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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.15429 of 2022 and
W.M.P. No.14577 of 2022

C.Sathyavathy

.. Petitioner

-vs-

1.The District Collector,
Union Territory of Puducherry,
Puducherry.

2.The Deputy Collector (Revenue) North,
Department of Revenue & Disaster Management,
Puducherry.

3.The Tahsildar cum Executive Magistrate,
Taluk Office, Puducherry.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in Proceeding No.1266/DC(R)N/A2/2022/ 1208 dated 09.05.2022 and quash the same as illegal and consequently direct the second respondent to issue caste certificate of Puducherry origin.

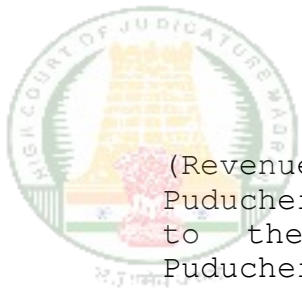
For Petitioner :: Mr.V.Vasanthakumar

For Respondents:: Mr.Balamurugan,
Government Pleader
Pondicherry for R1 to 3
assisted by
Mr.J.Kumaran,
Additional Government Pleader

ORDER

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

Mrs.C.Sathyavathy, the petitioner herein has filed this writ petition, challenging the Proceedings No.1266/DC(R)N/A2/2022/1208 dated 09.05.2022 issued by the Deputy Collector



(Revenue) North, Department of Revenue & Disaster Management, Puducherry, the second respondent herein and seeking a direction to the second respondent to issue caste certificate of Puducherry origin.

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2.Learned counsel appearing for the petitioner, assailing the impugned order, submitted that the petitioner, who belongs to Hindu Adi Dravida Caste, which comes under the Scheduled Caste, was born and brought up at Union Territory of Puducherry and has been working as a Staff Nurse at the General Hospital, Puducherry. While so, she married to one Mr.Kesavan, who was employed as a Doctor at General Hospital at Cuddalore District and belonged to Thiruvavarur District, Tamil Nadu, on 21.03.2003 and after their marriage, they were stayed at petitioner's parents home at Puducherry and out of their wedlock, they were blessed with a girl child on 26.06.2004, namely K.Namitha. Learned counsel for the petitioner further submitted that the petitioner, after coming to know that her husband Kesavan was already married, filed a petition in M.O.P. No.458 of 2001 for dissolution of marriage on the ground of cruelty and desertion before the Family Court, Puducherry and by judgment and decree dated 18.12.2021, the Family Court, Puducherry allowed her petition by dissolving the marriage, held between the petitioner and her husband and now the petitioner has been staying along with her daughter.

3.Learned counsel appearing for the petitioner further submitted that when the petitioner applied for issuance of community certificate for her daughter K.Namitha to pursue her higher studies, the Tahsildar cum Executive Magistrate, Taluk Office, Puducherry, the third respondent herein issued a community certificate of Hindu-Pallan, migrated from the State of Tamil Nadu quoting the reference of the community certificate of her estranged husband on 15.11.2021. When the petitioner's domicile was Union Territory of Puducherry, her daughter, who was also born at Puducherry, pursued all her academic education from Kinder-garden to Higher Secondary at Puducherry and the marriage between the petitioner and her husband was legally dissolved by the competent Court viz. Family Court, Puducherry by judgment and decree dated 18.12.2021 in M.O.P. No.458 of 2021, the third respondent ought not to have issued the community certificate to her daughter certifying that the petitioner belongs to Hindu-Pallan, migrated from the State of Tamil Nadu because neither the petitioner nor her daughter, at any point of time, stayed at her husband/ father's resident respectively, namely at Thiruvavarur or Tamil Nadu, except for few occasions on account of family functions. Since there was no relationship between the petitioner and her husband, the origin and community status of the petitioner should be taken into account and the origin of the petitioner's husband cannot be



taken into account, which is not legally permissible.

4. Adding further learned counsel for the petitioner submitted that in a similar and identical situation, a Division Bench of this Court in the case of P. Udhayanilavan vs. The Secretary, Government of Puducherry, Puducherry and two others vide order dated 21.10.2019 passed in W.P. No.15630 of 2019, observing whether the petitioner's father therein migrated before or after on 05.03.1964 is of no significance as 'Hindu Adi Dravidar' Community is a Scheduled Caste Community both under the Constitution (Pondicherry) Scheduled Caste Order 1964 and under the Constitution (Scheduled Caste) 1950 and considering the community and domicile status of the petitioner therein, has directed the concerned authority to issue the community certificate as 'Hindu Adi Dravidar' Scheduled Caste Community. Since the case on hand is squarely covered to the above case, following the above order passed by this Court on 21.10.2019 in W.P. No.15630 of 2019, this writ petition may be allowed.

5. Mr. Balamurugan, learned Government Pleader, assisted by Mr. J. Kumaran, learned Additional Government Pleader, appearing for R1 to R3, urging this Court to dismiss this writ petition, submitted that the reliance placed by the learned counsel for the petitioner on the order dated 21.10.2019 passed by the Division Bench of this Court in W.P. No.15630 of 2019 cannot be relied upon, since the Hon'ble Apex Court has granted an order of stay dated 04.01.2020 in S.L.P.No.8105 of 2020, preferred by the Government of Puducherry against the said order.

6. Learned Government Pleader also submitted that it is an admitted case that after the marriage was solemnised between the petitioner and her husband Kesavan on 21.03.2003, a female child namely, K. Namitha was born on 26.06.2004 and the petitioner's daughter and her husband were also frequently visited Thiruvarur, whenever any family function held in the said place, but, only after the year 2021, the marriage solemnised between the petitioner and her husband was dissolved by virtue of the decree and judgment dated 18.12.2021 passed by the Family Court, Puducherry in M.O.P. No.458 of 2021. Although the relationship between the petitioner and her husband has come to an end by obtaining decree for divorce from the competent Family Court, Puducherry, the relationship between the daughter and her father has not come to an end and the same still continues as the daughter Namitha is having legal right to inherit the ancestral property of his father Kesavan. It is an admitted case of both parties that their daughter was born out of their wedlock of Kesavan and the petitioner. Learned Government Pleader, drawing our notice to the impugned order dated 09.05.2022, passed by the third respondent, submitted that the Department of Revenue and



Disaster Management vide Memorandum No.9565/C2/Rev/2000 dated 10.11.2000 have instructed the Certificate issuing Authorities to follow only the guidelines prescribed in G.O. Ms. No.28 dated 02.02.1977 of Government of Puducherry, while deciding the migrant/origin status in respect of Scheduled Caste Certificates and caste should be decided based only on the residential status of applicant's father on the crucial date i.e. 05.03.1964 i.e. the date of Notification of the Providential Notification and not on the residential status of mother. Since the above G.O. Ms. No.28 dated 02.02.1977 has not been questioned or set aside or modified till date by any Court of law, based on the same, the present impugned order has been issued holding clearly that the petitioner is not entitled to get community certificate based on her community status, although her origin is Puducherry. Learned Government Pleader further contended that when the Government of Puducherry has passed the above G.O. making it clear that wherever the husband migrates from outside Puducherry and contracts marriage with a woman, domiciled at Puducherry, the community status of the woman will not be taken into account and only the community status of the father or husband alone will be taken into account.

7.We also find merits on the submissions made by the learned Government Pleader. It is an admitted case that the petitioner and her husband belong to Puducherry and Thiruvavur at Tamil Nadu respectively and out of their wedlock, on 21.03.2003, a female child namely, K.Namitha was born on 26.06.2004 and the daughter and father were also frequently visiting Thiruvavur, whenever any family function held in the said place, but, only after the year 2021, the marriage solemnised between the petitioner and her husband was dissolved by virtue of the decree and judgment dated 18.12.2021 passed by the Family Court, Puducherry in M.O.P. No.458 of 2021. After dissolution of marriage, the petitioner approached the respondents seeking community certificate for her daughter to pursue her higher studies. Since the third respondent on 15.11.2021 issued the community certificate of Hindu-Pallan, migrated from the State of Tamil Nadu quoting the reference of the community certificate of her estranged husband, she filed an appeal before the second respondent, challenging the said order and for issuance of caste certificate of Puducherry origin. As the appeal was dismissed by impugned order dated 09.05.2022, she is before this Court with the above prayer.

8.Considering the similar issue, one of us (T.R.J.) has held in W.P. No.8813 of 2022 dated 21.06.2022 as under:

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



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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 because the petitioner's grandfather and his predecessors were residing in poromboke land. The petitioner's father Mr.P.I.Ashokaraamasekar 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 on 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 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 Articles 341 and 342 of the Constitution of India, which reads as follows:

Article 341: (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 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.

(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



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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, this Court had held that the impugned order of cancellation of the Community Certificate given to 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.

9.A perusal of the above order shows that the petitioner therein is only a migrant from Tamil Nadu to Puducherry and he is not entitled to get the benefit of the reservation given to origin of Scheduled Caste as he is entitled to get the benefit of Scheduled Caste migrant. The order further states 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 therein.

10.In the light of the above, although the wife, who got divorce from her husband, is the origin of Puducherry and her husband is the origin of Tamil Nadu, the community status of the mother will not be taken into account and only the community status of the father or husband alone will be taken into account. Whenever any request is made for grant of community certificate to child or children of the father and mother, if the husband/ father is a migrant from outside the Puducherry, his community status alone will be taken into account, although the mother's origin is Puducherry.

11.In this regard, the Government of Puducherry has issued a Government Order in G.O. Ms. No.28 dated 02.02.1977 to follow the guidelines prescribed in the above G.O., while deciding the migrant/ origin status in respect of Scheduled Caste Certificates. On the basis of the above said G.O., the impugned order has been issued to the petitioner dismissing the appeal filed by the petitioner. It is useful to refer para 8 of the impugned order as under:

8.AND WHEREAS, the Department of Revenue and Disaster Management vide Memorandum No.9565/C2/Rev/2000 dated



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10.11.2000 have instructed the Certificate issuing Authorities to follow only the guidelines prescribed in G.O. Ms. No.28 dated 02.02.1977 of Government of Puducherry, while deciding the migrant/origin status in respect of Scheduled Caste Certificates and caste should be decided based only on the residential status of applicant's father on the crucial date i.e. 05.03.1964 i.e. the date of Notification of the Providential Notification and not on the residential status of mother.'

12.Since the above G.O. Ms. No.28 dated 02.02.1977 has not been questioned or set aside or modified till date, the impugned order passed by the second respondent cannot be found fault with. Therefore, we do not find any merit in this writ petition. Accordingly, this writ petition stands dismissed. However, there is no order as to costs. Consequently, W.M.P. No.14577 of 2022 stands closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Union Territory of Puducherry,
Puducherry.
- 2.The Deputy Collector (Revenue) North,
Department of Revenue & Disaster Management,
Puducherry.
- 3.The Tahsildar cum Executive Magistrate,
Taluk Office, Puducherry.

+1cc to Mr.V.Vasanthakumar, Advocate SR.No.40783

W.P.No.15429 of 2022 and
W.M.P. No.14577 of 2022

SS(CO)
GN (01/07/2022)