

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.08.2019
Pronounced On	05/09/19

CORAM

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

W.P.No.18142 of 2019

M.Kothandaraman ... Petitioner

vs

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

2.The Deputy Conservator,
Marine Department,
Chennai Port Trust, Rajaji Salai,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus or any other appropriate writ or direction in the nature of a Writ, calling for the entire records of the 2nd respondent impugned order No.D2/211/2019/M dated 29.03.2019 and quash the same and directing the respondents to pay the pensionary benefits, Earned Leave Encashment and terminal benefits including Gratuity, Commutation of Pension on attaining the age of superannuation on 31.03.2019 within a stipulated time.

For Petitioner : Mr.L.Chandrakumar
for Mr.Manisekaran .V
For Respondents : Mr.R.Karthikeyan

O R D E R

C.SARAVANAN, J.

The petitioner has challenged the impugned Communication dated 29.03.2019 bearing reference No.D2/211/2019/M issued by the 2nd respondent in this writ

petition. By the impugned communication the petitioner has been informed that he will retire in the afternoon of 31.03.2019 on attaining the age of superannuation and will be paid a provisional pension based on the approval of the Deputy Chairman on 21.03.2019 as Vigilance Clearance of the petitioner's community status was still pending before the State Level Scrutiny Committee.

2.The petitioner seeks to quash the impugned communication and prays for a direction to the respondents to release all pensionary benefits and terminal benefits including Earned Leave Encashment, Gratuity, and Commutation of Pension as the petitioner has attaining the age of superannuation on 31.03.2019.

3.The petitioner was appointed as a Lascar Grade II (Yard) with the respondents on 03.01.1978 against post reserved for person belonging to Scheduled Tribe. At the time of joining the respondents, the petitioner has produced a Community Certificate No.Naka.2070/76 dated 18.07.1976 issued by the Head quarters, Deputy Tahsildar, Tiruvallur. As per the said certificate, the petitioner's community was 'Kuravar' a "Other Backward Community" in Tamilnadu.

4.Later the petitioner substituted the aforesaid Community Certificate with a different community certificate No.Na Ka.7902/89 dated 16.06.1989 issued by the Tahsildar, Tiruvallur Taluk, Tiruvallur District wherein the petitioner which declared the petitioner's community as "Hindu Malakkuravan". The said community is Schedule Tribe (ST) Community under the Constitution (Scheduled Tribes) Order, 1950. This was also confirmed by the District Collector vide letter dated 14.12.1989 bearing reference No.K.Dis.38041/89.

5.It is the case of the petitioner that he has served the respondent for 41 years without any blemish and therefore it is unfair to the subject that the petitioner to verification now and thereby delay the release of retirement benefits.

6.The petitioner submits that the issue no longer, res-integra in the light of the decision of this Court in W.P.No.26741 of 2018 dated 08.03.2019. There, after referring to an earlier decision dated 24.01.2019

rendered in W.P.(MD).No.7461 of 2017, the Court allowed the said Writ Petition and the benefits were directed to be released to the petitioner therein.

7.The respondents have raised serious question relating to the status of the petitioner based on the Community Certificate bearing reference No.Naka.7902/89 dated 16.06.1989 produced by the Petitioner.

8.It is stated that the petitioner had earlier produced a community certificate bearing reference Certificate No.2070/76 dated 18.07.1976 claiming 'Kuravar' Community. However, later he produced a Community Certificate No.Na ka.7902/89 dated 16.06.1989 claiming 'Hindu MalakKuravan' which is a Schedule Tribe Community in Tamilnadu.

9.It is stated that the said certificate has been forwarded to the State Level Scrutiny Committee (SLSC) as early as 25.09.2013 for verification and same is still pending for verification and therefore the terminal benefits cannot be released without further verification.

10.Heard Learned Counsel for the Petitioner and the Respondent. We have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

11.At the outset, we would like to mention that the State Level Scrutiny Committee should have been made as a party to the proceedings. Even though as per the impugned communication verification of the Community Certificate of the Petitioner is still pending before the said Authority. The petitioner has not sought for any relief against the said authority. Therefore, the present Writ Petition is liable to be dismissed for non impleading of necessary party. That apart, the Vigilance Clearance has not been given by the Central Vigilance Officer as verification regarding genuineness of the petitioner's Community Certificate was still awaited.

12.As per 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, it is mandatory to verify the Community Certificate of a person claiming reservation. The Hon'ble Supreme

Court 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.

13.The Court further observed that genuine candidates are also denied 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. 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.

14.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.

15.For that purpose to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, following guidelines were issued:-

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 acknowledgment 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 acknowledgement 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.

16. 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, held 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.

17. Further the Hon'ble Supreme Court 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.

18. 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.

19. Finally, The Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India and others vs Jagdish Balaram Bahira and others (2017) 8 SCC 670 , has held 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 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 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."

20. Further, the State Level Scrutiny Committee vide its letters dated 27.01.2014, 09.07.2015 & 20.01.2016 has addressed to the District Collector and the Revenue Divisional Officer, Tiruvallur to forward the original documents and related papers for placing before it and therefore an enquiry is still pending. The Respondent have further stated that State Level Scrutiny Committee has asked for a report to proceed further. Final scrutiny by the said authority is awaited.

21. There is a bonafide doubt regarding the claim of the petitioner that he belongs to "Hindu Malakkuravan" community as at the time of joining employment, the petitioner had produced "Kuravar Community Certificate" bearing reference No.2070/76 dated 18.07.1976. The said community is a backward community and not a Scheduled Tribe Community. Therefore, his employment against a post meant for Schedule Tribe (ST) is in question as it is a Other Backward Community in the State of Tamil Nadu. Perhaps, if scrutiny was completed earlier, the petitioner would have lost his employment much earlier or in the alternative proved that he was entitled to reservation quota.

22. Since, the State Level Scrutiny Committee is presently seized of the matter, we are therefore of the view that it would be improper to order release of pension and terminal benefit at this stage. Further, no prejudice is caused to the petitioner as he is being given a provisional pension. In case the petitioner's claim turns out genuine, the petitioner cannot be

deprived of the terminal and retirement benefits.

23.The present Writ Petition is pre-mature. 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.

24.Though, the petitioner's employers should have completed this exercise 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.

25.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.

26.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.

27.Therefore, before parting with the present writ petition, we hope the State Government takes note of the difficulties 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.

28.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 complete verification of the Petitioner's Community Certificate.

29.The present writ Petition stands dismissed with the above observations. No cost.

Sd/-
Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

jen

To

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

2.The Deputy Conservator,
Marine Department,
Chennai Port Trust, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.V.Manisekaran , Advocate SR.No. 76815

+1cc to Mr. R.Kathikeyan, Advocate SR.No. 76935

W.P.No.18142 of 2019

sj (CO)
A.SK(14/10/2019)

सत्यमेव जयते

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