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W.P.Nos.9161 of 2021 & 10609 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.Nos.9161 of 2021 & 10609 of 2020

and

W.M.P.Nos.9692 & 9693 of 2021

P.Palani

... Petitioner
in both writ petitions

Vs.

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

2.The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 1.

... Respondents
in W.P.No.9161 of 2021



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1.The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 1.

2.The Secretary,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 1.

3.The Chief Engineer,
Civil Engineering Department,
Chennai Port Trust,
Chennai.

... Respondents
in W.P.No.10609 of 2020

Prayer in W.P.No.9161 of 2021 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 1st respondent in its proceedings No.19480/CV-4(1)/2017-11, dated 12.01.2021, and quash the same.

Prayer in W.P.No.10609 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to sanction full pension including commutation, gratuity, leave salary and other terminal benefits along with interest at 12% per annum without waiting for verification of the Community Certificate before the State Level Scrutiny Committee.



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For Petitioner : Mr.V.Vijay Shankar
in both writ petitions

For Respondents : Mr.M.Bindran
Additional Government Pleader
for R1 in W.P.No.9161 of 2021

: Mr.R.Karthikeyan
for R2 in W.P.No.9161 of 2021;
for R1 to R3 in
W.P.No.10609 of 2020

COMMON ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

W.P.No.9161 of 2021 is filed for issuance of a Writ of Certiorari to quash the proceedings of the 1st respondent dated 12.01.2021. W.P.No.10609 of 2020 is filed for issuance of a Writ of Mandamus directing the respondents to sanction full pension including commutation, gratuity, leave salary and other terminal benefits along with interest at 12% per annum without waiting for verification of the Community Certificate before the State Level Scrutiny Committee.



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2.The petitioner claims that he belongs to Kuruman Community which is classified as a Scheduled Tribe under the Constitution Order 1950. The petitioner also obtained a Community Certificate way back on 08.02.1978 and again by the Tahsildar, Tiruvallur, on 21.07.1980. The petitioner states that he joined as Mazdoor in the 2nd respondent Port Trust in the year 1980 and got promotion as Lascar and finally as Carpenter. The petitioner attained superannuation on 29.02.2020 while he was working as Carpenter HS Grade-I. The petitioner is also getting provisional pension.

3.After superannuation, at the instance of the petitioner's employer, a reference was made for verification of petitioner's community status. The Vigilance Cell conducted an enquiry in the petitioner's native place. It is the contention of the petitioner that, without undertaking a detailed enquiry, the Vigilance Cell concluded its enquiry and appears to have submitted a report to the State Level Scrutiny Committee, the 1st respondent in W.P.No.9161 of 2021. Based on the report of the Vigilance Cell, the 1st respondent summoned the petitioner to appear for enquiry on 21.12.2020.



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4.It is the case of the petitioner that the petitioner submitted a detailed objection on 19.12.2020 questioning the very verification process at the fag end of the petitioner's service. The counsel for petitioner submitted that at the time of enquiry, the petitioner prayed for an adjournment considering the fact that the enquiry was during Covid-19 pandemic. However, on the very date on which the petitioner was asked to appear for enquiry, the 1st respondent has passed the impugned order holding that the Community Certificate held by the petitioner is not correct. The 1st respondent not only cancelled the Community Certificate issued to the individual, but also directed the District Collector to confiscate the Hindu Kurumans Scheduled Tribe Community Certificate issued to the petitioner earlier and further directed the employer to take stringent action against the individual for obtaining a bogus Community Certificate playing fraud.

5.Though several grounds were raised in the writ petition challenging the impugned order, the learned counsel for the petitioner restricted his arguments to the following points :



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- i. The petitioner was called upon for an enquiry. While submitting his objections to the enquiry notice, the petitioner asked for some accommodation due to Covid by seeking adjournment. However, the impugned order is passed without even giving atleast one opportunity to the petitioner.
- ii. In the order of 1st respondent, the report of the Sub-Collector has been referred to. A copy of the report which was essential for the decision of the 1st respondent is not furnished to the petitioner. For the non-furnishing of the report of the Sub-Collector, the impugned order is vitiated.
- iii. The petitioner was not given an opportunity to cross-examine the Village Administrative Officer, who was examined by the Revenue.

6. From the counter affidavit filed by 1st respondent, this Court is unable to see any rebuttal to the specific points raised by the petitioner, except stating that the petitioner was given a fair opportunity to appear and that the *ex parte* order was passed to stop proliferation of such fake Community Certificate.



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7. In the representation submitted by the petitioner, the petitioner has requested the authorities to drop further verification proceedings in view of the facts narrated in his objections. The 1st respondent, while passing the impugned order, does not refer to the serious objections raised by the petitioner. When the petitioner's explanation could have been considered in his presence, the 1st respondent ought to have given one more opportunity to the petitioner. Hence, the impugned order without further opportunity to the petitioner is against the principles of natural justice.

8. Secondly, the 1st respondent has relied upon the report of the Sub-Collector and held as follows :

“8. The Sub Collector, Tiruvallur sent a report of the Tahsildar, Tiruvallur wherein it is stated that the issuance record in respect of the Community Certificate of the said individual was not found in the office of the Tahsildar, Tiruvallur.”

Since the report of the Sub-Collector is referred to by the 1st respondent, the 1st respondent ought to have furnished a copy of the same to the petitioner, which has not been done in the present case.



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9.Thirdly, the Village Administrative Officer, who was examined by the State Level Scrutiny Committee, was not cross-examined by the petitioner. The grievance of the petitioner is that no opportunity to cross-examine the Village Administrative Officer, was given to the petitioner.

10.All the three grounds raised by the petitioner would show that the main contention of the learned counsel for the petitioner is that the impugned order is in violation of the principles of natural justice inasmuch as the enquiry was not fairly conducted and the whole enquiry is vitiated, being contrary to the several judgments of this Court reiterating the necessity to adhere to the principles of natural justice. Whenever an official witness is examined to non-suit an employee during verification of community status of the said employee by the State Level Scrutiny Committee, a fair opportunity should be extended to the employee to cross-examine the witness. Similarly, a copy of every material that is relied upon by the State Committee should be furnished to the individual in compliance of principles of natural justice. In the present case, the 1st respondent has



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not adhered to the principles of natural justice while conducting enquiry and passing orders as to the community status of the petitioner. Hence, this Court is of the view that the impugned order is vitiated on the ground of violation of principles of natural justice for the reasons stated above. It is for this only reason, the writ petitioner is entitled to succeed.

11.As a result, **W.P.No.9161 of 2021 is allowed** and the impugned order of the 1st respondent dated 12.01.2021 is quashed and the matter is remitted to the 1st respondent to conduct fresh enquiry and pass orders afresh in accordance with law, after issuing notice to the petitioner and giving sufficient and fair opportunity to the petitioner to put forth his case. It is needless to say that every material that may be relied upon by the 1st respondent shall be furnished to the petitioner before passing final orders. An opportunity to cross-examine the witness should be given to the petitioner.

12.The petitioner has filed W.P.No.10609 of 2020 for issuance of a Writ of Mandamus directing the respondents to sanction full pension



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including commutation, gratuity, leave salary and other terminal benefits along with interest at 12% per annum without waiting for verification of the Community Certificate before the State Level Scrutiny Committee.

13.This writ petition has been filed by the petitioner, as the employer of the petitioner stopped payment of pension to the petitioner pursuant to the impugned order passed by the State Level Scrutiny Committee in relation to the community status of the petitioner.

14.However, now, it is brought to the notice of this Court that, after filing of the writ petition, the respondents have disbursed provisional pension to the petitioner and as on date, the petitioner is receiving provisional pension. Since this Court has set aside the order of the State Level Scrutiny Committee regarding the community status of the petitioner and has remitted the matter to the 1st respondent for fresh orders in accordance with law, depends upon the outcome of the proceedings before the 1st respondent with regard to the community status of the petitioner, the 2nd respondent shall pass appropriate orders regarding petitioner's



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entitlement as regards retirement benefits. However, provisional pension shall be paid till final order is passed.

15. With the above direction, **W.P.No.10609 of 2020 is disposed of.**

No costs in both writ petitions. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
31.01.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

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3.The Secretary,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 1.

4.The Chief Engineer,
Civil Engineering Department,
Chennai Port Trust,
Chennai.

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