

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 27.01.2020

Order Delivered on: 04.06.2020

CORAM :

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

Writ Petition No. 23533 of 2019
and
W.M.P. No. 23342 of 2019

1. M. Parthasarathi
2. P. Gurunathan

Both residing at near Ayyanar Kovil
Palamedu Village and Post
Madurai District
Pin Code - 625 503

... Petitioners

Versus

1. The State Level Scrutiny Committee
rep. by its Chairman
Adi Dravidar and Tribal Welfare Department
Fort St. George, Secretariat
Chennai - 600 009
2. The Sub Collector
Cheranmahadevi
Tirunelveli

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings bearing Na.Ka.No.A3/2709/19 dated 17.07.2019 of the second respondent and quash the order passed therein and consequently declare that the petitioners belong to the scheduled tribe/Kattunaicken Community in the light of the positive declarations on two occasions by this Court in WP No. 6119 of 1997 and WP No. 1906 of 2018 in respect of the first petitioner's elder brother and consequently direct the second respondent to issue community certificate in favour of the second petitioner.

For Petitioners : Mr. Yogesh Kannadasan
For Respondents : Mr. V. Shanmuga Sundar
Special Government Pleader

ORDER

R. SUBBIAH, J

The petitioners have come up with this writ petition challenging the order dated 17.07.2019 of the second respondent, in and by which, the second respondent declared that the petitioners did not belong to Kattunaicken Community and therefore, they cannot be recognised as such by issuing community certificate to them.

2. The case of the petitioners is that the first petitioner obtained a community certificate on 07.12.1984 issued by the Revenue Divisional Officer, Cheranmahadevi after necessary verification. In the year 1999, the first petitioner was appointed as ED Branch Postmaster in the Postal Department under the quota reserved for Scheduled Tribes. The second petitioner is the son of the first petitioner and he was in need of a community certificate for admission in the college. Therefore, the petitioners submitted an application dated 29.04.2019 to the second respondent. The application so submitted has not been processed and therefore, the petitioners approached this Court with a Writ Petition in WP No. 17931 of 2019 and prayed for issuing a Mandamus directing the respondents 1 and 2 therein to declare that the petitioners belong to Scheduled Tribe/Kattunaicken Community as per the earlier orders passed by this Court in WP No. 6119 of 1997 and WP No. 1906 of 2018 in respect of the first petitioner's elder brother and consequently direct the second respondent to issue community certificate in favour of the second petitioner. By order dated 28.06.2019, this Court directed the second respondent therein - Revenue Divisional Officer to conduct an enquiry and pass appropriate orders on the claim made by the petitioners for issuing community certificate, within a period of two weeks. Pursuant to the order dated 28.06.2019, the second respondent passed the order dated 17.07.2019, rejecting the request of the petitioners. Therefore, assailing the order dated 17.07.2019 of the second respondent, the present writ petition is filed.

3. The learned counsel appearing for the petitioners would contend that the first petitioner's elder brother by name M. Santharam applied for issuing a community certificate in his favour by declaring that he belongs to Kattunaicken community. The application of Mr. Santharam was rejected and he challenged it by way of WP No. 6119 of 1997. This Court, by order dated 25.08.2000 quashed the order of rejection dated 28.02.1997

passed by the District Collector, Tirunelveli and consequently directed the employer of the said Santharam viz., LIC of India, Madurai Division to reinstate him in service. In that writ petition namely WP No. 6119 of 1997, reference was made to earlier Writ Petition No. 400 of 1992 filed by Santharam and the order passed thereon on 30.08.1996. In spite of the order passed in the earlier two writ petitions, the employer of the said Santharam has called upon him to participate in an enquiry during the year 2018 and therefore, the said Santharam has once again filed WP No. 1906 of 2018 before this Court for a Mandamus seeking to forbear the respondents from conducting an enquiry regarding the community certificate issued to him. By order dated 26.10.2018, this Court allowed the writ petition and restrained the respondents from conducting any further enquiry with respect to the community certificate issued to the petitioner, in view of the earlier order passed by this Court in WP No. 6119 of 1997. By placing reliance on the aforesaid orders passed by this Court in the writ petitions filed by Mr. Santharam, the learned counsel for the petitioners would contend that in the earlier writ petition filed by the petitioners herein in WP No. 17931 of 2019, this Court, in the order dated 28.06.2019, specifically directed the respondents to consider the claim of the petitioners in the light of the orders passed in WP No. 6119 of 1997 and WP No. 1906 of 2018 filed by Mr. Santharam, who is none other than the elder brother of the first writ petitioner herein. However, the second respondent failed to consider the same while passing the order of rejection dated 17.07.2019. According to the learned counsel for the petitioners, when the brother of the first petitioner was issued with a community certificate and its validity has been upheld by this Court in the earlier writ petitions, the second respondent is not justified in passing the order of rejection dated 17.07.2019. Therefore, the learned counsel for the petitioners prayed for allowing this writ petition.

4. Opposing the writ petition, the learned Special Government Pleader appearing for the respondents would contend that the first petitioner submitted an application on 29.04.2019 seeking to issue community certificate to his son, the second petitioner. When the application was under consideration, the petitioners filed WP No. 17931 of 2019 and obtained a direction to consider the application and to pass orders thereon within a period of two weeks. Thereafter, a summon was issued to the first petitioner to participate in an enquiry on 11.07.2019 and accordingly, the first petitioner participated in the enquiry and submitted his records. The documents furnished by the first petitioner are not sufficient to hold that he belongs to Kattunayakkan community. Even though in the educational certificates produced by the first petitioner his community was indicated as Kattunayakan community, it is not a conclusive

proof for accepting the community of the petitioners. Further, the second respondent conducted a detailed enquiry and concluded that the petitioners did not belong to Kattunayakan community. The order of rejection dated 17.07.2019 contain very many details as to why the second respondent could not accept the claim of the petitioners for declaring their communal status. In any event, if the petitioners are aggrieved by the order of rejection dated 17.07.2019 passed by the second respondent, they ought to have filed an appeal to the District Collector within 30 days and it was also clearly mentioned in the order of rejection dated 17.07.2019. In spite of the same, the petitioners have rushed to this Court with this writ petition. The learned Special Government Pleader therefore would contend that the second respondent is wholly justified in passing the order of rejection and it calls for no interference by this Court.

5. We have heard the counsel for both sides and perused the materials placed on record. The petitioners, while assailing the order of rejection dated 17.07.2019 passed by the second respondent, has placed heavy reliance on the writ petitions filed by the brother of the first petitioner by name Santharam. The said Santharam, while working in Life Insurance Corporation of India was terminated from service on 26.12.1991. Challenging the same, he filed WP No. 400 of 1992 which was allowed by this Court on 30.08.1996 and the matter was remitted back to the District Collector to conduct a fresh enquiry. Once again, an adverse order dated 28.02.1997 was passed which was challenged in WP No. 6119 of 1997. This Court, by order dated 25.08.2000, has held that while conducting enquiry against the petitioner - Santharam, several statements have been obtained by the respondents therein behind his back and he has no occasion to cross-examine the statement made by those persons. It is in those circumstances, the order of rejection passed by the District Collector, Tirunelveli on 28.02.1997 was set aside by this Court with a direction to the employer of Santharam viz., Life Insurance Corporation of India to reinstate him in service. The relevant portion of the order dated 25.08.2000 passed in WP No. 6119 of 1997 reads as under:-

"10.Under these circumstances, and in the light of various infirmities in the impugned order, the same is liable to be quashed. I am also satisfied that the petitioner has placed acceptable documentary evidence in support of his claim. Accordingly, the impugned order of the first respondent dated 28.02.1997 is quashed. The third respondent is directed to reinstate the petitioner with all service benefits. Writ Petition is allowed to the extent mentioned above."

6. In the next writ petition viz., WP No. 1906 of 2018, filed by the above said Santharam, he has contended that after 14 years from 25.08.2000, the date on which WP No. 6119 of 1997 filed by him was allowed by this Court, a show cause notice dated 11.09.2014 and 31.07.2015 was issued for enquiry with respect to verification of community status for which the said Santharam also submitted his replies on 15.10.2014 and 06.08.2015 however, no enquiry was conducted. While so, at the verge of his retirement, in the year 2018, an enquiry is sought to be conducted. It is in those circumstances, the third writ petition filed by Mr. Santharam in WP No. 1906 of 2018 was allowed by this Court by virtue of the order passed in WP No. 6119 of 1997. Therefore, the orders passed by this Court in favour of the brother of the first petitioner Santharam cannot be relied on by the petitioners.

7. As far as the order of rejection dated 17.07.2019 passed by the second respondent is concerned, admittedly, before passing the order dated 17.07.2019, an enquiry was conducted in which the first petitioner participated and produced documentary evidence. Thereafter, the second respondent also conducted an independent enquiry to find out the community to which the petitioners belonged to. In the order of rejection passed by the second respondent, it was stated that the first petitioner has not furnished sufficient documentary evidence to prove that he belongs to Kattunayakkan community. In order of rejection the second respondent also traced the history, custom and rituals prevailed in the Kattunayakkan Community and ultimately held that there is no evidence to show that the petitioners belong to Kattunayakan Community.

8. Above all, in the order of rejection passed by the second respondent, it was clearly stated that if the petitioners are aggrieved by the order, in any manner, they can prefer an appeal before the District Collector, Tirunelveli. The petitioners, without exhausting such alternative remedy has come up with the present writ petition. Therefore, liberty is given to the petitioners to approach the District Collector, Tirunelveli by filing an appeal within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman
The State Level Scrutiny Committee
Adi Dravidar and Tribal Welfare Department
Fort St. George, Secretariat
Chennai - 600 009
2. The Sub Collector
Cheranmahadevi
Tirunelveli.

SVI (CO)
RMP (21/07/2020)

WP No. 23533 of 2019



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