

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2019
Pronounced on : 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18921 of 2019

A.R.Venkatachalan

... Petitioner

vs

1.The State Level Scrutiny Committee
rep.by its Chairman
Adi dravidar & Tribal Welfare Dept.
Fort St.George, Secretariat,
Chennai 600 009.

2.Union of India
Southern Railway
Rep.by its General Manager,
Park Town, Chennai 600 003.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the proceedings of the first respondent bearing No.13577/CVIII/2017 dated 17.06.2019 and quash the order passed and consequently direct the second respondent to disburse the terminal benefits such as provident fund, gratuity, leave encashment and other benefits.

For Petitioners : Mr.Yogesh Kannadasan

For R1 : Mr.V.Shanmuga Sundar
Spl.Govt.Pleader

For R2 : Mr.P.T.Ramkumar

O R D E R

C.SARAVANAN, J.

The present writ petition challenging the order of the 1st respondent, dated 17.06.2019 bearing No.13577/CVIII/2017 and for a consequential direction to the 2nd respondent to disburse the terminal benefits such as provident fund, gratuity, leave encashment and other benefits.

2. The petitioner was appointed on 07.11.1975 by the 2nd respondent as a gangman under the quota reserved for Scheduled Tribes. At the time of appointment, the petitioner had purportedly produced a "Kammara Naidu Community Certificate" claiming the status of a Scheduled Tribe. However, the photocopy of the said community certificate is not available with the 2nd respondent.

3. There were doubts as to whether the petitioner was indeed entitled to be appointed against the quota reserved for Scheduled Tribes. Under these circumstances, internal verification was caused by the Vigilance Department of the 2nd respondent. As early as 25.01.2000, statements were recorded from the petitioner. At that time, questions were asked as to who were his father and mother's siblings and the details of his spouse. The petitioner was also asked to give the details of his brothers and sisters and their occupation and address.

4. The petitioner was asked to specify his caste and religion to which the petitioner replied that he belonged to Hindu religion and Kammara Scheduled Tribe Community.

5. The petitioner was also asked to furnish details of the community certificate and from where he got the aforesaid community certificate. The petitioner was however unable to give any particular. The petitioner also mentioned that he did not have the original community certificate or copies and therefore stated that he will furnish the same as early as possible as and when asked for.

6. Meanwhile, the 2nd respondent collected collateral evidence from Madurai Kamaraj University, regarding community of one A.R. Ramasamy another brother of the petitioner. By letter dated 25.4.2000 it was confirmed that the said person belong to Gavara backward community. On 17.4.2003, the petitioner was

asked to submit a copy of the community certificate. However, the petitioner failed to furnish the same.

7. Meanwhile, the District Level Vigilance Committee by their proceeding dated 28.5.2007 cancelled the petitioner's another brother A.R.Radhakrishnan's community certificate claiming Kammara Scheduled Tribe status.

8. Meanwhile, the petitioner attained the age of superannuation on 31.3.2016 and was allowed to retire. The Petitioner was sanctioned a provisional pension vide letter dated 4.3.2016 pending verification of the community certificate before the State-Level Scrutiny Committee in terms Rule 10 of the Railway Services (Pension) Rules, 1993.

9. Since the petitioner retired on 31.3.2016, the petitioner filed O.A.No. 310/00793/2016 before the Central Administrative Tribunal to direct the 2nd respondent to release all terminal benefits on the ground that no record is pending with the office of the State-Level Scrutiny Committee regarding verification of genuineness of the community certificate of the petitioner at the behest of the 2nd respondent.

10. By an order dated 19.7.2016, the Central Administrative Tribunal had allowed the relief to the petitioner. Under these circumstances, the 2nd respondent filed W.P.No 2463 of 2017 before the Division Bench of this Court. By an interim order dated 1.3.2019, the court noted that no file was pending regarding the community status of the petitioner before the 1st respondent herein. This court further observed that the 1st respondent had stated that if the 2nd respondent sent the community certificate of the petitioner for verification, it will verify the same as per the guidelines of the Honourable Supreme Court in Kumari Madhuri Patil Versus Additional Commissioner Tribal Development and Others, 1994 SCC (6) 241.

11. By the aforesaid order, the court directed the 1st respondent to file a complete and comprehensive report and to expound in a detailed manner as to why the matter is pending before the 1st respondent committee without substantial progress so far. The 1st respondent was directed to file a report on or before 14.3.2019. Thereafter, on 27.3.2019, the Court directed Mr Justin Raj, Superintendent of Police, Schedule Castes/Scheduled Tribes, Vigilance Cell, Madurai Region submit

his report within a period of one month from the said date before the 1st respondent (3rd respondent wherein). The case was thereafter directed to be listed on 26.4.2019.

12. Meanwhile, the Deputy Superintendent of Police, SC/ST Vigilance Cell, Madurai Region, Madurai vide letter dated 23.4.2019 confirmed that the petitioner does not belong to the aforesaid community. By an order dated 26.4.2019, the court directed the case to be listed on 25.6.2019 granted time to the Director of Tribal Welfare, Chennai and the 1st respondent herein to complete all formalities and to furnish a copy of the enquiry report and status report. Pursuant to the aforesaid orders of the court, the 1st respondent has passed final order and has directed to confiscate of the community certificate of the petitioner.

13. In the impugned order, the 1st respondent has observed that the petitioner has not co-operated with the enquiry. The show cause notice dated 26.04.2019 issued the petitioner pursuant to the report of the Deputy Superintendent of Police has also remained unanswered. During the hearing fixed on 17.6.2019, the petitioner did not appear and only his wife appeared stating that the petitioner was hospitalised.

14. Therefore, based on the available records, the 1st respondent has come to a conclusion that the petitioner does not belong to "Kammara Scheduled Tribe". Accordingly, the District Collector, Madurai was directed to confiscate the community certificate issued to the petitioner and recommended appropriate action has taken against the petitioner as per the rules.

15. The petitioner has challenged the impugned order in the present writ petition on various grounds. It is not necessary to go into the various legal grounds raised, as the petitioner has played fraud. Though complaints were received as early as 2000 and the petitioner was asked to produce a copy of the original vide letter dated 17.04. 2003, the petitioner failed to produce the same. It is not clear whether while securing employment with the 2nd respondent whether the petitioner had produced a community certificate at the time of appointment in the year 1975. He has also in failed to produce both photocopy and original of the community certificate for verification by the authorities when called for. Neither original nor copy of the community certificate is available for our perusal. In fact, there are no particulars of the community certificate.

16. It is clear that the petitioner managed to continue in service by hoodwinking the authorities by filing repeated proceedings without filing a copy of the community certificate. Even today when the case was taken up for hearing, we asked about the community certificate. The learned counsel for the petitioner was however unable to give any explanations as to why the community certificate was not produced for verification. In fact, it is not clear on what basis the petitioner was allowed to be in service without production of community certificate though serious doubts had arisen in 2000.

17. It is even more surprising that the petitioner was allowed to be in service till the date of superannuation and by letter dated 4.3.2016 the petitioner was sanctioned provisional pension when indeed no community certificate had been sent for verification to the 1st respondent. The 2nd respondent has now filed collateral evidence to substantiate that the petitioner indeed does belong to another community namely Hindu Vadugan.

18. We also summoned the records of the 1st respondent. In the records and anthropologist report are also there. In the said report it has been concluded that is on the cultural traits and the practices, the petitioner may belongs to Hindu Kammara Naidu Community.

19. That apart there are collateral evidence is available on the file which indicate that the petitioner siblings have claimed different community status. Those who claimed "Kammara Scheduled Tribe Community", their community certificate has been cancelled.

20. The observation of the Honourable Supreme Court in Kumari Madhuri Patil v. Additional Commr., Tribal Development, (1994) 6 SCC 241 that ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee is clearly applicable to the facts of the present case.

21. We therefore find no reasons to interfere with the impugned order passed by the 1st respondent. Accordingly, the present writ petition is dismissed while giving liberty to the petitioner to produce the community certificate based on which he got employed with the 2nd respondent in the year 1975. In case

the petitioner has the aforesaid community certificate, he should approach the 1st respondent within a period of 30 days from the date of receipt of a copy of this order to work out his remedy.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman,
State Level Scrutiny Committee
Adi dravidar & Tribal Welfare Dept.
Fort St.George, Secretariat,
Chennai 600 009.

2. The General Manager,
Union of India
Southern Railway
Park Town, Chennai 600 003.

+1cc to the Government Pleader Sr.81559
+1cc to Mr.P.T.Ramkumar, Advocate Sr.80961
+1cc to Mr.Yogeshkannadasan, Advocate Sr.80581

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srg 18/10/2019