

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.01.2019	Order Pronounced on : 09.01.2019
------------------------------------	-------------------------------------

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

W.P.Nos.33682 of 2018
and W.M.P.No.39090 of 2018

D.Veeraraghavan

... Petitioner

versus

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

2. The Traffic Manager,
Chennai Port Trust,
Administrative Office,
Rajaji Salai, Chennai - 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus, to call for the entire records of the 2nd respondent impugned orders No.A3/114/2017/T dated 28.02.2017 and A2/261/Circular/2018/T dated 16.08.2018 and to quash the same and to direct the respondents to pay the pensionary benefits and terminal benefits including Gratuity, Medical benefits, Encashment of leave salary and Commutation of Pension on attaining the age of superannuation on 28.02.2017 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 Petitioner : Mr.N.Naganathan

For Respondents : Mr.R.Karthikeyan

ORDER

The petitioner D.Veeraragavan, was originally appointed as Mazdoor in the Civil Department in the respondent's Office on 26.08.1980 and he was further promoted as Yard Foreman in Traffic Department. After completion of more than 36 years of unblemished service, he retired from service on attaining the age of superannuation

on 28.02.2017, the date on which, the 2nd respondent (The Chief Mechanical Engineer, Chennai Port Trust, Administrative Office, Rajaji Salai, Chennai - 600 001) issued an impugned order dated 28.02.2017, stating that since verification of genuineness of his Community Certificate is pending before the State Level Scrutiny Committee, his retirement benefits is withheld.

2. It is claimed by the petitioner that on attaining the age of superannuation, he was given only provisional pension from the date of his retirement and his gratuity, retirement and terminal benefits, encashment of leave salary and commutation of pension were withheld by the respondents on the ground that verification with regard to his Community Certificate is pending before the State Level Scrutiny Committee, which is per se illegal, as it is trite that an employer cannot have a right to withhold/retain the retirement benefits of an employee after his/her retirement.

3. It is further claimed by the petitioner that when there was no disciplinary proceedings pending against him nor any suspension order issued, the impugned order dated 28.02.2017 passed by the second respondent, withholding his retirement benefits is totally unsustainable. Furthermore, despite several representations being filed before the respondents, there was no response from the respondents.

4. According to the petitioner, he belongs to Kurumans Community, which is recognized as Schedule Tribe Caste and a Community Certificate dated 27.07.1980 to that effect was issued by the Tahsildar, Arakkonam, which was produced by him at the time of selection process, based on which, he was appointed under reserved quota. However, the respondents insisted upon him to produce a fresh community certificate, for which, he also produced a fresh Community Certificate on 12.05.1987 issued by the Tahsildar, Arakkonam Taluk. While so, the Port Trust sent a letter to the District Collector, Vellore, to verify the veracity of Community Certificate. After conducting a discreet enquiry, the Revenue Divisional Officer, Ranipet, cancelled the certificate, by order dated 20.06.2000, against which, the petitioner filed a W.P.No.12258 of 2000 before the Hon'ble High Court, which was allowed on 27.07.2005.

5. The petitioner was terminated from service on 21.02.2006, based on the order dated 12.01.2006, passed by the District Level Vigilance Committee, against which, the petitioner filed WP.No.10280 of 2006 before the Hon'ble High Court, where, an order of interim stay was passed. Pursuant to the same, the petitioner, by an order dated 04.08.2006 was reinstated into service. After the lapse of 10 years, he was issued with a letter for enquiry on

12.01.2017, which is pending before the State Level Scrutiny Committee.

6. The petitioner further submitted that Adi Dravidar Welfare Department issued a letter dated 16.09.1992, holding that community certificate issued by concerned Tahsildar prior to 11.11.1989 is valid.

7. In support of his claim, the petitioner relied upon a decision of the Hon'ble Apex Court rendered in the case of R.Kandasamy vs. The Chief Engineer, Madras Port Trust (reported in 1997 (7) SCC 505), wherein, it was held that the community certificate issued to a Schedule Tribe person by the Tahsildar prior to 11.11.1989 is a good and valid Community Certificate for all purpose so long as such a certificate is not cancelled and the authorities cannot decline to take that into consideration.

8. Moreover, the Division Bench of this Court, in W.P.No.5918 of 2016, by an order dated 18.02.2016, held that mere reference to the pendency of the verification of the community certificate is not a ground for the employer to deny the terminal benefits to the employee.

9. The learned counsel appearing for the petitioner relied upon a decision rendered by a Division Bench of this Court in W.P.No.19234 of 2014 filed by the Railway Administration, Southern Railway, wherein, it was held that the pendency, if at all it is taken to 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 and directed the Railway Administration to settle the terminal benefits within a period of eight weeks from the date of receipt of a copy of the order and directed the State Level Scrutiny Committee to complete the proceedings, in accordance with law, within a period of three months from the date of receipt of a copy of this order.

10. In the case of Dayaram vs. Sudhir Batham and others, reported in 2012(1) SCC 333, relied upon by the learned counsel for the petitioner, the Honourable Supreme Court relied upon the decision in the case of Madhuri Patil vs. Commissioner, Tribal Department, reported in 1994 (6) SCC 241, wherein, the Honourable Apex Court held that the caste certificates issued should be scrutinized with utmost expedition and promptitude and issued directions to streamline the procedure for the issuance of caste (social status) certificates, their scrutiny and approval. The said directions are extracted here under:

"1. The application for grant of social status certificate shall be made to the Revenue

Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate

and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the

prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

11. In view of the directions issued by the Hon'ble Apex Court in the case of scrutiny of community certificate, the State Level Scrutiny Committee and concerned authority is expected to follow the above directions and it is expected to finalise the enquiry within the time limited specified therein.

12. But, in the case on hand, the respondents and the State Level Scrutiny Committee have not followed the said directions and even after the lapse of more than 10 years, the enquiry has not been completed. For the lacuna on the part of the respondents and the State Level Scrutiny Committee in not completing the enquiry with regard to the community certificate, the petitioner cannot be made to suffer. Therefore, the impugned order has to be set aside and it is set aside accordingly.

13. In cases where after verification when the community certificate has been proved to be genuine one, this Court directed to disburse the retirement benefits with 18% interest. Not in this case because genuineness is yet to be verified.

14. For the reasons aforesaid, the impugned order is set aside and the writ petition is allowed accordingly. The respondents are directed to settle the terminal benefits except pension to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. The State Level Scrutiny Committee is directed to

complete the enquiry with regard to the veracity of the petitioner's Community Certificate and on completion of the enquiry, if the petitioner is found guilty, it is open to the respondents to proceed in a manner known to law including forfeiture of pension. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

ogy

To

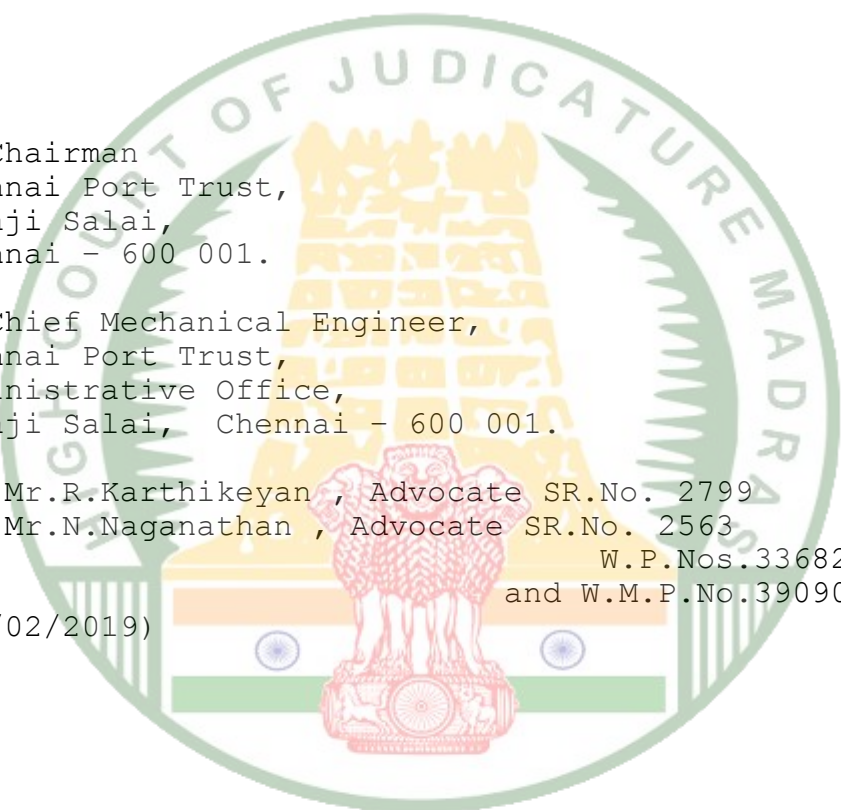
1. The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.
2. The Chief Mechanical Engineer,
Chennai Port Trust,
Administrative Office,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.R.Karthikeyan , Advocate SR.No. 2799

+1cc to Mr.N.Naganathan , Advocate SR.No. 2563

W.P.Nos.33682 of 2018
and W.M.P.No.39090 of 2018

A.SK(15/02/2019)



WEB COPY