

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2019

Coram

The Hon'ble Mr. Justice R. Subbiah
and
The Hon'ble Mr. Justice Krishnan Ramasamy

Writ Petition No. 26741 of 2018

M. Hema

...Petitioner

Vs.

1. The Chennai Port Trust,
rep. By its Chairman,
Rajaji Salai, Chennai -1.
2. The Chennai Port Trust,
rep. By its Secretary,
Rajaji Salai, Chennai -1.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to disburse all the terminal benefits, including pension with reasonable interest from the date of the dues to the petitioner.

For Petitioner : Mr. Yogesh Kannadasan

For Respondents : Mr. R. Karthikeyan
Standing Counsel

सत्यमेव जयते
O R D E R

[Order was delivered by R. SUBBIAH, J]

The petitioner has filed this Writ Petition seeking for a direction upon the respondents to disburse all the terminal benefits, including pension with reasonable interest from the date on which, dues are payable to her.

2. The case of the petitioner, as stated in the affidavit, filed in support of this Writ Petition, in short, are as follows:-

i) The petitioner belongs to Kondareddis Community, which is recognized as Scheduled Tribe Community. In the year, 1982, she was selected and appointed as a Nurse in the Medical Department of the respondent's Office under the quota reserved for scheduled tribes (ST). At the time of appointment, she produced a community certificate issued by the Taluk Office, Radhapuram, dated 23.04.1976. The petitioner would state that in the SSLC Certificate, Transfer Certificate and other educational records, it was clearly indicated that she belongs to ST community. Such community certificate was issued to her only after conducting elaborate enquiry and on verification of records. After several months since her appointment, she was directed to produce another community certificate issued by the Revenue Divisional Officer, which was also complied with. Thereafter, her service was confirmed. Subsequently, she was promoted as Senior Nurse, and finally as Matron, and she attained superannuation on 30.09.2018.

ii) In the year 2002, when the name of the petitioner was about to be considered for promotion to the post of Matron, based on a false complaint received from a third party, the respondents entertained a doubt with regard to the genuineness of her community certificate and referred the certificate for verification before the then District Collector, Tirunelveli. Hence, the petitioner was constrained to approach this Court by filing a Writ Petition seeking for a prayer to direct the respondent/Chennai Port Trust to regularize her promotion since she was promoted as Matron on ad hoc basis. In the meantime, the respondent/Chennai Port Trust took steps to revert the petitioner from the said post, and hence, the petitioner has filed another Writ Petition, wherein, this Court passed an interim order, protecting her interest. In the meantime, the Writ Petition filed by the petitioner earlier was disposed of by holding that the District Collector has no authority to conduct enquiry with regard to the verification of genuineness of the petitioner's community certificate and the matter was referred to State Level Scrutiny Committee. Eventhough the said order came to be passed on 06.12.2010, nothing turned out. Only in the year 2015, the petitioner received a notice from the said Committee calling upon her to appear for enquiry. Since the petitioner was bed-ridden at that relevant point of time, she could not attend the enquiry. This was also intimated to the State Level Scrutiny Committee. Thereafter, when the petitioner was at the verge of retirement, she received a notice, dated 01.08.2018, wherein, there was reference to an order passed by this Court in a Writ Petition filed at the instance of the respondents viz., W.P.No.9498 of 2018, in which, this Court has ordered for completion of the enquiry with regard to the verification of genuineness of the community certificate of the petitioner within a specified time. Since the said Writ

Petition was filed by the respondents on the ground that the petitioner was not appearing for enquiry, the petitioner filed a Petition to set aside the order passed in W.P.No.9498 of 2018 and to restore the said Writ Petition on file with a view to place on record that she has not evaded the enquiry at any point of time, and the said Writ Petition is yet to be listed.

iii) Now, the petitioner retired from service on 30.09.2018, and as on the date of retirement, the community certificate produced by the petitioner was not cancelled and there was no adverse order passed against the petitioner. However, by citing the pendency of enquiry with regard to the genuineness of the community certificate produced by the petitioner at the time of her appointment, the respondents have not settled any of the terminal benefits, such as gratuity, regular pension and other entitlements. Hence, the petitioner has filed the Writ Petition seeking for the aforesaid relief.

3. At the threshold, the learned counsel appearing for the petitioner submitted that the issue involved in this Writ Petition is no longer res integra, as the same has been dealt with by the Hon'ble Division Bench of this Court, in number of Writ Petitions, and the Appeals preferred against the said judgments by the State/Employers were dismissed by the Hon'ble Supreme Court. For instance, the learned counsel has drawn our attention to one such decision rendered by the Hon'ble Division Bench, in W.P.No.11555 of 2018, in the case of V.Raju Vs. Tamil Nadu State Level Scrutiny Committee and four others, dated 27.06.2018, wherein, the Hon'ble Madurai Division Bench by referring to the decision of a Co-ordinate Bench of this Court, in W.P.No.5918 of 2016, dated 18.02.2016, in the case of Union of India Vs. the Registrar, CAT, Madras Bench, Chennai, held that pendency of verification of the community status is not a ground for denial of terminal benefits to the employee. Thus, by observing so, allowed Writ Petition (MD) No.11555 of 2018, and directed the employer of the petitioner, viz., the Chennai Port Trust, to forthwith release all his pensionary and terminal benefits, within a specified time without insisting upon on any proceedings from the first respondent/State Level Scrutiny Committee. The learned counsel further submitted that the Special Leave Petition preferred by the employer/Chennai Port Trust was dismissed by the Hon'ble Supreme Court. Thus, the learned counsel submitted in the light of the above referred decision, this Bench may issue appropriate orders, directing the respondents to disburse all the terminal benefits due to the petitioner, without insisting upon on any proceedings from the first respondent/State Level Scrutiny Committee. The learned counsel for the petitioner furthermore submitted that, in fact, it is only due to the delay committed by the State Level Scrutiny Committee in completing the enquiry with regard to the

verification of genuineness of the petitioner's Community Certificate, the respondent/Chennai Port Trust filed W.P.No.9498 of 2018 seeking for a prayer to direct the State Level Scrunity Committee to complete the enquiry within the specified time and as far as the petitioner is concerned, she has been cooperating with the State Level Scrutiny Committee for completion of the enquiry. Therefore, for the delay committed by the State Level Scrutiny Committee, in completing the enquiry, the petitioner cannot be denied the payment of terminal benefits, by citing the pendency of enquiry with regard to the genuineness of the community certificate, which was produced by the petitioner at the time of her appointment, in the year, 1982.

4. The learned Standing Counsel appearing for the respondents while reiterating the averments set out in the counter affidavit, raised serious objection with regard to the grant of any relief in favour of the petitioner. He submitted that, when the proceedings with regard to the genuineness of the petitioner's community status is pending, this Court may not issue any direction in the light of the earlier decisions, as, in the cases relied upon by the learned counsel for the petitioner, relief were granted taking into consideration the facts and circumstances of the case involved thereunder, whereas, in the present case, since the petitioner is dragging on the matter by not appearing before the State Level Scrutiny Committee with regard to the verification of the genuineness of the petitioner's community certificate, the respondents have filed W.P.No.9498 of 2018 and obtained an order from the Division of this Court to complete the enquiry within the specified time, vide order, dated 28.06.2018. To set aside the said order passed in W.P.No.9498 of 2018, the petitioner has filed a Petition and the same is pending. Therefore, the learned counsel vehemently opposed to issuing any such direction, as sought for by the petitioner.

5. We have heard learned counsel for the petitioner and learned counsel for the respondents and perused the counter affidavit filed by the second respondent.

6. Though the learned counsel for the respondents stoutly opposed to the grant of prayer sought for in this writ petition, we are not inclined to accept the objection raised by him. The fact remains that the petitioner was allowed to retire from service on 30.09.2018. The mere pendency of the inquiry with respect to the genuineness of the community certificate produced by the petitioner at the time of her selection/appointment wayback in the year 1982, (three decades back) cannot be a ground to deny the payment of terminal benefits to the petitioner. This is more so because, when the petitioner was allowed to retire from service, the employer-

employee relationship between the petitioner and the respondents is seized and the respondent/Employer loses their right to proceed against the petitioner. In fact, in the decision rendered by the Hon'ble Division Bench of this Court, in W.P.No.18210 of 2001 and W.P.No.33236 of 2017, in the case of (V.Ravichandran and Central Electronics Engineering Research Institute and another, the Division Bench directed the respondents therein to settle the terminal benefits payable to the petitioner therein. The same was reiterated by the Hon'ble Madurai Division Bench of this Court, in the decision rendered in W.P.(MD)No.11555 of 2018, in the case of V.Raju (supra).

7. It is pertinent to mention here that as against the decisions rendered in W.P.No.18210 of 2001 and W.P.(MD)No.11555 of 2018, Special Leave Petition were preferred by the employer concerned in the respective Writ Petitions in S.L.P.(Civil) Diary No.21299 of 2018 and S.L.P.(Civil) 2018 Diary No.30205 of 2018, and the same were also dismissed by the Honourable Supreme Court.

8. Further, this Court is reminiscent of the fact that, in the Writ Petition filed by a petitioner, who was selected and appointed in the year 1979, whose services were terminated on the alleged ground of production of bogus community certificate and in respect of an identical prayer, viz., WP (MD) No. 7461 of 2017, (in which, I was a Party), this Court allowed the Writ Petition by order, dated 24.01.2019. It would be appropriate to refer to the operative portion of the said decision for the effective disposal of this Writ Petition, which reads as follow:-

" Normally, in matters of this nature, this Court will not interfere and issue a Mandamus to settle the terminal benefits when the claim with respect to the communal status of an employee is pending before the State Level Scrutiny Committee. But in the present case, the circumstances that led to the delay warrants us to issue a Mandamus. In fact, as mentioned above, by order dated 04.10.2007 passed by this Court in WP (MD) No. 5665 of 2005, this Court directed the State Level Scrutiny Committee to decide the case pertaining to the communal status of the petitioner, within a period of three months. However, a decade had lapsed but there is no progress in the case filed against the petitioner before the State Level Scrutiny Committee. Further, the petitioner retired on 31.05.2014 but even after four years of his retirement, the case pertaining to verification of his communal status before

the State Level Scrutiny Committee has not witnessed any progress. Even according to the counsel for the respondents 1 to 3, on 02.08.2010, the State Level Scrutiny Committee directed the Deputy Superintendent of Police, Scheduled Castes/Scheduled Tribes Vigilance Cell, Madurai to cause an enquiry and to submit a report. However, even after eight years from the date of passing such an order on 02.08.2010 by the State Level Scrutiny Committee, it is not known as to whether any enquiry has been caused or report had been filed and the petitioner is made to grope in the dark to see the end of the case pending before the State Level Scrutiny Committee. Having regard to the above peculiar facts and circumstances, in order to subserve the interest of justice, we feel that this is a fittest case where this Court will be justified to issue a Mandamus as prayed for by the petitioner.

9. In the result, the Writ Petition is allowed and the respondents 1 to 3 are directed to settle the terminal benefits payable to the petitioner on his retirement from service on 31.05.2014, within a period of eight weeks from the date of receipt of a copy of this order. No costs."

9. Hence, this Writ Petition is disposed of, by directing the respondents to settle all the terminal benefits payable to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-VI)

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To

Sub Assistant Registrar

1. The Chairman,
The Chennai Port Trust, Rajaji Salai, Chennai -1.
2. The Secretary,
The Chennai Port Trust, Rajaji Salai, Chennai -1.

+1 cc to Mr.Yogesh Kannadasan, Advocate, S.R.No.22454

WP No.26741 of 2018

SSI (CO)

SSM(27/03/2019).