



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 11.03.2021

Orders Pronounced on
17.03.2022

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Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.5957 of 2016

A.Subramanian

... Petitioner

Vs.

The Chief Regional Manager,
(Disciplinary Authority)
National Insurance Company Limited,
Coimbatore Region Office,
684, trichy road,
Stock exchange Building,
Coimbatore-5.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondent to grant the petitioner Full Pension with effect from 01.01.2015, DCRG, Earned Leave Encashment, Provident Fund and all other admissible benefits along with interest.

For petitioner : Mr.V.Vijay shankar

For respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan.

O R D E R

The prayer in the Writ Petition is to issue a Writ of Mandamus to direct the respondent to grant the petitioner Full Pension with effect from 01.01.2015, DCRG, Earned Leave Encashment, Provident Fund and all other admissible benefits along with interest.

2. The petitioner claims to belong to Malayali community which is a Scheduled Tribe in terms of the Constitution Scheduled Tribe Order 1950. According to him, he has been issued with a community certificate by the Tahsildar, Attur on



17.06.1977 certifying him as belonging to Schedule Tribe Community. Further, his School records also disclosed the fact that he belonged to the said Malayali community.

3. In 1978, the petitioner joined the respondent Insurance Company as Assistant. After serving for over 30 years, the petitioner superannuated from service in the cadre of Senior Assistant with effect from 31.12.2014.

4. During his service, the Collector, Salem District, cancelled his community certificate on 16.06.1992 on the basis of the discreet enquiry conducted behind the back of the petitioner. The petitioner, being aggrieved by the cancellation of the certificate without conducting proper enquiry, approached this Court in W.P.No.10550 of 1992. The Writ petition was finally disposed of by an order dated 14.06.2001, wherein this Court has set aside the order of cancellation of the Collector and granted liberty to proceed against the petitioner afresh by a duly constituted committee. The Court held that there was flagrant violation of principles of natural justice as copies of the report of the Tahsildhar, R.D.O and the statement obtained from the villagers were not furnished to the petitioner.

5. In pursuance of the liberty granted by this Court in June 2001, the petitioner was summoned for enquiry by the Scrutiny Committee. In the meanwhile, the petitioner was placed under suspension by the respondent Company on 19.12.2013 on the ground that the caste status was pending verification. The petitioner was once again constrained to approach this Court in W.P.No.1165/2014 and the same was allowed by this Court on 03.02.2014. This Court, set aside the order of the respondent on the ground that as long as the community certificate issued to the petitioner was not duly cancelled and the same was subsisting, no valid action can be taken against the employee. The petitioner was therefore, reinstated in service and on superannuation, retired from service on 31.12.2014.

6. The grievance of the petitioner in this writ petition is that despite superannuation on 31.12.2014, all the benefits payable to him have been withheld and not released so far. In this regard, the petitioner appeared to have made a representation on 09.06.2015 and the same did not evoke any response from the respondent employer. Therefore, the petitioner is before this Court for redressal of his grievance.

7. Mr.V.Vijay Shankar, the learned counsel for the petitioner would submit that under the regulation as applicable



to the service condition of the petitioner, it is not open to the respondent to withhold the retirement benefits merely on the premise that the community status of the petitioner is under verification. According to the learned counsel, the long pendency of the verification before the State Level Scrutiny Committee is not the fault of the petitioner. According to him, there are hundreds of such claims which are pending verification and the inordinate delay is not attributable to the petitioner and his terminal benefits cannot be withheld for an indefinite period on this account.

8. In terms of the regulation, the retirement benefits can be withheld only on two contingencies namely conviction in a criminal case or found guilty of grave misconduct. But it does not cover the present contingency namely pending verification of community status. He would, in this regard, particularly refer to Regulation 42 of General Insurance (Employees) Pension Scheme, 1995, which is extracted hereunder.

42. Withholding or withdrawal of pension - The competent authority may by order in writing, withhold or withdraw pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

9. According to the learned counsel, the following decisions would support his contentions, namely that merely because of the pendency of verification of caste certificate, the retirement benefits cannot be withheld.

(i) He would refer to the order passed in W.P.No.21759 of 2011 dated 21.02.2013. Paragraph Nos. 3 to 5 of the said order passed by the learned Division Bench are extracted hereunder.

3. The learned counsel for the petitioner submitted that till the petitioner reached the age of superannuation on 31.05.2011, no committee was constituted for conducting an enquiry as directed by this Court and though the petitioner was permitted to retire, the terminal benefits were not paid to her. On enquiry, the petitioner was informed that in view of the pendency of the issue relating to community certificate, the terminal benefits have not been released to her. Hence, the present writ petition.

4. Learned counsel appearing for the respondent Board fairly conceded that there is no provision in the Tamil Nadu Electricity Board Service



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Regulations to withhold the terminal benefits after permitting an employee to retire from service. However, according to the learned counsel for the Board as well as the learned Additional Government Pleader appearing for the 3rd respondent, in view of the pendency of the issue with regard to the community certificate, the petitioner is not entitled to receive the terminal benefits. Further, the learned Additional Government Pleader submitted that the petitioner is not co-operating for the enquiry to be conducted as directed by this Court.

5. Here is a case wherein, by order dated 31.05.2011, the petitioner was permitted to retire from service, but without prejudice to the outcome of the Court case. According to the learned counsel for the petitioner, no court case was pending as against the petitioner, but, he fairly admitted the pendency of the issue with regard to community certificate before the authority concerned.

However, we are unable to understand us to how the respondent Board can withhold the terminal benefits, when there is no such enabling provision in the service regulations. Apart from this, the petitioner has served in the respondent Board for a period of 29 years from 1981 to 2011. Even assuming for a moment that it is decided that the petitioner does not belong to Scheduled Tribe Community, whether the appointment issued to the petitioner way back in the year 1981 can be cancelled is a questionable one. Unless a definite power has been given in the Service Regulations to that effect, the same cannot be done. Consequently, we are of the view that having allowed the petitioner to retire from service, she is entitled to the terminal benefits. The respondent Board is directed to release the terminal benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order. But, at the same time, the 3rd respondent is at liberty to proceed with the enquiry with regard to the community certificate of the petitioner. In the event of the petitioner not co-operating for the enquired, the 3rd respondent is at liberty to proceed further and pass orders indicating the non-co-operation of the petitioner. The writ petition is disposed of accordingly. No costs. Connected M.P. is closed.



(ii) In identical circumstances, the Division Bench has held that in the absence of any power to withhold the retirement benefits, the retired employee is entitled to be paid the terminal benefits, notwithstanding the fact that the community certificate was under verification.

(iii) He would refer to another decision in W.P.No.22714/2013 dated 26.08.2013, wherein the Division Bench of this Court in paragraph Nos.6 to 11, has held as under:

6. The learned counsel for the second respondent submitted that so long as the community certificate has not been cancelled, the community certificate must be taken to be a valid one and since the second respondent has been permitted to go on voluntary retirement, the Department is not justified in withholding the terminal benefits. The learned counsel placed reliance upon the unreported judgment of the Division Bench of this Court in W.P.No.21759 of 2011 dated 21.02.2013.

7.As pointed out earlier, the verification of the community certificate of the second respondent was referred way back in 2001 and in turn, the same was referred to State Level Scrutiny Committee, which was constituted as per G.O.Ms.No.108 dated 12.09.2007 notwithstanding that the verification of the community certificate is pending with the State Level Scrutiny Committee. The fact remains that the second respondent was permitted to go on voluntary retirement. Even though the said order dated 04.01.2010 states that the order is issued "without prejudice to the outcome of her community status verification/confirmation by the newly constituted Committee as per G.O.Ms.108 dated 12.09.2007", the order does not specifically state that pending community status verification by the Committee, the terminal benefits will not be disbursed. It is fairly well settled that so long as the community certificate is not cancelled by the duly constituted Committee, the said community certificate is deemed to be valid for all purposes. Since the second respondent has been permitted to go on voluntary retirement and a provisional pension at the rate of Rs.7,220/- per month was also released to the second respondent with effect



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from 04.01.2010, we are of the view that the Department was not justified in refusing to disburse the terminal benefits. Taking note of the fact that process of verification of the genuineness of the community certificate is still pending and that the community certificate has not been cancelled by a competent authority, the Tribunal rightly directed the petitioner Department to disburse the terminal benefits.

8.The Tribunal has directed the petitioner Department to disburse the terminal benefits like gratuity, commutation of pension, leave encashment etc., admissible to the second respondent with interest at the rate of 12% from the date it became payable till the date of release. Since the petitioner Department is said to have not disbursed the terminal benefits on the ground that the verification of the community certificate of the second respondent was pending before the State Level Scrutiny Committee, it cannot said that there was wilful or deliberate delay on the part of the Department in releasing the terminal benefits, warranting direction to pay interest at the rate of 12%. So far as the direction of the Tribunal in ordering payment of interest at 12%, we are of the view that it is not justified and the same is liable to be interfered with.

9.Mr.V.Vijay Shankar, the learned counsel for the petitioner submitted that since the community certificate verification is pending before the State Level Scrutiny Committee, in case if the community certificate is found to be bogus, the interest of the Department/Revenue has to be protected.

10.Having regard to the submissions, it is made clear that the disbursement of the terminal benefits is subject to the outcome of the community certificate verification pending with the State Level Scrutiny Committee.

11.In the result, the direction of the Tribunal in ordering disbursement of the terminal benefits is confirmed. Insofar as the direction of the Tribunal to pay interest at the rate of 12% is set aside and the writ petition is partly allowed. It is made clear that the disbursement of the terminal benefits is subject to the



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outcome of the community certificate verification pending with the State Level Scrutiny Committee. No costs. Consequently, connected miscellaneous petition is closed.

(iv) The learned counsel would further refer to the order passed in W.P.No.7991 of 2010 dated 28.04.2010, wherein one other Division Bench of this Court in paragraph Nos. 2 to 4 has held as under:

2. We have heard Mr.R.Thiagarajan, learned senior counsel appearing for the petitioners. It is by now well settled that so long as the community certificate issued in favour of the second respondent is not cancelled in the manner known to law, the employer viz., the petitioners herein, has no right to deprive whatever the certificate that was produced by the second respondent for securing the employment has not been cancelled and the issue relating to the genuineness of that certificate is pending before the state Level scrutiny Committee. A mere pendency of the genuineness of the community certificate, by itself, would not disentitle the second respondent his pension and other benefits. The Tribunal has allowed the application only on the above finding, which we do not find any interference is required.

3. Mr.R.Thiagarajan, learned senior counsel for the petitioner, would submit that the State Level scrutiny Committee may be directed to dispose of the petition pending as to the genuineness of the community certificate. In our opinion, such an order cannot be passed in this petition, as the petitioners have to work out their remedy in an appropriate petition. The petitioners, therefore, could take out an appropriate application seeking for a direction to the State Level Scrutiny Committee for disposal of the application. While dismissing this writ petition, we also make it clear that whatever the benefits to which the second respondent is otherwise entitled to and paid pursuant to the order of the Tribunal and in this writ petition, shall be subject to the order that may be passed by the State Level Scrutiny Committee.



4. With the above observation, the writ petition is dismissed. No costs. consequently, connected M.P. is also dismissed.

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The learned counsel would therefore, submit that the issue is directly covered under the above said ruling of the Division Bench of this Court.

10. On behalf of the respondent Company, Mr. Anand Gopalan, appeared and filed a detailed counter affidavit resisting the claim of the petitioner.

11. According to the learned counsel for the respondent, the respondent company earlier appeared to have approached this Court in W.P.No.9642/2016 seeking a direction to the State Level Scrutiny Committee to verify the caste certificate of the petitioner expeditiously and this Court disposed of the writ petition on 07.04.2016 directing the State Level Scrutiny Committee to pass orders on merits and in accordance with law following the guidelines laid down by the Hon'ble Supreme Court as well as the High Court within a period of six weeks. However, till date, the Committee has not passed any final order. The learned counsel would submit that despite several representations addressed to the State Level Committee by the respondent, no final order has been passed till date.

12. The learned counsel would further submit that as far as the Management is concerned, they have initiated effective steps for early disposal of the certificate verification pending before the State Level Committee but unfortunately, despite the directions of this Court and also the subsequent representations from the Management, nothing seemed to have moved the Committee towards passing of the final order in the matter.

13. The learned counsel would submit that notwithstanding the pendency of verification, the petitioner has been settled the gratuity amount of Rs.10,00,000/- along with interest and the petitioner's contribution towards Provident Fund was also released to him to the tune of more than Rs.9 lakhs in 2014 itself. He would therefore, submit that it is not that the petitioner has been left completely in the lurch without any payment. On his turn, the learned counsel would refer to a decision reported in 2018 SCC Online Mad 2243 (R.Prabhuraj v. The Reserve Bank of India, rep. by Deputy General Manager, Human Resource Management Department, Fort Glacis, No.16, Rajaji Salai, P.B.No.40, Chennai - 600 002 and another). The Division



Bench of this Court, in consideration of the similar claim of the retired employee whose retirement benefits have been withheld due to the pendency of caste certificate verification, after advertent to various decisions, has ultimately directed the State Level Scrutiny Committee to verify the community certificate and pass a speaking order within a period of eight weeks. As a matter of fact, even in this case, at the instance of the respondent Management, similar direction has been issued but for some unknown reason, the same has not been complied with.

14. The learned counsel would refer to another Division Bench decision rendered in W.P.No.19874 of 2008 dated 08.11.2012. The ruling of the Division Bench appears to be striking a different cord inconsistent with the view taken by the other Division Bench as relied upon on behalf of the petitioner. For the sake of record, the operative portion of the said order in paragraph Nos. 28 to 32 are extracted hereunder.

28. With regard to the submission made by the learned counsel for the petitioner that on account of long lapse of time and the time taken by the scrutiny committee to give its opinion, the employee cannot be denied the terminal benefits, the Hon'ble Supreme Court in G.Sundarasan - Vs - Union of India & Anr. (1995 (4) SCC 644) held that the onus is on the employee, who was appointed under the scheduled caste quota, does not cease merely because continuing in service for a long period of 30 years on the basis of a community certificate granted by the competent authority and, on the facts of the case, found that in the departmental enquiry it has been found that the appointee do not belong to scheduled caste and he procured employment under the reserved quota by submitting false certificate.

29. Similar view has been taken in the unreported judgment dated 29th Sept., 2011, made in W.P. No.17184/11, wherein a Division Bench of this Court directed the payment of terminal benefits to the employee subject to the orders passed by the State Level Scrutiny Committee.

30. The facts of the present case would disclose that in the application submitted for voluntary retirement, one of the condition stipulate that the employee/writ petitioner herein was made aware that the bank may initiate action against him for any commissions/omissions, which may come to light at a later date and also recover any financial loss, which



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may arise on that account, from his terminal benefits, including pension payable in future; that in the order relieving the petitioner on voluntary retirement also states that the acceptance of notice of voluntary retirement is without prejudice to the right of the bank to recover any loss or damage caused by him while in bank's service.

31. In the light of the above condition, there is nothing wrong in the act of the bank in postponing payment of terminal benefits till the scrutiny committee declares its decision. The facts of the case would also disclose that the Salem District Scrutiny Committee has passed an order dated 17th Feb., 2012, canceling the community certificate issued to the petitioner and it has also been challenged by filing W.P. No.26799/12.

32. In the light of the reasons assigned above, the writ petition is dismissed. However, the 1st respondent is directed to deposit the terminal benefits payable to the writ petitioner on account of voluntary retirement, in an interest bearing fixed deposit till the jurisdictional committee gives its decision on the genuineness of the community certificate and if the committee gives positive opinion as to the genuineness of the community certificate issued to the petitioner, then the 1st respondent shall take immediate and necessary steps, to disburse the terminal benefits as expeditiously as possible. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

15. The learned counsel would therefore, submit that once, the terminal benefits are released in favour of the petitioner, it is difficult to recover the amount from the employee, if the certificate verification goes against the claim of the petitioner.

16. On behalf of the petitioner, three Division Bench decisions have been cited wherein all the decisions have consistently held that it is not open to the employer to withhold retirement benefits merely citing the reason of pendency of caste verification before the competent authority/committee. Such view, in the opinion of this Court, appears to be not only binding on this Court, but also very much in consonance with the rule position as demonstrated before this Court in respect of the present lis. As extracted supra, the rule envisages only two situations for withholding of the



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terminal benefits, namely conviction in a criminal case or found guilty of grave misconduct. In the absence of third contingency namely pendency of certificate verification, the respondent's action in not releasing the terminal benefits has to be held as without the authority of law.

17. As a matter of fact, Regulation 45 mandates payment of provisional pension in case of any departmental or judicial proceedings pending against the retired employees. Therefore on no account, the retirement benefits could be validly withheld by the Department, except on the above mentioned two eventualities.

18. In any case, this Court finds that the rulings of the Division Bench as relied upon by the learned counsel for the petitioner appear to be having more force in tune with the Service Regulations. In such circumstances, the reliance placed by the learned counsel for the respondent on two decisions of the Division Bench may not be stated to prevail over as the binding precedent. Moreover, the action of the Management in not releasing the retirement benefits must be supported by explicit provision in the Regulation that govern the service conditions of the petitioner. In the absence of the same, such action cannot stand the test of judicial scrutiny.

19. In the above case, there is not only absence of provisions, authorising the Management to withhold the terminal benefits, but it is also in contravention of the consistent rulings of this Court as aforementioned.

20. For the above stated reasons, the Writ Petition is allowed. The respondent is directed to release all the terminal benefits duly admissible to the petitioner on his retirement from 31.12.2014 as prayed for.

21. It is made clear that the release of terminal benefits including pension will be subject to the outcome of the caste verification pending before the State Level Scrutiny Committee. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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