

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941

OP (CAT).No.3785 OF 2013(Z)

AGAINST THE ORDER/JUDGMENT IN OA 432/2010 DATED 21-12-2012 OF
CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

PETITIONERS/S:

- 1 THE SOUTHERN RAILWAY
REPRESENTED BY ITS DIVISIONAL MANAGER, PALAKKAD
DIVISION, PALAKKAD.
- 2 THE SENIOR DIVISIONAL PERSONNEL OFFICER
DIVISIONAL OFFICE, PERSONNEL BRANCH, OLAVAKKODE,
SOUTHERN RAILWAY, PALAKKAD DIVISION, PALAKKAD.

BY ADV. SRI.P.V.SANTHOSH JOSE, SC, RAILWAYS

RESPONDENT/S:

- 1 K. NATARAJAN
J/E566, TECHNICIAN GR.I, SENIOR SECTION
ENGINEER/ELECTRICAL PUMP OFFICE, SOUTHERN RAILWAY,
PALAKKAD DIVISION, PALAKKAD.
- 2 THE SCRUTINY COMMITTEE FOR VERIFICATION OF
COMMUNITY CERTIFICATE
REPRESENTED BY THE CHAIRMAN AND SECRETARY TO
GOVERNMENT, SCHEDULED CASTE AND SCHEDULED TRIBES
DEVELOPMENT DEPARTMENT, SECRETARIAT, TRIVANDRUM.
- ADDL. 3 JANAKI N.
AGED 57, W/O.LATE NATARAJAN, SOUPARNIKA, 11/17,
ATHIKUZHY, CHITTOOR, PALAKKAD DISTRICT -678 101.
- ADDL. 4 CHIDAMBARAN N.
AGED 38 YEARS, S/O.LATE NATARAJAN, SOUPARNIKA,
11/17, ATHIKUZHY, CHITTOR, PALAKKAD DISTRICT - 678
101.

ADDL. 5 GURUPRASAD N.
AGED 31 YEARS, S/O.LATE NATARAJAN, SOUPARNIKA,
11/17, ATHIKUZHY, CHITTOR, PALAKKAD DISTRICT - 678
101.

ADDITIONAL RESPONDENTS R3 TO R5 ARE IMPEADED AS
PER THE ORDER DATED 11.01.2018 IA.NO.2298/2017 IN
OP(CAT) 3785/2013.

R1 BY ADV. SRI.K.N.ABHILASH
R1 BY ADV. SRI.M.A.AHAMMAD SAHEER
R1 BY ADV. SMT.K.P.GEETHA MANI
R1 BY ADV. SMT.T.B.REMANI
R1 BY ADV. SRI.SUNIL NAIR PALAKKAT
R1-2 BY SRI.S.RADHAKRISHNAN, SENIOR PANEL, RAILWAYS
R1, R3-5 BY ADV. SRI.M.R.ANISON
R2 BY GOVERNMENT PLEADER

OTHER PRESENT:

SPL.GP SRI.M.K.ROBINRAJ

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 06.01.2020,
ALONG WITH WP(C).33828/2016(C), THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941

WP(C).No.33828 OF 2016

PETITIONER/S:

- 1 K.NATARAJAN
ATHIKUZHI HOUSE, P.O, CHITTOOR, PALAKKAD DISTRICT.
[DIED]
- 2 ADDL.P2.JANAKI N,
AGED 57 YEARS
W/O.LATE NATARAJAN, SOUPARNIKA, 11/17, ATHIKUZHY,
CHITTOOR, PALAKKAD DISTRICT-678101.
- 3 ADDL.P3.CHIDAMBARAN.N,
AGED 38 YEARS
S/O.LATE NATARAJAN, SOUPARNIKA, 11/17, ATHIKUZHY,
CHITTOOR, PALAKKAD DISTRICT-678101.
- 4 ADDL.P4.GURUPRASAD N,
AGED 31 YEARS
S/O.LATE NATARAJAN, SOUPARNIKA, 11/17, ATHIKUZHY,
CHITTOOR, PALAKKAD DISTRICT-678101. ADDL.
PETITIONERS 2 TO 4 ARE IMPEADED AS PER ORDER DATED
09/02/2018 IN I.A.NO.997/2018.

BY ADVS.
SRI.M.R.ANISON
SMT.V.BHARGAVI (PANANGAD)
SMT.K.P.GEETHA MANI
SMT.P.A.RINUSA

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
SCHEDULED CASTES AND SCHEDULED TRIBES DEVELOPMENT
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM 695 001.

- 2 THE SCRUTINY COMMITTEE FOR VERIFICATION OF
COMMUNITY CERTIFICATES REPRESENTED BY ITS CHAIRMAN
SCHEDULED CASTES AND SCHEDULED TRIBES DEVELOPMENT
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM 695
001.
- 3 THE VIGILANCE CELL OF THE KERALA INSTITUTE FOR
RESEARCH TRAINING AND DEVELOPMENT STUDIES OF
SCHEDULE CASTES AND SCHEDULED TRIBES (KIRTADS)
REPRESENTED BY ITS VIGILANCE OFFICER, DIRECTORATE
OF KIRTADS, KOZHIKODE 673 001.
- 4 THE SOUTHERN RAILWAY
REPRESENTED BY ITS DIVISIONAL MANAGER, SOUTHERN
RAILWAY, PALAKKAD DIVISION, PALAKKAD 678 001.
- 5 THE SENIOR DIVISIONAL PERSONAL OFFICER
DIVISIONAL OFFICE, PERSONNEL BRANCH PALAKKAD,
SOUTHERN RAILWAY, PALAKKAD BRANCH, PALAKKAD 678
001.

R1-3 BY SPL.GOVERNMENT PLEADER SRI. M.K. ROBIN RAJ
R4-5 BY SRI.S.RADHAKRISHNAN, SENIOR PANEL, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06.01.2020, ALONG WITH OP (CAT).3785/2013(Z), THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[OP (CAT).3785/2013, WP(C).33828/2016]

Dated this the 6th day of January 2020

K. Vinod Chandran, J.

W.P. (C) is filed by an individual challenging the order of the Scrutiny Committee For Verification of Community Certificates ('Scrutiny Committee' for brevity), which interfered with the caste status claimed by the petitioner. O.P.(CAT) No.3785/2013 is filed by the Southern Railway challenging the order in O.A. filed by the petitioner in the other case. The O.A. is an offshoot of the proceedings taken against the petitioner under the Kerala (Scheduled Caste & Scheduled Tribe) Regulation of Issue of Community Certificates Act, 1996 (for brevity 'Act 11 of 1996') and the Rules framed thereunder. On the ground of a pending enquiry on the caste status of the employee, the retirement benefits of the petitioner, who was employed with the Southern Railway were withheld. The retirement of the petitioner occurred before the order was

passed by the Scrutiny Committee. Even when the O.A. was disposed of, the matter was pending before the Scrutiny Committee constituted under Act 11 of 1996. Hence, the Tribunal found that the terminal benefits of the applicant has to be paid considering him to be a general category candidate and in accordance with the incidence of service of the next junior candidate in the general category; one Sri. Balan. It was also directed that, if the Scrutiny Committee holds in favour of the applicant, he should be granted all benefits, if he has enjoyed any, as a SC employee. It was after the Tribunal's order in O.A. 432/2010 that the Scrutiny Committee passed the impugned order in W.P.(C) No.33828/2016.

2. We shall refer to the parties from their status in the writ petition and the Southern Railways as the employer. We have to notice that the petitioner is no more and his wife and children are impleaded as the additional petitioners, who have a legitimate claim to the estate of the deceased petitioner. Admittedly the initial appointment of the petitioner was not based on his SC status and it is not clear as to whether he had received any benefits by way of promotion or otherwise on the basis of the SC status. The entire controversy arose on a

complaint made by a colleague of the petitioner, against his caste status shown in the muster roll of employees. This triggered the inquiry under Act 11 of 1996 and the withholding of pensionary benefits on retirement. It is in the fitness of things that we consider the writ petition first before going into the original petition filed by the employer.

3. Sri. M.R.Anison, learned counsel appearing for the writ petitioner would take us to the various documents produced in the writ petition as also those produced by a reply affidavit dated 06.01.2020 to assert that the petitioner's SC status has to be upheld. In addition to the above contention, Sri. Anison also has a contention that the Scrutiny Committee which heard the Kerala Institute for Research, Training and Development Studies ('KIRTADS' for short) and the petitioner consisted only of two members though a third member was appointed. The Scrutiny Committee was constituted in accordance with the Kerala (SC & ST) Regulation of Issue of Community Certificates Rules, 2002. The fact that only two members heard the petitioner and the KIRTADS is very evident from Annexure-A1 produced by the State along with a statement dated 04.02.2017.

4. The learned Special Government Pleader

Sri.M.K.Robin Raj, appearing for the State, however submits that the detailed genealogical report as produced by the KIRTADS would indicate that the petitioner does not belong to the SC community as claimed by him. It is also pointed out that Annexure A1 specifically indicates that the third member had agreed with the conclusions arrived at by the other two members as he was given the entire files by circulation. The Special G.P seeks to sustain the order of the Scrutiny Committee.

5. We have to first consider the jurisdictional aspect as raised by the learned counsel for the petitioner. Rule 7 of the Rules of 2002, speaks of the constitution of the Scrutiny Committee with a Chairman and two other members. The Chairman and the three members are persons holding posts in the Government itself. The three members are the Secretary, SC/ST Development Department, the Director, KIRTADS and the Director, SC/ST Development Department. In the present case, the third member, being the Director of the SC/ST Development Department was absent when the matter was heard. Hence, as on the date of passing of the final orders, there were three members in the Scrutiny Committee as is evident from Annexure

A1, the third member was not present. This is evident from paragraph No.203 of the Minutes as produced by the Government as Annexure A1, which is extracted hereunder:

“203). The Committee also decided to circulate the entire file and other documents to the Committee Member Dr. P. Pugazhendi, Director, Scheduled Tribes Development Department and authorise the Chairman to issue proceedings.”

6. Here, we have to take note of two Division Bench judgments as placed before us by the learned counsel for the petitioner. In **G. Velayudhan v. State of Kerala [1997 (1) KLT 299]**, a Division Bench of this Court, considering a case before the enactment of the Act of 1996 found that the Constitution of the Scrutiny Committee by lesser number of members is not valid and binding. **M.F.A. No.58/2006 dated 06.04.2016 [K. Haridasan v. State of Kerala and Ors.]** was concerned with a case after the enactment of the Act of 1996. Another Division Bench following **Velayudhan's** case held that the Committee which has to consider the caste status of persons necessarily is to be constituted of three members as has been held in **Kumari Madhuri Patil v. Addl. Commissioner [(1994) 6 SCC 241]** which stipulation has been adopted by the legislature, in the Act of 1996.

7. In the present case, it is evident that though the constitution of the Scrutiny Committee was of three members; one of the members was not present when the matter was heard. As has been held in **Velayudhan's** case, the decision of the Scrutiny Committee has serious civil consequences with regard to the right of persons whose caste status is decided and it is a proper adjudication that is carried on by the Scrutiny Committee. The power exercised by the Scrutiny Committee is one in the nature of a judicial power as distinguished from an administrative or even a quasi judicial exercise. When a hearing is carried out on the question of the caste status of an individual which has very many civil consequences, with respect to the appointment, employment and continuance in service, necessarily, the same has to be done by the constituted committee and there could be no delegation to two members and a ratification made by the third member, of the conclusions arrived at by the two. In such circumstances, we have no hesitation to hold that the impugned order in W.P.(C) No.33828/2016 is without jurisdiction and the same deserves to be set aside. We, hence, allow the writ petition.

8. Normally, when a procedural irregularity is noticed,

this Court would refer the matter to the authority whose orders have been interfered with, to resume the enquiry from the stage at which such procedural irregularity occurred. In the present case, there is no scope for such a remand for resumption of enquiry since the petitioner, whose caste was in doubt, is no more. In such circumstances, the writ petition has to be allowed setting aside the Scrutiny Committee's order. But, however, leaving open the question of caste status of the petitioner's family to be decided in accordance with law in an appropriate case, if it arises.

9. Now, we turn to O.P.(CAT) No.3785/2013. As we noticed, the Tribunal directed that the petitioners pensionary benefits would be reckoned as a general candidate, on the basis of similar incidence of service obtained by his next junior from the general category; subject only to the condition that the benefit if any obtained as a SC would survive if the Scrutiny Committee eventually finds his caste status. In the present case, the Scrutiny Committee's order has been set aside by us. We also found that there is no scope for any further enquiry on the caste status, since the petitioner is no more. There could hence be no reckoning made of the petitioners pensionary benefit by

reference to that of his immediate junior in the general category. There is also no scope for an enquiry as to whether he obtained any benefit by virtue of his caste status, since as of now there is no inquiry pending against the declared caste status. Even if the applicant in the O.A. has obtained any benefit as SC, it has to be reckoned. The enquiry initiated on the doubt raised as to the petitioner's SC status, in his life time, though concluded, has been now set aside. There can be no further proceedings taken due to the death of the petitioner. In such circumstances, we do not think that there could be any interference caused to the order of the Tribunal and O.P.(CAT) No.3785/2013 stands dismissed.

10. The Scrutiny Committee's order having been set aside and there existing no scope for further enquiry into the petitioner's caste status; without much ado, the Railway would grant the terminal benefits as due to the deceased petitioner, in accordance with the applicable rules. The learned counsel for the petitioners informs us that the family is in abject poverty. The Railways shall disburse the terminal benefits including the pension and the family pension after his death on 15.08.2017 due to the legal heirs, for the last more than 10 years within a period

of three months from today. We also make it clear that the family would be entitled to apply for interest before the appropriate authority for the delayed payment as per the Pension Rules of the Railways.

The parties to suffer their respective costs. Ordered accordingly.

sd/-

K.VINOD CHANDRAN

JUDGE

sd/-

V.G.ARUN

JUDGE

Shg

APPENDIX OF OP (CAT) 3785/2013

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	EXHIBIT P1. TRUE COPY OF THE O.A.NO.432 OF 2010 ALONG WITH ANNEXURES.
EXHIBIT P2	EXHIBIT P2. TRUE COPY OF THE INTERIM ORDER DATED 14.06.2010 IN O.A.NO.432 OF 2010 ISSUED BY THE HONOURABLE TRIBUNAL.
EXHIBIT P3	EXHIBIT P3. TRUE COPY OF THE REPLY STATEMENT IN O.A.NO.432 OF 2010 ALONG WITH ANNEXURES.
EXHIBIT P4	EXHIBIT P4. TRUE COPY OF THE REJOINDER SUBMITTED BY THE APPLICANT IN OA 432 OF 2010.
EXHIBIT P5	EXHIBIT P5. COPY OF THE ORDER POSTING THE APPLICANT TO THE PARENT DEPARTMENT.
EXHIBIT P6	EXHIBIT P6. TRUE COPY OF THE REJOINDER TO THE REPLY STATEMENT OF THE RESPONDENTS ON 31.01.2011.
EXHIBIT P7	EXHIBIT P7. TRUE COPY OF M.A. FOR IMPEADING ADDITIONAL RESPONDENT.
EXHIBIT P8	EXHIBIT P8. TRUE COPY OF THE ADDITIONAL REPLY STATEMENT ALONG WITH THE ANNEXURES.
EXHIBIT P9	EXHIBIT P9. TRUE COPY OF THE REJOINDER TO THE ADDITIONAL REPLY STATEMENT.
EXHIBIT P10	EXHIBIT P10. TRUE COPY OF THE ADDITIONAL REPLY STATEMENT ALONG WITH THE ANNEXURE.
EXHIBIT P11	EXHIBIT P11. TRUE COPY OF THE FINAL ORDER DATED 21.12.2012 IN OA. 432 OF 2010 OF THE HONOURABLE TRIBUNAL.
EXHIBIT P12	TRUE COPY OF THE ORDER ISSUED BY JOINT SECRETARY TO GOVERNMENT, THE SCRUTINY COMMITTEE FOR VERIFICATION OF COMMUNITY CERTIFICATE, SCHEDULED CASTES AND SCHEDULED TRIBES DEVELOPMENT, SECRETARIAT, THIRUVANANTHAPURAM -1 TO THE PETITIONERS

RESPONDENT'S/S EXHIBITS:

- | | |
|-------------------------|---|
| EXHIBIT R3 (A) . | A TRUE COPY OF THE APPLICATION FOR FAMILY PENSION SUBMITTED BY THE 1ST PETITIONER |
| EXHIBIT R1 (A) | TRUE COPY OF THE TREATMENT CERTIFICATE ISSUED BY THE MEDICAL OFFICER IN CHARGE, REGIONAL CANCER CENTRE, THIRUVANANTHAPURAM DATED 21.07.2014. |
| EXHIBIT R1 (B) | TRUE COPY OF THE CERTIFICATE ISSUED BY THE HEAD OF NEPHROLOGY GOVT. MEDICAL COLLEGE, THRISSUR. |
| EXHIBIT R1 (C) | TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE JUBILEE MISSION MEDICAL COLLEGE HOSPITAL, THRISSUR. |

APPENDIX OF WP(C) 33828/2016

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE RELEVANT PAGE OF S.S.L.C BOOK OF THE PETITIONER'S BROTHER MR. ABHIMANUE K.
EXHIBIT P2	TRUE COPY OF ONE SUCH COMMUNITY CERTIFICATE ISSUED BY THE TAHSILDAR, CHITTUR TO THE PETITIONER DATED 27-09-1978
EXHIBIT P3	TRUE COPY OF LETTER DATED 06-08-1983 ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P4	TRUE COPY OF THE ORDER DATED 06-10-1978 ISSUED BY THE DIVISIONAL OFFICER, PERSONAL BRANCH, SOUTHERN RAILWAY, OLAVAKKODE.
EXHIBIT P5	TRUE COPY OF THE JUDGMENT DATED 06-06-2007 IN WP(C) NO 133444/2001
EXHIBIT P6	TRUE COPY OF THE WRITTEN EXPLANATION DATED 07-07-2009 SUBMITTED BY THE PETITIONER.
EXHIBIT P7	TRUE COPY OF THE REPORT DEATED 28-01-2010 ISSUED BY THE 3RD RESPONDENT (EXCLUDING DOCUMENTS) .
EXHIBIT P8	TRUE COPY OF THE WRITTEN EXPLANATION DATED 17-05-2010 SUBMITTED BY THE PETITIONER (EXCLUDING THE DOCUMENTS) .
EXHIBIT P9	TRUE COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 05-05-2016
EXHIBIT P10	TRUE COPY OF ORDER BEARING G.O (MS) NO 44/2016/SCSTDD DATED 16-07-2016 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P11	TRUE COPY OF THE REPORT DATED 06-08-1986
EXHIBIT P12	TRUE COPY OF THE ORDER BEARING NO G.O(MS) NO 1281/2013/SCSTDD DTED 13-09-2013 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P13	TRUE COPY OF ORDER BEARING G.O. (RT)NO.10/2009/SCSTDD DATED 03.01.2009.

EXHIBIT P14 TRUE COPY OF DEPOSITION OF MR.ABHIMANUE
(BROTHER OF THE PETITIONER) DATED
25.04.2014.

EXHIBIT P15 TRUE COPY OF DEPOSITION OF VIGILANCE
OFFICER,KIRTADS (MR.MANIBHOOSHAN) DATED
25.04.2014.

EXHIBIT P16 TRUE COPY OF DEPOSITION OF MR.SUBASH
(RESEARCH OFFICER, KIRTADS) DATED
25.04.2014.

EXHIBIT P17 TRUE COPY OF DEPOSITION OF MR.VASUDEVAN
DATED 20.07.2013.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R1 A TRUE COPY OF THE ENTIRE KIRTADS ENQUIRY
REPORT DATED 28.1.2010

EXHIBIT R1 B TRUE COPY OF THE G.O.(RT) NO-187/94/SCSTDD
DATED 4.5.1994

EXHIBIT R1 C TRUE COPY OF THE MINUTES OF THE SCRUTINY
COMMITTEE MEETING HELD ON 15.2.2016

ANNEXURE R1 TRUE COPY OF THE RELEVANT MINUTES