

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :06.01.2020
CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
W.P.No.27015 of 2019
and WMP 26399 of 2019

H.Krishnarajan

... Petitioner

Vs.

1. Food Corporation of India,
Regional Office,
No.8, Mayor Sathyamoorthy Road,
Chetpet, Chennai 600 031.
Rep by General Manager (TN)

2. The Chairman of the State Level Scrutiny Committee
and the Secretary to Government,
Adi Dravidar Tribal Welfare (CV2) Department,
Secretariat, Chennai 600 009. .. Respondents

(R2 Suo-motu impleaded as per order
dated 06.01.2020 made in WP No.27015/2019 by NAVJ)

Prayer:- Writ petition filed under Article 226 of the
Constitution of India praying to issue a Writ of
Certiorarified Mandamus, calling the records of the respondent
pertaining to his order made in E-I/37(10)/2006 dated
26.08.2019 and quash the same consequent to direct the
respondent to reinstate the petitioner into service with all
attendant benefits.

For Petitioner : Mr.S.Doraisamy
for R.Malaichamy

For Respondents : Mr.R.M.Muthukumar

O R D E R

The present Writ Petition has been filed challenging the
order passed by the respondent dated 26.08.2019, cancelling
the appointment of the petitioner and removing him from the
rolls of the Food Corporation of India, and further directing
that the petitioner is not entitled for any terminal
benefits.

2. The Chairman of the State Level Scrutiny Committee and
the Secretary to Government, Adi Dravidar Tribal Welfare (CV2)
Department, Secretariat, Chennai 600 009, is suo motu
impleaded as the second respondent in the present writ
petition.

3. The sister of the petitioner, viz. Smt.Umamaheswari, was working in the respondent Corporation as AG.III (Genl.) (Assistant Grade). She died in harness in the year 1992 and the Writ Petitioner was appointed in her place as a dependent of the deceased on 28.10.1994. The said Uma Maheswari was employed with respondent as a Sweeper under ST quota and it is stated that her Community Certificate verification was pending at the time of her death. One Smt.H.Rani, who is the other sister of the petitioner, was also working in the respondent Corporation and she is said to have been dismissed from service for having secured employment by producing bogus Community Certificate by an order dated 15.09.2006. The Writ Petition filed by H.Rani, against the removal from service also came to be dismissed by this Court by an order dated 18.11.2008.

4. The respondent Corporation entertained doubts on the Community Certificate produced by the petitioner and by virtue of the Community Certificate of his sister H.Rani being found to be bogus and the other sister Uma Maheswari, having died pending verification of the Certificate, thought it fit to cancel the appointment of the petitioner and remove him from service by the impugned order dated 26.08.2019. This order has now become the subject matter of the challenge in the present Writ Petition.

5. Mr.S.Doraisamy, learned counsel appearing for Mr.R.Malaichamy, on behalf of the petitioner submitted that the impugned order passed by the respondent suffers from serious illegality, since it has been passed even before the Community Certificate given in favour of the petitioner was cancelled in the manner known to law. The learned counsel submitted that as per the judgment of the Hon'ble Supreme Court in Kandasamy v. Chief Engineer, Madras Port Trust, till a Community Certificate is cancelled, it should be construed to be a valid Community Certificate for all purposes. The learned counsel further submitted that the respondent has only relied upon the Community Certificate of H.Rani and the said H.Rani, had approached this Court and filed WP No.29432 of 2016 to re-verify her Community Certificate and this Court by an order dated 24.08.2016, made in WP No.29432 of 2016, had directed the Authorities to test the genuineness of the Certificate issued in her favour. The learned counsel submitted that the subsequent development was never taken into consideration by the respondent and unilaterally an order has been passed removing the petitioner from his services.

6. Per contra, Mr.R.M.Muthukumar, learned counsel appearing on behalf of the respondent submitted that the Community Certificate of the sister of the petitioner was found to be bogus and she was removed from service and therefore, the natural consequence would be that the petitioner also does not belong to the relevant Community and

the very appointment given to the petitioner based on his Schedule Tribe Status, becomes illegal. The learned counsel submitted that the petitioner himself filed WP No.33721 of 2017 for a Writ of Mandamus forbearing the Authorities from making verification of the Community status of the petitioner and this Writ Petition came to be dismissed as withdrawn on 19.02.2019. The learned counsel therefore submitted that this by itself shows that the petitioner was not acting bona fide and he was aware of the fact that his Community Certificate is not genuine.

7. The learned counsel further submitted that the respondent had followed the procedure and guidelines given by the Hon'ble Supreme Court in Kumari Madhuri Patil's case and found that the Community Certificate issued to the petitioner is not genuine and consequently the appointment order came to be cancelled. The learned counsel therefore, prayed that the present Writ Petition is devoid of merits and is liable to be dismissed. The respondent had also filed a counter affidavit in the above Writ Petition.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. It is an admitted case that the petitioner's sister Uma Maheshwari was originally working in the respondent Corporation and her appointment was based on the Schedule Tribe quota. She died while in service and the petitioner was appointed in the year 1994 in the dependent quota of the deceased against ST category. It is seen from the impugned order that the petitioner had declared that he belongs to "Hindu kattunayakan" Community which is recognised as a Schedule Tribe. The petitioner was subsequently promoted to the post of Dusting Operator in the year 2009 and then as a Manager in the year 2017.

10. The Community Certificate submitted by the petitioner was subjected to verification. In the meantime, the respondent Corporation took into consideration the cancellation of the Community Certificate issued in favour of Smt.H.Rani, who is also one other sister of the petitioner and she was terminated from service by the respondent Corporation. The termination order was challenged and it was confirmed by this Court in WP No.11042 of 2008.

11. The Community Certificate of the petitioner was referred to the District Collector, Villupuram, for verification of genuineness. Subsequently, it was referred to the Tamil Nadu State Level Scrutiny Committee. The petitioner filed a Writ Petition in WP No.33721 of 2017 seeking to restrain the Authorities from scrutinising the communal status of the petitioner. This writ petition was subsequently dismissed as withdrawn on 19.02.2019.

12. Pursuant to the withdrawal of the Writ Petition by the petitioner, the respondents straight away concluded that the petitioner does not belong to "Hindu kattunayakan" Community and had proceeded to cancel the appointment of the petitioner by considering it as an illegal appointment based on a false certificate and removed the petitioner from service.

13. The Community Certificate granted in favour of the petitioner is yet to be cancelled and as on today, it is valid for all purposes. Admittedly, the Community Certificate of the petitioner has been put under scrutiny of the State Level Scrutiny Committee and it is pending. Till final orders are passed by the State Level Scrutiny Committee, the Certificate granted in favour of the petitioner cannot be termed as bogus by the respondent Corporation. The respondent Corporation ought to have waited for the final determination of the Community Certificate by the State Level Scrutiny Committee. The respondent went wrong in concluding that the petitioner is not entitled for appointment under ST quota only based on the fact that the Certificate granted in favour of H.Rani, who is the sister of the petitioner, was earlier found to be bogus. However, the certificate granted in favour of H.Rani has been directed to be scrutinised by the Division Bench of this Court in WP No.29432 of 2016, dated 24.08.2016. Therefore, this subsequent development also will have a bearing in the present case.

14. The impugned order has been passed by the respondent without affording any opportunity to the petitioner and without waiting for the final decision of the State Level Scrutiny Committee, which has already commenced the process of verification of the Community Certificate of the petitioner. In view of the above discussion, this Court has to necessarily interfere with the impugned order passed by the respondent and accordingly, the same is set aside. The respondent has to necessarily await for the final decision of the State Level Scrutiny Committee and thereafter, take a decision in accordance with law. In the meantime, the respondent is directed to re-instate the petitioner into service with all attendant benefits and appropriate orders in this regard shall be passed within a period of four weeks from the date of receipt of a copy of this order.

15. The genuineness of the Community Certificate granted in favour of the petitioner has become doubtful and questionable and therefore, it has already become a subject matter of scrutiny before the State Level Scrutiny Committee. The Writ Petition filed by the petitioner challenging the same has also been dismissed as withdrawn on 19.02.2019. Therefore, there is no embargo on the part of the State Level Scrutiny Committee to proceed further with the enquiry on the Community Certificate issued to the petitioner. In matters of public

employment, particularly when the employment was given under SC and ST quota, it is important to ensure that the Community Certificate is genuine, failing which a deserving candidate belonging to SC or ST Community will be deprived of his chance to get employment. Therefore, the petitioner has to necessarily come out clean and establish that the Community Certificate granted in his favour is genuine.

16. In view of the above, there shall be a direction to the State Level Scrutiny Committee to proceed further with the verification of the Community Certificate of the petitioner and complete the enquiry and give a report to the respondent Corporation within a period of three months from the date of receipt of copy of this order. It is made clear that the petitioner shall cooperate for the enquiry and the final report shall be given within the time stipulated by this Court.

17. In the result, this Writ Petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jv
To

1. General Manager (TN)
Food Corporation of India,
Regional Office,
No.8, Mayor Sathyamoorthy Road,
Chetpet, Chennai 600 031.
2. The Chairman of the State Level Scrutiny Committee
and the Secretary to Government,
Adi Dravidar Tribal Welfare (CV2) Department,
Secretariat, Chennai 600 009.

+1cc to Mr.R.M.Muthukumar , Advocate SR.No. 1419

+1cc to Mr.S.Doraisamy , Advocate SR.No. 1092

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A.SK(28/02/2020)