

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24219 of 2018
and
W.M.P.No.28225 of 2018

K.Kirubanandhan

.. Petitioner

Vs.

1. Tamil Nadu Public Service Commission,
Frazer Bridge, Park Town,
Chennai-600 003,
Rep. by its Under Secretary.
2. The Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai,
Secretariat,
Chennai-600 009,
Rep. by its Chairman.
3. The Collector,
Dharmapuri,
Dharmapuri District.
4. The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent to process the application of the petitioner (Register No.040716332) under Scheduled Tribe Category for the appointment to the post of Group-IV services as per Notification No.23/2017, dated 14.11.2017 on the file of the first respondent without insisting upon the production of the Community Certificate and accepting the sworn affidavit of the petitioner that he belongs to Kurumans (ST) Community.

For petitioner : Mr.V.Elangovan

For respondents: Mr.M.Loganathan for R-1

Mr.V.Shanmugasundar,
Spl.G.P. for RR-2 to 4

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to process the application of the petitioner (Register No.040716332) under Scheduled Tribe Category for the appointment to the post of Group-IV services as per Notification No.23/2017, dated 14.11.2017 on the file of the first respondent without insisting upon the production of the Community Certificate and accepting the sworn affidavit of the petitioner that he belongs to Kurumans (ST) Community.

2. It is the case of the petitioner that he belongs to Kurumans Community, which is a Scheduled Tribe Community. Since it was not required for the parents at the relevant point of time and as his parents are illiterates, they did not obtain any Community Certificate. The petitioner had completed B.E. (Mechanical Engineering) in the year 2016. In all his School Records, the petitioner's Community is entered as Kurumans (ST) Community. Since the petitioner is in need of Community Certificate, his father preferred an application to the fourth respondent on 23.06.2014, requesting to issue Community Certificate to his father, himself and his brother K.Mahendiran stating that they belong to Kurumans (ST) Community, based upon the State Level Scrutiny Committee report of one K.Devi and S.Kaviyarasan, who are the petitioner's close relatives.

3. It is the further case of the petitioner that since no order was passed on the above said application, the petitioner's father preferred a Writ Petition before this Court in W.P.No.27155 of 2015 seeking for a direction to the fourth respondent-Revenue Divisional Officer (RDO), Dharmapuri, to hold proper enquiry, examine the proceedings of the second respondent-State Level Scrutiny Committee, dated 28.04.2008 and 27.03.2014 relating to the blood relatives of the petitioner, viz., K.Devi and S.Kaviyarasan and decide the application of the petitioner, dated 23.06.2014 for issuance of ST Community Certificates to the petitioner therein (T.K.Kariyappan) and his sons, viz., K.Kirubanandhan (petitioner herein) and Mahendiran. In the said Writ Petition, by order dated 31.08.2015, this Court observed as follows:

"5. By this petition, the petitioner is seeking a direction to the first respondent to consider his application and issue community certificate to him and his sons, viz., Kirubanandhan and Mahendiran, accordingly. We have been repeatedly observing that a community comprises not only the members of the family, but, also the members of the same group or tribe. In the case on hand, when the community status of the petitioner's paternal cousin has been confirmed by the State Level Scrutiny Committee vide proceedings dated 27th March 2014, the said proceedings does have a high probative value. However, it is well within the power of the competent officer concerned to examine the relationship of the said person with the applicant.

6. In view of the foregoing, we direct the first respondent to consider and pass orders on the petitioner's application dated 23rd June 2014, on merits and in accordance with law, after conducting enquiry as per the guidelines laid down by the Supreme Court in Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (1994 (6) SCC 241). Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

7. The writ petition stands disposed of accordingly. Costs made easy."

4. Thereafter, the fourth respondent, by proceedings dated 28.11.2015, rejected the said application holding that the petitioner's family does not belong to Kurumans Community. Challenging the said rejection order, the petitioner's father filed Writ Petition before this Court in W.P.No.18360 of 2016, which was disposed of along with W.P.Nos.15117, 14611, 14706, 18359 and 18361 of 2016 on 18.07.2016. After hearing both sides, in the said Writ Petitions, this Court set aside the said rejection order, dated 18.07.2016 in the said Writ Petitions, observing as follows:

"19. For the above said reasons, we are of the view that the impugned orders passed by the Respondent in all the Writ Petitions warrants interference since the same are unsustainable in law and accordingly the impugned orders are set aside. The State

Level Scrutiny Committee shall verify the said applications and forward its report within a period of one month from the date of receipt of a copy of this order and the Respondent after obtaining the report shall issue certificates in accordance with law to the Petitioners within a period of one month thereafter.

20. It is needless to state that the relationship certificate and other relevant records produced by the Petitioners shall be duly taken into consideration by the authorities while completing the above said exercise. Accordingly, the Writ Petitions are disposed off on the above stated terms. No costs."

5. It is the further averment of the petitioner in the affidavit filed in support of the present Writ Petition that thereafter, the second respondent-State Level Scrutiny Committee referred the matter to the Vigilance Cell, Dharmapuri as well as to the Anthropologist. The Vigilance Cell conducted a local enquiry and found that the claim of the petitioner's father is genuine. Apart from the local enquiry, the Vigilance Cell had also obtained a report from the Anthropologist, who gave report that the petitioner's family belongs to Kurumans (ST) Community.

6. After two years, according to the petitioner, the second respondent forwarded the petitioner's application to the third respondent-District Collector as per G.O.Ms.No.147, Revenue Department, dated 17.03.2016 and now the matter is pending before the third respondent.

7. While so, the first respondent-Tamil Nadu Public Service Commission (TNPSC) issued a Notification in Notification No.23 of 2017, dated 14.11.2017 calling for application for various posts included in the Combined Civil Services Examinations-4 (Group-IV Services) for the years 2015-2016, 2016-2017 and 2017-2018, in which, the petitioner preferred an application for the above post(s) under ST Category. The petitioner appeared for the written examination on 11.02.2018 and the first respondent published the results on 30.07.2018 and the petitioner was successful in the said examination and his communal rank is 54. Thereafter, the first respondent sent a Circular which was uploaded in the web-site on 27.08.2018 instructing all the candidates to upload all the Certificates in TNPSC's web-site from 30.08.2018 to 18.09.2018, failing which, the application would be rejected. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

8. The learned Standing Counsel appearing for the first respondent/TNPSC and the learned Special Government Pleader appearing for the respondents 2 to 4, by filing counter affidavits, submitted that the Deputy Superintendent of Police, SC/ST Vigilance Cell had forwarded the spot enquiry report through the Director of Tribal Welfare, vide letter in Na.Ka.No.TD/A1/3741/2017, dated 18.01.2018, wherein it was concluded that the petitioner's father Thiru.T.K.Kariappan belongs to Kurumans Scheduled Tribe (ST) Community, but however, the documentary evidence examined by the Deputy Superintendent of Police, Vigilance Cell shows that the petitioner's father belongs to Kurumba (Most Backward Class) Community. It is further submitted that the petitioner's father filed appeal/petition before the District Collector, Dharmapurai, based on G.O.Ms.No.147, Revenue (RA3(2)), dated 17.03.2016 relating to issuance of Scheduled Tribe Kurumans Community Certificate to his children, namely Kirubanandhan (petitioner herein) and Mahendiran. After receipt of the Vigilance Cell reports and the connected papers, the third respondent/District Collector, Dharmapurai took up the appeal of the petitioner's father and rejected the petitioner's claim for issuance of the Scheduled Tribe Community Certificate, vide proceedings in Na.Ka.No.13596/2018/Koo3, dated 28.09.2018.

9. The learned counsel for the respondents further contended that the petitioner's father filed an appeal/petition to the State Level Scrutiny Committee on 08.12.2018 and he appeared before the State Level Scrutiny Committee-II on 19.12.2018 and the Committee decided to grant one month's time to the petitioner's father to submit additional documents/evidence in support of his communal claim, subsequent to which, the petitioner's father filed the following documents on 07.01.2019, namely (i) Copy of Thiru.L.Kandasami's (father's brother) SSLC Certificate, (ii) Copy of Community Certificate of Thiru.L.Kandasami and (iii) Family tree authorised by the Tahsildar, Dharmapuri, regarding issuance of Scheduled Tribes Kurumans Community Certificate. Thereafter, the Government issued show cause notice on 24.05.2019 to the petitioner's father-T.K.Kariappan through the Director of Tribal Welfare, in response to which, the reply is still awaited, and on receipt of the said reply, the matter will be placed before the State Level Scrutiny Committee-II. Hence, the learned Special Government Pleader appearing for the second respondent-Committee prayed for time for completion of the verification by the said Committee.

10. Heard both sides and perused the materials available on record.

11. Be that as it may. This Court is not conducting any roving enquiry with regard to the disputed questions of facts in this Writ Petition, as it is represented by the learned Special Government Pleader appearing for the second respondent-Committee that the appeal is pending before the second respondent. Accordingly, the second respondent-State Level Scrutiny Committee is directed to consider the said appeal of the petitioner's father filed on 08.12.2018 and pass appropriate orders and dispose of the said appeal, on merits and in accordance with law, in the light of the Vigilance Cell report as well as the report of the Anthropologist, within a period of six weeks from the date of receipt of a copy of this order and till such time the said appeal is disposed of, first respondent-TNPSC is directed to keep the post, if any applied for by the petitioner, vacant till the disposal of the said appeal. Before passing orders on the said appeal, the second respondent-Committee shall also take into consideration the order passed by this Court in W.P.No.12614 of 2019, dated 15.07.2019, which reads as follows:

"5. Today, when the matter is taken up for consideration, the learned Special Government Pleader appearing for the respondents 2 and 3 filed a detailed counter stating that now the matter is pending before the second respondent-Committee, if the petitioner appears before the Committee, they will conduct enquiry and complete the same, within a period of four weeks.

6. Whereas, the learned counsel for the petitioner insisted this Court to issue a direction to the respondents to issue Community Certificate by virtue of Anthropologist Report as well as the Vigilance Cell Report. But we are not inclined to accept the prayer made by the petitioner, since the enquiry is pending before the second respondent-Committee. Hence, it would be appropriate to direct the second respondent-Committee to pass orders by conducting enquiry. Accordingly, the second respondent-Committee is directed to conduct enquiry and complete the same, within a period of four weeks from the date of receipt of a copy of this order, based on the Vigilance Cell Report dated 04.10.2018 as well as Anthropologist Report dated 23.08.2018. In the meantime, the first respondent is directed to keep the post vacant till the completion of enquiry.

7. With these directions, the Writ
Petition stands disposed of. No costs.
Consequently, connected Miscellaneous
Petitions are closed."

12. With the above observations and directions, the Writ
Petition is disposed of. No costs. Consequently, W.M.P. is
closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge, Park Town,
Chennai-600 003,
2. The Chairman,
The Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai,
Secretariat,
Chennai-600 009,
3. The Collector,
Dharmapuri,
Dharmapuri District.
4. The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

+1 cc to Mr.S.Doraisamy, Advocate, S.R.No.62123

+1 cc to the Government Pleader, S.R.No.62381

W.P.No.24219 of 2018

NMI(CO)
SSM(21/08/2019)