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W.P.No.9722 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 21.09.2023

Order delivered on 01.11.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.9722 of 2020
and
W.M.P.No.11840 of 2020

G.Ayyanar

.... Petitioner

VS

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

2. The Collector,
Villupuram District,
Villupuram.

3. The Divisional Railway Manager,
Divisional Office,
Personnel Branch,
Tiruchirappalli.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
to issue a Writ of Certiorari to call for the records relating to the proceedings



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of the Tamil Nadu State Level Scrutiny Committee - III in Proceedings No.19562./CV-6/2012-7 dated 22.05.2020 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader for R1 & R2
Mr.P.T.Ramkumar for R3

ORDER

(Order of the Court was made by J.NISHA BANU, J.,)

This Writ Petition has been filed challenging the proceedings of the 1st respondent / Tamil Nadu State Level Scrutiny Committee - III, dated 22.05.2020, by which, the community certificate of the petitioner was cancelled.

2. The case of the petitioner is that he belongs to Kattunayakan community, which is notified as a 'Scheduled Tribe' community in the Presidential notification in Serial No.9. In the year 1979, he obtained community certificate from the Tahsildar, Villupuram stating that he belongs to Kattunayakkan (ST) Community. The above certificate was detained by ITI, Tiruvannamalai, for record purpose. Again, another community certificate was issued by the Tahsildar, Villupuram on 06.05.1989 for employment purpose. Based on the said certificate, he joined duty as Track



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Manager in Southern Railways and retired from service on 31.01.2016. The Southern Railways referred his community certificate to District Level Vigilance Committee in the year 2002 for verification. The District Level Vigilance Committee, cancelled his community certificate holding that he does not belong to Kattunayakan community. Hence, the petitioner filed a writ petition in W.P.No.46527 of 2002. This Court passed an order in the said writ petition, on 22.09.2003, setting aside the said order and remitted the matter back to verify the communal status of the petitioner. Pending enquiry, the Government passed G.O.(2D)No.108, Adi dravidar and Tribal Welfare (CV-1) Department dated 12.09.2007 that the State Level Scrutiny Committee alone has power to enquire into the genuineness of the Scheduled Tribe candidate. Hence, the petitioner filed W.P.No.28662 of 2014 before this Court to complete the enquiry at the earliest. This Court passed an order directing the District Level Vigilance Committee to place all the records before the State Level Scrutiny Community for conducting proper enquiry within twelve weeks. Thereafter, the 1st respondent issued notice to the petitioner on 02.09.2015 to appear for enquiry on 11.09.2015. The petitioner appeared for enquiry and the 1st respondent referred the community certificate to the Vigilance Cell for conducting enquiry and submit a report. The Vigilance Cell



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Officer, without following the procedure and without providing an opportunity to cross examine the witnesses, conducted the enquiry and submitted a report. However, no order was passed by the 1st respondent. Therefore, the petitioner filed a writ petition in W.P.No.3023 of 2018 before this Court to direct the 1st respondent to pass orders regarding verification of community certificate within eight weeks. On 18.04.2018, the Director of Tribal Welfare issued a show cause notice asking the petitioner to give explanation for the report submitted by Vigilance Cell Officer. The petitioner also gave detailed explanation to the show cause notice. However, without considering his explanation, the 1st respondent committee cancelled his community certificate on 22.05.2020. Hence, the present writ petition.

3. (i) Learned counsel for the petitioner would submit that the 1st respondent has not considered the explanation submitted by the petitioner. The report of the Revenue Divisional Officer dated 12.10.1990 stating that the petitioner belongs to Hindu Kattunayakan (ST) Community was not taken into consideration by the Vigilance Cell Officer and the 1st respondent Committee. Learned counsel would further state that in the year 1979 itself the petitioner obtained community certificate from the Tahsildar, Villupuram stating that he belongs to Hindu Kattunayakan (ST) Community. The said



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certificate was detained by IIT, Thiruvannamalai, for record purpose. The 1st respondent has passed an order stating that the community certificate dated 09.04.1989 and 06.05.1989 are not genuine but the petitioner did not obtain any community certificate on 09.04.1989 which show the total non-application of mind in cancelling the community certificate of the petitioner. He would further submit that the Vigilance Cell Officer had conducted discreet enquiry behind the back of the petitioner. The Vigilance Cell Officer had examined 30 witnesses but the petitioner was not given an opportunity to cross examine the witnesses. In support of the said contention, learned counsel would rely on the decision of the Hon'ble Supreme Court in the case of *Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra* reported in **2013(4) SCC 465**.

(ii) Learned counsel for the petitioner further relied on the decision of the Hon'ble Supreme Court reported in **2012 (1) SCC 113 (Anand v. Committee for Scrutiny and verification of Tribal Claims and other)**, in which, the Hon'ble Supreme Court has held that "*the burden of proving the caste claim is upon the applicant, who has to produce all the requisite documents of his claim, that the caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the*



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documents and material produced by the applicant and that in case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim. Learned counsel for the petitioner would therefore submit that the Vigilance Cell Officer has filed the report by gathering evidence on his own to disprove the petitioner's claim.

(iii) Learned counsel for the petitioner would further submit that none of the documents submitted by the petitioner have been considered by the concerned authorities. No enquiry was conducted as per the guidelines issued by *Kumari Madhuri Patil's case*. The entire exercise has been done mechanically without applying the mind either by the Vigilance Cell Officer or by the Anthropologist. He would further submit that the petitioner had put in 23 years of service under the 3rd respondent and attained superannuation on 31.01.2016 and was also receiving pension. However, the 1st respondent cancelled his community certificate on 22.05.2020 and the authorities have also stopped payment of pension from December 2022 payable in January, 2023. Therefore, the impugned order passed by the 1st respondent is liable to be set aside.

4. (i) Per contra, the learned counsel appearing for the first respondent



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would state that the petitioner had obtained 'Kattunayakan' Scheduled Tribe community Certificate from the Tahsildar, Villupuram on 06.05.1989. On the strength of the said community certificate, the petitioner got appointment as Trackman in Southern Railways under the quota reserved for Scheduled Tribes. The Southern Railways has referred to Collector Villupuram to cause verification of genuineness of the community certificate issued by the Tahsildar, Villupuram. The District Collector, conducted a detailed inquiry and cancelled the certificate on 7.10.1995. Aggrieved by the said proceedings, the petitioner filed W.P.No.18033 of 1995 and this Court passed an order dated 06.08.2002, directing the 2nd respondent to initiate proceedings for verification of the genuineness of the certificate. Based on the order passed by this Court, the District Level Vigilance Committee, Villupuram, conducted enquiry and cancelled the Kattunayakan community certificate of the petitioner by proceedings dated 26.11.2002. Against which, the petitioner preferred W.P.No.46527 of 2002 and this Court set aside the said order on 10.08.2005 and ordered to constitute an appropriate valid committee to verify the community certificate of the individual.

(ii) Learned Additional Government Pleader would further submit that subsequently, as per G.O.(2) No.108 dated 12.09.2007, the verification of the



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community status of the petitioner was taken up by the State Level Scrutiny Committee. During enquiry on 01.03.2019, the petitioner produced unauthenticated and irrelevant family tree before the State Level Scrutiny Committee which is related to his wife's side only. The petitioner could not produce the family tree authenticated by the Tahsildar to prove his paternal side relationship with Ms.Roja, Ms.Gowripriya and Ms.Kavitha, in whose cases the State Level scrutiny Committee confirmed community status as Scheduled Tribe Hindu-Kattunayakan and who are claimed to be the relatives from his grandmother side, Tmt.Pappathiyammal (W/o Pavadai), elder sister of Neelambal, W/o Masilamani. The anthropologist, after thorough analysis categorically stated that the petitioner does not belong to 'Hindu Kattunayakan' Scheduled Tribe community. He would further submit that the community certificate, without verification by the appropriate authority, cannot be said to have attained finality. Though the petitioner's employers should have completed the exercise long before, nevertheless in the peculiar facts and circumstances of the case, as there was no prior verification of the community certificate of the petitioner, it needs to be verified at least at the time of retirement so that there is no further drain to the exchequer. He would further submit that finding the community certificate not genuine, the State



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Level Scrutiny Committee, recommended to the employer of the petitioner/3rd respondent, to take appropriate action as per law. Thus, there is no violation of natural justice committed by the respondents, as ample opportunity was given to the petitioner. Therefore, he would be pray to dismiss the writ petition.

5. We have considered the submissions made on either side and perused the materials available on record.

6. It is seen from the records that the petitioner obtained community certificate in the year 1979 itself from the Tahsildar, Villupuram stating that he belongs to kattunayakkan(ST) community and the said certificate was detained by ITI, Tiruvannamalai, for record purpose. Therefore, according to the petitioner, another community certificate was issued by the Tahsildar, Villupuram on 06.05.1989, for employment purpose and only based on the said certificate, he was appointed as Track Manager in the Souther Railways and he retired from service on 31.01.2016. When his certificate was verified by the District Level Vigilance Committee, it cancelled his community certificate stating that the petitioner does not belong to Kattunayakan community. Therefore, W.P.No.46527 of 2002 was filed and this Court, on 22.09.2003, passed an order, setting aside the cancellation of the petitioner's



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community certificate and remitted the matter back to verify the communal status of the petitioner. Subsequently, G.O.(2D)No.108, Adi dravidar and Tribal Welfare (CV-1) Department, dated 12.09.2007, was passed stating that State Level Scrutiny Committee alone has power to enquire into the genuineness of SC/ST certificates. Therefore, the petitioner filed W.P.No.28662 of 2014 to complete the enquiry at the earliest and this Court, passed an order, directing the State Level Scrutiny Committee to complete the enquiry within twelve weeks. However, the State Level Scrutiny Committee referred the community certificate of the petitioner to the Vigilance Cell Officer and the Vigilance Cell Officer, conducted an enquiry and without providing an opportunity to cross examine the witnesses by the petitioner, submitted a report and thereafter, no order was passed by the 1st respondent. Therefore, the petitioner filed W.P.No.3023 of 2018 before this Court and this Court, directed the respondent therein to pass orders within eight weeks. Thereafter, the Director of Tribal Welfare issued show cause notice asking for explanation for the report submitted by the Vigilance Cell Officer. The petitioner also filed a detailed explanation. However, without considering the same, cancelled his community certificate on 22.05.2020.

7. It is seen from the records that the petitioner retired from service



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four years before the cancellation of his community certificate by the State Level Scrutiny Committee on 22.05.2020. He was sanctioned with pension, gratuity and other benefits. Subsequently, the authorities have also stopped payment of pension from December 2022 payable in January, 2023. We are of the view that at this stage, cancellation of the petitioner's community certificate is uncalled for. The Government of India have issued guidelines periodically mandating all employers and authorities to undertake verification at the earliest point of time preferably at the time of one's entry into service. In the present case, the petitioner has completed 23 years of unblemished record of service and retired on 31.01.2016. Further, there is nothing on record to show that all the statements were recorded in the presence of the petitioner and an opportunity was given to the petitioner to cross examine the witnesses. Thus, there is violation of principle of natural justice.

8. It is pertinent to point out that the Hon'ble Apex Court and various High Courts have time and again stressed that verification after retirement is a wasteful exercise and would be purely academic. In the present case, the State Level Scrutiny committee issued notice to appear for enquiry only on 11.09.2015 at the verge of his retirement and passed an order, cancelling the community certificate of the petitioner only on 22.05.2020, four years after



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his retirement. In similar circumstances, in SLP(C) No.24458/2019 dated 03.03.2023, the Hon'ble Apex Court has held as follows:

It is submitted that the respondent No.1 who served in the Railways has superannuated on 28.02.2022 and therefore, the exercise in this case would largely be academic on the aspect of whether she belonged to the claimed Scheduled Tribe category.

Considering the above, we deem it is appropriate to order for closure of the proceedings.

Accordingly, the Special leave Petition stands disposed of.

9. Considering the facts and circumstances of the case and in the light of the above decision of the Hon'ble Apex Court, we are inclined to set aside the impugned order passed by the 1st respondent. Accordingly, the impugned order dated 22.05.2020 passed by the 1st respondent is hereby set aside. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B., J.) (N.M., J.)
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J. NISHA BANU, J.
and
N.MALA, J.

vsi

Pre-delivery order in

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01.11.2023