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W.P.Nos.3539 and 7599 of 2021
and W.P.No.33826 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.Nos.3539 of 2021, 7599 of 2021 & 33826 of 2019
and W.M.P.Nos.4028 of 2021, 8117 of 2021 & 34341 of 2019**

P.Selladurai

.. Petitioner in all W.Ps

Vs.

1.The Chairman
State Level Scrutiny Committee-III
Additional Secretary to Government
Adi Dravidar and Tribal Welfare (CV-5) Department
Secretariat, Chennai - 600 009

2.The Assistant General Manager (HRM)
Indian Bank, Corporate Office,
254-260, Avvai Shanmugam Salai
Royapettah, Chennai - 600 014.

3.The Assistant General Manager
Indian Bank, Puducherry Main Branch
Amudasurabi Building, M.G.Road
Puducherry - 605 001

..Respondents in W.P.No.3539 of 2021

1.The Chairman
State Level Scrutiny Committee-III
Additional Secretary to Government
Adi Dravidar and Tribal Welfare (CV-5) Department



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Secretariat, Chennai - 600 009

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2.The General Manager (CDO)
HRM Department, Indian Bank
Corporate Office, 254-260, Avvai Shanmugam Salai
Royapettah, Chennai - 600 014.

3.The Assistant General Manager
Indian Bank, Puducherry Main Branch
Amudasurabi Building, M.G.Road
Puducherry - 605 001

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Royapettah, Chennai - 600 014.

2.The Assistant General Manager
Indian Bank
Puducherry Main Branch
Amudasurabi Building
M.G.Road
Puducherry - 605 001

..Respondents in W.P.No. 33826 of 2019

Prayer in W.P.No.3539 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the 1st respondent dated 08.12.2020 in No.9339/CV-5/2007-9 and quash the same and consequently direct the respondents 2 and 3 to settle the petitioner's gratuity, encashment of earned leave and other terminal benefits.

Prayer in W.P.No.7599 of 2021: Petition filed under Article 226 of the



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Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the 2nd respondent dated 01.03.2021 in RC/01003/2021 and quash the same and consequently direct the 2nd respondent to release the freezing of petitioner's bank account bearing No.558746340 with Indian Bank, Pondicherry Main Branch.

Prayer in W.P.No.33826 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 1st respondent's letter Ref.No.GR:O:22130:2019-20 dated 27.09.2019 in so far as the denial of gratuity and encashment of earned leave is concerned and quash the same and direct the respondents to settle the petitioner's gratuity, encashment of earned leave and other terminal benefits.

For Petitioner : Mr.J.Duraisamy, Senior Counsel
in all W.Ps for Mr.V.Elangovan

For Respondents : Mr.P.Gurunathan, AGP for R1
in all WPs M/s.S.R.Sumathy for R2 and R3.

COMMON ORDER

[Order of the Court was made by J.NISHA BANU, J.]

The above writ petitions are filed to quash the impugned orders dated 27.09.2019, 08.12.2020 and 01.03.2021 and to direct the respondent/Indian Bank to settle the petitioner's gratuity, encashment of earned leave and other



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terminal benefits.

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2. It is averred in the writ petition that the petitioner belongs to Urali community, which is a notified Scheduled Tribe community and he obtained a community certificate from the Tahsildar, (Forest Settlement), Attur in the year 1983. Based on merits and his social status, he was selected to the post of Clerk in Indian Bank in the year 1984 and subsequently, promoted as Senior Manager.

3. While so, on the basis of certain anonymous complaints, the genuineness of the petitioner's community certificate was pending before the District Level Vigilance Committee. Pursuant to the Government Order in G.O.(2D) No.3, Adi Dravidar and Tribal Welfare (CV-1) Department dated 31.01.2008, it was decided that the enquiries prior to 12.09.2007, should be conducted only by the State Level Scrutiny Committee.

4. The petitioner along with similarly placed persons filed W.P.Nos.13687 of 2006 etc batch cases seeking to quash the G.Os issued in this regard. The said WPs batch was disposed of by a Division Bench of this Court vide order dated 01.04.2008, holding that the genuineness of the



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community certificate in respect of the Scheduled Tribe candidates should be considered only by the State Level Scrutiny Committee in terms of the Government order dated 31.01.2008 and accordingly, directed the State Level Scrutiny Committee to consider the genuineness of the Community Certificates of the petitioners after collecting the papers from the respective District Level Vigilance Committees.

5. Pursuant to the direction of this Court, the petitioner was called for personal enquiry before the State Level Scrutiny Committee. Thereafter, the impugned order dated 08.12.2020, challenged in W.P.No.3539 of 2021, was passed by the State Level Scrutiny Committee/1st respondent.

6. The impugned order reads that *“after giving many chances to appear for personal enquiry, he evaded the enquiries and he did not substantiate his claim and so based on available materials, the community certificate was scrutinised and also analyzed the enquiry report of Vigilance Cell and pointed out that the “Urali” Scheduled Tribe Community Certificate dated 27.12.1983 issued by the Tahsildar (Forest Settlement), Attur, is “Not Correct” and consequently directed the District Collector, Salem, to confiscate the said*



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“Urali” Scheduled Tribe Community Certificate and recommended the
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employer to take appropriate action in this regard as per law.”

7. In the meantime, the employer-Indian Bank passed the order dated 27.09.2019 pointing out that since the verification process is still pending before the State Level Scrutiny Committee, the petitioner was placed under cessation of service from the Bank at the close of office hours on the date of superannuation 30.09.2019 and that he will not be entitled for the payments of retirement benefits till the proceedings are completed and final orders are passed thereon.

8. Thereafter, pursuant to final orders of verification of the State Level Scrutiny Committee, dated 08.12.2020, the employer Indian Bank passed the order dated 01.03.2021 impugned in W.P.No.7599 of 2021. The General Manager (CDO), Indian Bank, has pointed out that on the basis of the proceedings of the State Level Scrutiny Committee-III dated 08.12.2020, the petitioner was called upon to show cause vide letter dated 15.02.2021 as to why his appointment should not be considered as per se illegal and his services should not be treated as cancelled.



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9. The petitioner by his explanation dated 22.02.2021, stated that he preferred W.P.No.3539 of 2021 before the High Court, Madras. Since no stay on the proceedings of the State Level Scrutiny Committee cancelling the community certificate and holding that the Urali ST community certificate is per se illegal and void, the explanation was rejected. The employer therefore, cancelled the order of appointment as ab initio void and that he was not entitled for payment of any benefits. It was also pointed out that the terminal benefits already released is to be repaid as per the indemnity bond executed by the petitioner.

10. When W.P.No.7599 of 2021 was listed for admission on 24.03.2021, learned Additional Government Pleader took notice for the 1st respondent and the matter was listed on 30.03.2021. On 30.03.2021, notice was ordered to the respondents and taking note of the averments in paragraph 6 of affidavit in the said WP, coupled with the Indemnity Bond dated 27.11.2020 executed by the petitioner in favour of the General Manager (CDO), Indian Bank, ad-interim stay till 11.06.2021 was granted by this court.



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11. The learned counsel for the petitioner argued that as per the direction of the High Court, Delhi dated 14.07.2014 in C.W.P.No.5976 of 2003, the Government of India had decided to verify the ST community certificates of all those who had obtained employment under ST category from the year 1995 and afterwards only. Furthermore, as per the Judgment of the Hon'ble Supreme Court, the community certificate issued before 11.11.1989 are valid and need not be enquired.

12. On the other hand, counter affidavit filed by the 1st respondent, would indicate that based on valid evidences, and on the merits, after following the due procedure as contemplated under law, the impugned order dated 08.12.2020 is passed.

13. The employer-Indian Bank [Respondents 2 and 3] also filed counter affidavit and submitted that appointment of the petitioner into the Bank has been held illegal and void abinitio due to falsity in ST community certificate produced by him, therefore, there is absolutely no justification for him to claim any service or terminal benefits. It is also submitted that his claim for salary



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arrears consequent to such illegal appointment is untenable in law.

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14. Heard both sides and perused the records.

15. A perusal of the entire matter in hand would go to show that the impugned order passed by the State Level Scrutiny committee is an exparte order. The petitioner is an employee of the Indian Bank and the petitioner is not able to get the retirement benefit because of the cancellation of the community certificate. The service rule contemplates immediate verification of the truthfulness of caste claims for appointments made on reservations to the vulnerable communities. It directed completion of the verification about the veracity of caste/community certificate within 2 months.

16. The State Level Scrutiny Committee conducted exparte enquiry in the case of the petitioner and found that the petitioner's anthropological roots not established to the satisfaction of the committee. This would go to show that the complexity of the best known methods and the enormity of time in probing the anthropological roots of the individuals to determine their caste/community has become a challenge and this lead to courts taking varying decisions at varying points of time on matters of admissions and employment secured on



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the basis of false caste/community certificates.

17. The Honourable Supreme Court, in the case of **R.SUNDARAM VERSUS THE TAMIL NADU STATE LEVEL SCRUTINY COMMITTEE & ORS. [CIVIL APPEAL NO. OF 2023 (Arising out of Special Leave Petition (Civil) No. /2023 Diary No.15448 /2020]** while deciding the SLP filed by the retired Bank Staff, who challenged the denial of his post-retirement benefits, held in paragraphs 14, 15 and 16 as under:-

“ 14. After serving the Respondent bank for 38 years, the Appellant, two days before his superannuation received his cessation order without there being any proper enquiry. Further, on communication made to the respondent no.1, it was found that on the date of passing the cessation order, no case was pending against the Appellant. To us, a very clear pattern of harassment is visible, and there appears to be a sinister motive against the Appellant and his right to pensionary benefits. Even after 38 years of service, irrespective of the merits of the case, the fact that the Appellant has not been treated with any respect is sad to see, and the use of delayed procedure as a dangling sword can only be interpreted as harassment .

15. In the case of Madhuri Patil and Another Vs Additional Commissioner, Tribal Development and Others³ , this Court gave fifteen guidelines as to how the exercise of verification of community certificate ought to be completed. The relevant extract from the said judgment are reproduced hereunder: “The admission wrongly gained or appointment wrongly obtained on the basis of false social



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status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following: (emphasis supplied) 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



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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.

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 concerned educational institution 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 for further study or continue in office in a post.”

16. It has been explicitly stated by this Court that the exercise of verification of community certificate must be completed expeditiously. In the present case however, as has been mentioned above, there has been an inordinate and unexplained delay of 19 years, an amount of time which cannot be fathomed within the ambit of “reasonable time” “

18. The Hon'ble Supreme Court of India, in the above referred to judgment [**R.Sundaram vs. Tamil Nadu State Scrutiny Committee** reported in **2023 SCC Online SC 287**] has held that where the validity of a community



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certificate is put to question, keeping in mind the importance of the document and the effect it has on peoples' rights, the proceedings questioning the document cannot, except in the most exceptional circumstances, be done ex-parte. The Apex Court observed that in proceedings where the genuineness of his belonging to a community is under question, must have a right to be heard, and must be given the right to cross-examine the witnesses, for the nature of the proceedings which are not just a question pertaining his employment, but also something that strikes at the core of his being, i.e., his identity." Therefore, as the right to be heard was denied to the Appellant, the burden of proof on the respondents to disprove the nature of the certificate, had not been discharged. Hence, it was held that the Court must presume the community certificate of the Appellant to be genuine.

19. In our view, the aforesaid judgment of the Apex Court is squarely applicable to the facts of the present case. Thus, in view of our discussion in the preceding paragraphs and in the light of the judgment of the Apex Court in **R.Sundaram's case** (supra), we hold that, the respondents passed the impugned orders with inordinate delay, the impugned orders are not sustainable.



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20. The reservation policy is a matter of pride for our diversity and any exploitation or misuse even if detected late cannot be a justification for such misuse. In the light of the above discussion, the Writ Petitions are allowed. The impugned orders dated 27.09.2019, 08.12.2020 and 01.03.2021 are set aside. The Petitioner is entitled to the post-retirement benefits accrued to him by way of his 35 year long service. The Respondent bank is directed to grant all post-retirement benefits to the petitioner, if due to him which shall be payable on the date of actual payment, along with 6% simple interest. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B,J.) (N.M., J.)
10.07.2023

Index : Yes / No

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Additional Secretary to Government
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