

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM :

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.31888 of 2017 and 3896 of 2018
and
W.M.P.No.35039 of 2017

A.N.NarasimhanPetitioner in
both W.Ps

Vs

1.The State Level Scrutiny Committee
rep. by its Chairman,
Adi Dravidar and Tribal Welfare
Department, Secretariat,
Chennai - 9.

2.The Deputy Superintendent of Police,
Social Justice and Human Rights,
O/o.Superintendent of Police,
Tiruvallur, Tiruvallur District.

....Respondents in
W.P.No.31888 of 2017

1. Union of India
rep. by the Department of Posts India
rep. by Chief Post Master General -
TN Circle, Chennai - 2.

2. Union of India rep. by the
Department of Posts India rep.
Superintendent, Railway Mail Service,
Chennai Sorting Division,
Chennai - 8.

3.The Central Administrative Tribunal,
Madras Bench rep. by its Registrar,
High Court Buildings, Chennai - 104.

....Respondents in
W.P.No.3896 of 2018

W.P.No.31888 of 2017:- Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings in Na.Na.72 SJ & HR/2017 dated 29.08.2017 of the second respondent and quash the orders passed therein and consequently forbear the respondents from conducting enquiry with regard to his community status except as per the principles laid down by the Supreme Court in Madhuri Patil's case reported in AIR 1995 SC 94.

W.P.No.3896 of 2018:- Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned judgment dated 14.06.2017 in O.A.No.880 of 2017 of the third respondent and quash the orders passed therein and consequently direct the respondents 1 and 2 to disburse the petitioner's terminal benefits viz., leave encashment, gratuity and computation and other accrued amounts, if any, with reasonable interest from the date on which the said amounts are due and payable to the petitioner.

For Petitioner : Mr.Yogesh Kannadasan
in both W.Ps

For Respondents : Ms.A.Sri Jayanthi,
Spl. Govt. Pleader for R1 & R2
in W.P.No.31888 of 2017

Mr.Rabu Manohar,
SCGSC for R1 & R2
in W.P.No.3896 of 2018

R3 - Tribunal
in W.P.No.3896 of 2018

COMMON ORDER

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

Challenging the order of the second respondent dated 29.08.2017 and consequently forbear the respondents from conducting enquiry with regard to his community status except as per the principles laid down by the Supreme Court in Madhuri Patil's case reported in AIR 1995 SC 94, the petitioner has filed W.P.No.31888 of 2017.

2. Challenging the order of the third respondent dated 14.06.2017 in O.A.No.880 of 2017 and for a consequential direction to respondents 1 and 2 to disburse the petitioner's terminal benefits viz., leave encashment, gratuity and computation and other accrued amounts, if any, with reasonable interest from the date on which the said amounts are due and payable to the petitioner, the petitioner has filed W.P.No.3896 of 2018.

3. The issue involved in W.P.No.3896 of 2018 is as to whether the petitioner is entitled for retiral benefits notwithstanding the pendency of the verification of community status with the State Level Scrutiny Committee.

4. It is not in dispute that the issue involved is no longer res integra in view of the number of judgments already delivered by this Court, as confirmed by the Apex court. In a recent judgment rendered in W.P.No.18210 of 2001, by order dated 22.12.2017, this Court was pleased to hold as follows:

14. In our firm view, the order passed by the District Level Vigilance Committee consisting of two members cannot be sustained in view of the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil case, supra. As a matter of fact, the said decision of the Hon'ble Supreme Court has been subsequently followed in a similar case by the Hon'ble Supreme Court in Baswant v. State of Maharashtra & Others, (2007) 12 SCC 800, wherein it was observed as follows:

"4. In the affidavit in reply filed by the respondents, it has been pointed out that respondent 1 firstly constituted Caste Certificate Scrutiny Committee consisting of two members only. Hence, the constitution of the Committee was not in accordance with the decision rendered by this Court in Madhuri Patil (Kumari) V. Addl. Commissioner Tribal Development, (1994) 6 SCC 241. Thereafter, the State Government has constituted a new Committee consisting of three members. In this view of the matter, the impugned order passed by respondent 4, the Caste Certificate Scrutiny Committee is required to be set aside and is accordingly set aside."

15. In view of the aforesaid two decisions of the Hon'ble Supreme Court, there cannot be any doubt that the decision of the Two Member Committee cancelling the community certificate of the petitioner cannot be sustained.

16. Under identical circumstances, a Division Bench of this Court, in V.Usharani v. The District Collector and Chairman, District Level Vigilance Committee [Order dated 10.8.2005 passed in W.P.No.10333 of 2000], held as under:

"By order dated 30.5.2000, the first respondent herein cancelled the writ petitioner's community certificate. The first respondent Committee, consisting of two members alone, has no authority to verify the community status of the writ petitioner as per the law laid down by the Supreme Court in its judgment reported in AIR 1995 SC 94 (Kumari Madhuri Patil v. Additional Commissioner, Tribal Development).

2. In these circumstances, we have no hesitation in quashing the impugned order and it is accordingly quashed. We make it clear that this order will not come in the way of the writ petitioner's community certificate being verified by the Committee to be newly constituted as per G.O.Ms.No.111, Adi Dravidar and Tribal Welfare (ADW-10) Department, dated 6.7.2005. The writ petition is allowed."

17. When the Hon'ble Supreme Court and this Court has time and again held that Two Member Committee has no authority to verify the communal status of a candidate as the same is a far cry from the procedure laid down by the Hon'ble Supreme Court in Kumari Madhuri Patil case, supra, and based on such directions, the State Government formed a Three Member Committee vide the government orders, referred supra, the proceedings dated 25.09.2001 cancelling the community certificate of the petitioner by a Two Member Committee cannot be countenanced and the same is liable to be set aside.

18. That apart, in the case on hand, enquiry into the social status of the petitioner, who was appointed on 24.02.1983, was initiated in the year 2001, nearly after 18 years, that too by a Two Member Committee. Moreover, the petitioner was served with a charge memo dated 28.05.2013 and he attained superannuation on 30.11.2017.

19. Considering the subsequent developments and in view of the observations made above, we are inclined to pass the following order:

a) W.P.No.18210 of 2001 is allowed and all proceedings initiated against the petitioner are set aside.

b) W.P.No.33236 of 2017 is allowed and the impugned proceedings bearing No.45352/99/H1 dated 25.09.2001 of the Two Member Committee is set aside, and it is always open to the Competent Committee consisting of Three Members to enquire into the social status of the petitioner, if so advised.

c) The first respondent/Institute is directed to pay all retirement benefits payable to the petitioner, if not already paid, within a period of eight weeks from the date of receipt of copy of this order.

No costs. Consequently, W.M.P.Nos.36647, 37360 and 36567 of 2017, W.P.M.P.No.26806 of 2001 and W.V.M.P.No.2205 of 2005 are closed.

5.A similar view was again taken by a Division Bench of this Court in W.P.(MD) No.11555 of 2018 by order dated 27.06.2018. The special leave petitions filed in S.L.P. (Civil) Diary Nos.21299 of 2018 and 30205 of 2018 against the aforesaid two orders were dismissed by orders dated 29.10.2018 and 20.09.2018 respectively.

6.In such view of the matter, the writ petition in W.P.No.3896 of 2018 stands allowed. Consequently, the order of the Tribunal stands set aside and the Original Application in O.A.No.880 of 2017 is allowed. Consequently, we direct the State Level Scrutiny Committee to pass appropriate orders on the verification of the community status of the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

7.In view of the above order passed in W.P.No.3896 of 2018, another writ petition filed by the petitioner in W.P.No.31888 of 2017 stands disposed of. We call upon the petitioner to cooperate with the enquiry. We also make it clear that all the issues are left open. No costs. Consequently, connected miscellaneous petition is closed.

mmi

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chairman,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare
Department, Secretariat,
Chennai - 9.

2.The Deputy Superintendent of Police,
Social Justice and Human Rights,
O/o.Superintendent of Police,
Tiruvallur, Tiruvallur District.

3.The Chief Post Master General
- T.N.Circle,
Department of Posts India, Chennai - 2.

4.The Superintendent,
Department of Posts, Railway Mail Service,
Chennai Sorting Division,
Chennai - 8.

5.The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Buildings, Chennai - 104.

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.6392

+2cc to Mr.Yogesh Kannadasan, Advocate, S.R.No.6689 & 6690

+1cc to the Government Pleader, S.R.No.6968

W.P.Nos.31888 of 2017
and 3896 of 2018

MR(CO)
KAK(01/03/2019)

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