BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.02.2022
CORAM
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**
W.P.(MD)No.8035 of 2018

S.Rajendran ... Petitioner

vs.

1.The Manager,
Personnel Department (Class III and IV Cell),
The New India Assurance Company (Head Office),
87, MG Road, Fort,
Bombay-1.

2.The Regional Manager,
The New India Assurance Company Limited,
252, Kamaraj Salai,
Madurai-1. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to sanction gratuity and Employer's Contribution of Provident Fund and other retirement benefits along with interest at 12% per annum from 31.01.2015.

For Petitioner : Mr.Vijayshankar
For Respondents : Mr.N.Dilip Kumar

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O R D E R

This Writ Petition is filed for issuance of a Writ of Mandamus, to direct the respondents to sanction gratuity and Employer's Contribution of Provident Fund and other retirement benefits along with interest at 12% per annum from 31.01.2015.

2.The brief facts of the case are that the petitioner belongs to Konda Reddis community which belongs to Scheduled Tribe under the Constitution Scheduled Tribes Order, 1950. He was issued with a community certificate by the Thasildar of Musiri. Based on the certificate, the petitioner joined the service to the respondents Insurance Company in the year 1983 and he has attained superannuation on 31.01.2015. In the year 1993, the respondents wanted the petitiner to obtain a fresh community certificate from RDO. At the instance, the petitioner approached this Court by filing a Writ Petition in W.P.No.4342 of 1993. This Court, vide order, dated 08.02.2000, allowed the Writ Petition and observed that it is not open to the respondents to insist on a fresh community certificate from RDO. Later, in the year 2002, the District Level

Vigilance Committee initiated enquiry proceedings and the same was challenged in W.P.No.17174 of 2002 questioning his jurisdiction. So, this case was taken up along with batch of cases and the Writ Petition was allowed by observing that it was only the duly constituted committee which can make verification of the community status. The District Committee is not an appropriate authority but the said State Level Scrutiny Committee is a competent body. Therefore, the certificate of the petitioner can be verified only by the said State Level Scrutiny Committee.

3.In the meanwhile, the petitioner attained superannuation in the year 2015. The respondents herein have issued Provident Fund (Employee Contribution) and leave encashment. Employer's contribution, gratuity and other terminal benefits are not disbursed. The contention of the respondents is that since the community certificate verification is still pending, the petitioner is not entitled to terminal benefits. The respondents have filed a counter affidavit stating that the petitioner has not taken any steps in the year 2003 to get necessary orders from the said State Level Scrutiny Committee. In the School Leaving Certificate of the petitioner, the petitioner's communal status is mentioned as only Reddy and not Konda Reddy. It was brought to he knowledge of this Court by showing the transfer certificate, the petitioner has stated for the query whether she belongs to SC/ST. The petitioner has mentioned as “No”. The petitioner has also relied on two judgments.

4.The respondents also relied on one more judgment, where it states that the person who entered the service by producing false certificate, is depriving the appointment of the genuine SC candidate to the post and do not observe any sympathy or diligence of the Court.

5.Heard Mr.Vijayshankar, learned Counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned Standing Counsel appearing for the respondents and perused the records placed before this Court.

6.The contention of the respondents is that the petitioner has not stated the true facts before this Court. In the School Leaving Certificate the petitioner has stated that the petitioner belongs to Reddy Community and for the question whether the petitioner belongs to SC/ST the petitioner has stated as “No”. But now, he has claimed to belong to Konda Reddi community. This Court is not able to accept the said contention of the respondents, since the School Leaving Certificate and other certificates cannot be relied on when there is a community certificate issued by the Tahsildar. This Court cannot sit as an Enquiry Officer and enquire all these issues. Once the Tahsildar has issued a certificate in the year 1976, wherein the Tahsildar is the competent authority during the year 1976, the genuineness cannot be questioned, unless and until it is cancelled as known to law. There are several judgments where it says that when a community certificate is issued it is valid until it is cancelled. Therefore, the contention of the respondents cannot be accepted.

7. The learned Counsel appearing for the petitioner relied on several judgments. He relied reported in ***AIR 2013 SC 3583*** and the relevant portion is extracted below:

> *"8. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of* Article 300 *A of the Constitution of India.*
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> *...*
>
> *15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid* Article 300A. *On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."*

8.He also relied on the order passed in W.P.No.7991 of 2010 and the relevant portion is extracted below:

> *"2.We have heard Mr.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 service benefits to which he is otherwise entitled to. Admittedly, 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."*

He also relied on the order passed in W.P.No.21759 of 2011, dated 21.02.2013. The relevant portion of the order is extracted below:

> *"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 as 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 third 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 enquiry, the third respondent is at liberty to proceed further and pass orders indicating the non-cooperation of the petitioner. The writ petition is disposed of accordingly. No costs. Connected M.P. Is closed."*

He also relied on the order passed in W.P.No.22714 of 2013, dated 26.08.2013. The relevant portion of the order is extracted below:

> "7. ....*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 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.

.....

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

He also relied on the order passed in W.P.No.19234 of 2014, dated 07.07.2015. The relevant portion of the order is extracted below:

"36. That leaves us with one last question as to what would happen if the State Level Scrutiny Committee eventually holds that the 2nd respondent does not belong to the Scheduled Tribe. We cannot shirk this question, but the answer is too obvious. The right of a person to receive pension continues until his final departure. Even after his departure, his family become entitled to Family Pension. Therefore, if the State Level Scrutiny Committee eventually cancels the Community Certificate of the 2nd respondent, the petitioner can always pass orders forfeiting the pension as well as the Family Pension."

He also relied on order passed in W.P.No.5918 of 2016, dated 18.02.2016. The relevant portion of the order is extracted below:

"16. Admittedly, in the present case, no judicial proceedings or departmental proceedings are pending against the second respondent and the Railways have started the process of verifying the Community Certificate of the second respondent as early as 03.12.2003. The second respondent had attained the age of superannuation on 30.04.2013, nearly after ten years from the date of the petitioner starting the process of verification. Even after two and a half years of his retirement, that is even today, the verification process has not been completed. Hence, mere reference to the pendency of the verification of the community certificate of the second respondent before the State Level Scrutiny Committee is not a ground for the petitioners to deny the terminal benefits to the second respondent. As observed by the Division Bench of this Court in the above referred to decision, in the event of the Scrutiny Committee cancelling the Community Certificate, the Railways can pass orders forfeiting the pension. Hence, the mere pendency of the proceedings

before the Scrutiny Committee cannot impede the settlement of terminal benefits to the second respondent."

He also relied on order passed in W.A.(MD)No.282 of 2017, dated 04.04.2017. The relevant portion of the order is extracted below:

"7.Admittedly, the appellant bank were not diligent in prosecuting the matter with regard to the Verification of the genuineness of the communal status of the respondent/Writ Petitioner. In fact, no doubt was raised by the appellant bank at the time, when the respondent/Writ Petitioner was appointed to the service of the appellant bank in the year 1984. It appears that for the first time, the genuineness was doubted, based on a complaint, which was received by the appellant bank in the year 1996. Therefore, the appellants bank caused an enquiry into the matter and addressed to the District Collector, Idukki, vide letter, dated 15.03.1996. In fact, the said letter was a reminder to the earlier letter, dated 08.01.1996, wherein the genuineness of the community certificate issued to the respondent/Writ Petitioner has been sought for. In response to the said communication, a reply was received from the District Collector, Idukki, on 01.11.1996, addressed to the Branch Manager, State Bank of India, Bodinayakkanur, certifying that the respondent/Writ Petitioner is suitable for service and there is nothing against him. The appellants bank, after receiving the said certificate through its Branch Manager, had forwarded the same to the Assistant General Manager, vide letter, dated 28.10.1997. Thereafter, nothing transpired and the matter was put in a cold storage. For the first time, it was resurrected, when the respondent/Writ Petitioner attained the age of superannuation and retired from service. After the respondent/Writ Petitioner superannuated and retired from service, he was also paid one month pension. Subsequently, the appellants bank took a decision to withhold the gratuity, the employees provident fund, etc., which prompted the respondent/Writ Petitioner to approach this Court for appropriate direction for disbursement of the retirement benefits."

He also relied on order passed in W.P.Nos.1369 and 14780 of 2015, dated 11.12.2017 and the relevant portion is extracted under:

"Hence, it is held that:

1.A Caste/Community Certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority.

2.Their contents are to be treated as correct and every public authority, undertakings, bodies, institutions etc., which are bound by instructions relating to such certificates are bound to act upon them, so long as they are not cancelled.

3.In no disciplinary proceeding, their genuineness or correctness of their contents can be gone into. It is open to the department or employer or organization, to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued could be still valid, on materials which have since come to their knowledge. They can appear in the verification enquiry and place the materials.

4.If the certificate is cancelled, then disciplinary proceedings can be initiated for having furnished false information.

5.Appointing authorities have the right to verify the genuineness of the certificates by approaching the District Magistrate-Collector of the District or such other constituted authority, and once the report is received that the certificate is genuine, thereafter the certificate-holder cannot be further harassed to prove his caste/community in any other manner.

6.In causing verification, the Collector is bound to follow the procedure laid down in Letter dated 7-7-1983 of Government of Tamil Nadu.

7.In view of what is stated in Chapter XIX of Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services, 6th Edition (1982), the instructions issued by the Central Government from time to time relating to Scheduled Castes and Scheduled Tribes, pertaining to issue of caste certificates are binding upon public sector undertakings, statutory and semi-government bodies and voluntary agencies receiving grands-in-aid from the Central Government, as provided therein."

9.Therefore this Court is of the considered opinion that the hard earned benefit which accrues to an employee, is in the nature of "property" and this right to property cannot be taken away without the due process of law. There is no statutory provision or rules which empowers the employers for withholding pension or gratuity in the given situation. A mere pendency of the genuineness of the community certificate, by itself, would not disentitle the petitioner his pension and other benefits. Even assuming for a moment that it is decided that the petitioner does not belong to Scheduled Caste community, whether the appointment issued to the petitioner way back 20 / 30 years, can be cancelled is a questionable one. 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.

10. The petitioner has submitted the General Insurance (Employees') Pension Scheme, 1995 and relied on Rule 42 where it has been stated that unless a person is convicted or found guilty for misconduct, the terminal benefits cannot be withheld. In the present case, no such allegation is against the petitioner.

11. The petitioner relied on Office Memorandum of the Government of India, dated 30.11.2021, where it has been stated as under:

> "*The Central Civil Service (Pension) Rules, 1972 or the instructions / guidelines issued by this Department however do not provide for withholding of the retirement benefits under any other circumstances including on account of pending verification of caste status of the employee*".

12.Therefore, based on the Pension Scheme applicable to respondent company as well as Office Memorandum of the Central Government, this Court is of the considered opinion that the petitioner is entitled to terminal benefits and the respondents have no power to withheld the terminal benefits. The petitioner relied on judgments rendered by this Court and uniformly in all the cases it has been held that the terminal benefits cannot be withheld. Infact the judgment further states that the respondents are empowered to forfeiting the pension as well as the family pension, if the community certificate was cancelled. Therefore, this Court is of the considered view that the petitioner is entitled to terminal benefits, of course, with a rider. If in the enquiry proceedings the certificate is cancelled, then the respondents are empowered to forfeiting the pension as well as the family pension. The respondents are directed to pay the pension and terminal benefits within a period of 10 weeks from the date of receipt of a copy of this order.

13.With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

TO:

1.The Manager,
Personnel Department (Class III and IV Cell),
The New India Assurance Company (Head Office),
87, MG Road, Fort,
Bombay-1.

2.The Regional Manager,
The New India Assurance Company Limited,
252, Kamaraj Salai,
Madurai-1.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-6626[F] dated 16/02/2022)

+1 CC to M/s.A.SRINIVASAN, Advocate (SR-6616[F] dated 16/02/2022)

W.P.(MD)No.8035 of 2018
15.02.2022

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