

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.08.2019
Pronounced On	05.09.2019

CORAM

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

W.P.No.19861 of 2019

C.Pasupathi

...Petitioner

vs

The Chennai Port Trust,
rep.by its Chairman,
Rajaji Salai, Chennai 1.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to direct the respondent to disburse the petitioner's terminal benefits to him such as provident fund, gratuity, leave encashment and other benefits by the issue of a Writ of Mandamus or any other appropriate Writ and Order or direction.

For Petitioner : Mr.Yogesh Kannadasan

For Respondent : Mr.R.Karthikeyan

O R D E R

The petitioner was employed with the respondent Port Trust and has retired from service on 30.06.2019. The petitioner has filed the present writ petition to direct the respondents to disburse petitioner's terminal benefit such as provident fund, gratuity, leave encashment and other benefits.

2.The petitioner joined the services of the respondent Port Trust in the year 1983 as an Assistant Technician against the post reserved for Scheduled Tribes. The petitioner had produced a "Konda Reddy" Community Certificate dated 30.10.1980 issued by the Tahsildar, Madurai South at the time of appointment.

3. In the year 1991, complaints were received that the petitioner did not belong to the aforesaid community but he belongs to "Reddiyar" Community. Pursuant to the aforesaid complaint, the Collector of Madurai was informed about the same by the respondent on 13.10.1992.

4. The Collector of Madurai by letter dated 16.03.1995 informed the petitioner that the claim of the petitioner to the aforesaid community certificate appears to be incorrect. Accordingly, the petitioner was asked to forward the aforesaid community certificate for cancellation.

5. Meantime, the Collector, Madurai requested his counterpart in Dindigul to verify the genuineness of the community certificate of the petitioner. By a letter dated 05.06.1995 bearing reference No.L.Dis.14415/94 purportedly issued at the behest of the Collector Dindigul and signed by the Superintendent, it was confirmed that the petitioner belonged to the aforesaid community. However, by a letter dated 11.01.1969, the office of the District Collector has confirmed that the said letter dated 05.06.1995 was not sent by their office and that same was a fabricated letter.

6. Meanwhile, District Vigilance Committee, Trichirapalli issued an enquiry notice dated 16.12.2000 to the petitioner and asked the petitioner to appear for an enquiry on 22.12.2000 without fail. A copy of the notice was also served through the respondent on the petitioner on 22.12.2000.

7. Under these circumstances, the petitioner filed W.P.No.3783 of 2001 to restrain verification of the community certificate of the petitioner. By an order dated 03.08.2001, an interim injunction was granted and thereafter final order was passed on 01.08.2005. The impugned notice was quashed without prejudice to any future action that may be taken.

8. Thereafter, the petitioner filed W.P.No.39670 2006 to restrain the respondent from terminating, suspending or leaving the petitioner from service without awaiting a final order that may be passed by 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) 6 SCC 241. The said Writ Petition was dismissed by an order dated 02.07.2007 as premature as the matter was still pending consideration before the District Level Vigilance Committee.

9. Though, the verification of the petitioner's community certificate was pending before the State-Level Scrutiny Committee, no orders were passed. Therefore, the respondent filed W.P.No.3501 of 2018 to direct the State Level Scrutiny Committee to complete the enquiry within the stipulated period.

10. The said writ petition was disposed by an order dated 28.06.2018 with a direction to complete the enquiry with regard to the community status of the petitioner herein within a period of four weeks. The petitioner was called to appear for enquiry.

11. It is the case of the respondent that the petitioner never co-operated with the verification process and in the process has continued to be in service and finally retired from service on 30.06.2019. Since the petitioner's community certificate has not yet been verified by the State Level Scrutiny Committee, the petitioner has now rushed to the court seeking for release of terminal benefits.

12. Heard learned counsel for the petitioner and the respondent. We have considered the submissions of the both sides.

13. Though several decisions were cited and produced, ultimately both the petitioner and the respondent rely on the decision of the Hon'ble Supreme Court rendered in Chairman and Managing Director, Food Corporation of India and Ors vs Jagdish Balaram Bahira and Ors, (2017) 8 SCC 670.

14. According to the petitioner as per the decision of the Hon'ble Supreme Court, the respondent cannot withhold the terminal benefits if the community certificate has not been canceled.

15. This is a case where there are questions surrounding the genuineness of the 'Konda Reddy' Community Certificate dated 03.10.1980 produced by the petitioner at the time of appointment is under verification. As early as 19.12.1991, complaints were received by the petitioner's employer/respondent that the petitioner had obtained a bogus community certificate claiming 'Konda Reddy' Community and got employed by playing of fraud.

16. The petitioner himself thwarted the enquiry by filing

W.P.No.3783 of 2001. Thus, the enquiry could not hold. Thereafter, faced with the threat of termination/suspension from service, the petitioner filed W.P.No.39670 of 2006 and secured an order. Subsequently, the respondent also filed W.P.No.3501 of 2018 wherein the State Level Scrutiny Committee was directed to complete the enquiry within a period of two weeks. Despite an order from this court the petitioner failed to appear as a result of which the enquiry before the State Level Scrutiny Committee has remained inconclusive. Now the petitioner seeks for release of all its terminal benefits.

17.The exercise of verification of Community Certificate ought to have been completed at the time of employment, if not soon after by the State Level Scrutiny Committee was constituted as per the order of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241. 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.

18.In this case the petitioner has not availed of opportunity to appear before the State Level Scrutiny Committee and now wants to claim the terminal benefits as the petitioner has retired from service on 30.06.2019.

19.As per the decision of the Hon'ble Supreme Court in R Vishwanatha Pillai vs State of Kerala (2004) 2 SCC 105 and as per the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others (1994) 6 SCC 241, it is clear that a party cannot claim benefit of reservation if he is not entitled to. In fact as per the decision of the Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India and Ors vs Jagdish Balaram Bahira and Ors, (2017) 8 SCC 670, it is clear that no finality can be attached to certificate to claim to receive benefits where certificate is yet to be verified.

20.The petitioner has heavily placed reliance on the true copy of the letter dated 05.06.1995 bearing reference No. L.Dis.14415/94 allegedly signed by the District Collector, Dindigul, while respondent has relied on the letter dated 11.01.1996. The office of the District Collector, Dindigul in

the aforesaid letter has stated that the true copy of the letter dated 05.06.1995 bearing reference No. L.Dis.14415/94 was fabricated. The respondent further submits that no finality can be attached to the certificate and until the certificate is in any event verified by the State Level Scrutiny Committee and therefore the claim of the petitioner cannot be considered at this stage.

21. In this case the petitioner has not co-operated with the State Level Scrutiny Committee and now seeks to get an order from this court to release all terminal benefits without awaiting the outcome of the proceedings before the aforesaid Committee.

22. Further, the petitioner has not impleaded the State Level Scrutiny Committee as a party and has attempted to prevaricate the entire process by filing repeated Writ Petitions by not participating in the enquiry before the said Authority. In our view, the present writ petition is both premature and not bonafide and has been filed without impleading a necessary party.

23. To allow the petitioner to walk away with all the terminal benefits after having served the Department without verification of the Community Certificate cannot be allowed. We will be failing in our duty in protecting the Constitution, if we allow the petitioner to get the relief.

24. It appears that the petitioner is receiving provisional pension and therefore no prejudice or because the petitioner. Therefore, the present writ petition is liable to be dismissed. Since the State Level Scrutiny Committee is seized of the issue, the petitioner is directed to approach the said committee to have his 'Konda Reddy' Community Certificate verified to justify his claim.

25. In case, the petitioner fails to participate in the enquiry before the State Level Scrutiny Committee, the petitioner's aforesaid community certificate may be canceled. Respondent shall thereafter take further steps to cancel payment of all terminal benefits and pensionary benefits including provisional pension which is being paid to the petitioner. The observations in this paragraph will apply only the petitioner fails to co-operate in the proceedings before the State Level Scrutiny Committee.

26.The writ petition is dismissed with the above observations. No cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Chairman,
State Level Scrutiny Committee,
Adi Dravidar & Tribal Welfare Department,
Fort St.George, Secretariat,
Chennai - 600 009.

+1cc to Mr.Yogesh Kannadasan, Advocate SR.76809

+1cc to Mr.Mr.R.Karthikeyan, Advocate SR.76936

W.P.No.19861 of 2019

NRL (CO)
CB(14/10/2019)

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