

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.11.2018	Pronounced on 09.01.2019
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THE HON'BLE DR. JUSTICE S.VIMALA

W.P. NOS. 31486 & 28441 OF 2018

W.P.No.31486 of 2018

K.Rengaraju

... Petitioner

- Vs -

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

2. The Deputy Chairman,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai - 600 001.

3. The Financial Adviser and
Chief Accounts Officer,
Administrative Office,
Chennai Port Trust, Rajaji Salai,
Chennai - 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, to call for the entire records relating to the impugned order passed by the 3rd respondent in No.Estt(R) 2/533/2015/F dated 30.05.2015 and to quash the same and to direct the respondents to pay the pensionary benefits and terminal benefits including Gratuity, Commutation of Pension on attaining the age of superannuation on 31.05.2015 along with interest at the rate of 18% p.a. from the date of retirement till the date of final payment for the delayed period, within a stipulated time.

W.P.No.28441 of 2018

S.Mathivanan

... Petitioner

- Vs -

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.
2. The Deputy Chairman,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai - 600 001.
3. The Chief Mechanical Engineer
Administrative Office Rajaji Salai
Chennai ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the 2nd respondent in No.CME/A1/1588/2016/MEE dated 30.03.2017 and consequential order No.CME/A1/1588/2016/MEE dated 13.12.2017 on the file of the 3rd respondent and quash the same and to direct the respondents to pay pensionary benefits and terminal benefits including Gratuity, Provident Fund, Commutation of Pension on attaining the age of superannuation on 30.03.2017 along with interest at the rate of 18% per annum from the date of retirement till the date of final payment for the delayed period, within a stipulated time.

For Petitioners : Mr.N.Naganathan in both W.Ps.

For Respondents : Mr.S.Hajamohideen Gisthi
in W.P.No.31486 of 2018
Mr.R.Karthikeyan, SC
in W.P.No.28441 of 2018

COMMON ORDER

This Court, vide order dated 10.12.2018, disposed of W.P.No.28441/2018 directing the respondents to disburse the terminal benefits to the petitioner with a further direction that if it is found that the petitioner has submitted false certificate, it is open to them to resort to criminal

prosecution against the petitioner.

2. When W.P. No.31486/2018 is taken up today, learned counsel appearing for the respondent submitted that the issue in W.P. No.28441/2018 is connected with the present writ petition and further submitted that the records in both the cases are inter-connected and, therefore, prayed that the order passed in W.P. No.28441/2018 should be recalled and that both the petitions, viz., W.P. Nos.31486 and 28441 of 2018 must be heard together on merits once again.

3. It is to be pointed out that this Court had disposed of W.P. No.28441/2018 on 10.12.2018 itself and, therefore, the present submission advanced by the learned counsel for the respondent is belated. However, in the interest of justice and to give a quietus to the issue and considering the fact that the learned counsel for the petitioner in W.P. No.28441/2018, who is also the counsel for the petitioner in W.P.No.31486/18, has also no objection, this Court, hereby recalls the order passed in W.P. No.28441/2018 and takes up both the case and dispose of the same by this common order.

W.P. No. 28441 of 2018

4. Writ petition in W.P.No.28441 of 2018 has been filed, challenging the impugned order dated 30.03.2017, by which, the petitioner Mathivanan, has been informed that pending verification of the genuineness of his ST Community Certificate, which is pending with State Level Scrutiny Committee, it has been decided to withhold his terminal benefits and that he would be given provisional pension.

5. The petitioner was appointed as Special Mechanic (Mechanical) on 11.05.1982 and his service was confirmed. He has been promoted as Supervisor Grade-II on 23.08.1983 and promoted as Supervisor Grade-I on 13.08.1986. Thereafter, he was promoted as Assistant Engineer on 13.03.1991 and Assistant Executive Engineer on 27.02.2002. Then, he was promoted as Executive Engineer on 11.06.2010.

6. The community certificate of the petitioner was issued by the Tahsildhar, U.Keeranur Village, Ulundurpet Taluk, by the proceedings dated 07.04.1982. This certificate has been produced even during the selection process before the respondent and based on the said community certificate, the petitioner was appointed in the reserved quota.

7. The Port Trust i.e., the respondent herein, wrote a letter to the District Collector, Villupuram, to verify the veracity of the community certificate of the petitioner. Based on the report of the District Collector, the respondent passed the order on 21.10.2015 directing the petitioner to obtain a

fresh community certificate. The above order was challenged by the petitioner in W.P.No.35662 of 2015 and the writ petition was disposed of with a direction to the State Level Scrutiny Committee to complete the enquiry within a period of three months.

W.P. No. 31486 of 2018

8. The impugned order dated 30.5.2015, relating to W.P.No.31486 of 2018, filed by the petitioner K.Rangaraju reads that on the retirement of the petitioner on superannuation on 31.05.2015, provisional pension will be paid and if the District Vigilance Committee finds the community certificate to be bogus, pension will be stopped; other terminal benefits such as Gratuity, Commuted value of pension, terminal encashment settlement are withheld till the final order is passed by the District Vigilance Committee, Chennai.

9. It is the case of the petitioner that he was appointed as Lower Division Clerk on 06.11.1979. By the order dated 25.02.1980, the services of the petitioner has been confirmed in the post of Lower Division Clerk. On 22.05.1982, the petitioner was promoted to the post of Upper Division Clerk with effect from 06.12.1981. Thereafter, he was promoted as Assistant Superintendent with effect from 21.07.2002. Subsequently, he was promoted as Office Superintendent in the year 2009 and his services were regularized by the order dated 08.07.2010.

10. The community certificate of the petitioner was issued by the Tahsildar, Mylapore by the proceedings dated 18.05.1979. On the strength of the community certificate, which was produced by the petitioner at the time of selection, the petitioner was appointed under reserved quota.

11. The Port Trust i.e., the respondent herein wrote a letter to the District Collector, Tiruchirapalli, to verify the veracity of the community certificate. The District Collector conducted a discreet enquiry and passed an order on 19.02.1986. This was challenged in W.P.No.2707 of 1986 and the writ petition was allowed on 12.06.1991. Once again W.P.No.6606 of 1988 was filed seeking to quash the order passed by the District Collector, Chennai, dated 16.05.1988 and the respondent therein was directed to furnish a copy of the report of the District Collector, Tiruchirapalli, and thereafter, to proceed with the enquiry in accordance with law. Thereafter, after the lapse of seven years, the District Collector issued a notice calling upon the petitioner to attend an enquiry and challenging the said notice, third writ petition was filed in W.P.No.22906 of 2005 which was dismissed.

12. Reliance was placed by the learned counsel for the petitioners on the decision of this Court in Union of India - Vs

- P.V.Ponnuswamy (W.P.No.5918 of 2016, dated 18.02.2016), which related to the case of a person similarly placed as that of the petitioners. In the said case, the Division Bench of this Court, taking into consideration the order passed in W.P. No.19234/2014, held that pendency of the scrutiny proceedings cannot be a ground to decline the terminal benefits. For better clarity, the relevant portion of the order reads as under :-

"16. Admittedly, in the present case, no judicial proceedings or departmental proceedings are pending against the second respondent and the Railways have started the process of verifying the Community Certificate of the second respondent as early as 03.12.2003. The second respondent had attained the age of superannuation on 30.04.2013, nearly after ten years from the date of the petitioner starting the process of verification. Even after two and a half years of his retirement, that is even today, the verification process has not been completed. Hence, mere reference to the pendency of the verification of the community certificate of the second respondent before the State Level Scrutiny Committee is not a ground for the petitioners to deny the terminal benefits to the second respondent. As observed by the Division Bench of this Court in the above referred to decision, in the event of the Scrutiny Committee cancelling the Community Certificate, the Railways can pass orders forfeiting the pension. Hence, the mere pendency of the proceedings before the Scrutiny Committee cannot impede the settlement of terminal benefits to the second respondent."

(Emphasis supplied)

13. Similar view has been taken by a learned single Judge of this Court in W.P. No.12659 of 2016 vide order 01.12.2016, in case of a similarly placed person and direction was issued to the authorities therein to disburse the retirement benefits. The relevant portion of the order reads as under:

"18. There cannot be any dispute that truth and purity are concomitant for entering into the Government Service and to continue the same. No doubt, anybody who try to enter into the service utilizing the quota which is meant for the last, least and the littlest is to be severely punished; so that it will be a deterrent to all others who will be the potential offenders trying to grab the opportunity which is meant for marginalized and downtrodden, in order to make them others in the higher strata.

18.1. However, in the case on hand, it is not as if that the enquiry has been ordered either at the time of appointment or immediately after the appointment, but the enquiry itself has commenced after twelve years of the appointment, based on the complaint from some other sources. It is relevant to point out that the Bank did not initiate any Department enquiry, so far. It would not have been much difficult for the Bank to enquire the persons who were the complainants in the above case. The Bank has not shown any interest in expediting the enquiry, but only to the limited extent of writing letters after letters to the authorities concerned."
(Emphasis supplied)

14. The proceedings of the Adi Dravidar and Tribal Welfare Department dated 16.09.1991 clearly stipulates that the community certificates issued by Tahsildars prior to 11.11.1989 is valid. In the case of R.Kandhasamy - Vs - The Chief Engineer, Port Trust, (1997 (7) SCC 505), the Hon'ble Supreme Court laid down that the community certificate issued by the Tahsildars prior to 11.11.1989 is valid for all purposes, so long as such certificates are not cancelled in a manner known to law and, therefore, the authorities cannot decline to take the said certificate into consideration.

15. In the case on hand, it is to be pointed out that the community certificate issued to the petitioners have not been cancelled in a manner known to law. Only based on certain communication alleged to have been received from the Vice President, Tamil Nadu, Bharath Scouts & Guides, Chennai, raising allegations that SC/ST Officers & employees working in Chennai Port Trust have entered in the Trust's service by producing bogus community certificate, request has been made to the Port Trust to ascertain the genuineness of the community certificates. Only in the wake of the said communication, action is sought to be taken against the petitioner, viz., Mathivanan.

16. It is borne out by record that the petitioner in W.P. No.28441 of 2018 attained the age of superannuation on 30.03.2017 and that the petitioner in W.P. No.31486 of 2018 attained the age of superannuation on 31.5.2015. It is to be pointed out that based on the above allegation, communication has been addressed on 29.9.05 pertaining to the petitioner in W.P. No.28441/18 referring his community certificate to the District Level Vigilance Community.

17. In the above backdrop, while the case of the petitioners is simple and direct, i.e., for payment of their terminal and

other pensionary benefits on their superannuation, the writ petition is attacked by the learned counsel for the respondents on three grounds :-

- i) The District Collector, being a necessary party, non-impleadment of the District Collector as a party-respondent, render the petition not maintainable for non-joinder of necessary party;
- ii) The Court ought not to have entertained the petitions as the matter is pending before the District Level Vigilance Committee/State Level Vigilance Committee to decide on the genuineness of the community certificate;
- iii) Since the matter pertains to the genuineness of community certificate, the matter should have been placed before the Division Bench.

18. Learned counsel appearing for the respondents placed reliance on the following judgments :-

- i) V.Balasubramanian - Vs - State Bank of India (2011 SCC OnLine Mad 1663);
- ii) G.Venkatasamy - Vs - The Assistant General Manager (Administration) UCO Bank, Zonal Office, 328, Thambu Chetty Street, Chennai - 1 and another (2011 SCC OnLine Mad 1664);
- iii) T.Soundararajan - Vs - The Chairman, Chennai Port Trust, Chennai and others (2015 SCC OnLine Mad 9019);
- iv) G.Sundaram - Vs - The General Manager, Indian Bank, HRM Department, 31 Rajaji Salai, Chennai - 3 and others (2017 SCC OnLine Mad 14736);
- v) K.Karunambal - Vs - The Chief General Manager, State Bank of India, Local Head Office, Chennai and others (2017 SCC OnLine Mad 14671);
- vi) I.Dorai - Vs - The Chairman, Chennai Port Trust, Rajaji Salai, Chennai - 1 and others (2017 SCC OnLine Mad 15463);
- vii) T.Chandrasekaran - Vs - The Indian Bank, Rep. by its General Manager (HRM), HRM Department, 254-260 Avvai Shanmugam Salai, Royapettah, Chennai - 600 104 and others (2017 SCC OnLine Mad 22275) and
- viii) R.Prabhuraj - Vs - The Reserve Bank of India, Rep. by Deputy General Manager, Human Resource Management Department, Fort Glacis, No.16, Rajaji Salai, P.B.No.40, Chennai - 600 002 and another (2018 SCC OnLine 2243)

19. It is not in dispute that the community certificates, the genuineness of which are under question, is Scheduled Tribe

Community Certificate. However, the counter filed by the respondents in W.P. No.28441 of 2018 reveals that the matter has been addressed to the District Collector for verification of community certificate. In this regard, useful reference can be had to the Government Order in G.O. (2D) No.108, Adi Dravidar & Tribal Welfare Department (CV-I) Department, dated 12.09.2007, which clearly reveals that for verifying the genuineness of the community certificates relating to Scheduled Tribes, the State Level Scrutiny Committee alone is empowered.

20. While no counter has been filed in W.P. No.31486/18, from the counter filed by the respondent in W.P. No.28441 of 2018, it is seen that the matter is pending before the District Level Vigilance Committee, Villupuram and that the District Level Vigilance Committee had directed the petitioner to produce the certificates. This Court is at a loss to understand as to how the matter is maintainable before the District Level Vigilance Committee in a case relating to genuineness of Scheduled Tribe Community Certificate, when G.O. (2D) No.108, Adi Dravidar & Tribal Welfare Department, dated 12.9.2007 clearly stipulates that the State Level Scrutiny Committee alone is empowered to enquire into the genuineness of Scheduled Tribe Certificate. Therefore, the first contention that non-impleadment of District Collector as a necessary party makes the writ petitions non-maintainable cannot be sustained as the matter cannot be decided by the District Level Vigilance Committee of which a District Collector is a member.

21. It is not in dispute that the petitioners had been in employment for more than three decades and have, thereafter, demitted office, on attaining superannuation during the year 2017 and 2015 respectively. The counter of the respondents reveal that the genuineness of the certificates have been put in issue only in the year 2005, almost two decades after their appointment and after the petitioners have been promoted a few times during the said period. During the said period, no allegations have been raised by any party with regard to the genuineness of the community certificates of the petitioners. The genuineness of the certificates are sought to be verified only in the year 2005 and more than a decade has passed since action taken to verify the genuineness of the certificates.

22. Further, it is not the case of the petitioners that their community certificates should be accepted as genuine. The simple and straight forward prayer of the petitioners is for payment of their terminal and pensionary benefits to which the petitioners are entitled after having put in more than three decades of unblemished service. The prayer of the petitioners being for payment of terminal benefits, there is no necessity for the placing the matter before the Division Bench, as matters pertaining to orders on community certificate alone needs to go

before the Division Bench. The present petitions not being one challenging the community certificates, either for or against, but purely a service jurisdictional matter, the plea for placing the matter before the Division Bench falls short of sustainability. Therefore, the third contention is also rejected.

23. Once the above contention regarding placing the matter before the Division Bench is negatived, the 2nd contention, that this Court ought not have entertained these petitions at this stage cannot be accepted, as this Court is well within its power to take up the petitions on board, more especially, when the matter pertains to service jurisprudence, and hear the issue on merits. Therefore, the 2nd contention also cannot be sustained and, accordingly, the same is rejected.

24. The decisions relied on by the learned counsel for the respondents would not in any way come to the aid of the respondents in furthering their case. In all the above decisions, the delay was caused due to the act on the part of the employees in not cooperating with the verification process. However, in the case on hand, the matter has been wrongly placed before the District Level Vigilance Committee and that the delay is not attributable to the petitioners. The delay is only attributable either to the administrative lacuna or wrong placement of the matter before a Committee, which has no jurisdiction, which has occasioned in the petitioners suffering the ignominy of not receiving their retiral benefits. A perusal of the counter clearly reveals that the respondents have merely addressed communications to the District Collector for ascertaining the genuineness of the community certificates and have not taken any other steps to have the same completed in spite of passage of more than a decade. Therefore, placing reliance on judgments in which the employees were the culprits in causing the delay to fasten the liability on the petitioners herein would be an attempt to deprive them of their rightful share of their entitlement.

25. It is to be pointed out that when the petitioners have worked for more than two decades without any aspersions, and out of clear sky, entertaining an allegation, without any basis, that too from a third party, who is in no way connected, and the matter lying in cold storage for more than 12 years pending authentication as to the genuineness of the community certificate and depriving the petitioners of their rightful stake at the end of their long and unblemished career is nothing but killing the hen, which had laid the golden eggs all along, without giving its due share. Such an act on the part of the respondents at the time of superannuation of persons hits at the root of their livelihood for which they have strived for decades together. There is no plausible justification for keeping the

enquiry pending for decades together, which adds insult to injury at the fag end of an unblemished career of the individuals.

26. For the reasons aforesaid, as observed by the Division Bench of this Court in Ponnuswamy's case (supra), the writ petitions are allowed with a direction to the respondents to settle the terminal and other pensionary benefits to the petitioners within a period of eight weeks from the date of receipt of a copy of this order. It is open to the respondents to approach the State Level Scrutiny Committee, for ascertaining the genuineness of the community certificate of the petitioners, and if such request is made, the State Level Scrutiny Committee shall take up the matter on day-to-day basis without adjourning the matter for more than two consecutive working days and dispose of the proceedings within a period of two months. If the petitioner is found guilty on completion of enquiry, it is open to the respondents to proceed in a manner known to law for forfeiting the pension. However, in the circumstances of the case, there shall be no order as to costs.

s/d-
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

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To

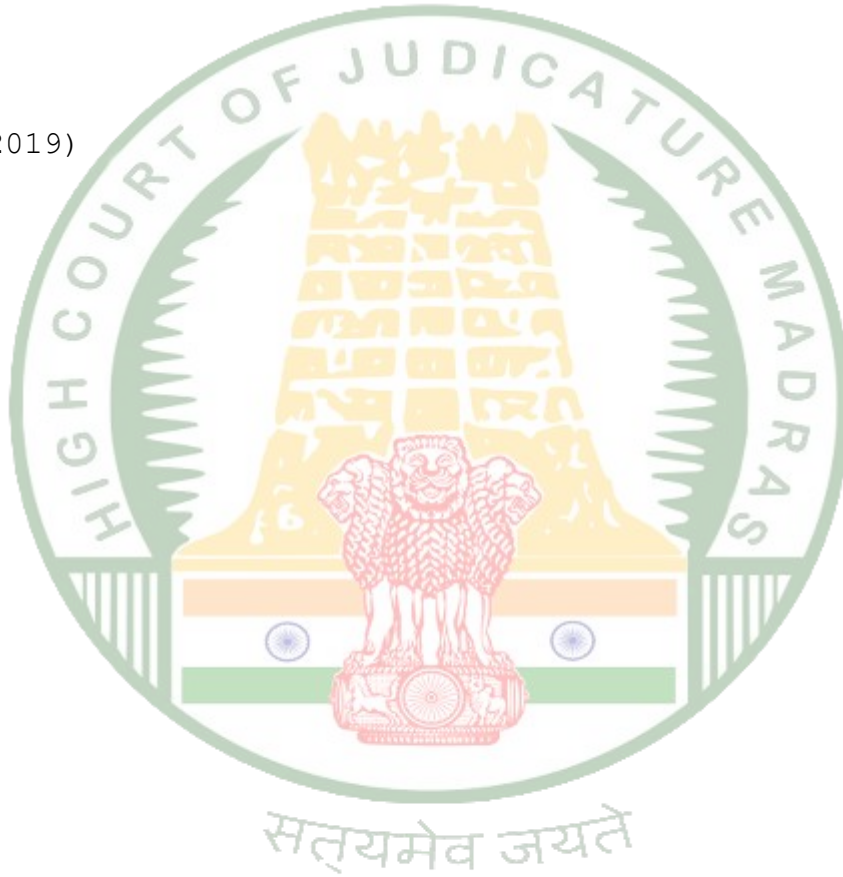
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4. The Chief Mechanical Engineer
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W.P. NOS. 31486 &
28441 OF 2018

NMI (CO)
SP (04/02/2019)



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