



W.P.(MD)No.17548 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2022

PRONOUNCED ON : 19.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17548 of 2016

and

W.M.P.(MD)Nos.12673 and 12674 of 2016

J.Alagesan

... Petitioner

vs.

The Manager (P&IR)/DM,
LIC Insurance Corporation of India,
Divisional Office,
Bridge Station Road,
Post Box No.16, Sellur,
Madurai-2.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in P&IR, dated 18.08.2016 and to quash the same and consequently, to direct the respondent to convert the petitioner's community status to open category in service records and to grant him correct fixation of pay and allowance and all incentives from the date of his appointment with all arrears and benefits.



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For Petitioner
For Respondent

:Mr.V.Vijaya Shankar
:Mr.G.Prabhu Rajadurai

ORDER

The Writ Petition in filed for issuance of Writ of Certiorarified Mandamus, to quash the proceedings in P&IR, dated 18.08.2016 and consequently, to direct the respondent to convert the petitioner's community status to open category in service records and to grant him correct fixation of pay and allowance and all incentives from the date of his appointment with all arrears and benefits.

2. The petitioner claims that the petitioner belongs to the Konda Reddy Community which is a Schedule Tribe and has produced a community certificate, dated 26.02.1980, issued by the Tahsildar and another certificate by the Revenue Divisional Officer, Mettur Dam on 27.10.1988. Both these certificates were issued after due verification and enquiry and the same has not been cancelled as per law and the same is still valid and the petitioner was selected and appointed by an order, dated 31.01.1997. However, the petitioner's service was not confirmed, because of the issue in his community certificate as Scheduled Tribe. Hence, the petitioner filed W.P.No.1629 of 1999 and the said writ petition was



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dismissed. Aggrieved over the same, the petitioner preferred W.A.No.513 of 2003 and this Court, vide order, dated 05.06.2007, modified the order and directed the respondent Corporation to take appropriate action to verify the community certificate and the Court has also directed the District Collector to hold a proper enquiry after affording opportunity to the petitioner and this Court has also directed the respondents to pay the salary to which the petitioner is entitled to in accordance with law.

3. The contention of the petitioner is that the time limit of 4 months was fixed for the respondent Corporation to verify his community certificates, no steps whatsoever have been taken for more than 9 years. The petitioner has submitted various representations to the respondent and requested to pay appropriate salary. The petitioner is receiving Rs.9,160/- per month, whereas his colleagues appointed with him were drawing about Rs 45,000/- per month. Therefore, the petitioner approached this Court again by filing W.P.(MD)No.8038 of 2012 and this Court, vide order, dated 15.06.2012, felt that since there was already a direction by this Court in W.A.No.513 of 2003, disposed of the Writ Petition permitting the petitioner to file a contempt application, if necessary.



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4. Based on the order, the respondent slightly revised the salary of the petitioner by revising as if for a new appointee on probation and the petitioner's salary was fixed as Rs.31,000/- per month whereas his colleagues and juniors appointed along with him were drawing about Rs.80,000/- per month. The petitioner was not granted any incentives and other monetary benefits when the other employees are receiving. The contention of the petitioner is that the Government of India, Ministry of Business have issued guidelines contained in OM, dated 12.09.1990 permitting SC/ST employees to move to open category (OC) by voluntarily relinquishing their SC/ST status. The petitioner submits that the SC/ST employees who were facing difficulties in having their services confirmed were facing procrastinated verification proceedings had opted to move to OC category. Hence, the petitioner, in order to avail such benefits so as to put an end to the trauma and agony he was undergoing. He submitted a representation to the respondent on 25.07.2016 requesting the respondent to put himself under OC category, so that he could be treated as an open category candidate. However, the respondent refused, vide impugned order, dated 18.08.2016, stating that the request is not feasible as a matter of verification of



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community certificate is before the scrutiny committee. Aggrieved over the same, the present writ petition is filed.

5. The respondent has filed a counter affidavit stating that the petitioner was appointed as Apprentice Development Officer with this respondent Corporation on 31.03.1997 the said appointment was made against the vacancy reserved for Scheduled Tribe. The Petitioner produced the Community Certificate, dated 26.02.1980, issued by Tahsildar Mettur Dam. As the Tahsildar was not the competent to issue Community Certificate bearing No. 000026/388713, dated 27.10.1988, allegedly issued by Revenue Divisional Officer, Mettur Dam-1. The said prescribed form was made available to the petitioner only in January 1997, but the Certificate was, dated 27.10.1988.

6. The contention of the respondent is that if it was a genuine document, the petitioner could have produced it at the time of appointment itself. A complaint from LIC/SC/ST Employees Welfare Association, Madurai, was received on 26.04.1997, alleging that the Petitioner belong to Reddy's Community and that he fraudulently obtained a certificate as if he belongs to Konda Reddy Community. It



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was also pointed out in the said complaint that then Salem District Collector issued circular informing that there was no person belonging to Konda Reddy community in Kolathur Village of Mettur Taluk. In view of the same, the respondent referred the case the District Collector, Salem by letter, dated 29.04.1997 and 02.05.1997 for verification. The respondent further submitted that the District Collector, Salem, vide letter RDC 130889/93/D15, dated 20.10.1993, addressed to the Government Pleader stating that the said Revenue Divisional Officer T.Kaliaperumal had not issued any Konda Reddy community certificate to anyone during his tenure as Revenue Divisional Officer, Mettur from 13.10.1986 to 31.10.1988. The alleged certificate of the petitioner falls during such period.

7. When the matter was pending before the District Collector, Salem, the petitioner filed a Writ Petition in W.P.No.1629 of 1999 and the same was disposed on 30.12.2002 with the direction to the petitioner to produce a fresh Community Certificate within 4 weeks against which the petitioner preferred a Writ Appeal in W.A.No.513 of 2003 and the Honourable Division Bench, by order, dated 05.06.2007, directed the Senior Divisional Manager, LIC of India, Madurai to send a reminder to the District Collector and further direction was issued to the



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District Collector to enquire into said complaint and take decision. In compliance of the said order, respondent referred the case to the District Collector by letter, dated 19.06.2007 and 21.06.2007. However, by G.O.Ms.No.108, dated 12.09.2007, the power to verify the genuineness of the community certificate was given to the State Level Scrutiny Committee. The respondent regularly following up with the District Collector, vide letters, dated 19/06/07, 21/06/07, 16/07/07, 09/08/07, 07/09/07, 14/12/07, 07/01/08, 20/02/08, 06/03/08, 24/04/08, 11/06/08, 10/07/08, 18/08/08, 19/09/08, 17/10/08, 20/11/08, 19/12/08, 28/01/09, 20/03/09, 24/11/10, 25/01/11, 04/03/11, 12/04/11, 13/06/11, 25/08/11, 04/10/11, 09/12/11, 22/02/12, 16/05/12, 27/07/12, 15/09/12, 21/11/12, 10/01/13, 30/03/13 & 28/05/13 and State Level Scrutiny Committee vide letters, dated 03/11/07, 18/02/09, 13/03/09, 18/04/09, 19/05/09, 15/06/09, 29/07/09, 21/08/09, 12/11/09, 30/03/10, 29/06/10, 24/11/10, 25/07/12, 22/08/13, 08/11/13, 13/01/14, 16/03/14, 01/07/14, 01/09/14, 01/11/14, 02/01/15, 02/03/15, 02/05/15, 01/08/15, 12/10/15, 30/11/15, 30/01/16, 04/04/16, 06/07/16, 01/08/16, 02/09/16, 03/10/16, 04/11/16, 05/12/16, 02/01/17, 04/02/17, 02/03/17, 04/04/17, 05/06/17, 05/07/17, 31/08/17, 28/09/17, 30/10/17, 01/11/17, 09/12/17, 05/01/18, 09/02/18, 03/03/18, 31/03/18, 07/05/18, 01/06/18 and 04/07/18, such authorities have not yet taken any



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decision.

8. The contention of the respondent is that the issue is pending before the State Level Scrutiny Committee for the past more than 12 years. The petitioner has not taken a single step to finalize the issue before the committee. It is the duty of the petitioner as well to establish his community status at all time and he cannot take advantage of delay on the part of official machinery. The issue was considered in several cases and if a person does not belong to Scheduled Caste and Scheduled Tribe Category and the appointed if granted, it is considered as fraud on the Constitutional Scheme. The petitioner has suppressed the material facts that he has regarding his community certificate. The petitioner is taking advantage of the delay of the authorities but the respondent is taking earnest effort to comply with the order of the Court.

9. The contention of the respondent is even in the appointment letter, dated 31.10.1997, it is stated that “during the period of apprenticeship you shall be liable to be discharged from service without any notice” and still the petitioner was not confirmed and he is continuing in the probation period. However, only to



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provide an opportunity to establish, the petitioner was retained. The petitioner was given salary as revised stipend prospectively. This is only to provide opportunity to the petitioner to take necessary steps. But the petitioner is taking advantage of the same. The said Office Memorandum, dated 12.09.1990, issued by the Ministry of Finance is applicable to the case of the petitioner and the said memorandum cannot be utilized to avoid illegality. Therefore, the respondent prayed to dismiss the writ petition.

10. The petitioner filed a reply affidavit, wherein the petitioner has denied the allegations stated in the counter and submitted that the judgment of the Hon'ble Division in W.A.(MD)No.513of 2003 clearly held that the responsibility of making verification is on the competent authority i.e. the Vigilance Committee. In so far as the petitioner herein is concerned he has not received any notice or communication asking him to appear for enquiry before the State Level Scrutiny Committee. Moreover there are detailed procedure devised by the Government for verification of caste certificates of SC / ST and the same is contained in G.O.Ms. No.108 dated 12.09.2007 and G.O.Ms.No.106 dated 15.10.2012. As per the said G.O.s before verification by the State Level Scrutiny Committee, it is



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mandatory to have local / spot enquiry by the Vigilance Committee which would conduct detailed spot enquiry and collect evidence in the presence of the concerned individual who will have an opportunity to explain and rebut the same. If any adverse order is passed, a copy of the adverse order ought to be furnished along with a show cause to the individual who will have an opportunity to explain and rebut the same. Thereafter the State Level Scrutiny Committee is expected to call the individual for personal enquiry, afford an opportunity of hearing and arrive at a decision. The State Level Scrutiny Committee is a high powered body constituted by the State Government, which conducts its proceeding as per procedure set out above. The Committee ought to summon the individual and the individual cannot thrust / push the State Level Scrutiny Committee to conduct an enquiry. Moreover there are several hundreds of application are pending before the Committee. In the present case none of these procedures have commence. Further the relief sought for in the present writ petition is for appropriate direction to convert him to the open category in terms of OM dated 12.09.1990 and to grant all pay, incentives and allowances from the date of his appointment. The other persons in his cadre are receiving Rs.1.10 lakhs per month and the petitioner have completed 25 years and hardly three more years to attain



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superannuation. All over India the petitioner alone is stagnating and the petitioner is seeking equality in pay as enshrined in the Constitution. The petitioner is seeking the salary for discharging his duties as Development Officer and prays to allow the writ petition.

11. Heard Mr.V.Vijaya Shankar, the learned Counsel appearing for the petitioner and Mr.G.Prabhu Rajadurai, the learned Counsel appearing for the respondent and perused the records.

12. The issue raised before this Court is that the petitioner was recruited on 31.01.1997 in the SC/ST quota based on the community certificate that he belongs to Konda Reddy Community. On complaint from the LIC/SC/ST Employees Welfare Association, Madurai, the employer entertains a doubt that the petitioner has submitted forged document since it was also pointed out in the said complaint that the then Salem District Collector issued circular informing that there was no person belonging to Konda Reddy community in Kolathur Village of Mettur Taluk. The District Collector, Salem by letter, dated 29.04.1997 and 02.05.1997 had directed to verify. The respondent further submitted that the



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District Collector, Salem, vide letter RDC 130889/93/D15, dated 20.10.1993 had submitted instructions stating that the said Revenue Divisional Officer T.Kaliaperumal had not issued any Konda Reddy community certificate to anyone during his tenure as Revenue Divisional Officer, Mettur from 13.10.1986 to 31.10.1988. The alleged certificate of the petitioner falls during such period. Hence the respondents claim that the petitioner is not entitled to any relief in the present writ petition. However, the petitioner submits that the community certificate is pending for verification and the verification ought to be carried out by the State Level Scrutiny Committee as per G.O.Ms.No.108 and 106 as stated supra. In the meanwhile, the petitioner is seeking to pay the salary as applicable to the said post wherein the similarly placed persons are receiving and the petitioner is seeking a direction to consider him as under open category in terms of Office Memorandum dated 12.09.1990. The Office Memorandum is extracted hereunder:

***“No.101/11/90-SCT(B)
Government of India
Ministry of Finance
Department of Economics Affairs
(Banking Division)***



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SC/ST SECTION

New Delhi, the 12 Sept: 1990.

To,

All the Chief Executives of Public Sector

Banks/ Financial Institutions.

Sub:: Requests of SC/ST employees for change of Caste Status.

Sir,

Some Public Sector Banks have received requests from some of their employees belonging to SC/ST Communities voluntarily giving up the benefits available to them as members of the SC/ST. The matter has been examined in consultation with the Department of Personnel & Training which has advised that in such cases the following procedure may be followed:

"The SC/ST candidates who are not willing to avail themselves of the benefits of SCs and STs in services, may be asked to furnish a Sworn Affidavit that he/she is voluntarily quitting the benefits available to him/her as an SC or ST candidate, as the case may be and he/she will not claim such benefits in future also. After obtaining the above affidavit, he/she may be treated as a General category candidate thereafter.

I am directed to convey the above decision of the Govt to you for compliance.

The receipt of this letter may please be acknowledge.

Yours faithfully

(S.P. BHATIA)



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Under Secretary to the Government of India

CC: to

GM(P) of Union Bank of India w.r.t his letter No. DP;REC;69(5a): 359 dated 29.1.1990 for information and necessary action.

Secretary, IBA, Bombay.

Chief Personnel, Personnel (SEL & TRG) Division, Punjab National Bank, New Delhi w.r.t his letter No. S&T/SC/ST/GI/V dated 04.06.90 for information and necessary action”

13.The learned Counsel for the respondents submitted that the OM is not applicable to the present case since it is applicable only for persons who is seeking employment by giving up the SC ST status. However, on perusal of the OM it is seen that the OM is addressed to all Bank, Financial Institutions wherein it is stated the reason for passing OM is that “some Public Sector Banks have received requests **from some of their employees** belonging to SC/ST Communities voluntarily giving up the benefits available to them as members of the SC/ST” The phrase used is “**from some of their employees**”, which means the existing employees and not persons who are seeking employment. Interestingly this OM was issued in the year 1990 and it is in force from 1990



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onwards. Therefore, this Court is of the considered opinion that the petitioner is eligible to seek the benefits under the said OM and shall give up the benefits.

14. The learned Counsel for the petitioner further submitted that the petitioner is eligible for equal pay that is applicable to the similarly placed persons and relied on the judgment rendered in ***Sabha Shankar Dube Vs Divisional Forest Officer and others*** reported in ***(2019) 12 SCC 297*** wherein it has been held as under:

“10. On a comprehensive consideration of the entire law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh has held as follows: (SCC p.223, para 58)

“58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependents would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situated constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”



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He also relied on ***P.Mani Vs State of Tamil Nadu***, reported in **2019 (2) CWC 189**

wherein it is held as under:

8. *The most questions that arises for consideration is whether the Appellant, who had been temporarily engaged on Daily Rated basis as Women Warder, was entitled to the minimum of the Pay Scales which was applicable to the Regular Employees holding the same post. The Division Bench of this Court in the Order, dated 24.11.2004 in W.P. No.2719 of 2004, etc. batch, while dealing with claims in respect of certain persons, who were similarly placed to the Appellant, answered the same in their favour and the Respondents implemented that decision by issuing G.O. Ms. No.719, Home (Prison-2) Department, dated 26.8.2009. Now, what has to be seen is whether the Appellant also has to be extended the same benefit.*

9. *The Hon'ble Supreme Court of India in State of Punjab v. Jagjit Singh, 2017 (2) LLN 562 (SC) 2017 (1) SCC 148, and Sabha Shanker Dube v. Divisional Forest Officer, 2018 (4) LLN 564 (SC): 2018 SCC Online 2440, has reiterated the settled legal position that Temporary Employees (Daily Wage Employees, ad hoc Appointees, Employees appointed in Casual basis, Contractual Employees and likewise) are entitled to draw wages at the minimum of the Pay Scales which are applicable to the Regular Employees holding the same post. The relief granted by the Division Bench of this Court in the Order, dated 24.11.2004 in W.P. No.2719 of 2004, etc. batch is in consonance with the aforesaid binding legal principle recognizing such pre-existing obligation on the State, and the Respondents have also accepted the same as Policy matter and issued the said Governmental Order for its implementation, which gives rise to the inference that it has to be liberally construed as in the nature of Judgment in ram with intention to give benefit to all similarly placed persons, whether or not they have approached the Court for such relief. That being so, the Respondents cannot be heard to complain of any prejudice caused due to the delay on the part of the remaining similarly placed persons, like the Appellant, approaching the Court belatedly seeking extension of the benefit to them. In this context, it would be appropriate to refer to the dictum laid down by the Hon'ble Supreme Court of India in State of Uttar*



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Pradesh v. Arvind Kumar Srivastava, 2015 (1) SCC 347, where after referring to the various binding legal decisions on the subject, it has been succinctly held as follows:

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in Service matters more emphatically as the Service Jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such Employees cannot claim that the benefit of the Judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the Judgment pronounced by the Court was Judgment in ram with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur, when the subject matter of the decision touches upon the Policy matters, like scheme of regularization and the like see K.C. Sharma & ors. v. Union of India (supra). On the other hand, if the Judgment of the Court was in persona holding that benefit of the said Judgment shall accrue to the parties before the Court and such an intention is stated expressly in the Judgment or it can be impliedly found



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out from the tenor and language of the Judgment, those who want to get the benefit of the said Judgment extended to them shall have to satisfy that their Petition does not suffer from either laces and delays or acquiescence."

In the light of this legal position coupled with the facts of the case as noticed supra, it has to be held that even though the Appellant was not a party to the earlier litigation covered by the aforesaid batch of cases, she has to be extended the same benefits and the Respondents are bound to pay her the difference in the Monetary benefits arising out of the Minimum Scale of Pay applicable to regular Warder after deducting the amount of wages actually paid to her during the period she had worked. Hence, the Order No.2735/KeCU/2012, dated 25.4.2012 passed by the Third Respondent cannot be sustained and the same is quashed to the extent that it denies that benefit to the Appellant. The Respondents are directed to make necessary calculations for ascertaining the amount due to the Appellant in this regard and disburse the same to her under written acknowledgment and file a Report of Compliance before the Registrar (Judicial) of this Court by 30.4.2019.

15. This Court is of the considered opinion that the above judgments were rendered on different facts. Admittedly the petitioner is receiving lesser salary. But receiving lesser salary is for a different reason, since the petitioner is kept under probation all these years and was not regularized, was not granted other monetary benefits since the petitioner's certificate is still pending. Hence the aforesaid judgments cannot be relied on for the present facts of the case. If the certificate is verified and declared as genuine then the petitioner would be entitled



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to regular salary. Therefore this Court is of the considered opinion that the said Judgments are not helping the petitioner.

16. The learned Counsel for the respondent relied on ***B.Ravindran Vs.General Manager (Personnel), United India Insurance Company and another*** reported in (2020) 1 CWC 917 wherein it is held as under:

14. According to the petitioner, he belongs to Scheduled Tribe Community and that having completed 34 years of service in the capacity of Development Officer (Administration), he attained superannuation on 31.05.2017. But his pension and other benefits were withheld on the ground that the Community Certificate has not been verified by the State Level Scrutiny Committee and that the Community Certificate which was produced by the petitioner at the time of joining in the respondent Organisation, was obtained by misrepresentation and that the Tahsildar, Madurai North, who issued the certificate, had no such authority to issue such certificate regarding the community status of a Scheduled Tribe. But, according to the petitioner, the Community Certificate produced by him has not been cancelled so far and is very much valid and subsisting.

...

23.It is also appropriate to refer to yet another Division Bench judgment of this Court in the case of T. Prabakaran v. The Chairman, State Level Scrutiny Committee and Secretary to Government, reported in 2017 SCC OnLine Mad 22011. In that case, it has been categorically held by this Court that as regards the question as to whether a particular person belongs to the reserved community, truth has to be found out, so as to enable him to claim the benefits attached to such status. It has been specifically held that the Courts have got a duty to see that only eligible people are given "Scheduled Tribe" Community certificates, since the benefits earmarked by the Constitution to the Scheduled Tribes should go to the deserving members of the community. Finally, a direction has been



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given to the State Level Scrutiny Committee to consider the matter afresh and take a decision on merits as per law, within a stipulated time frame.

24. In R. Agilandamurthy v. Tamil Nadu State Level Scrutiny Committee, reported in 2018 SCC OnLine Mad 149, under similar circumstances, a Division Bench of this Court, after considering the facts and circumstances of the case in detail, held that for disbursement of the terminal benefits of the incumbent who has attained the age of superannuation, during the pendency of the writ petition therein, he has to await the ultimate outcome of the verification of the community status by the State Level Scrutiny Committee.”

17.The above referred judgments had held that the employee ought to wait until the verification of the community status by the State Level Scrutiny Committee. But the Government of India had issued an Officer Memorandum wherein it has been directed to grant permission to those employees who has opted for exiting from the reserved category. Since the petitioner has opted for such benefits, then the petitioner is entitled to such benefits. Therefore the impugned order is set aside and the respondents shall take an affidavit from the petitioner indicating that the petitioner is willing to exit from the reserved category, thereafter the respondents shall treat the petitioner as open category and consequential monetary benefits and service benefits shall be disbursed to the petitioner within a period of six weeks from the date of receipt of a copy of this



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order.

18.In the result, the writ petition is allowed. No costs. Consequently,
connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

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