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W.A.2758 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.03.2023

DELIVERED ON: 28.04.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.A.No.2758 of 2010
and M.P.No.1 of 2010

1.The Tamil Nadu Public Service Commission,
Rep. By its Secretary,
Omanthoorar Government Estate,
Chennai-600 002.

2.The Under Secretary,
Tamil Nadu Public Service Commission,
Chennai.

.. Appellants

Vs.

N.Jayarani

.. Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the judgment dated 22.04.2009 made in W.P.No.42261 of 2006.

For Appellants : Mrs.G.Hema,
Standing Counsel for TNPSC
For Respondent : Mr.S.Subbiah, Senior Counsel
for M/s.Elizabeth Rani



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JUDGMENT

D.KRISHNAKUMAR, J.

The officials respondents in W.P.No.42261 of 2006 have preferred this appeal, challenging the impugned order dated 22.04.2009 passed in the said writ petition, in and by which the order of the second appellant in Proceedings No.697/PSD-D3/99 dated 14.06.2009 calling upon the writ petitioner/respondent to produce the community certificate obtained in her father's name, came to be set aside by this Court .

2. The short facts necessary for the disposal of this writ appeal are as follows:

2.1. The writ petitioner / respondent was born to the parents belonging to Adi Dravida Christian community and passed B.Com., degree. She got married with one Nathan, who is Hindu and therefore, she reconverted to Hinduism and the marriage was solemnized as per Hindu Rites and Customs on 21.10.1992. The petitioner's husband met with an accident on 11.04.1996 and died. Thereafter, the petitioner declared her status that she belongs to Scheduled Caste Community in



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the Tamil Nadu Government Gazette dated 22.07.1998 by stating that she reconverted to Hinduism in the name of D.Jayarani Nathan on 21.10.1992.

2.2. The writ petitioner/respondent applied for the post of Group IV services conducted by TNPSC for the year 1996-1997. She produced a certificate issued by the Tahsildar, Radhapuram, dated 31.03.1993 wherein it is certified that the petitioner belongs to Hindu Adi Dravida Community, which is recognized as a Scheduled Caste Community, as per G.O.Ms.No.1564 dated 13.07.1985. The petitioner also produced a certificate from the Sub-Collector, Cheramahadevi, dated 01.10.1996 to show that she is a destitute widow, as her husband died on 11.04.1996.

2.3. The writ petitioner was provisionally selected by the respondents for appointment to the post of Junior Assistant cum Typist and the selection order was communicated by the second respondent through his memo dated 19.01.1999. The petitioner was allotted to Tirunelveli Revenue District and she joined in the service as Junior



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Assistant in Madhapuram Treasury Office, Tirunelveli District in February, 1999.

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2.4. While the petitioner was serving in the said post, she received a memo from the second appellant / respondent dated 14.06.1999, in and by which she was requested to produce a fresh community certificate obtained in her father's name, as the community certificate already produced in the name of her husband cannot be accepted. The petitioner was also directed to produce the B.Com. Degree Certificate or Provisional Certificate. Challenging the aforesaid order of the second respondent dated 14.06.1999, the petitioner had filed O.A.No.3626 of 1999 before the Tamil Nadu Administrative Tribunal, which was transferred to this Court and renumbered as W.P.No.42261 of 2006.

2.5. The learned Single Judge, in the impugned order, has observed that the documents, namely the Community Certificate issued by the Tahsildar, Radhapuram dated 31.03.1993, Destitute Widow Certificate issued by the Sub-Collector, Cheramahadevi as well as the Gazette



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Notification dated 22.07.1998, clearly establish the fact that the petitioner got herself converted to Hindu Religion on 21.10.1992 and living as Hindu Adi Dravida and she is a destitute scheduled caste widow, on account of demise of her husband on 11.04.1996.

2.6. The learned Single Judge has also considered the questions as to whether the Christian Adi Dravida converted to Hindu faith marrying a Hindu Adi Dravida and accepted by the community as Scheduled Caste member, can get the benefit of reservation given to Scheduled Caste Community? and also whether the appellant / TNPSC have jurisdiction to direct the writ petitioner/respondent to produce fresh community certificate, mentioning the name of the petitioner's father? and by relying upon various decisions of this Court as well as the Hon'ble Supreme Court, the Writ Court has ultimately held that once a community certificate is issued to a person by the competent authority, the same is valid until the same is cancelled and therefore, the respondents have no jurisdiction to direct the petitioner to produce the community certificate mentioning the name of the petitioner's father. Challenging the aforesaid



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order, the officials respondents therein has filed the instant writ appeal.

3. The learned counsel for the appellants contended that the learned Judge has erred in placing reliance on G.O.Ms.No.1, Adi Dravida and Tribal Welfare Department dated 02.01.2009 for granting the relief to the respondent especially when the said Government Order does not have retrospective effect. It is further contended that TNPSC is bestowed with the duty of selecting candidates which includes the duty of fitting the candidates into their reservation quota and in which circumstances, TNPSC has the authority to delve / probe into the genuineness of the claims made by the candidates and therefore, prays for setting aside the impugned order passed by the learned Single Judge. The learned counsel for the appellant has placed reliance on the Full Bench decision of this Court in ***TNPSC v. R.Manikandan and others [2011 (5) CTC 1]***.

4. Mr.S.Subbiah, learned Senior Counsel appearing for the respondent/writ petitioner has submitted that the learned Single Judge



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has rightly passed the order allowing the writ petition, following the earlier decision of this Court as well as the Hon'ble Supreme Court on the ground that the appellant has no jurisdiction to issue notice to the respondent/writ petitioner asking for community certificate containing the name of her father. It is submitted by the learned Senior Counsel for the respondent/writ petitioner that the writ petitioner has joined duty and presently working as Junior Assistant cum Typist in the office of the Commissioner of Treasuries and Accounts, Saidapet, Chennai.

5. This Court has considered the rival submissions and also perused the materials on record.

6. The fact remains that the petitioner applied for Group-IV service and she was selected and appointed as Junior Assistant/Typist. The impugned notice was issued by the second appellant on the ground that the Government issued letter No.81 Adi Dravida and Tribal Welfare Department, dated 19.9.2000 stating that persons converted to Hinduism from Christian religion are not entitled to claim scheduled caste status.



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The said Government letter was cancelled through G.O.Ms.No.1 Adi Dravida and Tribal Welfare Department, dated 2.1.2009, pursuant to the order issued by the Division Bench of this Court in W.P.No.14769 of 2002 dated 13.4.2007 and the Government ordered to give scheduled caste status to the persons re-converted to Hinduism, Sikhism and Buddhism from Christianity, provided they are accepted by their community. The relevant portion of G.O.Ms.No.1 Adi Dravida and Tribal Welfare Department, dated 2.1.2009 reads as follows:

"The children born to Christian Schedule Caste parents i.e., Christian by birth, converted to Hinduism, Sikhism or Buddhism at a later date and the Scheduled Caste parents embracing Hinduism, Sikhism or Buddhism converted to other religion and subsequently reconverted to Hinduism, Sikhism or Buddhism, if they are accepted by their community people, the Revenue Authorities can issue Scheduled Caste community certificate to them to become eligible for the constitutional privileges conformed on the Hindu Scheduled Caste (following Hinduism, Sikhism or Buddhism) and order accordingly."

7. In the light of the aforesaid stand taken by the Government and having regard to the fact the community certificate issued to the petitioner by the Tahsildar, Radhapurm is not cancelled, the respondents have no jurisdiction to direct the writ petitioner / respondent to produce



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the community certificate mentioning the name of the father and the learned Single Judge has also rightly observed the said fact in the order. Therefore, the impugned order of the second respondent dated 14.06.1999 calling upon the petitioner to produce fresh community certificate containing the name of the writ petitioner's father is totally unsustainable.

8. A Hon'ble Division Bench of this Court in the decision in ***A.Logan v. National Aviation Company India Limited and Others*** [2009 SCC Online 1825], in respect of similar matter, has held as under:

“18. This Court viewing the case from the said background is to find out as to whether the petitioner who was born as Christian to Christian parents and on conversion to Hinduism, he is entitled to the benefits of Hindu Scheduled Caste Community.

19. In 44 Madras Law Weekly page 854 : AIR 1937 Madras page 172 : 167 Indian Cases page 488 Ramayya vs. Mrs.Josephine Elizabeth, it has been held that normally conversion is not a principal requisite to a person becoming an Hindu. The said judgment has been subsequently considered in a judgment reported in AIR 1940 Madras 513 - Goona Durgaprasada Rao and another vs. Goona Sudarsanaswami and others, and held that "there is no authority in support of the learned District Judge's view that on account of the absence of a ceremony of reconversion or any other expiatory ceremony, the Court is



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bound to treat Appalaswami as having continued to remain a Christian and his marriage with Appalanarasamma as invalid".

20. In AIR 1976 SC page 939 C.M.Arumugham vs. S.Rajagopal and others, the question came for consideration was whether on conversion to Christianity a person ceased to be a member of Adi-Dravidar Caste the Hon'ble Supreme Court held as follows:-

"That on reconversion to Hinduism, a person can once again become a member of the Caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. If a person who has embraced another religion can be converted to Hinduism, there is no rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course, the community is willing to take him within the fold. It has been further held that the object and purpose of the constitution (Scheduled Castes) Order, 1950 would be advanced rather than retarded by taking the view that on reconversion to Hinduism, a person can once again become a member of the Schedule Caste to which he belonged prior to his conversion."

21. In 1984 (2) SCC 112 - S.Anbalagan vs. B.Devarajan and others, same question once again came for consideration and it has been held as follows:-

"Ordinarily a person who had earlier embraced another religion regains his caste, unless the community does not accept him. For reconversion to Hinduism no particular ceremony such as expiatory rites need be performed, unless the practice of the caste makes it necessary. In fact the practice of caste is so deep-rooted in the Indian people that its mark does not seem to disappear



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on conversion to a different religion. If such a convert becomes Hindu he will revert to his original caste. This appears to be practically so in the case of members of the Scheduled Castes, who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity.

No different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion."

22. In 2002(2) CTC 257 (DB) - N.S.Ziauddeen vs. S.Ashok Kumar, Principal Sessions Judge, following the ratio laid down by the Hon'ble Supreme Court of India in various decisions, it has been held that there is no absolute bar for a non-Hindu to convert into Hinduism and such conversion will restore old caste to which such convert to which parents belonged originally before such parents' conversion to Christianity.

23. In the unreported judgment of this Court dated 4.11.2006 in W.P.No.29822 of 2004 -R.Shankar vs. The Registrar General, High Court, Madras and 2 others, the issue pertaining to the petitioner therein born as a Christian to Christian parents converted to Hinduism and became an Hindu Adi-Dravida and got selected as Civil Judge Junior Division under the said category and that selection was withheld on the ground that he is not entitled to avail such a benefit.

24. This Court after taking into consideration the various decisions of the Hon'ble Supreme Court of India including the judgment reported in AIR 1976 SC page 939 C.M.Arumugham vs. S.Rajagopal and others, Guntur Medical College vs. Y.Mohan Rao, AIR 1976 SC 1904 and



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2002(2) CTC 257 (DB) - N.S.Ziauddeen vs. S.Ashok Kumar, Principal Sessions Judge (cited supra) and other decisions, held that the *petitioner born to Christian parents, who were originally Hindu Adi-Dravidas embraced Christianity, but later renounced Christianity and reconverted to his original community that is Hindu Adi-Dravida and his reconversion was accepted by his community people, he is entitled to get rights and benefits given to the Scheduled Caste people and therefore, he is entitled to appoint to the post of Civil Judge Junior Division.*

25. In (2007) 3 MLJ 209 - Prof.I.Elangovan vs. State of Tamil Nadu and another, the vires of the Government letter Ms.No.81, Adi-Dravidar & Tribal Welfare Department dated 19.9.2000, relied upon by the third Respondent to cancel the community certificate issued in favour of the petitioner herein, came up for consideration.

26. This Court in the said decision, placing reliance upon the judgment reported in AIR 1976 SC page 939 C.M.Arumugham vs. S.Rajagopal and others, Guntur Medical College vs. Y.Mohan Rao, AIR 1976 SC 1904 , AIR 1996 SC 1182 - Swvigaradoss vs. Zonal Manager, FCI, has set aside the clarification as given in sub-paragraph (2) to paragraph 2 of the above said letter and remanded the matter to the authority concerned with a direction to issue a fresh clarification giving reference to the other judgments rendered by the Supreme Court, as discussed above within a period of two months.

27. As per the ratio laid down in catena of decisions referred to above, it is clear that a person born to Christian parents on conversion to Hinduism will become a member of Hindu Scheduled Caste provided that if other members of the caste accept him as a member and admit him within their fold. The Letter Ms.No. 81 sub-para (2) to paragraph No.2 of the letter dated 19.9.2000 issued by the Adi-



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Dravidar and Tribal Welfare Department was also set aside by this Court and it was reported in (2007) 3 MLJ 209 - Prof.I.Elangovan vs. State of Tamil Nadu and another, (DB) (cited supra) and thereafter, the Government considered the said issue once again and issued G.O.Ms.No.1, Adi-Dravidar and Tribal Welfare (CV-1), Department, dated 2.1.2009. ***As per the said G.O., children born to Christian Scheduled Caste parents on conversion to Hinduism, Sikhism, or Buddhism at a later date and the Scheduled Caste parents embracing the above said religion and subsequently reconverted to Hinduism, if they are accepted by their community people, the Revenue Authorities can issue Scheduled Caste Certificate to them to become eligible for the Constitutional privileges conformed on the Hindu Scheduled Caste.***

.....

31. This Court after taking into consideration the ratio laid down in the above cited decisions and the submissions made by the respective counsel is of the view that the impugned order is unsustainable and is liable to be set aside since the third Respondent places reliance upon the Government Letter dated 19.9.2000 a portion of which, has been set aside by this Court vide judgment dated 13.4.2007 made in W.P.No.14769 of 2002 reported in (2007) 3 MLJ 209 (DB) - Prof.I.Elangovan vs. State of Tamil Nadu and another, (cited supra). The third Respondent has not taken into consideration the above cited decision and therefore on that sole ground, the impugned order is liable to be quashed.

32. After filing of the writ petition, the Government has considered the above cited decision and passed an order in G.O.Ms.No.1, Adi-Dravidar and Tribal Welfare (CV-1) Department, dated 2.1.2009 under which, it has been clarified that the children born to Christian Scheduled Caste



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parents on reconversion to Hinduism, can avail the constitutional privileges of the Hindu Scheduled Caste community subject to the condition that they should be accepted by their community people.

33. *Though the petitioner relies upon number of documents to substantiate that he has been converted to Hinduism and professing Hindu faith, this Court cannot adjudicate the vires/genuineness of those documents and it is for the third Respondent to adjudicate the same and pass appropriate orders on merits.* (emphasis supplied)

34. In the result, the writ petition is allowed and the impugned order dated 13.4.2008 passed by the third Respondent is quashed and the matter is remanded to the third Respondent for fresh consideration on merits and in accordance with law. It is open to the petitioner to let in evidence before the third Respondent to substantiate his claim.”

9. The Hon'ble Full Bench of this Court in ***TNPSC v.***

R.Manikandan and others [2011 (5) CTC 1], has held as under:

27. In that view of the matter and for the reasons discussed, we answer the reference in the following manner:-

A) The scrutiny of the genuineness of the Scheduled Caste certificates can be made only by District Level Vigilance Committee constituted by the State Government in terms of G.O. (2D) No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007;

B) The scrutiny of the genuineness of the Scheduled Tribe certificates can be made only by State Level Scrutiny Committee constituted by the State Government in terms



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of G.O. (2D) No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007;

C) Such scrutiny of certificates, be it Scheduled Caste or Scheduled Tribe, cannot be made by the Tamil Nadu Public Service Commission;

D) For the purpose of processing the application and allowing a candidate to take part in the written examination and the consequential oral examination, the Service Commission would be entitled to verify as to whether the Candidate has produced a Caste Verification Certificate obtained from the respective Committees and in the event such certificate is produced, the selection of the candidate cannot be withheld and the name should be forwarded to the appointing authority for making appointments;

E) In the event a candidate does not produce such a Caste Verification Certificate and in the event he is selected, his name cannot be withheld and can be forwarded for appointment with a clear indication that the selection is subject to the verification of the community certificate;

F) In terms of paragraphs 10 and 15 of the directions of the Apex Court in Kumari Madhuri Patil's case [(1994) 6 SCC 241], which we have extracted, a candidate who is selected and appointed subject to verification of the community certificate, shall not claim any benefit of such selection and in case if the certificate is found to be false, the candidate should consequently lose his employment.

With the above directions, we answer the issue referred before us.”

10. In the light of Clauses (A) to (C) of Para 27 of the decision of the Hon'ble Full Bench of this Court cited supra, District Level or State



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Level Vigilance / Scrutiny Committee constituted by the State Government is the competent authority to scrutinize the genuineness of the Scheduled Caste Community Certificates and the appellants /TNPSC has no jurisdiction to question the genuineness of the Scheduled Caste Community Certificate produced by the incumbent. In the case on hand, the District Level or State Level Scrutiny/Vigilance committee is not a party in this writ appeal and therefore, it is for the user department to forward the community certificate to the District Level Vigilance Committee to verify as to the genuineness of the said certificate and to pass appropriate orders.

11. In the light of the reasons assigned above, this Court is unable to find any reason to interfere in the order passed by the Writ Court. It is for the Commissioner of Treasuries of Accounts, Saidapet. Chennai to forward the Community Certificate issued by the Tahsildar, Radhapuram, to the District Level Vigilance Committee, Tirunelveli who shall conduct detailed enquiry and take appropriate decision in accordance with law within a period of six months from the date of receipt of a copy of this



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order. It is open to the respondent/writ petitioner to let in evidence before the District Level Vigilance Committee to substantiate her claim and the appointment of the respondent / writ petitioner will be subject to the outcome of the order passed by the District Level Vigilance Committee. Thus, we are of the view that there is no merit in this appeal and consequently, the appeal is liable to be rejected.

12. The Writ Appeal stands dismissed with the above directions.

No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.,] [K.G.T., J.]
28.04.2023

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**D.KRISHNAKUMAR, J.,
&
K.GOVINDARAJAN THILAKAVADI, J.**

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**Order in
W.A.No.2758 of 2010**

28.04.2023