

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.01.2020

ORDERS PRONOUNCED ON : 03.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.NO.8274 OF 2019
AND
W.M.P.NO.8818 OF 2019

G.Kumar

.. Petitioner

Vs.

1. The State Level Scrutiny Committee,
rep. by its Chairman and Secretary
to the Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
2. The Director of Tribal Welfare,
Chepauk,
Chennai-600 005.
3. The Deputy Superintendent of Police,
O/o Dy. Supdt. of Police,
Social Justice & Human Rights Division,
Tiruvallur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records bearing No.Na.Ka.No.Pa.Ma.A2/3438/2016, dated 11.02.2019 of the second respondent and quash the orders passed therein and consequently forbear the respondents from proceeding with further enquiry as per the principles laid down by the Honourable Supreme Court in Dayaram's case reported in (2012) 1 SCC 333 and in Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra, reported in (2013) 4 SCC 465.

For petitioner : Mr.Yogesh Kannadasan

For respondents : Mr.V.Shanmuga Sundar,
Spl.G.P.

ORDER

R.SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records bearing Na.Ka.No.Pa.Ma./A2/3438/2016, dated 11.02.2019 of the second respondent and quash the orders passed therein and consequently forbear the respondents from proceeding with further enquiry as per the principles laid down by the Honourable Supreme Court in Dayaram's case reported in 2012 (1) SCC 333 and in Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra, reported in 2013 (4) SCC 465.

2. It is the case of the petitioner that he belongs to Hindu Kurumans Community. The petitioner joined as a Postman on 31.03.1997 in the Department of Posts at Chennai G.P.O., Chennai-1 and his appointment was based on the quota under the Scheduled Tribe category on the strength of the Hindu Kurumans Scheduled Tribe Community Certificate, dated 23.09.1991 issued by the Sub-Collector, Thanjavur. The petitioner is also having another Community Certificate, dated 18.07.1985 issued by the Tahsildar, Tanjore. The petitioner's services were confirmed after three years of his initial appointment. Thereafter, he was promoted as Postal Assistant during the year 2005.

3. While so, during 2009, based on the third party complaints, the petitioner's Certificate was sent for verification to the District Level Vigilance Committee, Thanjavur. Even though the petitioner obtained Community Certificate as early as in the year 1985 and in 1991, and appointed as Postman during 1997 and promoted as Postal Assistant during 2005, suddenly, enquiry was initiated at the instance of third party complaints after several years of his appointment. The enquiry was conducted by the Committee consisting of District Adi Dravidar and Tribal Welfare Officer and an Anthropologist. Even before the enquiry by the said Committee, a detailed enquiry was conducted by the Revenue Divisional Officer, Thanjavur, who had sent favourable report, dated 25.07.2009 to the District Adi Dravidar and Tribal Welfare Officer. The Committee, after conducting an elaborate enquiry, had forwarded the favourable findings to the effect that the petitioner belongs to Scheduled Tribe Community, which is evident by letter, dated 25.01.2010, addressed by the Adi Dravidar and Tribal Welfare Officer to the Principal Secretary, Adi Dravidar and Tribal Welfare Department, Secretariat, Chennai. In a similar enquiry conducted by the District Level Vigilance Committee, Thanjavur in respect of one Ms.Valarmathi, who is none else than the petitioner's mother's blood brother's daughter, in whose favour, a favourable finding was rendered by

the said Committee.

4. In such a situation, to the shock and surprise of the petitioner, the third respondent had summoned the petitioner for enquiry during 2014. The petitioner attended the enquiry and produced various documentary evidence along with the favourable findings. Despite production of the favourable findings, the third respondent rendered an adverse finding, dated 13.01.2019, upon which, the petitioner was called upon by the second respondent to offer explanation, for which, the petitioner sought time. In the impugned enquiry notice from the second respondent, dated 11.02.2019, a reference is made about Madhuri Patil's case (Madhuri Patil Vs. Commr., Tribal Development), reported in 1994 (6) SCC 241, suggesting that the said enquiry is initiated in terms of the said Madhuri Patil's case.

5. It is the further case of the petitioner that the Honourable Supreme Court, in the case of Dayaram Vs. Sudhir Batham, reported in 2012 (1) SCC 333 and in the case of Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra, reported in 2013 (4) SCC 465, clearly stipulated that enquiry is unwarranted by the Caste Scrutiny Committee in respect of the Certificates that were issued after due and proper enquiry and hence, the action of the respondents in verifying the petitioner's Certificate is arbitrary and unsustainable in law. Hence, the petitioner has filed the above Writ Petition for the relief stated supra.

6. When the Writ Petition is taken up for hearing, the learned counsel for the petitioner invited the attention of this Court to Dayaram's case (cited supra) and Ayaaubkhan's case (cited supra). In the said Dayaram's case, the Apex Court held that if there were to be a Legislative governing or regulating grant of Caste Certificates, and if Caste Certificates are issued after due and proper inquiry, such Caste Certificates will not call for verification by the Scrutiny Committee. The relevant portion of the said judgment of the Supreme Court in Dayaram's case (cited supra) reads as follows:

"36. Having regard to the scheme for verification formulated by this Court in Madhuri Patil (Madhuri Patil Vs. Commr., Tribal Development (1994 (6) SCC 241 : 1994 SCC (L & S) 1349 : 1994 (28) ATC 259) the Scrutiny Committees carry out verification of caste certificates issued without prior enquiry, as for example, the caste certificates issued by Tahsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare,

without any enquiry or on the basis of self-affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the Scrutiny Committees. Madhuri Patil provides for verification only to avoid false and bogus claims. The said scheme and the directions therein have been satisfactorily functioning for the last one-and-a-half decades. If there are any shortcomings, the Government can always come up with an appropriate legislation to substitute the said scheme. We see no reason why the procedure laid down in Madhuri Patil should not continue in the absence of any legislation governing the matter."

7. For the same proposition, the learned counsel for the petitioner also relied on the judgment of the Apex Court in Ayaaubkhan Noorkhan Pathan's case (cited supra), and the relevant portion of the same reads as follows:

"39. Thus it is evident from the aforesaid judgment in Dayaram (2012 (1) SCC 333: 2012 (1) SCC (Civ) 205 : 2012 (1) SCC (L & S) 109) , that the purpose of issuing directions in Madhuri Patil (Madhuri Patil Vs. Commr., Tribal Development : 1994 (6) SCC 241 : 1994 SCC (L & S) 1349 : 1994 (28) ATC 259) was only to examine those cases where caste certificates had been issued without conducting any prior enquiry, on the basis of self-affidavits regarding one's caste alone, and that the said directions were not at all applicable, where a legislation governing or regulating the grant of caste certificates exists, and where caste certificates are issued after due and proper enquiry. The caste certificates issued by holding proper enquiry, in accordance with duly prescribed procedure, would not require any further verification by the Scrutiny Committee."

8. Therefore, the learned counsel for the petitioner submitted that the Community Certificate of the petitioner was earlier verified by the District Level Vigilance Committee, Thanjavur, and therefore, it need not be again sent for verification to the first respondent-Committee. Thus, he sought for allowing the Writ Petition.

9. Countering the above submissions, the learned Special Government Pleader appearing for the respondents, by filing counter affidavit of the second respondent, submitted that the impugned order is only a notice issued by the second respondent calling for explanation based on the Vigilance Report submitted by the third respondent, dated 13.01.2019 for the purpose of forwarding the same to the State Level Scrutiny Committee for verifying the genuineness of the Community Certificate issued to the petitioner that he belongs to Kurumans ST Community. The second respondent has every right to call for the explanation by issuing the notice as per G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012 and forward the same to the State Level Scrutiny Committee to verify the genuineness of the Community Certificate issued to the petitioner. The petitioner is only trying to delay the final decision on the genuineness of his Scheduled Tribe Community Certificate.

10. In reply, it is the submission of the learned counsel for the petitioner that the petitioner's Community Certificate was already verified after conducting due and proper enquiry by the authorities as well as the District Level Vigilance Committee, Thanjavur and hence, there is no need to again send the Community Certificate for verification by the first respondent-Committee.

11. Heard both sides and perused the materials available on record.

12. It is to be noted that after the judgment of the Apex Court in the Madhuri Patil's case (cited supra) in 1994, we are of the opinion that if the Community Certificate is not verified by the State Level Scrutiny Committee so far, the burden to prove the social status of the petitioner is always on him, who profounds to seek constitutional socio-economic advantages and it is no part of the duty of the State to disapprove or otherwise. Further, in the case on hand, the present verification is only in accordance with the judgment of the Apex Court in Madhuri Patil's case (cited supra). Though the petitioner relied on the said two judgments of the Apex Court in Ayaubkhan Noorkhan Pathan's case (cited supra) and Dayaram's case (cited supra), the said two judgments do not say that when once the Community Certificate is issued by the authorities, after verification, it cannot be again sent for verification at

all, when a reasonable doubt arises. The petitioner's Community Certificate was not yet verified by the State Level Scrutiny Committee in accordance with the judgment of the Supreme Court in Madhuri Patil's case (cited supra). The petitioner can very well prove the genuineness of his Community Certificate before the State Level Scrutiny Committee.

13. Thus, we are not inclined to entertain the Writ Petition and the same is accordingly dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Chairman and Secretary to the Government,
The State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
2. The Director of Tribal Welfare,
Chepauk, Chennai-600 005.
3. The Deputy Superintendent of Police,
O/o Dy. Supdt. of Police,
Social Justice & Human Rights Division,
Tiruvallur District.

+1cc to Mr.Yogesh Kannadasan, Advocate, S.R.No.9167

+1cc to the Government Pleader, S.R.No.9027

W.P.No.8274 of 2019

CP(CO)
CS/13/03/2020

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