

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 01-10-2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.27698 of 2017
And
W.M.P.Nos.29655 to 29657 of 2017

The Deputy General Manager,
The New India Assurance Co. Ltd.,
Divisional Office,
K.G.Swamy Complex,
14/7, Bagalur Road,
Hosur-635 109.

.. Petitioner

vs.

1.Appellate Authority under the Payment of
Gratuity Act, 1972 and
The Deputy Chief Labour Commissioner (Central),
Shasthri Bhawan,
Chennai-600 006.

2.Controlling Authority under the Payment of
Gratuity Act, 1972 and
The Assistant Labour Commissioner (Central),
Shasthri Bhawan,
Chennai-600 006.

3.Mrs.D.Mary Punitha Selvi

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorarified Mandamus, calling for the records of the second
respondent in G.A.No.10 of 2015 and the order passed therein
dated 09.08.2016 and thereafter confirmed by the first
respondent in G.A.No.7 of 2016 dated 30.06.2017 and quash the
same with regard to the claim of the third respondent for
payment of gratuity under the payment of Gratuity Act 1972.

For Petitioner : Mr.A.Thayaparan for
Mr.P.Sukumar.

For Respondents-1&2 : Mr.R.Veludas,
Central Government Counsel.

For Respondent-3 : Mr.S.Mahesh

O R D E R

The order of the second respondent in G.A.No.10 of 2015 dated 09.08.2016, which is confirmed by the first respondent in G.A.No.7 of 2016 dated 30.06.2017, are under challenge in the present writ petition.

2. The writ petitioner is the New India Assurance Company Limited. The writ petitioner states that the third respondent joined the services of the writ petitioner-organisation as an Assistant during the year 1979 under the Reserved Category Vacancy and she enclosed a Community Certificate stating that she belongs to Aadhi Dravidar Community. Since the School Leaving Certificate of the third respondent showed her religion as 'Christian', the third respondent was called upon to submit her Caste Certificate. Pursuant to such communication, the third respondent produced a Caste Certificate issued by the Tahsildar dated 06.08.1979 stating that she belongs to Aadhi Dravidar Community. Based on such Certificate, an order of appointment was issued on 06.08.1979. A condition was imposed at the appointment stating that the third respondent knowingly or unknowingly furnishes incorrect or false particulars for suppression of material information, she would be disqualified and her appointment is liable to be cancelled and she will be dismissed from service without any notice. The third respondent-employee accepted the letter of appointment with the abovesaid conditions and joined the services of the writ petitioner-company, namely, The New India Assurance Company Limited.

3. A complaint was received by the writ petitioner-organisation stating that the third respondent does not belong to Aadhi Dravidar Community. On verification of the school certificate of the third respondent, which showed that she belongs to Christian Community. A show cause notice dated 08.03.2000 was issued to the third respondent stating that she has furnished a false information about her caste for which the third respondent submitted a reply dated 02.05.2000. Thereafter,

a charge memo dated 17.05.2004 was issued to the third respondent invoking the provisions of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. The third respondent submitted her written statement of defence and thereafter, an Enquiry Officer was appointed and a domestic enquiry was conducted.

4. While-so, the three member District Level Vigilance Committee went into the authenticity of the claim made by the third respondent and examined as to whether she belongs to Aadhi Dravidar Community or not. The third respondent also participated in the proceedings before the Competent Committee and the said Committee submitted its report on 21.12.2009, holding that the third respondent is not entitled to be considered as a candidate for Aadhi Dravidar Community. Accordingly, cancelled the Aadhi Dravidar Community Certificate issued by the Tahsildar on 06.08.1979. The third respondent did not challenge the said cancellation order issued by the District Level Vigilance Committee. Therefore, the report of the Committee became final.

5. In view of the fact that the Community Certificate issued by the Tahsildar was cancelled by the District Level Vigilance Committee, the writ petitioner-employer dismissed the third respondent from service by an order dated 12.04.2010. The third respondent challenged the said order of dismissal by way of an appeal to the Appellate Authority and the said appeal was also rejected by a speaking order.

6. The learned counsel for the writ petitioner states that the writ petitioner secured appointment, knowing the fact that the certificate issued by the Tahsildar, stating that the writ petitioner belongs to Aadhi Dravidar Community is a false one. This apart, the third respondent was recruited under the Reserved Category and consequent to the cancellation of her Community Certificate, the very basis of her appointment itself goes and therefore, the third respondent was dismissed from service. When the appointment itself is null and void and non-existent, the third respondent cannot claim any benefits, including the terminal and gratuity benefits. The third respondent is not entitled for any benefit under the Service Rules as she was dismissed from service on account of furnishing false information regarding her Community Certificate and the said Community Certificate produced by the third respondent was cancelled by the District Level Vigilance Committee.

7. Respondents 1 and 2 entertained an application filed by the third respondent under the Payment of Gratuity Act,

1972 and issued a direction to settle the gratuity in favour of the third respondent. The first respondent also confirming the order stating that the third respondent is entitled to get the actual gratuity and accordingly directed the writ petitioner-management to settle the gratuity. Thus, two orders are under challenge in the present writ petition.

8. The learned counsel for the writ petitioner cited the judgment of the Hon'ble Supreme Court of India in the case of Bank of India and Another vs. Avinash D.Mandivikar and Others [(2005) 7 SCC 690] and the relevant paragraphs 6 and 9 of the judgment of the Supreme Court, cited supra, are extracted hereunder:-

"6. Respondent 1 employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to the Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of the law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate.

9. A similar plea about long years of service was considered by this Court in R. Vishwanatha Pillai v. State of Kerala [(2004) 2 SCC 105 : 2004 SCC (L&S) 350] to be inconsequential. In para 19 it was observed: (SCC pp. 116-17)

"19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid

and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

9. The Supreme Court in unequivocal terms held that when the clear finding of the Scrutiny Committee is that he did not belong to the Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of law.

10. When the Apex Court held that appointments secured based on such false informations or incorrect community certificate cannot be considered as a valid appointment in the eye of law. This being the settled principles, this Court is of an opinion that the facts and circumstances of the present writ petition is not squarely falls under the principles settled in this regard.

11. The learned counsel appearing on behalf of the third respondent opposed the contention of the learned counsel for the writ petitioner by stating that the third respondent has not furnished any false information. She belongs to Aadhi Dravidar Community originally. However, she admitted the fact

that she was practicing Christianity and her father was also a Christian. The third respondent reiterated that the Certificate was issued by the Tahsildar for which the third respondent cannot be blamed at all. The third respondent submitted the application for issuance of the Certificate as she believed that she belongs to Aadhi Dravidar Community and on verification, the Tahsildar issued the Certificate and therefore, she cannot be now penalised in respect of the Certificate issued by the Tahsildar.

12. Though the third respondent belongs to Aadhi Dravidar Community by birth, she is a Christian and her father was also a Christian. Thus, the submission of the application seeking Scheduled Caste Community Certificate itself is irregular and ought not to have been entertained by the Revenue Officials. Though the learned counsel for the third respondent states that the Community has not been challenged, the third respondent secured appointment by submitting false informations.

13. The learned counsel for the third respondent made an attempt to cover up the irregularities by stating that the third respondent belongs to Aadhi Dravidar Community and she applied for a certificate and the said Certificate was issued by the Tahsildar. She produced the same and secured appointment and therefore, she had not committed any offence or misconduct or fraudulent activity. Though such an argument seems to be fanciful and smart, this Court is of the opinion that any person submitting an application, seeking the benefit of Reserved Category must be cautious that they are submitting a declaration to that effect. If any incorrect informations are submitted, then the very appointment itself becomes null and void. Therefore, it is not the question of contending the consequence in a logical manner, but it is the question of culling out the truth regarding the eligibility of a person in securing appointment under Reserved Category.

14. In the present case on hand, the District Level Vigilance Committee cancelled the Community Certificate issued to the third respondent by the Tahsildar. Then the same shows that the third respondent is not entitled for the Community Certificate as she belongs to Aadhi Dravidar Community. Once the District Level Vigilance Community has cancelled the Certificate, then it is to be construed that the third respondent is not entitled for appointment under the Reserved Category and therefore, for all purposes, the declaration furnished by the third respondent is violated and she has committed a misconduct and the action taken by the writ petitioner-management is in consonance with the principles and

there is no infirmity.

15. As far as the Payment of Gratuity Act, 1972 is concerned, Section 4(6) stipulates as follows:-

"(6) Notwithstanding anything contained in sub-section (i),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee 1[may be wholly or partially forfeited].

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

16. Sub Clause (2) states that if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. The third respondent falls under this category in view of the fact that she had furnished wrong information and had given a declaration stating that she belongs to Aadhi Dravidar Community. Subsequently, the competent District Level Vigilance Committee cancelled the Community Certificate of the third respondent stating that she is not entitled to avail the benefit of Reserved Category Community and she being a Christian, her community certificate issued by the Tahsildar was cancelled.

17. This being the factum, the informations provided are false and the appointment secured is in violation of the Rule of Reservation and under these circumstances, the third respondent is not entitled for gratuity or any other benefit in view of the Service Rules of the writ petitioner-management as the order of termination amounts to forfeiture of the services rendered by an employee in view of the fact that the termination amounts to forfeiture of the service, the third respondent is not entitled to gratuity as ordered by respondents 1 and 2.

18. During the course of arguments, it is brought to the notice of this Court that large number of such bogus certificates are produced in Government organisations and in Insurance Companies, including the petitioner-The New India Assurance Company, Life Insurance Corporation of India etc. All these cases are to be dealt with in a casual manner and by abusing the judicial process and by adopting the tactics of prolongation and protraction, the employees are working for several years in such Governmental organisations. By misrepresenting their Community or by furnishing false declarations and by producing certain certificates for which these employees are not entitled, the appointments were secured and the genuine persons are denied employment. As enunciated under the Constitution of India, the Rule of Reservation is to be implemented scrupulously and by strictly following the procedures contemplated. In the event of identifying false or fraudulent activities in the matter of submitting the Community Certificate, then immediate actions are to be taken.

19. Under these circumstances, the writ petitioner-company is also directed to ensure all further actions in respect of verification of Community Certificates of such employees and pursue the cases of this nature as expeditiously as possible by filing petitions and by approaching the concerned Court with a request for speedy disposal of the cases. The Courts in this regard are also duty bound to dispose of the cases of this nature, as the Community Certificate causes social impact and large number of such false certificates are resulting in infringement of constitutional right of all others, who all are otherwise eligible to avail the benefit of Rule of Reservation.

20. The amount deposited, pursuant to the orders of respondents 1 and 2 are to be returned to the writ petitioner-company. The writ petitioner-company is at liberty to file an appropriate application before respondents 1 and 2 for the withdrawal of the deposited amount and in the event of filing any such applications, respondents 1 and 2 are directed to disburse the deposited amount to the writ petitioner without causing any delay.

21. In view of the facts and circumstances, this Court is of an opinion that the third respondent is not entitled to avail the benefit of gratuity under the provisions of Payment of Gratuity Act, 1972, as discussed in the aforementioned paragraphs. Consequently, the order passed by the second respondent in G.A.No.10 of 2015 dated 09.08.2016 and the order

passed by the first respondent in G.A.No.7 of 2016 dated 30.06.2017 are quashed.

22. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn

To

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+1 cc to M/s.P.Sukumar Advocate sr84391
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