



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :31.10.2023

Pronounced on :16.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

V.Perumal

.. Petitioner

/versus/

1.Tamil Nadu State Level Scrutiny Committee-III,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai 600 009,
Repd. by its Chairman.

2.The Bank of Baroda,
Rep.by its Deputy General Manager,
Zonal Office, Baroda Pride,
New No.41, Old No.101,
1st Floor, Luz Church Road,
Mylapore, Chennai 600 034.

3.The Bank of Baroda,
Rep.by Deputy General Manager,
Regional Office (Madurai Region),
2nd Floor, Aparna Towers,
No.2, 3, Bye-Pass Road,
Madurai 625 016.

.. Respondents



WEB COPY

W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

Writ Petition has been filed under Article 226 of Constitution of India praying to Writ of Certiorified Mandamus directing to call for the proceedings of the 1st respondent i.e. Tamil Nadu State Level Scrutiny Committee dated 24.12.2020 and quash the same and consequently direct the respondents 2 and 3 to continue to pay the provisional pension to the petitioner.

For Petitioner :Mr.L.Chandra Kumar and
Mr.V.Vijaya Shankar for
Mr.N.Naganathan

For Respondents :Mr.P.Kumaresan, AAG
Asst. by
Mr.P.Sathish, AGP for R1
No appearance for R2 and R3

ORDER

The Division Bench of this Court consisting of Hon'ble Judges J.Nisha Banu and N.Mala,J.J. upon hearing this Writ Petition had on 24.08.2023 delivered a split verdict. Hence, case is placed before the Third Judge for consideration by order of the Hon'ble Chief Justice vide order dated 19.09.2023.

2. The facts of the case in short, as pleaded by parties are:



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

The petitioner herein got appointment in Bank of Baroda in the year 1988 under quota for ST community by producing the certificate given by the Tasildar, Attur, as if he belong to Kattunaiyakan community which is a ST community. His community certificate was verified by the State Level Scrutiny Committee(in short as “SLSC”) on the direction of this Court following the dictum laid in *Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development and others reported in [(1994)6 SCC 241]* case. The SLSC concluded that the petitioner does not belong to ST community and the certificate, he produced to get appointment is not correct. It also ordered the said certificate must be confiscated and departmental action must be initiated against him.

3. Contending that the verification of caste certificate cannot be done at the fag end of the service and should confine only to the persons who joined service after 1995 and not before 1995, the petitioner had argued that the impugned proceedings of the SLSC to be quashed and the petitioner must be paid his retirement benefits. The OM dated 24/12/2020 issued by the Parliamentary Committee on the welfare of Schedule Castes and Schedule



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY Tribes through Lok Sabha Secretariat had relied by the petitioner which reiterates that verification of the ST caste certificate to be done only for those employees, who were appointed after 1995. ***Kumari Maduri Patil*** judgment dated 02/09/1994 can only be implemented prospective.

4. On behalf of the State, it was argued that there is no time limit prescribed for verification of doubtful ST community certificate. Neither in *Kum. Mathuri Patil* judgment nor in the OM of the Central Government Department, there is prohibition for verification of community certificates of persons, who had joined service prior to 1995. On receipt of materials adequate to suspect the genuineness of the community given by the employee, the said community certificate need to be verified to prevent the abuse of social welfare policy meant for underprivileged strata of the society.

5. Upon hearing the rival submissions, the Hon'ble Mrs.Justice J.Nisha Banu allowed the writ petition. The reason given by the learned Judge for allowing the writ petition is stated as below:-

“10. The search for answers to the questions surrounding the problem culminated in the issue of, inter alia,



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

the O.M. dated 24.12.2020 of the Lok Sabha Secretariat (Parliamentary Committee on the welfare of scheduled Castes and Scheduled Tribes). The above O.M. has now become a matter of public policy. It has accommodated the principles enunciated in the decision of the Hon'ble Supreme Court in the Kumari Madhuri Patil's case(cited supra). The O.M. stipulates 1995 as the cut off date from which verification process to check the veracity of the caste certificates of candidates availing reservations shall be taken up.

*11. It also contemplated immediate verification of the truthfulness of caste claims for new admissions/appointments under the constitutional rights of reservations to the vulnerable communities. It directed completion of the verifications about the veracity of caste/community certificates within 2 months. In effect a fair proposal was drawn through the O.M. to address the problem confounding the abuse of the scheme. The decision to limit the period of exercise to 25 years preceding the date of the issue of O.M. is a just and fair balancing act in the light of the observations in the **Kumari Madhuri Patil's** case(cited supra). The prescription in the O.M. is fairer because, very often the parents make the claims and sometimes it becomes literally impossible for certain classes of people to establish their caste/community through evidences.*

12. Therefore, in the background of the peculiar nature of the issue confronting the just implementation of the constitutional right of reservation, I am of the considerate view that for the appointments that happened before 1995, it is not open for the



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

Central Government, State Government and Public Sector Undertakings to deny continuous employment or post retirement benefits on the basis of a post facto finding of falsity of claims or doubtful caste/community certificates presented at the time of appointments. Similarly, in the light of the instructions contained in O.M. dated 24. 12.2020, the question of stripping of degrees and denying retirement benefits on the ground of false certificates will cease to exist. Consequent to the issue of the O.M. dated 24.12.2020, the proceedings of the State Level Committee is of no consequence to the facts and circumstances of this case.”

6. Whereas Hon'ble Mrs.Justice N.Mala, dismissed the writ petition for the following reasons:-

23. Therefore on the facts of the case, I am of the view that the Ist respondent is justified in concluding that the petitioner had failed to prove that he belonged to the Hindu Kattunayakan Scheduled Tribe community. Therefore the cancellation of the petitioner's certificate is justified and the same is confirmed.

25. The petitioner in his original affidavit categorically denied that he was ever issued with certificate dated 29.05.1988. The petitioner went to the extent of stating that the impugned order was vitiated, as it referred to the certificate dated 29.05.1988, where no such certificate was given to the petitioner. It was after rule nisi was issued on



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

01.03.2021 that the petitioner filed additional affidavit clarifying that what he meant by not having the certificate dated 29.05.1988, was that he had handed it over to the bank and he did not have the same. In my view, the conduct of the petitioner is to say the least unpalatable. Considering the aforesaid conduct of the petitioner, I am of the view that the observation of the Vigilance Cell that the petitioner was a habitual, cannot be faulted.

26. The framers of our constitution dreamt of an egalitarian society. The constitutional provisions and the scheme of reservation for the backward classes and the Scheduled Caste and Scheduled Tribe were meant to achieve the goal of equality, where all people irrespective of their religion, caste and sex would be treated equally with respect, dignity and honour. It is unfortunate, nay, dismaying that certain unscrupulous elements indulge in producing false certificates for the purpose of seeking employment and education, thus, depriving the truly deserving persons of their rights guaranteed under the constitution. Therefore, the Hon'ble Supreme Court has held that people who indulge in fraud for procuring the community certificate commit fraud not only on the society, but on the constitution. No wonder that the dream of Dr. Ambedkar, of achieving the goal of casteless and classless society 50 years ago still remains a dream!

In view of all the observations and discussions, the writ petition is dismissed and the impugned order dated 24.12.2020 is confirmed. Consequently connected



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

Miscellaneous Petitions are closed. There shall be no order as to costs.

7. The diversified opinion expressed by the two learned Judges of the Division Bench, had warranted reference to the third Judge. This Court on perusing the materials placed and the views of the two learned Judges, had formulated the the following points for consideration :-

(i) Whether the O.M., dated 24.12.2020 prohibits scrutiny of caste certificate issued prior to 1995?

(ii) Whether the observation in the said O.M., that the decision of the Hon'ble Supreme Court in *Kumari Madhuri Patel Vs. Additional Commissioner* can be implemented only prospectively is legally sustainable?

(iii) Can there be any limitation for reviewing act of fraud on constitution?

8. The learned counsel appearing for the petitioner and the learned Additional Advocate General Mr.P.Kumaresan, made their respective submissions. Mr.V.Vijaya Shankar, assisted the Court in view of the seriousness of the issue which will have bearing on several other writ petitions



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

on the same point, which are pending before this Court.

9. The written submissions on behalf of the petitioner is extracted in verbatim so as to understand the contention of the petitioner why he strongly rely on the point of cut off year as 1995.

“ The issue has been referred for the opinion of the third Judge on the difference of opinion by the Division Bench to be decided by the Hon'ble third judge in regard to the applicability of OM - - dated 24.12.2020

The only question or rather the issue which crops up for consideration is whether the above said memorandum will have the force of applicability or not for recruitments made after 1995 on the premises that the dictum laid down by the Hon'ble Apex court in Kumari Madhuri Patil's case has to be taken to have prospective effect or not. It is on this premises, the petitioner is constrained to putforth the submissions for the Hon'ble third judge to opine on the following reasons and grounds:

(i)The petitioner was initially selected and appointed by the Banking Service Recruitment Board in the clerical cadre during 1989. At the time of his appointment he had produced a community certificate dated 17.03.1980 issued by the Thasildar, Athur in the Quota reserved for Scheduled Tribe vacancy as he belong to Hindu Kattunayakan ST community.

(ii)Pursuant to his appointment with applicable promotions, he had reached the age of superannuation on 31.12.2018 and has been allowed to retire.

(iii)In the meantime, there seems to have arisen a doubt as to the community status of the petitioner resulting in the employee viz., the Bank filing a writ petition seeking the State Level Scrutiny Committee to conduct enquiry and pass orders on merits.

(iv)Subsequently after his retirement, there was no impediment or



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

any disciplinary proceedings to withhold the retiral benefits, the petitioner filed writ petition during 2019 seeking settlement of benefits and other allied reliefs.

(v) Further, after retirement, SLSC called upon the petitioner to appear for enquiry on 24.11.2020 though its letter dated 21.11.2020. It was during peak corona pandemic period the notice of hearing was addressed. The petitioner expressed his valid reason for not appearing on 24.11.2020 due to health grounds.

(vi) Without further opportunity of being heard on 24.12.2020 the SLSC concluded that the certificate is not a genuine one resulting in the above writ petition being filed for quashing of the impugned order dated 24.12.2020 inter alia on the ground that the Office Memorandum dated 24.12.2020 after threadbare discussion of the dictum of law holding the field and also that of being various earlier OMs dated 25.05.2005, 09.09.2005, 07.03.2016 wherein it came to be reiterated and also repeatedly held that verification of ST caste certificates of employees who were appointed after 1995 based on complaint etc., are only required to be verified and no action should be taken or initiated for verification of the caste certificate due to inordinate delay and also that of the judgment of the Supreme Court in Kumari Maduri Patil's case held on 02.09.1994 by observing that the judgement can only implemented in prospective, the OMs came to be issued.

(vii) By the said OMs, it meant that unless otherwise clinching materials and that of documentary evidence which are worth consideration of taking cognizance of the issue in regard to verification of community certificate alone can be pressed into operation and the rest if any, already claimed and utilized need not be reopened or for that matter, put to rest or lay to rest in peace.

(viii) The background in regard to verification of community certificate was by issuance of a Government Order dated 11.11.1989 wherein for the first time the RDO instead of Thasildar was termed and treated as competent authority for the issuance of ST community certificate, therefore prior to 11.11.1989 it was the Thasildar who was the competent authority



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

to issue community certificate inclusive of those who belong to ST community. In so far as the case of the petitioner is concerned, he was issued with a community certificate dated 17.03.1980 and his appointment was during 1989 thereby the GO referred supra and holding the field at that relevant point of time, to say the least Thasildar was the competent authority to issue community certificate of ST prior to 11.11.1989 has to be held valid and there would arise no question of verification, re-verification or to find out as to whether the same is false or not at this distance of time since the earliest opportunity for the respondent department or for that matter by the competent authority, then District Level Scrutiny Committee or State Level Sucrutiny Committee, the time limit prescribed was only for a period of about six months even as late as 2007 assuming that the GO would commence its six months period from the issuance of GO (2D) No. 108, dated 12.09.2007 which shall be over by March, 2008. In the case of the petitioner for the first time the respondent Bank initiates action only during 2016 much after the expiry of the upper time limit prescribed in the GOs.

(ix)It is needless to say that taking into account the totality of the circumstances and that of mushrooming of complaints, allegations, anonymous and pesedonomous petitions the welfare body of the SC and ST community took stock of the factum and placed it before the Ministry of Personnel, Public Grievances and Pensions and a report was obtained from the Government wherein it was opined that Limitation Act for verification of community certificate must be given effect to and be made applicable and only therein and thereafter the six months of joining of the candidate came to be prescribed and therefore any verification beyond the said limitation would be impermissible.

(x)It is to be noted that taking into account the entirety of the issue the Parliamentary Committee on the welfare of the SC & ST taking note of the fact that atrocity against these communities are on a running spree, the OM dated 24. 12.2020 reiterating the earlier DoPT OM came to be issued holding and stating that those employees who are appointed after 1995 alone can be re-verified or the community status can be put to verification by the SLSC. In issuing the above said OM the committee took cognizance of the fact that the judgment of Kumari Maduri Patil dated 02.09.1994 have prospective effect for the simple reason



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

that by the time the initiation towards verification is pressed into operation, inordinate delay had occurred and to say the least at this distance of time that the judgment of the Apex Court has to be termed and treated to have retrospective effect would only result in opening of floodgate all those who have retired peacefully and for those who are rendering services without any stigma or itch will be under the mercy of an aspirant promote or so called welfare associations which see no welfare for the individual but only for the office bearers of the associations in seeking merciless reference/complaints towards verification of community certificates. It is on this premises, the OM dated 24.12.2020 with an avowed object of putting at rest the verification of community for the appointments made prior to 1995 came to be issued. It is on this basis, the opinion of the learned Judge holding that OM dated 24.12.2020, post facto finding of falsity of claims or doubtful caste or community certificate presented at the time of appointments is liable to be upheld.

(xi) Per contra, the other Hon'ble Judge proceeds in detail on merits to take a different view and in doing so as casually touched upon the OM without proper consideration, in fact, without appropriate consideration of the OM by resorting to observing that the verification of certificate if found to be false would be fraud on Constitution without resorting to initial date of registration of the Community Certificate staking his claim for the purpose of appointment and that of being timeline for such verification. At this juncture, it is worth mentioning that the community Certificate initially submitted/registered was not at the instance of the individual claimant. It was on the basis of the parent's registration that the community certificate came to be issued, during which period or rather the said occasion the claimant was a minor not being aware of future benefits prospects, and that of his claim for any eligibility much less under the category of reservation. It is on attaining majority, the certificate already registered and obtained not at his instance, but by the elders who were not aware of any falsity or to falsely claim any benefit at a later point of time, the community status stood registered, therefore falsity or fraud on Constitution assuming without admitting is said to have taken place cannot be attributed to the individual/the claimant herein. It is therefore not permissible to attribute motive or fraud much less fraud on Constitution on the allegation of bogus or false community



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

certificate at this distance of time much less on the basis of an appointment made by acceptance of the community status which in not being verified within a reasonable period/span and that the same having been accepted, acted upon with consequential benefits of accruals thereto also being conferred cannot be tested about its veracity merely because some unwanted elements or an unwarranted association or for that matter, at the instance of inimically disposed person based on generated documents, the individual cannot be placed on defense to put forth his claim of genuineness which had bygone and had embedded in the roots of claim would only tantamount to humiliation, mental agony and anguish by allowing the Damocles Sword to hang over the head on the verge of retirement or after retirement without the service accruals being settled in time. It is on the above totality on the circumstances the welfare body of the SC/ST had been repeatedly pressing into operation towards the above said sufferance being kept at bay though not for the latest recruits, atleast for those who have been appointed prior to 1995 and are either on the verge of retirement or having retired or in having retired like that of the petitioner. The above said aspect has been miserably failed to be considered by the Learned Judge who had opined differently.

(xii) It is on these basis and that of the submissions to be made, it is prayed that the Hon'ble referee Judge may be pleased to allow the claim upholding the time limit of appointments made prior to 1995 need not be faced with verification of the community status to establish the same to be a genuine one and further prays to leave open all other issues to be decided by an appropriate Bench."

10. In response to the above written submission of the petitioner, the Chairman of the State Level Scrutiny Committee-III had filed a counter which is also extracted in full for better understanding of the stand of the State.

“5. It is respectfully submitted that, the employer viz. Bank of Baroda has requested the Chairman, District Level



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

Vigilance Committee, Salem to cause verification of the above Scheduled Tribe Form of Caste Certificate issued by the Tahsildar, Omalur Taluk, Salem District to Thiru. V. Perumal, S/o. Thiru. Vellian.

6. It is respectfully submitted that, the district Collector, Salem has sent spot enquiry report of the Revenue Divisional Officer, Attur to the Government vide Na.ka.No.24142/1992/D10, dated 05.05.2015. The Revenue Divisional Officer, Attur, in his spot enquiry report dated 13.04.2015 has reported that local enquiries have been conducted with the public on the genuineness of the Kattunayakkan Scheduled Tribe Community claim of the individual Thiru.V.Perumal in Gangavalli Village and Taluk of Salem District and as per the statements of the Village Administrative Officer, Revenue Inspector it was ascertained that no such Kattunayakkan Scheduled Tribe Community people ever lived in the above village and hence the "Kattunayakan" Scheduled Tribe Community Certificate obtained by Thiru V. Perumal is not true.

7. It is respectfully submitted that, the in the meantime, the employer (i.e.) Bank of Baroda, Regional Office, Madurai Region has filed a W.P.No.8573/2016 before the Hon'ble High Court of Madras. The Hon'ble High Court of Madras in its order dated 09.03.2016 has ordered as follows:-

"The learned Government Advocate appearing for the official respondents fairly submits that after affording an opportunity of hearing to the third respondent -employee, necessary orders will be passed on the petitioner's representation, on its own merits and in accordance with law, in accordance with the guidelines laid down by the Supreme Court as well as this Court, as afore stated, within a period of six weeks."

8. It is respectfully submitted that, in obedience to the aforesaid Hon'ble High Court's direction the Director, Tribal Welfare, Chennai has forwarded the report of Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Region to the Government vide Letter No.TD/ B1/6442/2017, dated 24.10.2019. The Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Region in his report vide C. No.41/DSP/ SC/ST/Vigilance Cell/ Salem Region/ 2016, dated 23.12.2016



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

inter-alia, has observed as follows:

Sl. No.	Documentary Evidence scrutinized	Observation in the document	Remarks inferred by the State Level Scrutiny Committee
1	Individual's 6 th Standard <u>School Certificate</u> – obtained from Headmaster, Government Boys Higher Secondary School, Mettupalayam.	In the said document, the community of the individual Thiru.V. Perumal, S/o Thiru. Vellian (Admission No.4415) has been recorded as “Hindu-Ottan”	From the said record, it is clearly established that the individual belong to “ <u>Ottan</u> ” Community and does not belong to <u>Kattunayakan</u> ” <u>Scheduled Tribe Community</u> . Hence, the sand “Kattunayakan Scheduled Tribe Community Certificate produced by the individual is a <u>fake/bogus one</u> .
2.	Individual's brother 8 th <u>Standard School Certificate</u> – obtained from Headmaster, Government Boys Higher Secondary School, Mettupalayam.	In the said document, the community of the individual Thiru. V.Venkatachalam , S/o Thiru.Vellian (Admission No.3769 has been recorded as “Hindu-Ottan”.	From the said record, it is clearly established that the individual's brother belong to “ <u>Ottan</u> ” <u>Community</u> and does not belong to “ <u>Kattunayakan</u> ” <u>Scheduled Tribe Community</u> . Hence, the said “Kattunayakan Scheduled Tribe Community Certificate produced by the individual is a <u>fake /bogus one</u> .
3.	Extract of Birth Register in respect of individual Thiru.V.Perumal, S/o Thiru.Vellian	In the said register, the community of the individual Thiru.V.Perumal, S/o Thiru.Vellia has been recorded as “Hindu-Man Ottan”.	From the said record, it is clearly established that the individual belong to “ <u>Hindu-Man Ottan</u> ” <u>Community</u> and does not belong to Kattunayakan Schedule Tribe Community. Hence, the said “Kattunayakan Scheduled Tribe Community Certificate produced by the individual is a <u>fake/bogus one</u> .
4.	Individual's Secondary School Leaving Certificate	In the said document, the community of the individual Thiru.V.Perumal, S/o Thiru.Vellian has been recorded as “Mos Back Ward Class”	From the said record, it is clearly established that the individual belong to Most Backward Class” Community and does not belong to “ <u>Kattunayakan</u> ” <u>Scheduled Tribe Community</u> . Hence, the said “Kattunayakan Scheduled Tribe Community Certificate produced by the



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

Sl. No.	Documentary Evidence scrutinized	Observation in the document	Remarks inferred by the State Level Scrutiny Committee
			individual <u>is a fake /bogus one.</u>
5	<u>Report of the VAO</u>	In the said report, the VAO has reported that the petitioner does not belong to Kattunayakan Community.	Hence, the said "Kattunayaka Scheduled Tribe Community Certificate produced by the individual <u>is a fake/bogus one.</u>
6	<u>Individual's brother's son community certificate</u>	c)In the said Community Certificate, the community of the Individual's brother's son Thiru.V.Vijayaraghavan, has been recorded as "Hindu-Ottar" (Most Backward Class).	Therefore, it clearly established that the ST Community Certificate produced by the petitioner is not a genuine one and has been obtained fraudulently.

9. It is respectfully submitted that, the Senior Lecturer / Cultural Anthropologist, Tribal Research Centre, Ooty in his spot enquiry report dated 09.12.2016, has stated that the above individual has not revealed any cultural aspects of the community and all his family members married among other castes group, but the marriage pattern is completely different and he could neither give details about the migratory roots nor the original native of the community where the cultural details can be found and the individual could not substantiate his claim as Kattunayakan and has concluded that the individual's claim is "not genuine." Further he has stated that based on the enquiry made at Alathudaianpatti, Thuraiyur Talk, Trichy District and with witnesses and perusal of the document / records and statement of Village Administrative Officer and report of Anthropologist, it is concluded that the individual Thiru. V. Perumal, S/o. Thiru. Vellian does not belong to "Hindu-Kattunayakan " Scheduled Tribe Community, and his claim for "Hindu-Kattunayakan" Scheduled Tribe Community is "Not genuine".

10. It is respectfully submitted that, a show cause notice was issued to Thiru V. Perumal, by the Director, Tribal Welfare enclosing the enquiry report of the Deputy Superintendent of Police, SC/ST Vigilance cell vide letter dated 01.09.2016, to send his reply and to appear in person along with reply. But the



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

individual neither sent his reply to the show cause notice nor appeared in person for enquiry before the District Deputy Superintendent of Police, SC/ST Vigilance Cell and also did not forwarded the particulars copies of documents to substantiate his Hindu- Kattunayakan" Scheduled Tribe Community claim to the State Level Scrutiny Committee for necessary disposal. In this regard, even though the individual was informed that his non-cooperation for the enquiry will be brought to the notice of the Hon'ble Court whenever the case filed by him is listed for hearing, but however he didn't turn up for enquiry despite the directions made by the Hon'ble High Court of Madras in its order dated 09.03.2016 in W.P.No.8573/2016 filed by the employer viz., Bank of Baroda, which was made known to the individual. Further, the individual was called for to attend the State Level Scrutiny Committee-III enquiry on 22.11.2019 with all connected documents to prove his Scheduled Tribe Community claim, since the burden of proof lies with the individual but, he was absent for enquiry on the said date and instead he sent a letter dated 19.11.2019 to grant extension of time on health grounds.

11. It is respectfully submitted that, the Parliamentary Committee on Welfare of SC/ST has requested the State Level Scrutiny Committee to dispose off the retired or soon to be retired cases, where verification of correctness of Scheduled Tribe Community Certificate is pending and the individual's case is one among such cases since the above individual along with others petitioned to the Parliamentary Committee with a direction to State Level Scrutiny Committee to dispose off their cases early and hence the individual was again called for to appear before the State Level Scrutiny Committee-II for enquiry on 24.11.2020 with all connected documents to prove his 'Scheduled Tribe Community Certificate claim. The individual was also informed that the State Level Scrutiny Committee has initiated a Special Drive to dispose of his case and he was made clear that this is a final enquiry and the State Level Scrutiny Committee-III shall take a decision on individual's Scheduled Tribe Community claim based on available records if the individual failed to turned up enquiry again. But the individual was again absent on 21.11.2020 and sought further time in his letter dated 21.11.2020 again on health grounds. The burden of proof lies with the individual to substantiate his Scheduled Tribe Community Certificate's claim as per the judgment dated 26.09.2018 filed by Karthikeyan vs. the State of Tamil Nadu in W. P. No.3649/2018. Ample



WEB COPY



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

opportunities given to appear for personal enquiry but he neither appeared nor furnished valid documents to prove his Scheduled Tribe Community Certificate claim.

12. It is respectfully submitted that, the State Level Scrutiny Committee-III has therefore examined the matter in-toto and after considering all the documents/records and the enquiry report of the Salem District Deputy Superintendent of Police, Scheduled Castes/ Scheduled Tribes, Vigilance Cell along with the relevant documents including Anthropologist report which was forwarded by the Director, Tribal Welfare, Chennai and as the aforesaid individual Thiru V. Perumal neither sent his reply to the show cause notice, nor attended the personal enquiry before the State Level Scrutiny Committee- III, even though sufficient opportunities were provided to prove his Scheduled Tribe Community claim, and based on the facts and evidences contained in the local enquiry report of the Revenue Divisional Officer, Attur, Salem District, the State Level Scrutiny Committee concluded that the individual Thiru. V. Perumal, S/o. Thiru. Vellian, couldn't prove that he belongs to "Kattunayakan" Scheduled Tribe community.

Therefore, the State Level Scrutiny Committee -III based on the available records/ documents concluded that the "Kattunayakan" Scheduled Tribe Form of Caste Certificate issued by the Tahsildar, Attur, Salem District to Thiru. V. Perumal, S/o. Thiru. Vellian dated 29.05.1988 is "Not-Correct" and consequently cancels the said "Kattunayakkan" Scheduled Tribe Form of Caste Certificate and directs the District Collector, Salem to certificate the "Kattunayakan" Scheduled Tribe Community Certificate issued by the individual Thiru. V. Perumal."

11. While advertng to the menace of fake community certificate to avail the privilege in educational institutions and public appointments, the Hon'ble Supreme Court in ***Kumari Madhuri Patil and another v. Additional Commissioner, Tribal development and others*** reported in ***[(1994) 6 SCC***



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

241/, after detailed discussion, laid the below guidelines to streamline the procedure for issuance of social status certificates, their scrutiny and their approval:-

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate



WEB COPY



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be “not genuine” or ‘doubtful’ or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-



WEB COPY



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

12. The Hon'ble Supreme Court in the Kumari Maduri Patel judgment further opined that the above procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

education of the candidate admitted/appointed on false social status or further continuance therein. It also said, every State concerned should endeavour to give effect to the said procedure and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.

13. Thus, in the said judgment, the Hon'ble Supreme Court has unequivocally expressed the object of laying the procedure stated in paragraph No.13 of the judgment and its expectation that the State will take steps to prevent the unscrupulous persons from getting the advantage of the reservations.

14. The guidelines indicate RDO/DC/Dept. Commission are the competent authority to issue social status certificate for the members of SC/ST. Verification of communities certificate to be carried out by the Committee



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

consisting of 3 members. The members of SC/ST community already holding certificate issued by authority other than one mentioned in guideline shall apply for verification to the scrutiny committee atleast 6 months prior to seeking admission or employment. The scrutiny committee has to complete verification as expeditiously as possible preferable on day to day basis within such period not exceeding two months.

15. On examining the Official Memorandum dated 24.12.2020 issued by the Lok Sabha Secretariat, we find it is the out come of the meeting of the Parliamentary Committee on the Welfare of SC/ST. The said OM reads as below:-

PARLIAMENTARY COMMITTEE ON THE WELFARE OF SC/ST

Ref: No: 57/1/1/SCTC/2019 Dated: 24th December 2020.

“Sub: “Study of atrocity cases against Scheduled Castes and Scheduled Tribes with respect to Implementation of the Prevention of Atrocities Act, 1989” - regarding release of retirement benefits to those SC/ST employees whose caste certificate is pending verification”.

The undersigned is directed to refer to this Secretariat OM of even number dated 14th December 2020 on the issues discussed during the meeting held on the sitting held in connection with the above mentioned subject and



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

state that DoP&T OM No.230/08/2005-AVD II dated 25.05.2005 & DoP&T OM No.36011/3/2005-Estt(Res)dated 09.09.2005, "Verification of SC/ST Caste Certificate and CVC Circular No.98/DSP/9(Part-2) dated 07.03.2016, "Action on Anonymous/Pseudonymous Complaint" (copy enclosed) clearly stipulate the verification of the ST caste certificates of only those employees who were appointed after 1995 under Ministries/Departments including CPSUs or on initial appointment/Promotion. Moreover as per CVC guidelines, no action should be taken on Anonymous/Pseudonymous Complaints. In the present cases there is an inordinate delay in initiation of verification of caste certificates, it is pertinent to mention that the Departments/Banks/PSus have not adhered to the above mentioned guidelines of DoP&T and CVC and also it is not in conformity with the Hon'ble Supreme Court judgment delivered vide Kumari Madhuri Patil v. Addl. Commissioner in 1995 AIR 94, 1994 SSC(6)241 Order dated 02.09.1994 since this judgment can only be implemented in prospective."

- Government has,therefore decided that a detailed verification of all such certificates produced before various appointing authorities since 1995 be carried.
- The CVOS are requested to initiate is task by collecting the details of all those who had been appointed In the Ministries/Departments or agencies including CPSUs with which they are concerned, since 1995 on the strength of ST certificates.

2. Keeping in view the above mentioned facts, it is requested that the concerned State Level Scrutiny Committees be directed to verify the ST caste certificates of only those employees who were appointed after the year 1995 and the process of verification should be completed within two months. The Action Taken Report in this regard may please be forwarded to this Secretarial at the earliest but not later than 18.02.2021 so that the same may be placed before the Committee.

3. The Committee has also unanimously decided that the RDO, Tiruttani, should be to caste certificate to all those Children whose parents possess the Kondareddy Caste Certificate issued by the competent authority without further



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

delay. The Action Taken Report in this regard may also be furnished to the Committee latest by 18.02.2021.

3. Receipt of this communication may kindly be acknowledged.

16. The aforesaid Official Memorandum dated 24/12/2020 refers earlier Official Memorandum's dated 25/05/2005 and the CVC Circular No 98/DSP/9/(part-2) dated 07/03/2016. Therefore, the OM of the year 2005 (25/05/2005) and the circular of CVC dated 07/03/2016 are also reproduced below.

GOVERNMENT OF INDIA
Department of Personnel and Training.

....

New Delhi, dated May 25th , 2005

OFFICE MEMORANDUM

Sub: Implementation of directions of the Hon'ble High Court of Delhi in CWP No.5976 of 2003 regarding re-verification of cases of persons who have secured employment in Government of India and Government of NCT of Delhi and its agencies under the strength of forged/fake ST Certificate.

The undersigned is directed to say that in Civil Writ Petition No. 5976 of 2003 (filed in the High Court of Delhi, it has been alleged that a large number of people have secured employment in Government of India (GOI) and in Government of National Capital Territory of Delhi (GNCTD) and its agencies like DDA, NDMC, Schools and College of Delhi under the reserved categories on the strength of forged/false Scheduled Tribes (ST) Certificates.

2. CBI was directed by the Hon'ble High Court vide



WEB COPY



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

order dated 14th July 2004 to verify the details of all those persons who had obtained employment under ST category. On preliminary verification, it appears that more than 30% of the ST certificate presented by candidates were either forged or false. Government has, therefore decided that a detailed verification of all such certificates produced before various appointing authorities since 1995 be carried out.

3. In order to achieve this task in a time bound manner, Government has sent up a coordinating mechanism under the Chairmanship of Shri ML.Sharma, Additional Director, CBI and the Chief Vigilance Officers (CVOS) of all those who had been appointed in the Ministries/Departments/or its agencies including CPSUS with which they are concerned, since 1995 on the strength of ST certificates. The original ST certificates produced at the time of appointment or whenever verified last, may be taken in personal custody by the CVO. If these certificates are found to be forged/false, these may have to be produced in the appropriate Court for taking action according to the law.

4. After obtaining the ST certificates, these may be subjected to verification by sending them to the concerned district authorities viz. District Collectors, Deputy Commissioners and District Magistrates under intimation to the Chief Secretary of the State concerned for confirming the authenticity of the certificates or certifying that the government employee actually belongs to a Schedule Tribe in those cases where records are not available for any reasons.

5. In case any certificate is found to be forged/false or any person who is found to be ineligible for not being member of Scheduled Tribe, legal action may be initiated against such persons by filing criminal case as well as departmental action for grave misconduct. The objective of this exercise is not to harass the government employees who have obtained employment on the strength of genuine ST certificate but to identify all those employees who have used a fake/false certificate in obtaining employment thereby depriving genuine persons belonging to ST of their right.

6. Shri. M.L.Sharma, Additional Director, CBI has been entrusted the responsibility of completing this task in a time bound manner so as to implement the directions of the Hon'ble High Court of Delhi. Since Government has to submit progress before the High Court before next date of hearing,



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

Shri Sharma has been authorized to take all necessary steps and render assistance to CVOS of the Ministry and CPSUS to collect necessary information in this regard so as to compile them and present the progress made on behalf of the Central Government before the Hon'ble High Court of Delhi.

7. In this regard all CVCs of the Ministries/Department are requested to collect information in proforma prescribed in Annexure I & Annexure II to this Office Memorandum in respect of such employees who have been recruited from the year 1995 onwards in all the Ministries/Departments and its agencies including CPSUS, statutory and non-statutory bodies etc., who are expected to implement the reservation policy in matter of employment under the State. To complete the exercise in a time bound manner the CVOS of the Ministries/Departments will coordinate with all the agencies of the Ministry/Department including CPSUs for implementing the reservation policy of the Government in matters of employment and cause an inquiry into the authenticity of the ST certificates and submit the same to Shri M.L.Sharma, Addl. Director, CBI at the earliest.

8. This issues with approval of MOS (PP).”

The Central Vigilance Commission Circular No.98/DSP/9/(part-2), dated 07.03.2016 referred in the Official Memorandum extensively in fact reads as below:-

Circular No.03/03/16

Sub: Action on Anonymous/Pseudonymous complaints
– reg.

The Commission has been receiving references from Departments /Organisations seeking clarification on the action to be taken on anonymous/pseudonymous complaints which were acted upon and at different stages of process including under disciplinary proceedings before issuance of CVC Circular No. 07/11/2014 dated 25th November, 2014 on the captioned subject. A few Court decisions arising out of the Commission's guidelines



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

issued earlier on the subject were also brought to the notice of the Commission.

2. The Commission considered the details of the Court orders/judgments and in one instance, the Central Administrative Tribunal (CAT), Principal Bench, Delhi had quashed the charge sheet dated 14.10.2004 issued to the delinquent official based on the pseudonymous complaints dated 18.02.1997 and 02.04.1997, vide order dated 20.07.2005. CAT had quashed the charge-sheet served mainly considering the circulars of the Commission dated 29.6.1999 and 31.6.2002 on the subject. in the order dated 20.07.2005, it was observed that the charge-sheet dated 14.10.2004 was issued pursuant to pseudonymous complaints received earlier and therefore is in violation of Commission's circular dated 29.6.1999 and 31.01.2002. The High Court agreed with the findings and observations of the CAT and dismissed the department's Writ Petition filed against the order of the CAT *in limine*. Thereafter, the Supreme Court had also dismissed the department's Civil Appeal in the matter. CAT's decision is based on one of the judgement dated 26.09.2003 of Madras High Court (in another case) wherein it was observed that the preliminary enquiry report dated 25.05.2000 based on anonymous complaint was subsequent to the CVC's circular dated 29.06.1999 and, therefore, is liable to be quashed and further that the prohibition (in CVC circular) that "no action will cover all pending proceedings on that date."

3. The instructions / guidelines issued from time to time on the subject-matter by DoPT CVC are as follows: iDoPT's O.M.No.321/4/910-AVD.111, dated 29.09.1992 that no action is required to be taken on anonymous/pseudonymous complaints in general, provided the option to inquire into such complaints which contained verifiable details.

ii.Commission's initial Circular No. 3(099/2 dated 29.6.1999 prescribing that no action should be taken on anonymous/pseudonymous complaints and should just be filed.

iii.Commission's circular No.98/DSP/9 dated 31.1.2002 reiterating that under no circumstances, should any investigation be commenced on anonymous/pseudonymous complaints.

iv.Commission's circular No.98/DSP/9 dated 11.10.2002 reviewing its earlier instructions of 1999, providing that if any Departments/organizations proposes to look into the verifiable facts alleged in anonymous/pseudonymous complaints it may refer



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

the matter to the Commission seeking its concurrence through the CVO or the Head of the organization.

v.DoPT O.M No.104/76/2011-AVD.I dated 18.10.2013 that no action is required to

be taken on anonymous complaints, irrespective of the nature of allegations and such complaints need to be simply filed.

vi.Commission's circular No.07/11/2014 dated 25.11.2014 withdrawing Circular dated 11.10.2002 and reiterating previous circulars dated 29.6.1999 and 31.1.2002 to the effect that no action should be taken on anonymous/pseudonymous complaints and such complaints should be filed.

4. Since, the aforesaid issues arising out of the observations of CAT and High Court of Madras involve interpretation of substantial questions of law, the opinion of Ld: Attorney General for India was sought by the Commission. Ld. Attorney General for India has furnished his opinion and clarified that unless expressly stated all Executive Circulars are prospective in nature and they do not have retrospective effect, Only 'a law can be retrospective if a law expressly states that it will be retrospective or the intention to that effect is very clear. It is further clarified that an anonymous / pseudonymous complaint, say made in 1997 i.e. prior to the prohibitory circular dated 29.06.1999 ought to have been generally not entertained but if there was verifiable material in accordance with the DoPT's D.M. of 1992 and investigation has commenced, the same would have to be taken to its logical conclusion notwithstanding the issue of a later circular dated 29.06.1999.

5. Based on the opinion furnished by Ld. AG, the following clarifications are being issued:-

i.No action should be taken on anonymous/pseudonymous complaints in line with Commission's present instructions dated 25th November, 2014 and such complaints should be filed.

ii.However, where the action was initiated on anonymous/pseudonymous complaints prior to the issue of CVC's circular dated 29.6.1999 and was pending as on 29.6.1999, it can be



WEB COPY

W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

pursued further to its logical end.

iii. Where action was initiated on anonymous/pseudonymous complaints between the period 11.10.2002 and 25.11.2004 with prior concurrence of CVC but is pending, further action is permissible on such complaints.

iv. Material/evidence gathered during the investigation/verification of anonymous complaints when the action was prohibited on such complaints (i.e. between 29.06.1999 & 11.10.2002), or where such enquiry was initiated without the approval of CVC, can be utilised for further initiation of disciplinary proceedings on misconducts noticed in such verification / enquiry.”

17. Thus, from a conjoint reading of the OMs issued earlier to the one issued on 24/12/2020 and the CVC circular dated 07/03/2016, they are in respect of verification of certificates initiated on anonymous/pseudonymous complaints or those verifications initiated at the fag end of the service and pending thereby causing uncertainty to the person concern or cases where the enquiry pending even after retirement without disbursement of retirement benefit.

18. As a matter of fact, the circular of CVC dated 07/03/2016 is not even in respect of enquiry about ST certificate. It is general in nature referring CAT order and High Court orders in respect of disciplinary proceedings of all



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY nature initiated on anonymous/pseudonymous complaints. In OM dated 24/12/2020, the CVC circular dated 07/03/2016 is wrongly cited as if CVC order was in respect of caste certificate verification.

19. The reading of OM dated 25/05/2005 makes it further clear that the Government in Personal and Training Department had taken a policy decision based on the Supreme Court and High Court directions that detail verification of all ST certificates produced before various authorities since 1995 to be carried out.(emphasis added).

20. It speaks about, the task of collecting the details of all those who had been appointed in Ministries/departments or agencies including CPSUs with which they are concern, since 1995 on the strength of ST certificate, vest with CVC and the process of verification should be completed within two months. Keeping this in view, instruction given to the State Level Scrutiny Committee to verify the ST caste certificates of only those employees who were appointed after the year 1995.



WEB COPY



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

21. This OM cannot be construed as a prohibition to SLSC from verifying ST certificates of persons who joined service prior to 1995. This OM does not prohibit SLSC from verifying ST certificates of persons joined in service prior to 1995 by a disjoint reading of the OM. The said OM only emphasis priority to be given for verification of ST certificates of persons, who joined service after 1995, since the process should complete within two months. It is erroneously to say that executive by this OM had taken a policy decision to fix the year 1995 as cut off date for ST certificate verification. This OM only reveals the decision to conduct the verification of persons, who had joined service after 1995 and complete the exercise within two months. So, for CVC to undertake the verification of process of persons who joined service after 1995. In so far as persons who have joined service before 1995, whoever had fallen under the scanner of scrutiny, has to subject himself for the process of verification and prove the genuineness of the certificate, which he relied and produced to get employment under ST quota. The OM dated 24/12/2020 is reflection of the concern expressed by the Parliamentary Committee in respect of delay in releasing the retirement benefit of SC/ST employees whose caste



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

certificate is pending verification for a long time. The references to CVC circulars and earlier OM dated 25/05/2005 and 09/09/2005 are to be read and applied to the contest and not out of contest.

22. As submitted by the Learned Additional Advocate General Mr.P.Kumerasan, there cannot be an Office Memorandum contrary to the spirit of the Hon'ble Supreme Court Judgement (*Kumari Maduri Patil case*). If the OM and circular of CVC is read out of contest as contended by the counsel for the petitioner, it will give way for the unscrupulous persons, who had manoeuvred to get false community certificate and deprived genuine ST members of their right of public office to go scot free. This will be contrary to the spirit of the law laid by the Supreme Court in *Kumari Maduri Patil case*. It this judgment, the Hon'be Judges have expressed their anguish as below:-

"The menace of unscrupulous individuals manoeuvring the system to obtain false caste certificates and securing admissions to education institutions and employment in Government and public sectors effectively depriving the constitutional rights of deserving communities had been a challenge for public administration for many reasons. The fact that very often, the applications for community certificates are moved by parents/guardians when the beneficiaries are still minors, compounds the problem. The complexity of the best known methods and the enormity of



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

time in probing the anthropological roots of the individuals to determine their caste/community adds up to the challenge. This lead to courts taking varying decisions at varying points of time on matters of admissions and employment secured on the basis of false caste/community certificates."

23. The learned Additional Advocate General also submitted that, getting public appointment by producing false certificate is a criminal offence. The offence of using dishonestly the false document as genuine is punishable with imprisonment upto 7 years. Section 468 of Criminal Procedure Code does not fix any period of limitation for taking cognizance of offence punishable with imprisonment for a period above 3 years. After the judgment of *Maduri Patil case*, the falsity or genuineness of the ST community certificate can be tested only by the State Level Scrutiny Committee. In view of administrative exigencies, OM dated 25/05/2005 issued to give primacy for the enquiry regarding caste certificate of person who joined service after 1995. The said OM did not and cannot prohibit the enquiry by authority competent to look into the genuineness of a caste certificate. The judgment rendered by the Hon'ble Supreme Court in *Kumari Maduri Patil* cannot be construed to have only prospective effect. Whenever the SLSC enquiry report holds a person had produced false certificate and used of it for getting appointment dishonestly,



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

then the prosecution should automatically follow. Through Office Memorandum limitation for enquiry of criminal offence cannot be fixed. Executive instruction cannot over ride the enforcement of law duly enacted by Parliament.

24. To buttress his argument, the Learned Additional Advocate General, rely on the judgment of the Hon'ble Supreme Court Constitutional Bench consisting of 5 Hon'ble Judges rendered in ***Commissioner of Central Exercise -vs- Ratan Melting & Wire Industries*** reported in ***[(2008) 13 SCC 1]***, wherein the Hon'ble Supreme Court dealing with the circular issued by Central Board of Excise and Customs giving different interpretation to the judgment of the Hon'ble Supreme Court, held that,

"7.Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

the Court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”

25. The Learned Additional Advocate General also referring the Judgment of the Hon'ble Supreme Court rendered in ***ESIC -vs- Union of India and others*** reported in ***[2022 (11) SCC 392]***, wherein the Hon'ble Supreme Court has held that in case of conflict between statement in recruitment advertisement and the Service Regulation, the Statute will prevail over the advertisement issued by the executive. Administrative instruction superseding the statutory rules not permissible.

26. *Kumari Maduri Patil judgment* was rendered by the Hon'ble Supreme Court on 02/09/1994. Nowhere in this judgement, we find that the guidelines laid by the Hon'ble Supreme Court is restricted for persons to be employed after 1995. It is a misconception that *Kumari Maduri Patil* judgement is only prospective in operation. Probably, the said misconception



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

been conceived since the guideline starts with what a person of ST community should do if he wants the privilege in admission to education institute or employment in Government/public sectors and how his application for certificate to be dealt by the Revenue authorities. Only to the extend of future aspirant it is prospective in nature. The procedure to verify the community certificate and the composition of Scrutiny Committee, the time limit to complete the verification are for all including persons who had already in employment/pursuing study in any institution under ST reservation quota. Unless the verification process is given retrospective effect, the persons who had grabbed the advantage dishonestly and already occupying the place of a genuine ST member cannot be weeded out to provide the opportunity for true and real ST candidate for whom the privilege is meant.

27. That apart, on examining the history of the petitioner case, it is shocking that this petitioner has misrepresented the court on many aspects and been hoodwinking the court by gross suppression of fact and suggesting falsehood. In fact, the plea of belated verification and victimisation at the instance of some unknown persons itself are incorrect and contrary to record.



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

The shocking facts revolving the litigating history of this petitioner is capsulized under:

28. Background facts:-

The writ petitioner was selected and appointed as a Clerk in the Bank of Baroda during the year 1989 under the quota meant for ST community. At the time of appointment he produced community certificate dated 17/03/1980 issued by the Thasildar, Attur as he belong to HINDU KATTUNAYAKAN. COMMUNITY which is a caste notified as Schedule Tribe. Soon after he joined service, the Bank Management had requested the District Collector, Salem to verify the community certificate and report. Accordingly, District Collector had conducted enquiry and cancelled the community certificate issued to the petitioner vide order dated 10/01/1992. The petitioner challenged the order of the District Collector in W.P.No.996/1992 and the Hon'ble High Court in its order dated 20/04/1999 has directed the District Level Scrutinising Committee to verify the community certificate of the petitioner. Pursuant to the order of the High Court, the District Level Scrutinizing Committee conducted enquiry and concluded that the petitioner does not belong to Hindu



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

WEB COPY
Kattunaiyakan community. As per the recommendation of the District Level Scrutinizing Committee, the Bank had initiated department proceedings against the petitioner. The petitioner had challenged the cancellation of his community certificate and the consequential departmental enquiry through WP 13221/2000 and W.P.No.19139/2000. In view of interim stay of departmental proceedings, the enquiry did not proceed. Meanwhile the petitioner has filed WP petitioner continued in service 7461 and W.P.No.7462 of 2002. This time, the Hon'ble High Court vide order dated 27/07/2005 directed the State Level Scrutinising Committee to verify the community certificate of the petitioner. On this direction there was no action or progress. [presumable due to non cooperation by the petitioner as recorded in the Enquiry report of the DSP, SC/ST Vigilance Cell, Salem Division, dated 23/12/2016.]

29. Meanwhile it appears that the Employer (viz) Bank of Baroda has also filed a writ petition Writ Petition W.P.No.8573 of 2016 seeking direction to expedite the enquiry on the communal status of the petitioner. The Hon'ble High Court disposed this writ petition on 09/03/2016 directing the State Level



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

Scrutinizing committee to conduct enquiry and submit report within a period of six weeks.

30. Meanwhile, the enquiry conducted by the SLSC pursuant to the High Court direction passed earlier, were not able to proceed in spite of several adjournment giving opportunity to the petitioner. Therefore, the Chairman of the SLSC had ordered for enquiry by the DSP, SC/ST Cell, Salem Division to conduct investigation about the genuineness of the community certificate issued to the petitioner.

31. The DSP, SC/ST Vigilance Cell, Salem Division on completion of enquiry found that the petitioner does not belong to Hindu Kattunaiyakkan community (ST) but, belongs to Hindu Man-Ottar “இந்து மண்-ஒட்டர்”) a community which come under OBC category. The enquiry report dated 23/12/2016 was forwarded to the Director, Tribal Welfare, Chennai.

32. The Director in turn on 24/10/2019 had requested the State Level Scrutiny Committee to resume the enquiry. The petitioner was called for enquiry



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

on 22/11/2019 with all connected documents to prove his ST community. The petitioner did not attend the enquiry but sought time extension. Again he was called to attend enquiry on 24/11/2020 but he did not participate but sought further time. In the said circumstances recording his non cooperation and failure to produce documents to prove he hail from Kattunaiyakan community, the SLSC concluded that the 'Kattunayakan' schedule tribe Form of Perumal (petitioner herein) given by the Tahsildar , Attur dated 29/05/1988 is "NOT CORRECT".The District Collector Salem was directed to confiscate the *certificate* and the employer (Assistant General Manager, (RH) Bank of Baroda, Regional Office , Madurai) to take appropriate action in this regard as per law.

33. The above proceedings of the SLSC dated 24/12/2020 is the subject matter of the writ petition W.P.No.4484/2021, which is under consideration by this Court. The petitioner has prayed for issuance of writ of Certiorified Mandamus to quash the proceedings of the SLSC dated



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

24/12/2020. In the affidavit filed in support of writ petition, the petitioner had mentioned only the writ petitions W.P.No.8573/2016 filed by the Bank and his W.P.(MD)No.490/2019 and conveniently omitted to mentions the earlier rounds of litigation commencing from 1992 when he first filed W.P.No.996/2012 challenging the order of the Salem District Collector who found that Kattunayakan community certificate of the petitioner is not true and cancelled it.

34. In this writ petition, as if he had been subjected to community certificate verification at the fag end of his career he had sought for Certiorified Mandamus. The petitioner had been adopting all tantrics to avoid the inevitable right from 1992. Presently, he wants to take advantage of the OM issued on misconception of facts, by giving contra interpretation to the Supreme Court judgment. Though the law is well settled that the there can be no administrative order or instruction overriding or superseding the effect of judicial pronouncement.

35. In the light of the above discussion and reasoning, the questions



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

framed for consideration are answered as below:-

(i) Whether the O.M., dated 24.12.2020 prohibits scrutiny of caste certificate issued prior to 1995?

NO. The observations made in the said OM is misconception of the earlier OM dated 25/05/2005 and the CVC circular is general in nature. There can be no executive order prohibiting enquiry of fake or false caste certificate which is not only a misconduct in the parlance of service jurisprudence but a crime under penal law.

(ii) Whether the observation in the said O.M., that the decision of the Hon'ble Supreme Court in Kumari Madhuri Patel Vs. Additional Commissioner can be implemented only prospectively is legally sustainable?

No. Any interpretation of the Supreme Court judgment contrary to the spirit of the judgment is non est in law as per the decision of the constitutional Bench of the Supreme Court in its judgement rendered in Commissioner of Central Exercise -vs- Rathan Melting and wire Industries (2008 (13) SCC 1).

(iii) Can there be any limitation for reviewing act of fraud on constitution?

Fraud vitiates every solemn act. By executive orders limitation cannot be prescribed for acts of fraud committed against constitution and laws. The petitioner herein whose birth register entry made in the year 1958 show he belong to Hindu Man Ottan



W.P.No.4484 of 2021

and

W.M.P.Nos.5110 and 5116 of 2021

WEB COPY

community. He had obtained community certificate from Tahsildar, Attur at Salem District as if he belongs to Kattunaiyakan community which is a Schedule Tribe. His ST certificate cancelled by the District Collector after enquiry as early as 1992 (i.e) even before *Maduri Patil* judgment. However the petitioner was able to manover, by filing writ petitions in sequences. He had not cooperated for enquiry conducted by State Level Scrutiny Committee. Enquiry by a senior police officer of the rank of DSP attached to the special vigilance cell for SC/ST had unravelled several truth about the dishonest act of the petitioner which independently requires prosecution apart from confiscation of his false community certificate besides departmental proceedings.

36. As a result, the judgement of the Hon'ble Mrs.Justice N.Mala is confirmed. The Writ Petition stands dismissed.

37. Since the petitioner has prevented the valuable right of public office of a Schedule Tribe Member, it is open to the State to take necessary penal action against the petitioner for offences under IPC and also under Section 3 (1) za (E) of SC /ST (Prevention of Atrocities) Act. The second



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

respondent/Employer is permitted to proceed against the petitioner for necessary action for recovery in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.11.2023

Index:yes
Speaking order/non speaking order
Neutral Citation:yes/no
ari

To:

1.The Chairman,
Tamil Nadu State Level Scrutiny Committee-III,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,Secretariat,
Chennai 600 009.

2.The Deputy General Manager,
The Bank of Baroda,
Zonal Office, Baroda Pride,
New No.41, Old No.101,
1st Floor, Luz Church Road,
Mylapore, Chennai 600 034.



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

3.The Deputy General Manager,
The Bank of Baroda,
Regional Office (Madurai Region),
2nd Floor, Aparna Towers,
No.2, 3, Bye-Pass Road,
Madurai 625 016.

4.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

ari



WEB COPY



W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

delivery Order made in
W.P.No.4484 of 2021
and
W.M.P.Nos.5110 and 5116 of 2021

16.11.2023