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W.P.Nos.18109 of 2019 & 11043 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.Nos.18109 of 2019 & 11043 of 2020

and

W.M.P.No.13438 of 2020

D.Gopi

... Petitioner
in W.P.No.18109 of 2019

Union of India owning Southern Railway,
Represented by
The Chief Personnel Officer,
Headquarters Office,
Personnel Branch, Southern Railway,
Chennai – 600 003.

... Petitioner
in W.P.No.11043 of 2020

Vs.

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



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2. Union of India, represented by its
General Manager,
Southern Railway,
Chennai.

3. The Chief Personnel Officer,
Head Quarters Office,
Personnel Branch,
Southern Railway, Chennai – 600 003

... Respondents
in W.P.No.18109 of 2019

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

2. D. Gopi

... Respondents
in W.P.No.11043 of 2020

Prayer in W.P.No.18109 of 2019 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 2nd and 3rd respondents to promote the petitioner to the post of Senior Personnel Officer and to the Deputy Chief Personnel Officer (Selection Grade-I) on par with his juniors and colleagues with all attendant benefits, allowances, seniority and consequential promotion without reference to Community Certificate verification pending before the State Level Scrutiny Committee, 1st respondent herein.



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Prayer in W.P.No.11043 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the entire records of the 1st respondent under his proceedings No.17464/CV-2(1)/2016-9 including the order dated 23.12.2019 and quash the same and further direct the 1st respondent to conduct a due and proper enquiry into the community status of the 2nd respondent.

For Petitioner	:	Mr.L.Chandrakumar for Mr.N.Naganathan in W.P.No.18109 of 2019 ; Mr.V.Radhakrishnan Senior Counsel for M/s.M.Vijay Anand in W.P.No.11043 of 2020
For R1	:	Mrs.V.Yamuna Devi Special Government Pleader in both writ petitions
For R2 and R3	:	Mr.P.T.Ramkumar Standing Counsel in W.P.No.18109 of 2019
For R2	:	Mr.L.Chandrakumar for Mr.N.Naganathan in W.P.No.11043 of 2020



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COMMON ORDER

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

W.P.No.11043 of 2020 is filed by the Union of India owning Southern Railways, represented by the Chief Personnal Officer, for issuance of a Writ of Certiorarified Mandamus to quash the order of the State Level Scrutiny Committee, the 1st respondent in W.P.No.11043 of 2020, dated 23.12.2019, and to direct the 1st respondent to conduct a due and proper enquiry into the community status of the 2nd respondent. The 2nd respondent in W.P.No.11043 of 2020 has filed W.P.No.18109 of 2019 for issuance of a Writ of Mandamus to direct the respondents 2 and 3/Southern Railways to promote him to the post of Senior Personnel Officer and to the Deputy Chief Personnel Officer on par with his juniors with all attendant benefits, without reference to Community Certificate verification pending before the State Level Scrutiny Committee.

2.At the time of filing the writ petition, it appears that the verification



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as to the community status of the petitioner in W.P.No.18109 of 2019 was pending before the State Level Scrutiny Committee and hence, the petitioner wanted this Court to issue appropriate directions for the due promotions of the petitioner in the 2nd respondent Establishment who is the petitioner in W.P.No.11043 of 2020.

3.Since the decision of this Court in W.P.No.11043 of 2020 will decide the fate of W.P.No.18109 of 2019, the facts in the writ petition in W.P.No.11043 of 2020 are sufficient, and the parties are hereinafter referred to by their litigating status in W.P.No.11043 of 2020.

4.The petitioner is the employer of 2nd respondent. The 2nd respondent was appointed in Southern Railways on 07.01.1983 as Clerk, as against the vacancy reserved for Scheduled Tribes. It appears that a complaint was received alleging that the petitioner belongs to the community “Porkollar” which comes under the General Category of “Kammalar”, which is commonly known as “Achary” and is classified as Backward Class. Since the petitioner got employment by showing his community status as



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Kammara, a Scheduled Tribe Community, the Senior General Manager of the Southern Railways forwarded the complaint to the District Level Vigilance Committee on 12.01.2001. After conducting enquiry, the District Vigilance Committee declared that the community certificate produced by the petitioner is not a genuine one, by proceedings dated 23.09.2004.

5.The petitioner filed a writ petition before this Court in W.P.No.4126 of 2005, challenging the order of the District Level Vigilance Committee, Vellore. The said writ petition was allowed by order dated 30.10.2009 by directing the State Level Scrutiny Committee to verify the community status of the petitioner. It is thereafter, the enquiry by the State Level Scrutiny Committee commenced, and it is stated by the petitioner that all necessary documents to prove his community status were filed through Deputy Chief Personnel Officer. By order dated 20.03.2015, the State Level Scrutiny Committee set aside the order District Level Vigilance Committee by declaring that the petitioner belongs to Kammara, which is a Scheduled Tribe Community.



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6. Thereafter, the 2nd respondent challenged the order passed by the State Level Scrutiny Committee, dated 20.03.2015, in W.P.No.39053 of 2016. This Court, by order dated 18.04.2017, set aside the order of the State Level Scrutiny Committee and directed the Committee to conduct fresh enquiry. It is admitted that the petitioner preferred a Special Leave Petition before the Hon'ble Supreme Court in SLP (C) No.21299 of 2017. The Hon'ble Supreme Court disposed of the Special Leave Petition by the following order :

“All that the High Court has done is to direct the State Level Committee to scrutinize the records and render a finding regarding caste status. Therefore, it will be open to the petitioner to take all available contentions before the State Level Committee. We also make it clear that the State Level Committee will be free to render its own findings uninfluenced by any of the observations or findings in the impugned judgment.”



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7.It was thereafter, the matter was again taken on file by the State Level Scrutiny Committee. It is admitted that the 2nd respondent has submitted all the relevant documents which they relied upon to prove that the petitioner's claim as to his community status is wrong. After enquiry, the State Level Scrutiny Committee passed the impugned order dated 23.12.2019, confirming the earlier decision of the State Level Scrutiny Committee that the petitioner/employee belongs to Hindu Kammara, which is a Scheduled Tribe Community. The said order is now challenged in W.P.No.11043 of 2020 by the employer, the 2nd respondent in W.P.No.18109 of 2019.

8.Learned Senior Counsel appearing for the petitioner in W.P.No.11043 of 2020 made the following submissions :

- (a) The impugned order is illegal, arbitrary and violative of principles of natural justice and contrary to the procedure laid down in deciding the community status of any individual.



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- (b) Despite specific directions issued by the Hon'ble Supreme Court to consider all the documents that are relied upon by the employer, the 1st respondent Committee failed to consider the documents with reference to their evidentiary value.
- (c) Referring to the fact that the certificate issued by the School where the sons of petitioner/employee were studying, the learned Senior Counsel submitted that the petitioner himself has obtained community certificate to his children showing that they belong to Achary community, which is a Backward Class community, and therefore, the 1st respondent ought to have accepted the case of the employer.
- (d) The father of petitioner/employee admittedly got employment in Railways as Khalasi by showing his community status as Blacksmith/“Achary” which is a Backward Class Community.
- (e) Relying upon the Service Book which was referred to by the Scrutiny Committee, the learned Senior Counsel submitted that the impugned proceedings issued by the 1st respondent, without considering the relevance, evidentiary value of material documents cannot be sustained.



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(f) Learned Senior Counsel then pointed out that the 1st respondent, though conducted a detailed enquiry and the order refers to the documents and the evidence available, has simply recorded everything but concluded that the writ petitioner belongs to Hindu Kammara, which is a Scheduled Tribe Community. Therefore, the learned Senior Counsel submitted that the 1st respondent has not even given proper reasons for its conclusions. Since the reasons recorded for coming to a conclusion is the basis for judging the veracity of order, according to the learned Senior Counsel, the impugned order is violative of principles of natural justice in the sense that the Committee had unfairly failed to discuss or analyse the documents.

9.As against the submissions of the learned Senior Counsel appearing for the petitioner, Mr.L.Chandrakumar, learned counsel appearing for the 2nd respondent, has referred to the documents relied upon by the Scrutiny Committee and tried to justify that the Scrutiny Committee has considered all the documents and has given a just decision.



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10. Even though lengthy arguments were advanced by learned counsels appearing on either side, this Court is unable to sustain the impugned order on the short ground that the 1st respondent Committee has not assigned proper reasons for its conclusions. It is true that the 1st respondent has recorded the submissions by both sides and the documents relied upon by both sides in seriatim. Even the question and answer during enquiry was extracted in the order. Strangely, the 1st respondent, after referring to all the documents, has ultimately recorded its conclusions in Para No.10, which reads as follows :

“10. The State Level Scrutiny Committee-II has carefully and independently examined all the records produced by the individual, the report of the, the report of the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Scheduled Caste/Scheduled Tribe, Vigilance Cell, Vellore District and the views of Anthropologist/Member, State Level Scrutiny Committee and concluded that Thiru.D.Gopi, S/o.Thiru Doraisamy belongs to Hindu Kammara Scheduled Tribe community. Accordingly, the State Level Scrutiny



*Committee-II reiterates the earlier decision of the State Level
Scrutiny Committee dated 20.3.2015.”*

11. We have seen in umpteen number of cases, similar order being challenged by the employees on the short ground that the order without assigning reasons for its conclusions, is violative of principles of natural justice. This Court cannot adopt two different yardsticks while considering the cases where there is serious allegation of violation of principles of natural justice. Reasons to be assigned are important, when a decision is rendered by a quasi-judicial authority. Without reasons, the person aggrieved may not be able to challenge it before the appellate forum and hence, this Court and the Hon'ble Supreme Court, in several judgments, have ruled that an order without assigning reasons is in violation of principles of natural justice. This case cannot be an exception, as we have already indicated that there is no finding recorded as to the relevance, evidentiary value, and the conclusions of the Committee on the interpretation or sufficiency of the documents. When there are rival pleadings and documents which are filed by both sides, there must be an



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attempt by the Enquiry Committee to consider, reconcile and to give reasons for its ultimate conclusions. This Court is unable to find proper reasons assigned by the State Level Scrutiny Committee to arrive at its conclusion.

12.This Court, apart from the grounds raised by the petitioner and the arguments advanced by the learned counsels on either side, finds that there is some real confusion as to the community status of the 2nd respondent/employee, going by the documents produced on either side. The community “Kammara” is a community which is listed under the Scheduled Tribes. However, there is another community by name “Kammala” which appears to be synonymous to “Achary” and “Viswakarma”. The community “Kammala” appears to be known in southern parts of Andhra Pradesh as “Blacksmith”. Without any scientific study, this Court is not inclined to go further into this topic which may require some research. However, the fact that the impugned order does not give proper reasons for its conclusions, is sufficient to set aside the order on the short grounds that the impugned order does not show an application of mind and it is in violation of principles of natural justice. Therefore, the impugned order of the 1st respondent, dated



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23.12.2019, is set aside. However, learned counsel appearing for the petitioner/employee, submitted that, as the employee is now retired, no further enquiry is required and the matter may be closed without further proceedings, in view of the judgment of the Hon'ble Supreme Court in a similar occasion to close the matter as the issue after retirement is purely academic. This Court is unable to consider this argument, because, if the 2nd respondent/employee is found to have got employment by false certificate, consequence would be that he would lose his employment. In this case, disbursement of the employee's retirement benefits shall be kept in abeyance till such time the community status is decided by the State Level Scrutiny Committee. This Court has examined this issue elaborately in a similar case and has held that retirement of an employee does not put an end to the process of verification and the consequences should follow. Therefore, recording the position that the consequences should follow, the impugned order of the State Level Scrutiny Committee is set aside on the ground of violation of principles of natural justice and for non-application of mind. The matter is remitted to the 1st respondent/State Level Scrutiny Committee, which shall enquire the matter afresh, after referring to all the documents



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and materials, and complete the enquiry and pass final orders within a period of 20 weeks from the date of receipt of a copy of this order.

Accordingly, **W.P.No.11043 of 2020 is allowed.**

13.Since we have remitted the matter for fresh consideration and the petitioner/employee is now retired, **W.P.No.18109 of 2019 is closed.** However, in case the petitioner in W.P.No.18109 of 2019 succeeds in getting his community status reaffirmed that he belongs to Scheduled Tribe, it is open to him to revive his request if he had lost some monetary benefits during the course of employment. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (N.S., J.)
28.03.2024

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Internet : Yes

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Neutral Citation : Yes / No

To

1.The Chairman,
Tamil Nadu State Level Scrutiny Committee



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Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
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S.S. SUNDAR, J.
and
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