commissioner, Tribal Development and others reported in [1994] 6 Supreme Court Cases at page 241 wherein the Appointing Authority was on receipt of the report from the empowered scrutiny committee holding that the Caste Certificate is not genuine shall cancel the appointment forthwith.

16. The Learned Counsel for the Petitioner cites the decision of Hon'ble Supreme Court between R.Vishwanatha Pillai V. State of Kerala reported in (2004) 2 SCC at page 105 at Special page 108 [Civil Appeal No.90 of 2004 Vimal Gosh V. State of Kerala and Others] wherein it is observed as under:

'Moreover, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste Community, then, the very basis of his appointment was taken away. His appointment was no appointment in the eye of law. He cannot claim a right to the post as he had usurped the post meant for a reserved category candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 and cannot be considered to be a person who holds a post within the meaning of Article 311. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.'

17. The Learned Counsel for the Petitioner refers to the decision of Hon'ble Supreme Court reported in (2017) 8 Supreme Court Cases 670 between Chairman and Managing Director, Food Corporation of India and Others V. Jagdish Balaram Bahira and Others at Special Page 723 and 724 at Paragraph No.55 and interalia at Paragraph No. 56, it is observed as under:

'55. Section 10, it must be noted, provides for the withdrawal of civil benefits which have accrued to an individual on the strength of a claim to belong to a reserved category, when the claim upon due enquiry and verification is invalidated. Section 10, as its marginal note indicates, provides for the withdrawal of benefits secured on the basis of a false caste certificate. Section 11 provides for offences and penalties. The invalidation of a caste certificate may result in two consequences (i) immediate cancellation or withdrawal of the benefits received by the candidate on the basis of a false caste certificate; (ii) prosecution of a claimant who procures a certificate which is found to be false by the Scrutiny Committee. The intent of a candidate may be of relevance only if there is a prosecution for a criminal offence. However, where a civil consequence of withdrawing the benefits which have accrued on the basis of a false caste claim is in issue, it would be contrary to the legislative intent to import the requirement of a dishonest intent. In importing such a requirement, the Bench of two Judges in *Shalini V. New English High School Assn.*, (2013) 16 SCC 526 has, with great respect, fallen into error. The Judgment in *Shalini* (2013) 16 SCC 526 must, therefore, be held not to lay down the correct principle. In the very nature of things it would be casting an impossible burden to delve into the mental processes of an applicant for a caste certificate. As the provisions of the Act indicate, a person, who claims to belong to a reserved category and who seeks the benefit of an appointment to a reserved seat or any other benefit provided by the provisions of Article 15(4), has to apply for the grant of a caste certificate. The burden of proof that he or she belongs to such a caste, tribe or class lies with the claimant. The legislature has legitimately assumed that a person who seeks a caste certificate must surely be aware of the caste, tribe or class to which he or she belongs and must establish the claim. If the claim to belong to the reserved category is found to be untrue, the caste certificate has to be cancelled on the ground that it has been obtained falsely. The grant of the benefit to the candidate is fraudulent because the candidate has obtained a benefit reserved exclusively for a specified caste, tribe or class to which he or she is not entitled. The decision of *Shalini V. New English High School Assn.*, (2013) 16 SCC 526 would result in serious consequences and would eviscerate the statutory provision. The interpretation which has been placed on the provisions of Section 10

by the Judgment in Shalini V. New English High School Assn., (2013) 16 SCC 526 is evidently incorrect.

56..... The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of a person who is not eligible allows someone who is ineligible to gain access to scarce public resources. Secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. These effects upon good governance find a similar echo when a person who does not belong to a reserved category passes off as a member of that category and obtains admission to an educational institution. Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the Constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity.'

18. Also in the aforesaid decision, at Page No.731, wherein at Paragraph No.69.3, it is observed as under:

'69.3. The decisions of this Court in [R.Vishwanatha Pillai V. State of Kerala (2004) 2 SCC 105] and in [Union of India V. Dattaray (2008) 4 SCC 612] 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.

19. The Learned Counsel for the Petitioner comes out with a plea that the 2nd Respondent / Tribunal should have followed the decision of Hon'ble Supreme Court between Bank of India and Another V. Avinash D.Mandivikar and others reported in (2005) 7

Supreme Court Cases at Page 690 at Special Page 697 at Paragraph Nos.6 and 7, it is held that as under:

'6. Respondent I employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to the Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate.

7. It was urged by learned counsel for Respondent 1 employee that there was no fraud practised and it was, in fact, under a bonafide belief that the claim was made and there is no finding about any fraud having been practised by the employee. The Scrutiny Committee examined the various documents and came to a definite conclusion that the documents were manipulated to present false claim.'

20. Also in the aforesaid decision at Page Nos.698 and 699 wherein at Paragraph No.11, interalia it is observed as under:

'..... By accepting the findings of the Scrutiny Committee that Respondent 1 employee did not belong to a Scheduled Tribe, the observations about the delayed reference lose significance. The matter can be looked into from another angle. When fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence.....'

21. The Learned Counsel for the Petitioner refers to the decision of Hon'ble Supreme Court between Superintendent of Post Offices and others V. R.Valasina Babu reported in [2007] 2 SCC at Page 335 at Special Page 336, it is observed as under:

'Equality clauses contained in Articles 14 and 16 of the Constitution, envisage that all the citizens of India shall get an opportunity to be considered for appointment in all the civil posts. Clause (4) of Article 16, however, provides for an exception. When a public employment is obtained on a vacancy reserved for a particular category of candidate, he must fulfil the criteria laid down therefor. When the vacancy was to be filled by a Scheduled Caste or Scheduled Tribe candidate for whom the post was created, the candidate must be one who belongs to that category. If the selectee does not fulfil the said basic criteria, his appointment cannot be allowed to be continued. Once the certificate on the basic criteria, his appointment cannot be allowed to be continued. Once the

certificate on the basis whereof the respondent obtained employment stood cancelled, no question of allowing him to continue in service would arise, if he had been appointed on basis of such a certificate. If the employee concerned had played fraud in obtaining an appointment, he should not be allowed to get the benefits thereof, as the foundation of appointment collapses.'

22. The Learned Counsel for the Petitioner strenuously projects an argument that the 2nd Respondent / Tribunal should have followed the decision of the Hon'ble Supreme Court between Regional Manger, Central Bank of India V. Madhulika Guru Prasad Dahir and Others reported in AIR 2008 SC at Page 3266, wherein at Paragraph No.16, it is observed as under:

'16. Having considered the matter in the light of the aforestated legal position, in our judgment, the decision of the High Court is untenable. As noted supra, the employee having accepted the finding of the Scrutiny Committee, holding that the caste certificate furnished by the employee was false, the very foundation of her appointment vanished and her appointment was rendered illegal. Her conduct renders her unfit to be continued in service and must necessarily entail termination of her service. Under these circumstances, there is absolutely no justification for her claim in respect of the post merely on the ground that she had worked on the post for over twenty years. The post was meant for a served candidate but she usurped the same by misrepresentation and deception. In our opinion, the fact that caste certificate was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment'.

23. The other contention advanced on behalf of the Petitioner is that the 1st Respondent had entered into service by producing the false certificate as established by the report of the State Level Scrutiny Committee dated 22.06.2015 and that he had obtained the appointment to the post, which was meant exclusively for SC/ST candidates and that he had deprived a genuine candidate to that post and therefore, no sympathy or indulgence is to be granted by the Court.

24. The Learned Counsel for the Petitioner points out that the State Level Caste Scrutiny Committee instead of passing final order within a reasonable time to comply with the

direction of the High Court has thought fit to issue notice to the 1st Respondent in June, 2016, which had resulted in undue delay, as regards finalisation of the case.

25. Apart from that, the Chairman of the State Level Caste Scrutiny Committee had addressed a communication dated 13.06.2016 to the 1st Respondent [with a copy earmarked to the Petitioner's office] stating that the 1st Respondent had not till date furnished any reply to the said Committee. The Petitioner's office is awaiting for the report of the Scrutiny Committee.

26. The Learned Counsel for the Petitioner contends that since the report of the Scrutiny Committee is expected at any time, the Petitioner will take immediate action on receipt of the said order of the Committee.

27. In response, the Learned Counsel for the 1st Respondent submits that the Petitioner / Government had failed to prove that inasmuch as the order of dismissal was passed on the basis of an order dated 22.06.2015 of the State Level Scrutiny Committee cancelling the community certificate of the 1st Respondent / Applicant, which order was set aside in W.P.No.19076 of 2015 dated 27.08.2015 and as such, the Impugned Order dated 29.06.2015 passed by the Petitioner / Respondent is liable to be set aside and that the 1st Respondent / Applicant should be permitted to retire with all benefits.

28. The Learned Counsel for the 1st Respondent submits that the Petitioner / Government's action in withholding the 1st Respondent's terminal and pensionary benefits after satisfactory completion of nearly 37 years of service is an illegal and unlawful one, because of the reason that the 1st Respondent / Applicant's Community Certificate was not cancelled in accordance with Law.

29. The Learned Counsel for the 1st Respondent takes a stand that the verification of the community certificate cannot be construed as pendency of Disciplinary proceedings and only if the community certificate is cancelled by the competent authority, the terminal benefits can be denied.

30. The Learned Counsel for the 1st Respondent refers to the decision of Hon'ble Supreme Court between State of Jharkhand V. Jitendra Kumar Srivastava and Another reported in AIR 2013 Supreme Court Page 3383 wherein it is held that 'Pension is hard earned benefit which accrues to an Employee and is in the nature of 'property'. This right to property cannot be taken away without the due process of Law, as per Article 300 A of the Constitution of India.

31. The Learned Counsel for the 1st Respondent refers to the decision of Hon'ble Supreme Court between Raju Ramsing Vasave V. Mohan Deorao Bhivapurkar reported in (2008) 9 SCC at Page 54 wherein at Special Pages 55 and 56, it is held as under:

'Where factual foundation arrived at by a committee authorised in this behalf concludes that a person is not a member of the Scheduled Tribe, such finding would remain operative unless set aside by a superior court. The Judgment of the High Court in favour of Respondent 1 was rendered on a wrong premise. Respondent's claim may be that he belonged to Halba Tribe but no factual foundation was placed before the High Court. The High Court relied solely on its earlier decision to hold that Koshti would come within the purview of the Scheduled Tribe of Halba or Halbi. The decision was rendered in 1988. The records maintained by the school where the respondent studied were not placed before the High Court. Only when the Caste Scrutiny Committee, a statutory committee, proceeded to enquire into the matter, the truth came out. It is not meant to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise a member of his family had been declared to be belonging to a Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another committee while examining the case of other members of the family in some detail. If it is found that in granting a certificate in favour of a member of a family, vital evidence had been ignored, it would be open to the Committee to arrive at a different finding. In order to fulfil constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of notified ST. When an advantage is obtained by a person in violation of constitutional scheme, a constitutional fraud is committed' [Paragraph Nos.26 to 28].

32. The Learned Counsel for the 1st Respondent cites the decision of Hon'ble Supreme Court reported in (1997) 7 Supreme Court Cases 505 between K.Kandasamy V. Chief Engineer, Madras Port Trust at special pages 506 and 507 wherein at Paragraph No.6, it is held as under:

'6. In our opinion the Community Certificate issued to a Scheduled Tribe candidate by the Tehsildar prior to 11.11.1989 is a good and valid Community Certificate for all purposes so long as such a certificate is not cancelled. The authorities cannot decline to take that

into consideration and insist upon a fresh Community Certificate from the Revenue Divisional Officer'

33. Continuing further, the Learned Counsel for the 1st Respondent relies on the decision of the Hon'ble Supreme Court Raiwad Manojkumar Nivruttirao V. State of Maharashtra and Another reported in (2011) 9 SCC at page 798 at Special Page 800 at Paragraph No.6 interalia it is held as under:

'..... has been relied upon by the High Court in the impugned judgment in this case to hold that the appellant did not belong to 'Mahadeo Koli' tribe. Before the decision of this Court in Madhuri Patil V. Commissioner Tribal Development [(1994) 6 SCC 241] the appellant had been appointed in the service of Nabard on 28.02.1992 and since 1992 for long nineteen years, he has been in service. Invoking our jurisdiction under Article 142 of the Constitution, we order that the initial appointment of the appellant in the service of Nabard will not be disturbed, but the appellant will not be granted any benefit as a member of the Scheduled Tribe including any promotional benefit and promotional benefit, if any, granted to the appellant as a member of the Scheduled Tribe shall be cancelled. We make it clear that the relief extended is not intended to be a precedent and shall not be relied upon to grant similar relief.'

34. The Learned Counsel for the 1st Respondent relies on the decision of the Hon'ble Supreme Court between Dr.Uma Agrawal V. State of Uttarpradesh and Another reported in [1999] 3 Supreme Court Cases at Page 438 at Special Page 439, wherein it is held that Pension is not a bounty but right of a Government servant. Government is obliged to follow Rules. Delay in settling retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too, there is a prescribed procedure. This indeed is unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind time-schedule prescribed in the Rules / instructions, apart from other relevant factors applicable to the case.

35. The Learned Counsel for the 1st Respondent refers to the order dated 28.04.2010 in W.P.No.7991 of 2010 between Union of India represented by the General Manager, Southern Railway, Chennai and others V. Lingam Ramalingam wherein the Division Bench of this Court had dismissed the appeal filed by the Southern Railways as against order passed by the 2nd Respondent / Tribunal wherein it was ordered that terminal benefits could not

be withheld on the ground that the pendency of the verification of the genuineness of the community certificate is pending.

36. The Learned Counsel for the 1st Respondent seeks in aid of the order dated 14.09.2015 in W.P.No.25554 of 2015 between Union of India, Principal Controller of Communication Accounts, Ministry of Communication and IT V. D.Sowbagiamani and Others, wherein it is held that inasmuch as no finality is reached with regard to the verification of the community certificate of the employee and who having reached the superannuation is entitled for disbursement of terminal benefits.

37. The Learned Counsel for the 1st Respondent refers to the Division Bench Order of this Court in W.P.No.18214 of 2010 dated 10.12.2010 between R.Balaguru V. the Chairman and others wherein it is observed that so long as certificate of the Petitioner had not been cancelled, he could not be denied service benefits and in that sense, he can claim terminal documents attached to his employment and the same could not be denied. Further, directions were issued to the Respondents to pay terminal benefits to the Petitioner.

38. At this stage, in regard to the procedure to be adhered to relating to the verification of Community Certificate, this Court aptly points out the decision of Hon'ble Supreme Court between Anand V. Committee for Scrutiny and Verification of Tribe Claims and Others reported in (2012) 1 Supreme Court Cases at Page 113 at Special Pages 120 and 121 at Paragraph Nos.21 to 23, it is observed as under:

'21. We are of the view that for the purpose of examining the caste claim under the Rules, the following observations of this Court in Kumari Madhuri Patil (supra), still hold the field:-

"...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."

22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary

evidence and should not be the sole criteria to reject a claim.

23. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim'.

39. At this juncture, this Court worth recollects and recalls the decision of the Hon'ble Supreme Court between the State of Punjab V. Jagdip Singh reported in AIR 1964 SC page 521 at Special Page 524 at Paragraph No.8, among other things, it is observed as under:

'8..... In our opinion where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status. No doubt, the Government has used the expression 'de-confirming' in its notification which may be susceptible of the meaning that it purported to undo an act which was therefore valid. We must, however, interpret the expression in the light of actual facts which led up to the notification. These facts which led up to the notification. Those facts clearly show that the so-called confirmation by the Financial Commissioner of Pepsu was no confirmation at all and was thus valid. In view of this, the notification of October 31, 1957 could be interpreted to mean that the Government did not accept the validity of the confirmation of the respondents and other persons who were confirmed as Tahsildars by the Financial Commissioner, Pepsu.'

40. Undoubtedly, as per Article 14 and 16(1) of the Constitution, an employer has an inbuilt public duty and in terms of the ingredients of Article 16(4) of the Constitution of India to assure that the benevolent aspect of reservation in the matter of public employment are not permitted to be utilised by a person not eligible to that, of course, based on the Community Certificate procured by him.

41. It is to be remembered that an act of wanton deception

with a view to secure something, which one is not entitled to, then, it amounts to an element of 'Fraud', as opined by this Court. After all, the word 'Fraud' is against any equitable principle and the same cannot be permitted to be perpetuated.

42. It is to be significantly pointed out that if an Employee or a Government Servant has no right to a post or a certain status and notwithstanding the fact when the concerned authority had issued a Status Certificate to that person, which is incorrect in Law, then, it is crystalline clear that the concerned person is not validly appointed to the post or showered upon the particular status. In fact, as per Government Order Ms.No.111 dated 06.07.2005 [based on the orders passed by this Court in Writ Appeal No.1645 of 2001 etc., batch dated 22.07.2005,] the State Level Scrutiny Committee alone is having the necessary competence and power to determine the issue of Scheduled Tribe Community Certificate. Without deciding the validity of the 1st Respondent's early appointment as clerk with effect from 23.11.1978 against Scheduled Tribe Vacancy, for which the conclusive final determination of the State Level Caste Scrutiny Committee in respect of Scheduled Tribe certificate is very much required and admittedly, the same is awaited.

43. As far as the present case is concerned, the Community Certificate resting upon which the 1st Respondent was appointed against the reserved quota was found to be false and admittedly, the matter was remitted back for re-verification and therefore, a categorical plea is taken on behalf of the Petitioner that the 1st Respondent's entitlement to the pensionary benefits is to be decided only after the State Level Scrutiny Committee passes an order in compliance with the Order passed by this Court.

44. It may not be out of place for this Court to make a pertinent mention that the District Vigilance Committee, Thanjavur by an order dated 09.06.2002 had stated that the 1st Respondent / Applicant had not appeared before the Committee for an enquiry inspite of opportunity being provided to him and this clearly established that he has no proof at his command to fortify his case that he belong to Scheduled Tribe Community 'Konda Reddis' and accordingly, ordered that he belong to 'Community of Reddiyars'. In fact, the District Vigilance Committee granted 30 days time to the 1st Respondent to prefer an Appeal against an order of the State Level Scrutiny Committee. The State Level Scrutiny Committee through proceedings dated 22.06.2015 came to the conclusion that the 1st Respondent had not produced any additional documents during enquiry other than those produced to the District Vigilance, Tiruchirapalli to establish his community claim and as such, he does not belong to

the 'Konda Redddis Community'. In these circumstances, the right course of action to be adopted in respect of the 1st Respondent's claim of retirement benefits is to await for the outcome of the re-verification by the State Level Scrutiny Committee.

45. To put it succinctly, the entitlement of the 1st Respondent / Applicant to receive retirement benefits would squarely depend upon the order that is to be passed by the State Level Scrutiny Committee. As a matter of fact, the State Level Scrutiny committee is the competent authority to verify the genuineness and veracity of the Community Certificate of the 1st Respondent and inasmuch as the matter is pending before the State Level Scrutiny Committee and the pendency of the said proceedings before the said Committee certainly, in the considered opinion of this Court, will not embolden the 1st Respondent to stake a claim of his 'Retirement Benefits'. Furthermore, he is to necessarily await for the outcome of the final order to be passed by the State Level Scrutiny Committee, because of the well settled legal principle that 'Onus of Proof of Social Status' rests on the shoulders of the individual, who made a claim to secure the constitutional socio economic advantages, in the considered opinion of this Court.

46. Looking at from that angle, the views taken by the 2nd Respondent / Tribunal in O.A.No.368 of 2016 dated 13.04.2016 to the effect that Pendency of the proceedings before the State Level Committee cannot be a bar for the Respondent / Administration for releasing the retirement benefits to the 1st Respondent / Applicant and the 1st Respondent cannot be embargoed in getting his retirement benefits and directing the release of pension and retirement benefits to him within a period of two months from the date of receipt of copy of this order, are legally untenable in the eye of Law. Consequently, the Writ Petition succeeds. The State Level Scrutiny Committee is directed to issue a fresh notice to the 1st Respondent / Applicant fixing the date of enquiry and permit the 1st Respondent / Applicant to produce the originals of the documents submitted with the explanation as well as the witnesses to prove his claim at the time of hearing taking note of the fact that the earlier opportunity provided to the 1st Respondent, this Court makes it abundantly quite clear that if the 1st Respondent does not attend the hearing with documents and witness, if he is desirous to produce or examine on his side, he shall not be granted any more opportunity or is not entitled to seek any extension of time on any score. After affording adequate opportunity of hearing including submission of documents and examination of witness, if the 1st Respondent so desires, the State Level Scrutiny Committee after examination of the material

available records is to pass a reasoned speaking order on the verification of the community certificate of the 1st Respondent on merits, of course, strictly in accordance with Law, keeping in mind the relevant Government Orders, relevant Rules, enunciated guidelines and binding decisions relating to the 'Judicial Precedent' to the subject matter in issue. The State Level Scrutiny Committee shall complete the enquiry, as expeditiously as possible, in any event, within a period of six weeks from the date of receipt of copy of this order, because of the reason that the 1st Respondent / Renganathan had retired on 30.06.2015 after 37 years of service. The result of the enquiry proceedings is to be communicated by the State Level Scrutiny Committee to the Petitioner and in this regard, the said Committee is directed to file a compliance report before the Registrar Judicial of this Court. The 1st Respondent, who had retired on 30.06.2015 is directed to wait for the final out-come of the verification of his Scheduled Tribe Community Status by the State Level Scrutiny Committee. Further, based on the final orders of the State Level Scrutiny Committee in regard to the verification of Petitioner's Scheduled Tribe Community Status, the parties are directed to act accordingly.

In fine, the Writ Petition is allowed in above terms. The Impugned Order in O.A.No.368 of 2016 dated 13.04.2016 of the 2nd Respondent / Tribunal is set aside by this Court for the reasons assigned in this Writ Petition. Consequently, the Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssd

To

The Registrar,
The Central Administrative Tribunal,
Chennai Bench,
Chennai - 600 104

+lcc to Mr.N.Naganathan, Advocate sr.no.17482
+lcc to Mr.T.Ravikumar, Advocate sr.no.17724

W.P.No.1411 of 2018 and
W.M.P.No.1789 of 2018

kj(co)
nr 28/03/2019