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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM

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

W.P.No.21216 of 2021
and
W.M.P. No.22489 of 2021

R.Balaguru

.. Petitioner

-vs-

1. The Chairman,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-9.
2. The Deputy Superintendent of Police,
Social Justice Rights Wing,
Office of the Superintendent of Police,
Nethimedu, Salem-2.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus by calling for the records of the second respondent in its C.No.153/SJHR/SLM/2017, dated 19.07.2021 and quash the same and consequently refrain the respondents from verifying the community status of the petitioner at this belated juncture.

For Petitioner	:	Mr.V.Vijay Shankar
For respondents	:	Mr.V.Manoharan, Additional Government Pleader

ORDER

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

Challenging the Notice C.No.153/SJHR/SLM/2017, dated 19.07.2021 issued by the Deputy Superintendent of Police, Social Justice Rights Wing, the second respondent herein, the petitioner has come to this Court with this writ petition.



2. Learned counsel appearing for the petitioner submitted that the petitioner, who belongs to Konda Reddis Community, which is classified as a Scheduled Tribe, having appointed in the year 1980 as a Chargeman in the Chennai Port Trust and rendering 30 years of service, got promotions and finally retired from service as Foreman on reaching the age of superannuation on 31.01.2010. Since the Port Trust declined to pay the pensionary benefits, he came to this Court with W.P. No.18214 of 2010 for issuance of a writ of Mandamus seeking a direction to the respondents therein to pay 1) Wage Board arrears from 01.01.2007 upto 31.01.2010 i.e. for 37 months, 2) Overtime allowances including incentives for January, 2010, 3) Incentive for December 2009 and January 2010, 4) Provident Fund lying to the credit of his account, 5) Gratuity for 30 years of service rendered, 6) Pension from 01.02.2010, 7) Commutation of Pension, 8) Earned Leave Encashment including EL and LHP and 9) Medical and other related benefits together with interest within a time frame. Learned counsel for the petitioner further submitted that by order dated 10.12.2010 passed in W.P. No.18214 of 2010, the Division Bench of this Court, while observing that the petitioner questioned the proceedings pending before the Revenue Divisional Officer by filing W.P. No.14407 of 1994 on the ground that the Revenue Divisional Officer has no jurisdiction to go into the genuineness of the community certificate and though the petitioner had submitted his representation as early as on 21.02.2009, the State Level Scrutiny Committee has not passed orders and verification of the community certificate would delay the payment of terminal benefits to the petitioner, has allowed the writ petition. Learned counsel for the petitioner further submitted that when the petitioner has been superannuated and regularly getting his pension and other terminal benefits from the Chennai Port Trust on the basis of the order passed by this Court in W.P. No.18214 of 2010 and the Special Leave Appeal (Civil) 13284 of 2011 filed by the Chairman, Chennai Port Trust and others was dismissed by the Hon'ble Supreme Court on 03.05.2011 confirming the above order, any further verification at this stage would tantamount to harassment. Adding further learned counsel for the petitioner submitted that any further enquiry at this belated stage is in breach of the guidelines set out in G.O. Ms. Nos.108 and 106 dated 12.09.2007 and 15.10.2012 respectively, as per which verification has to be done immediately on the individual's appointment. But, in the present case, such enquiry sought to be made is after 40 years from the date of his appointment and 12 years after his superannuation. Therefore, no such verification or enquiry shall be permissible. When guidelines have been issued in the aforementioned G.Os, verification has to be done shortly after the person's appointment or admission to an education institution as the case may be. Moreover, when the



petitioner, who is aged about 72 years, was tested positive for Covid-19 and advised to take complete bed rest, he could not appear for enquiry once again.

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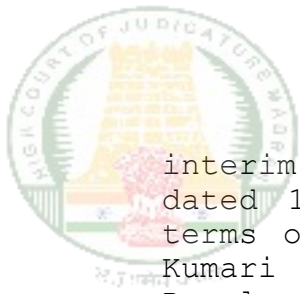
3. Learned counsel for the petitioner further submitted that when the petitioner has come to this Court with the above W.P. No.18214 of 2010, all the issues were addressed and this Court has frowned upon the authorities for delaying the verification. Therefore, the attempts made by the respondents to once again undertake enquiry or verification of the status of the petitioner's community as to whether he belongs to SC or ST are not permissible in view of the guidelines issued in G.O. Ms. Nos.108 and 106, which have been categorically held by the Division Bench of this Court in the above order dated 10.12.2010. Therefore, the enquiry sought to be conducted belatedly after 40 years from the date of appointment and 12 years from the date of retirement is impermissible and the impugned notice is liable to be quashed.

4. Opposing the above prayer, Mr.V.Manoharan, learned Additional Government Pleader appearing for the respondents heavily contended that the ground taken by the petitioner both in W.P. No.18214 of 2010 and in the present writ petition that the enquiry/ verification sought to be undertaken to find out the status of the community certificate to which the petitioner belongs was belated of 40 years from the date of appointment, is wholly un-acceptable. When the petitioner entered into the service of the Port Trust as a Chargeman, a complaint dated 18.09.1992 was received by the Chennai Port Trust stating that the petitioner had secured employment by producing a false community certificate. Therefore, the genuineness of the said certificate was sought to be verified by the Port Trust and for that purpose, the District Collector was addressed on 23.12.1992 to examine the certificate. Pursuant to the said request, the Revenue Divisional Officer, Mettur, had directed the petitioner to appear for enquiry on 13.06.1994 and after 12 years from the date of entry, the complaint was received only on 18.09.1992 and the petitioner also questioned the proceedings, pending before the Revenue Divisional Officer by filing W.P. No.14407 of 1994 on the ground that the Revenue Divisional Officer has no jurisdiction to go into the genuineness of the community certificate. While entertaining the same, this Court granted an order of stay of operation of the enquiry. Ultimately, the writ petition was dismissed on 19.06.2002 with a direction to complete the enquiry in terms of the directions issued by the Hon'ble Supreme Court in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development and others, reported in AIR 1995 SC 94. Only thereafter, the Revenue Divisional Officer



issued notice dated 15.09.2005 to the petitioner directing him to appear for enquiry and the said notice was again questioned by the petitioner by filing W.P. No.33939 of 2005 on the ground that he has no jurisdiction to go into the genuineness of the community certificate and the same came to be disposed of on 19.01.2009 and the impugned notice of the Revenue Divisional Officer was set aside with a further direction to the petitioner to go before the State Level Scrutiny Committee as the State Level Scrutiny Committee alone had the authority to verify the genuineness of the community certificate in terms of G.O. (2D) No.108 Adi Dravidar and Tribal Welfare (CV-I) Department dated 12.09.2007 and the State Level Scrutiny Committee was also directed to pass orders within a period of four weeks from the date of receipt of the representation from the petitioner and the petitioner submitted a representation on 21.02.2009 and the State Level Scrutiny Committee has not passed any final order and in the meanwhile, the petitioner attained the age of superannuation and retired on 31.01.2010. When the pensionary benefits were stopped by the Chennai Port Trust, the petitioner came to this Court with another Writ Petition No.18214 of 2010 alleging falsely that enquiry/verification was sought to be made after 40 years from the date of entry into service. When the petitioner got appointment as Chargeman in the year 1980, the Chennai Port Trust had immediately initiated enquiry proceedings against the petitioner by issuing notice dated 13.06.1994 on receipt of the complaint dated 18.09.1992. Therefore, it is absolutely unjustified on the part of the petitioner to say that the Chennai Port Trust has consumed 40 years from the date of entry to enquire into the status of the community certificate of the petitioner.

5.We find merits on the submission made by the learned Additional Government Pleader appearing for the respondents. When there was a complaint given against the petitioner's community status only on 18.09.1992, after 12 years from the date of entry, on receipt of the same, the Chennai Port Trust, who is duty bound to verify the genuineness of the certificate, addressed a letter to the District Collector on 23.12.1992 to examine the community certificate of the petitioner. Pursuant to the same, the Revenue Divisional Officer, Mettur directed the petitioner to appear for enquiry on 13.06.1994. Had the petitioner possessed all the valuable and acceptable documents to show that he belongs to Kondareddi, which is classified as ST community, he should have immediately co-operated with the enquiry, which has not been done by him. But, on the other hand, he had come to this Court with W.P. No.14407 of 1994 on the ground that the Revenue Divisional Officer had no jurisdiction to go into the genuineness of the community certificate. While entertaining the said Writ Petition, this Court granted an



interim order of stay and the same was dismissed vide order dated 19.06.2002 with a direction to complete the enquiry in terms of the directions issued by the Hon'ble Supreme Court in Kumari Madhuri Patil vs. Additional Commissioner, Tribal Development and others reported in AIR 1995 SC 94. Once again the petitioner filed another Writ Petition in W.P. No.33930 of 2005, taking a similar stand that the Revenue Divisional Officer has no jurisdiction to go into the genuineness of the community certificate. Finally, the same was disposed of by order dated 19.01.2009 directing the petitioner to go before the State Level Scrutiny Committee. Now, the State Level Scrutiny Committee has issued the impugned Proceedings. Therefore, we do not find any merit on the contention made by the learned counsel for the petitioner that there were a delay on the part of the respondents. On the basis of the findings and the records produced before us, we are unable to see that there is a delay on the part of the respondents. As we have highlighted above, when the complaint received only on 18.09.1992, immediately the Chennai Port Trust has acted upon and after addressing the District Collector on 23.12.1992 for examination, an enquiry notice was also issued on 13.06.1994, but, only the petitioner has been running from pillar to post to avoid the enquiry. The findings given by this Court in W.P. No.18214 of 2010 vide order dated 10.12.2010 show that argument made by the counsel that there was a delay was accepted, but, in our considered opinion, for the reasons mentioned above, there was no delay on the part of the respondents, as stated by the petitioner. Therefore, the stand taken by the petitioner that if at all the department wants to undertake any enquiry/verification of the community status, such enquiry should have been made after the person's appointment or admission to an education institution, on the basis of the guidelines issued in G.O. Ms. Nos.108 and 106 dated 12.09.2007 and 15.10.2012 respectively, cannot be acceptable. When the respondents have started enquiry immediately after coming to know that the petitioner had secured employment by producing a false community certificate, on receipt of the complaint dated 18.09.1992, the petitioner, who had avoided the enquiry for the reasons best known to him, could not say that there is a delay, although he had entered into service in the year 1980.

6.Learned Additional Government Pleader submitted that since the petitioner's appearance is sine qua non, he may be directed to appear and co-operate for the enquiry to reach a final conclusion.

7.Therefore, the petitioner is directed to appear and co-operate with the enquiry. If he fails to do so, the State Level



Scrutiny Committee shall pass appropriate orders in the manner known to law. While conducting enquiry, the State Level Scrutiny Committee shall consider the objection filed by the petitioner. Accordingly, this writ petition stands dismissed. Consequently, W.M.P. No.22489 of 2021 stands closed. No costs.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

vga

To

1. The Chairman,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-9.
2. The Deputy Superintendent of Police,
Social Justice Rights Wing,
Office of the Superintendent of Police,
Nethimedu, Salem-2.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.35497
+1cc to the Government Pleader, S.R.No.35316

W.P.No.21216 of 2021
and
W.M.P. No.22489 of 2021

GPL[co]
NSK/01/07/2022