



WEB COPY



W.P.No.8813 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Pronounced on : 21.06.2022

CORAM

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

W.P.No.8813/2022 and WMP.Nos.8667 and 8668/2022

P.A.Hemash

... Petitioner

-VS-

1. The District Collector,
Department of Revenue and
Disaster Management,
Government of Puducherry,
Puducherry.
2. Tahsildar,
Villianur Taluk Office,
Villianur, Puducherry.
3. The Assistant Controller (Exams),
Institute of National Importance
Combined Entrance Test (INI-CET),
All India Institute of Medical Sciences (AIIMS),
Ansari Nagar, New Delhi-110 608.
4. The Directorate General of Health Services,
National Board of Examinations in Medical Science,
Medical Counciling Committee,
NEET-PG, Medical Enclave,
Ansari Nagar, Mahatma Gandhi Marg,
Ring Road, New Delhi-110 029.



W.P.No.8813 of 2022

5. The Secretary,
Union Public Service Commission,
Combined Medical Service Exam,
Dholur House, Shahjahan Road,
New Delhi-110 069.

6. The Director General,
Employees' State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi-110 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in No.7678/TOV/TAH/CERT/A6/2021 dated 04.01.2022 and to quash the same and to direct the 1st respondent to issue Community Certificate to the petitioner.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.V.Ajayakumar

For Respondents : Mr.V.Balamurugan,
Government Pleader,
Pondicherry for R1 and R2

Mr.M.T.Arunan for R3 and R4

Mr.V.Chandrasekaran for R5

Mr.T.N.C.Kausaik for R6



W.P.No.8813 of 2022

ORDER

(Order of the Court was made by **T.RAJA, J.**)

WEB COPY

Challenging the impugned order passed by the 1st respondent herein in No.7678/TOV/TAH/CERT/A6/2021 dated 04.01.2022 and for quashing of the same with a direction to the 1st respondent herein, namely, The District Collector, Department of Revenue and Disaster Management, Government of Puducherry, Puducherry, to issue a Community Certificate to the petitioner, the present Writ Petition has been filed.

2. Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.V.Ajaya Kumar, learned Counsel appearing for the Writ Petitioner would submit that the petitioner is a permanent resident of Puducherry and belongs to Adi Dravida Community which is declared as Scheduled Caste in the Union Territory of Puducherry. The petitioner's father is working as Executive Engineer in Pondicherry Housing Board and his grandfather is a native of Pondicherry. The petitioner's grandfather also married his grandmother at Poothurai which is the other side of Puducherry-Tamil Nadu Boundary. Since the distance between these two places is only less than 1 k.m., his grandfather used to reside in both places and also was cultivating the family property belonging to his grandmother in Poothurai as his grandfather was not having any



W.P.No.8813 of 2022

landed property and thus, his grandfather and his family were residing in a hut in a poromboke land in Puducherry from time immemorial.

While so, the petitioner's father was issued with a Community Certificate of Puducherry and has completed his studies and subsequently, he got appointed as Technical Assistant in 1988 in the Pondicherry Housing Board on Daily Rated basis and later on, his services were regularised as Junior Engineer in 1991. The paternal relatives of his father were all enjoying the benefit of Scheduled Caste status of Puducherry and his father was also issued with the same community certificate. Based on the same, the petitioner was also issued with the same Community Certificate at the time of getting admission to the M.B.B.S. Course. But he was prevented from getting admission by some of the juniors of his father who were working under him by writing letters and petitions to the authorities stating that the petitioner's father's mother was having property in Poothurai and therefore, his mother is not a native of Puducherry, which are untrue. Therefore, earlier the petitioner filed a Writ Petition and on the basis of the orders passed by this Court in the said Writ Petition, he got admission in the M.B.B.S. Course.



W.P.No.8813 of 2022

3. Learned Senior Counsel for the petitioner would further submit that there is no other property or income to the petitioner's father's family except the salary of his father and the small house which was constructed by his father also in the poromboke land for which subsequently, Puducherry Government has given a patta to the petitioner's grandfather in the year 1978. While so, the petitioner applied for the Combined Medical Services Examinations of 2020-2021 and passed the examinations. Thereafter, the UPSC has directed him to produce the original certificates including the Community Certificate. Similarly, the petitioner applied for the post of Insurance Medical Officer Grade II in the ESI Corporation for which also the Community Certificate is needed to be produced. Though the petitioner applied for NEET examination for the year 2021-22 and got 465 marks, since he failed to produce the Community Certificate, he could not get admission. Likewise, the petitioner got selected for the Post Graduate Course in JIPMER, Puducherry in the examinations conducted by INICET, but he could not get admission as he failed to produce the Community Certificate in the prescribed format. Therefore, he was forced to forgo admission in JIPMER as well. He has applied for NEET and INICET Examinations for May, 2022 for which also Community Certificate is required without which the petitioner cannot be able to get admission at all. Therefore, the petitioner has approached the



W.P.No.8813 of 2022

revenue authorities in Vanur for getting a Community Certificate as directed by the Tahsildar, Villianur, Puducherry based on which the revenue authorities have conducted a detailed enquiry and came to the conclusion that the petitioner's grandfather who is a native of Puducherry married his grandmother and left Poothurai around 1960. So the revenue authorities in Vanur Taluk cannot issue community Certificate to the petitioner. Accordingly, directed the petitioner to approach the Revenue Authorities of Puducherry to get the Community Certificate. But all his efforts to get the community certificate has resulted in vain.

4. Learned Senior Counsel for the petitioner would also submit that the petitioner's father was issued with Community Certificate in 1982, 1985, 1987, 1988, 1990, 1992, 1994 and 1998 and the certificate issued in 1992 was purposefully cancelled by the Revenue Authorities thereby directing his father to produce evidence to show that he is a native of Puducherry for which his father was unable to produce any evidence because his grandfather and his predecessors were residing in the poramboke land in Pondicherry. Therefore, since the genuine request of the petitioner's father to issue Community Certificate was refused by the revenue authorities, challenging the same, the petitioner's father approached this Court by



W.P.No.8813 of 2022

filing W.P.No.20559/2014 and the petitioner also filed W.P.No.18027/2014 for obtaining a community certificate for getting admission and the order cancelling the Community Certificate of his father was set aside by a Division Bench of this Court with a direction to conduct an enquiry and to issue community certificate to his father as well as to the petitioner. But the revenue authorities simply reiterated the earlier order and refused to issue Community Certificate to his father as well as to the petitioner. Challenging the same, the petitioner's father once again approached this Court by filing W.P.No.16315/2018 and this Court, while dismissing the said writ petition by its order dated 02.11.2018 observed that the petitioner's father could not produce sufficient records to prove that he is a native of Puducherry. However, against the said order, the petitioner's father has filed a Review Petition No.189/2018 and the same is also pending before this Court. During the pendency of the said Review Petition, S.L.P. was filed before the Apex Court and the same was dismissed at the time of admission without going into the merits of the case. However, the Division Bench which dismissed the W.P.No.16315/2018 has passed a different order in another case in W.P.No.15630/2019 while allowing the said writ petition directed the revenue authorities to issue Community Certificate, provided, the writ petitioner therein is having minimum 5 years period of residence in the Union Territory of



W.P.No.8813 of 2022

Puducherry after migration. The said order was also brought to the notice of the Division Bench at the time of consideration of the Review Petition which is pending.

5. Learned Senior Counsel for the writ petitioner referring to a decision of the Hon'ble Apex Court in **S.Pushpa and Others vs. Sivachanmugavelu and others** reported in **(2005) 3 SCC 1** would submit that when a question arose for consideration whether the migrant scheduled castes/Tribes candidates belonging to another State were eligible for appointment to the posts which are reserved for Scheduled Castes/Tribes in the Union Territory of Puducherry, the Central Administrative Tribunal was of the view that the migrant Scheduled Castes/Scheduled Tribes candidates are not entitled to claim the benefit of reservation in the matter of employment in Puducherry Government Service. But the Supreme Court reversing the decision of the Central Administrative Tribunal observed that there is no violation of any provision of the Constitution of India in making the selection and appointment of migrant Scheduled Caste Candidates against the quota reserved for Scheduled castes on the post of Selection Grade Teachers in the Union Territory of Pondicherry, hence this petition may be allowed as prayed for.



W.P.No.8813 of 2022

WEB COPY

6. Per contra, Mr.V.Balamurugan, learned Government Pleader (Pondicherry) appearing for the respondents 1 and 2 and Mr.V.Chandrasekaran, learned Counsel for 5th respondent-UPSC urging this Court to dismiss the writ petition on the ground that the petitioner has got effective, statutory, alternative remedy before the Deputy Collector (Revenue), South, Villianur, Pondicherry against the impugned order dated 04.01.2022 passed by the Tahsildar-cum-Executive Magistrate, Villianur, inasmuch as on enquiry, it was found that he was not eligible for issuance of Scheduled Caste (origin certificate) under the Constitution (Pondicherry) Scheduled Castes Order, 1964 as his father and family members had migrated to Puducherry after 1970. Moreover, when the petitioner represented by his father approached this Court with W.P.No.16658/2013 seeking a direction to the Tahsildar/Deputy Tahsildar, Taluk Office, Villianur to issue Puducherry Origin Scheduled Caste Community Certificate, this Court disposed of the Writ Petition on 11.07.2013 with a direction to the respondents, namely, Tahsildar and Deputy Tahsildar, Taluk Office, Villianur to pass order on the application submitted by the petitioner therein within a period of two weeks from the date of receipt of a copy of that Order. Pursuant thereto, the Tahsildar, Villianur finding that there was no proof that his father and family members were residing



W.P.No.8813 of 2022

in Puducherry at the time of notification of the Presidential Order for Puducherry on 05.03.1964 rejected his application vide Proceedings No.3272/TOV/CERT/2013 dated 30.07.2013. Once again, the petitioner filed W.P.No.19368/2013 with a prayer to issue a Writ to CENTAC to admit the petitioner in the first year of MBBS Course for the academic year 2013-14 and to keep one seat vacant pending disposal of the writ petition. This Court, while disposing of the said Writ Petition observed that though the Tahsildar has now refused to issue certificate to the petitioner, the certificate dated 12.10.1998 given to the father of the petitioner earlier by the Deputy Tahsildar is still valid as the Revenue Department has not cancelled the said certificate issued to the petitioner's father and thereafter, the District Committee constituted under G.O.Ms.No.152 dated 24.11.2005 of the Department of Revenue and Disaster Management, Puducherry met on 25.06.2014 and 04.07.2014 and after considering the records and evidences produced, the then Collector-cum-District Magistrate, Puducherry has concluded by passing an order that the certificates issued to Thiru Ashokaraamasekar and his son Thiru Hemash prior to the year 2000 stand cancelled and thereupon, the Tahsildar was directed to issue a Scheduled Caste (Migrant) Certificate in the appropriate format to Thiru Ashokaraamasekar and his son Thiru Hemash vide order No.3270/DRDM/SC-CAN/2014 dated 24.07.2014.



W.P.No.8813 of 2022

WEB COPY

7. Learned Government Pleader (Pondicherry) appearing for the respondents 1 and 2 and the Counsel for 5th respondent would further submit that aggrieved thereby, the petitioner herein filed W.P.No.18027/2013 before this Court seeking to quash the proceedings dated 30.07.2013 for rejecting the request made by him in W.P.No.21443/2014 for the issuance of Scheduled Caste Certificate under the Constitution (Puducherry) Scheduled Castes Order, 1964. Besides this, the father and son also filed W.P.Nos.20559 and 21443/2014 seeking to quash the order passed by the District Collector vide Order No.3270/DRDM/SC-CAN/2014 dated 24.07.2014 and one Selvi A.Pavethra represented by her father Thiru P.I.Ashokaramasekar filed W.P.No.33021/2016 before this Court to quash the Order No.3053/DCRS/B7/Cert Appeal/2015-16 dated 17.8.2016 passed by the Deputy Collector (Revenue), South, Villianur, Puducherry, upholding the order passed by the Tahsildar, Taluk Office, Villianur. This Court, by a Common Order dated 28.04.2017 while setting aside the order dated 24.07.2014 of the District Collector-cum-District Magistrate, Puducherry, remitted the matter to the District Collector to consider the matter afresh in accordance with the procedure mentioned in G.O.Ms.No.152 dated 14.11.2005. In compliance of the order passed by this Court, the then Chairman-cum-



W.P.No.8813 of 2022

District Magistrate, Puducherry has ordered that the Scheduled Caste Certificate issued under the Constitution (Pondicherry) Scheduled Caste Order, 1964 as on 13.06.2018 to Thiru P.I.Ashokaraamasekar stands cancelled vide order No.3270/DRDM/C2/SC/2013 dated 13.06.2018. Again, the petitioner's father Thiru P.I.Ashokaraamasekar filed W.P.No.16315/2018 before the Division Bench of this Court and the same was dismissed against which a Review Petition No.189/2018 was filed and the same is also pending adjudication. Therefore, this writ petition should be dismissed as there is no merits therein, he pleaded.

8. Heard the submissions made on either side and we have also perused the materials available on record carefully.

9. Admittedly, the fact remains that the petitioner's father was initially issued with a Community Certificate of Pondicherry based on which he got appointment as Technical Assistant in 1988 in Pondicherry Housing Board. Thereafter, it appears that the Community Certificate issued to the petitioner's father was cancelled by the revenue authorities during the year 1992 with a direction to his father to produce evidence to show that he is a native of Puducherry for which the petitioner's father could not produce any evidence



W.P.No.8813 of 2022

because the petitioner's grandfather and his predecessors were residing in poromboke land. The petitioner's father Mr.P.I.Ashokaramasekar filed W.P.No.16315/2018 challenging the order dated 13.06.2018 passed by the Chariman-cum-District Magistrate, Collectorate, Revenue Department, Puducherry and the same came to be dismissed by a Division Bench of this Court by order dated 02.11.2018. Further, as relied on by the learned Government Pleader (Pondicherry) for the respondents 1 and 2 herein, in paragraph 22 of the said order, when the address of the petitioner's father was shown at Vanur, unless it is established by direct documentary evidence that the petitioner's grandfather came from Vanur to Puducherry and as such, he is residing at Puducherry from 05.03.1964 being the date on when the Constitution (Pondicherry) Scheduled Caste Order came into force, the petitioner's father cannot succeed in that writ petition. It goes without saying that the petitioner is only a migrant from Tamil Nadu to Puducherry. Therefore, they are not entitled to get the benefit of the reservation given to origin of Scheduled Caste as they are entitled to get the benefit of Scheduled Caste migrant. In this regard, it is relevant to extract paragraph No.22 of the order passed in W.P.No.16315/2018 here under:

"22. Moreover, learned Government Pleader (Puducherry) also produced documents of the year 1949 and 1977 on



W.P.No.8813 of 2022

the file of Sub-Registrar, Vanur, which shows that the petitioner's father has purchased a property in 1949 at Poothurai in Tamil Nadu and in the sale deed, the address of the petitioner's father was shown at Vanur. Likewise, in the settlement deed executed in favour of the mother of the petitioner in the year 1977, the address of the mother was shown as Poothurai. Thus, it is admitted that prior to 1964, the petitioner has no direct documentary evidence. Unless it is established by direct document evidence that the petitioner's father came from Vanur to Puducherry, and as such, he is a resident of Puducherry as on 05.03.1964 being the date when the Constitution (Pondicherry) Scheduled Castes Order came into force, the petitioner cannot succeed in this Writ Petition. In fact, all the documents produced on the side of the respondents, show that the petitioner and his family members were only natives of Vanur Village of Tamil Nadu."

10. Further, in this regard, it would be appropriate to refer to Articles 341 and 342 of the Constitution of India, which reads as follows:

"Article 341: (1) The President may with respect to any



WEB COPY



W.P.No.8813 of 2022

State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342: (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.



W.P.No.8813 of 2022

WEB COPY

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

A perusal of the Article 342 (1) and (2) clearly shows that the Parliament may by law include in or exclude from the list of Scheduled Tribes specified in the Notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe. Therefore, it is not open to the Tahsildar-cum-Executive Magistrate, Villianur to make any change in the Presidential Order. Once the Presidential Order issued in the Union Territory of Puducherry specifies that the Scheduled Castes residing in Puducherry as on 1964 are entitled to get the benefit thereof, moreover, the order dated 02.11.2018 passed in W.P.No.16315/2018 having said that any Government Order or Notification cannot alter or change any of the Presidential Notification dated 05.03.1964 and that since the petitioner's father has failed to establish that his father is a resident of Puducherry at the relevant point of time, this Court had held that the impugned order of cancellation of the Community Certificate given to



W.P.No.8813 of 2022

the petitioner's father by the Chairman-cum-District Magistrate cannot be found fault with. Therefore, it clearly shows that when the petitioner's father failed to get any Community Certificate from the Government of Puducherry, unless the Parliament issues a Notification including the petitioner's caste as Scheduled Caste, this Court cannot direct the 1st respondent to issue a Community Certificate to the petitioner herein. Hence, we cannot find fault with the impugned order of the 1st respondent.

11. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(T.R.J.,) (S.S.J.,)

.06.2022

tsi

To

1. The District Collector,
Department of Revenue and Disaster Management,
Government of Puducherry,
Puducherry.
2. Tahsildar,
Villianur Taluk Office,
Villianur, Puducherry.



W.P.No.8813 of 2022

3. The Assistant Controller (Exams),
Institute of National Importance
Combined Entrance Test (INI-CET),
All India Institute of Medical Sciences (AIIMS),
Ansari Nagar, New Delhi-110 608.
4. The Directorate General of Health Services,
National Board of Examinations in Medical Science,
Medical Counseling Committee,
NEET-PG, Medical Enclave,
Ansari Nagar, Mahatma Gandhi Marg,
Ring Road, New Delhi-110 029.
5. The Secretary,
Union Public Service Commission,
Combined Medical Service Exam,
Dholur House, Shahjahan Road,
New Delhi-110 069.
6. The Director General,
Employees' State Insurance Corporation,
Panchdeep Bhawan,
Comrade Indrajeet Gupta (CIG) Marg,
New Delhi-110 002.



WEB COPY



W.P.No.8813 of 2022

**T.RAJA, J.
AND
S.SOUNTHAR, J.
tsi**

Pre-delivery judgment in
W.P.No.8813 of 2022

21.06.2022