

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 599 of 2017 and WMP.No.644 of 2017
and

W.P. Nos. 43728 to 43730 of 2016 and WMP.NOS.37529,37531
AND 37533/2016 in WP.NOS.43728 TO 43730 /2016 Respectively

The General Manager,
Bharath Sanchar Nigam Limited,
Srirangapalayam,
Salem 636 007

... Petitioner
in all WPs.

Vs.

1. Central Administrative Tribunal
Rep. By its Registrar,
Madras Bench, High Court Campus,
Chennai - 104

.. 1st respondent
in all WPs

N. Janagarajan

..2nd respondent
in WP 599/17

K. Ramalingam

..2nd respondent
in WP 43728/16

G. Venkata Raju

.. 2nd respondent
in WP 43729/16

N. Chinnasamy

.. 2nd respondent
in WP 43730/16

The Secretary
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai - 600 009.

... 3rd respondent
in all Wps

(R3 impleaded as per order dated 04.04.2017
and made herein) I

Prayer: Writ Petitions filed under Article of 226 of the
Constitution of India praying for issuance of a writ of

certiorari calling for the records of the 1st respondent in O.A.No. 1113/2016, 573/2016, 574/2016, 575/2016 dated 02.08.2016, 29.04.2016, 29.04.2016 and 29.04.2016 and quash the same.

For Petitioner : Ms. Renuka Shankar
in all WPs.

For Respondents : R1 - Tribunal

Mr.V.Vijayshankar
for 2nd respondent
in all writ petitions

Ms.A.Sri Jayanthi
Spl. Government Pleader
for 3rd respondent
in all writ petitions

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

As the issue involved in all the writ petitions is one and the same, the matters are taken up together and disposed of by way of a common order.

2. The common facts as seen from this case are as follows. The private respondents were employees of the petitioner. They have completed their services. On 2.1.2012, a letter was sent on behalf of the Tamilnadu Tribal People Federation, Sankagiri, inter alia, alleging that some named employees have obtained false certificate and joined the service. The names included that of the private respondents.

3. On receipt of the aforesaid letter dated 02.01.2012, which is obviously bereft of any materials particularly with respect to bogus certificate obtained by named persons including the private respondents, a letter was addressed by the petitioner to the District Collector, Salem on 20.03.2013 asking him to verify the status.

4. In the mean while, the private respondents retired in the year 2015 and 2016. They also filed affidavit before this Court stating that till now nothing has been heard from the State Level Scrutiny Committee, which has been impleaded suo motu by this Court. The report filed by the State Level Scrutiny Committee dated 24.03.2017 states that the police verification is still on. We do not find any further information and therefore we are taking the affidavits filed on behalf of the second respondents as

true.

5. Learned counsel appearing for the petitioner would submit that in view of the pendency of the verification of the status of the community certificates belonging to the private respondents, the retiral benefits including pension cannot be given. Reliance has been made on the two unreported judgments of this Court, viz., (i) Union of India v. The Registrar, CAT and others (dated 06.03.2014 passed in W.P.No. 1166 of 2014); and (ii) V. Balasubramanian v. The Assistant General Manager (Administration) and another, (dated 29.09.2011 passed in W.P. No. 17184 of 2011).

6. Learned counsel appearing for the contesting respondents would submit that as of now none of the private respondents have been called for any enquiry by the State Level Scrutiny Committee. The complaint itself is based upon mere surmise. It only asked the petitioner to do the process of verification. So long as the certificate is not cancelled, the pension and other retiral benefits cannot be withheld. Rule 9 of CCS Pension Rules does not provide for withholding of pension in the absence of other departmental proceedings or judicial proceedings. There was substantial delay on the part of the petitioner. It is for the petitioner to expedite the process. Therefore, the writ petition will have to be dismissed. Learned counsel has made reliance upon the judgment in Union of India and others v. The Registrar, CAT and others (dated 07.07.2015, passed in W.P. No. 19234 of 2014) with specific emphasis on the following paragraphs:-

"28. Even if the petitioner could fall back upon Rule 9 or 10, both these Rules are very clear to the effect that they can be invoked only when judicial or departmental proceedings are pending against the employee concerned. We have already extracted both the Rules as above. Rule 9(1) specifically makes a mention about the pensioner being found guilty of grave misconduct or negligence, in any departmental or judicial proceedings. Today, no judicial or departmental proceedings have been initiated against the 2nd respondent. Therefore, the contingency contemplated under Rule 9(1) where the Railway Administration will have a right to withdraw pension, or gratuity in cases where a person is found guilty of a misconduct in a departmental or

judicial proceedings, has not even arisen. Even Rule 9(3) makes a specific mention about the pending of a departmental or judicial proceedings, as on the date of railway servant reaching superannuation. On the date on which the 2nd respondent reached the age of superannuation, viz., 31.07.2010, there were no departmental or judicial proceedings either initiated or pending. Even after five years of his retirement, that is even today, no proceedings other than a mere reference of the Community Certificate of the 2nd respondent is pending with the State Level Scrutiny Committee.

29. In order to satisfy our conscience whether any such proceedings are actually pending, we impleaded on the earlier occasion the State Level Scrutiny Committee and issued notices. Insofar as the case on hand is concerned, the State Level Scrutiny Committee appears to have sent a communication only yesterday, viz., 6.07.2015 to the Divisional Personnel Officer asking him to forward a copy of the Community Certificate for the purpose of initiating proceedings. The letter produced by Mrs. A. Sri Jayanthi, learned Special Government Pleader for the State of Tamil Nadu shows that only after we impleaded the State Level Scrutiny Committee and only after we issued a specific direction to the Government Pleader to ascertain the status of any such enquiry, the first salvo has been fired on 6.7.2015. Therefore, the pendency, if at all it is taken be pendency of the proceedings for verification before the State Level Scrutiny Committee, cannot impede the settlement of terminal benefits and pensionary benefits upon the 2nd respondent."

7. Learned counsel further submitted that the aforesaid decision has been followed by the other Division Bench in W.P. No. 5918 of 2016 dated 18.2.16, etc. Apart from the same, on the question of delay and the validity of the Certificate issued already, this Court has concurred with the submissions made. Reliance has been made on the

following judgments in this regard, State Bank of India and others v. K. Raja Lenin (dated 04.04.2017 passed in W.A. 282 of 2017) and P. Mahendran v. The State Level Scrutiny Committee and others (dated 11.12.2017 passed in W.P. No. 1369 & 14780 of 2015).

8. We do not find any merit in these writ petitions. The complaint made itself is only a request to make verification. It has been made by way of doubt expressed with respect to the status of the private respondents. It merely asked the petitioner to make the verification. The complaint further states that the status of SC/ST officials should be verified at the time of appointment and promotion as per O.M. No. 36011/5/88 Estt (SCT) dated 4/1998 and O.M. No. 36012/36 (22)/89 - Estt (SCT) dated 16.06.1989.

9. We do not know as to whether the above said process has been adopted or the aforesaid Official Memorandum is still in force. In any case, instead of acting on a complaint, which is bereft of materials, particularly at the fag end of the careers of the officers, the petitioner ought to have undertaken the process of verification at the time of appointment and promotion. As submitted by the learned counsel appearing for the private respondents, a mere forwarding of the complaint cannot be construed as one of the pendency of the judicial proceeding or initiation of the disciplinary proceeding, as the case may be. On evidence, this is a verification process. Further, notwithstanding suo motu impleadment of the third respondent and the status report filed way back in the year 2017, nothing has transpired thereafter.

10. We are not in a position to discard and disbelieve the affidavit filed on behalf of the private respondents in this regard. They cannot be kept in wait forever. The petitioner ought to have pursued the matter with the appropriate authority, especially with the third respondent, since the private respondents retired.

11. To put it differently, but for the so-called complaint dated 2.1.2012, the petitioner would not have taken any action. Therefore, we are of the view that it will be unfair to deny the benefits accrued in favour of the private respondents at this point of time, especially when they have completed their services. In such view of the matter, we do not find any error in the reasoning adopted by the Tribunal. However, we make it clear that the payment of pension and other retiral benefits would be subject to the decision of the third respondent.

12. Accordingly, the writ petition stands dismissed with the above said observations.

13. We are facing similar cases everyday. Perhaps, the problem could have been averted if only the petitioner had taken appropriate steps to do the process of verification at the earliest point of time. After all, getting an employment through a false certificate would amount to fraud on the Constitution and it is a serious offence. Therefore, we direct the petitioner to undertake the exercise of verification of the Community Certificate, especially with reference to SC/ST communities, so that such situations could be avoided in future. We also direct the third respondent herein to conclude the proceedings after issuing due notice to all the private respondents within a period of six months from the date of receipt of a copy of this order. The retiral benefits due will have to be paid to the private respondents within six weeks from the date of receipt of a copy of this order.

14. Accordingly, these writ petitions stand dismissed. No costs. Consequently, connected WMP Nos. 644 of 2017, 37529 to 37533 of 2016 stand closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssm

To

1. The Registrar,
Central Administrative Tribunal
Madras Bench, High Court Campus, Chennai - 104

2.The General Manager,
Bharath Sanchar Nigam Limited,
Srirangapalayam, Salem 636 007

3.The Secretary
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai - 600 009.

+1 CC TO GOVERNMENT PLEADER SR.NO. 4556

+4cc to Mr.V.Vijayshankar , Advocate SR.No. 5170 to 5173

+4cc to Ms. Renuka Shankar, Advocate SR.No. 4904 to 4907

W.P. No. 599 of 2017

and

W.P. Nos. 43728 to 43730 of 2016

A.SK(21/02/2019)