



W.P.31452 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

ORDER RESERVED ON : 22.12.2023

ORDER PRONOUNCED ON : 27.03.2024

**CORAM**

**THE HON'BLE MRS. JUSTICE J.NISHA BANU**

**AND**

**THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No. 31452 of 2022**

**and WMP.No. 30906 of 2022**

S.R.Krishnakumari

...Petitioner

Vs.

The Tamilnadu State Level Scrutiny Committee-III

Represented by its Chairman and Secretary,

Adi Dravidar and Tribal Welfare Department,

Namakkal Kavignar Maligai,

Secretariat, Chennai-9.

...Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent in its Proceedings No.3620/CV-5/2015-11 dated 17.08.2021 (received by the petitioner December 2021) and quash the same.



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For Petitioner : Mr. V.Vijayashankar

For Respondent : Mr.Stalin Abimanyu

Additional Government Pleader

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### **ORDER**

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

Writ Petition is filed challenging the order of the respondent dated 17.08.2021 and seeks to quash the same.

2. (i) It is averred in the writ petition that the petitioner belongs to Hindu kondareddis community which is classified as Scheduled Tribe under the Constitution Scheduled Tribes Order 1950. The petitioner was issued with the community certificate by the Tahsildar, Mettur on 14.09.1978. The petitioner on the basis of community certificate was appointed as Time Scale Clerk in the Department of Telecommunication on 09.07.1979.

(ii) The petitioner was terminated from service vide order dated 01.06.1984, on the basis of Collector's letter, stating that there were no Kondareddis community in the said District. The petitioner challenged the same before this Court and the same was later transferred to the Central Administrative Tribunal in TA.No.6/92. The said TA was allowed on 16.03.1994.



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(iii) The District Level Vigilance Committee attempted to verify the petitioner's community certificate. As the District Level Vigilance Committee did not have the jurisdiction to verify the community certificate, the petitioner filed W.P.No.6409 of 2004 challenging the said action.

(iv) The writ petition filed by the petitioner was allowed stating that the competent authority was the State Level Scrutiny Committee. Meanwhile the petitioner was superannuated from service on 30.11.2014. Long after superannuation of the petitioner, the petitioner received summons from the Vigilance Cell for enquiry in February 2019. The petitioner replied raising several objections including the objection that she had already superannuated and it was not proper to harass her.

(v) The Vigilance Cell submitted its report to the Scrutiny Committee stating that the petitioner was not co-operating. The respondent summoned the petitioner for enquiry on 30.11.2020. The petitioner on 28.11.2020, sent a representation pointing out that without furnishing the report of the Vigilance Cell, the respondent could not summon her for enquiry. The petitioner also pointed out that she had undergone surgery in left hip bipolar due to fracture and was confined to bed. Again vide letter dated 20.01.2021, the respondent summoned the petitioner for enquiry on



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29.01.2021. The petitioner by letter dated 27.01.2021 referring to her earlier letters requested the respondent to drop the verification, as the same was undertaken 6 years after her retirement. To the subsequent notice, the petitioner sent further representation on 24.07.2021 reiterating her earlier submissions. Thereafter the respondent passed the impugned order cancelling the petitioner's community certificate. Aggrieved by the cancellation order dated 17.08.2021, the petitioner has filed the above writ petition for the aforesaid relief.

3. The respondent filed detailed counter denying each and every allegation and contention raised in the writ petition. The respondent stated that petitioner was given ample opportunities at every stage of proceedings, but the petitioner neither appeared for personal enquiry nor furnished any valid document to prove her communal status. The respondent referred to the notices sent by the Vigilance Cell calling upon the petitioner to appear for personal hearing and replies of the petitioner to the same. The respondent also referred to the notices issued by the respondent and the petitioner's replies to the same wherein she specifically stated that the verification of her community certificate should be dropped. The respondent further referred to the documents relied on by the petitioner in the writ petition and the reasons for rejecting the same. The respondent therefore submitted that there was



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absolutely no infirmity in the impugned order and the same deserved to be confirmed.

4. The learned counsel for the petitioner submitted that there was gross violation of mandatory procedures set out in G.O (Ms). No. 108 dated 12.09.2007 and 106 dated 15.10.2012, as the petitioner was denied due and sufficient opportunities to substantiate her case. The learned counsel submitted that Vigilance report was not forwarded to her which was again a violation of the aforesaid G.Os'. The learned counsel further submitted that none of the reports relied on by the respondent were furnished to the petitioner and therefore the procedure adopted by the respondent was in violation of principles of natural justice. The learned counsel submitted that several of her close relatives belonged to the Kondareddis community, but the same was not considered by the respondent. The learned counsel therefore submitted that the impugned order deserved to be set aside and the writ petition is to be allowed.

5. The learned Additional Government Pleader appearing for the respondent on the other hand submitted that the petitioner was given ample opportunities at every stage but she failed to utilise the same. The counsel submitted that it was the



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petitioner who had not co-operated in the proceedings and therefore she could not complain of violation of principles of natural justice.

6. We have heard both the learned counsels and we have perused the entire materials placed on record.

7. At the outset, we would like to point out that the petitioner was terminated from service vide order dated 01.06.1984. The petitioner challenged the same before this Court and the same was later transferred to the Central Administrative Tribunal in TA.No.6/92. The said TA was allowed on 16.03.1994. When the respondent's termination order was set aside and the petitioner's application was allowed, the action taken by the authority viz., The District Level Vigilance Committee, to verify the genuineness of the community certificate issued to the petitioner, but who did not have the jurisdiction to verify the same, cannot be accepted at all by this court.

8. The petitioner filed W.P.No.6409 of 2004 challenging the action of the District Level Scrutiny Committee. The said writ petition was allowed stating that the competent authority was the State Level Scrutiny Committee.



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9. Meanwhile the petitioner was superannuated from service on 30.11.2014.

Thereafter, she has been issued with show cause notice as regards vigilance enquiry. The petitioner had filed writ petition in [W.P.No. 23957 of 2001](#) challenging the show cause notice issued by the Revenue Divisional Officer, wherein by order dated 06.12.2001 this Court dismissed the writ petition giving liberty to the petitioner to submit her explanation within the time stipulated therein.

10. It is further seen that the petitioner's employer BSNL filed writ petition in W.P.No.2827 of 2017 and this Court vide order dated 25.07.2017 directed as follows

*“There is doubtfulness in the claim of the second respondent Tmt. S.R.Krishnakumari that she belongs to Scheduled Tribe community and hence verification of the Community Certificate is necessary. However, she was provisionally allowed to retire.” Further, the court observed that, “In the above stated circumstances, the third respondent, viz., State Level Scrutiny Committee, is directed to verify the genuineness of the Community Certificate produced by the second respondent, viz., Tmt. S.R.Krishnakumari, in a proper perspective and pass appropriate orders in accordance with law, after hearing the second respondent Tmt. S.R.Krishnakumari and a report to that effect shall be placed before the concerned authority, within a period of three months from the date of receipt of a copy of this judgment, The second respondent, Tmt. S.R.Krishnakumari, shall co-operate with the State Level Scrutiny Committee for enquiry. With the above observation and direction, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.”*



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11. It is to be pointed out herein that the aforesaid fact has not been stated in the present writ petition. In the aforesaid order, the Court had specifically directed the petitioner to co-operate with the State Level Scrutiny Committee for enquiry. On the basis of the said order, the State Level Scrutiny Committee referred the case to the Vigilance Cell, which issued notices to the petitioner on 20.02.2019 to which the petitioner replied on 26.02.2019 stating that she required time to produce the documents which were not readily available with her.

12. The Vigilance Cell again sent letter on 07.10.2020 to the petitioner to which the petitioner replied on 17.10.2020 with a copy to the respondent to drop further verification of the Schedule Tribe community certificate. Thereafter the Deputy Superintendent of Police SC/ST Vigilance Cell, Salem sent a report to the Chief Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat, Chennai, along with copy of the enquiry notices issued to the petitioner along with the replies to the enquiry notices. For verification process, the respondent sent summons to the petitioner for enquiry on 18.11.2020. The petitioner replied on 28.11.2020 requesting to drop verification of her community certificate. The petitioner was again issued summons on 10.12.2020, 29.01.2021 to which the petitioner replied on 27.01.2021 again requesting the 1st respondent to exclude her



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for verification of her Schedule Tribe community certificate. Thereafter again on 13.05.2021 a further summon was issued for appearance on 26.05.2021, but the petitioner neither appeared nor submitted any document to substantiate her communal status. On 09.07.2021, another enquiry summon was issued to the petitioner to which the petitioner replied on 24.07.2021 again requesting the respondent to exclude her for verification of her Schedule Tribe community certificate.

13. The 1<sup>st</sup> respondent passed a detailed order dated 17.08.2021 cancelling the petitioner's community certificate.

14. From the above narration of facts, it is clear that the employer BSNL issued first termination order on 01.06.1984 and the same was set aside and the Tribunal allowed the T.A. in favour of the petitioner. Thereafter, the petitioner worked with the Employer BSNL and got superannuation on 30.11.2014. However, the Vigilance Enquiry summons was issued to the petitioner on February 2019 that is after 35 years of the first termination order issued to the petitioner, which was set aside by the Tribunal. Further, after superannuation of the petitioner in the year 2014, the respondent issued such vigilance enquiry notice for the first time on



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February 2019 which is also after 7 years after her superannuation. Even though the petitioner challenged the action of the Vigilance Department and the same was allowed by this court and the petitioner who was not physically well to attend the enquiry gave so many representations stating so, but it was not accepted and the impugned order dated 17.08.2021 was passed.

15. Viewed from any angle, the action of the respondent is nothing but harassing the petitioner who had worked with the employer BSNL with clear records and got superannuated without any blemish.

16. The Honourable Supreme Court in ***R.Sundaram Vs. The Tamil Nadu State Level Scrutiny Committee and Others dated 17.03.2023***, in paragraph 16, held as follows:-

*“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'.”*



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17. Therefore, this court is of the view that the action of the respondent in initiating vigilance enquiry after petitioner's superannuation and passing the impugned order with inordinate delay of 7 years after superannuation, cannot be accepted. The unexplained inordinate delay on the part of the respondent cannot in any way be justified as within reasonable time.

18. For the above reasons, the writ petition is allowed. The impugned order dated 17.08.2021 is set aside. The petitioner is entitled to retirement benefits and the Employer BSNL has to follow the Rules to sanction Pension and other benefits as per the Rules provided therein. No costs.

(J.N.B,J.)

27.03.2024

/nvsri/

**N.MALA, J.**

I have had the benefit of going through the Opinion of Respected Sister (HON'BLE MRS.JUSTICE J.NISHA BANU). I am unable to agree with the reasonings or the conclusion reached by Her Ladyship and I therefore give my own reasoning and conclusions.



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2. Writ Petition is filed challenging the order of the respondent dated 17.08.2021.

3. The petitioner belongs to Hindu kondareddis community which is classified as Scheduled Tribe under the Constitution Scheduled Tribes Order 1950. The petitioner was issued with the community certificate by the Tahsildar, Mettur on 14.09.1978. The petitioner on the basis of community certificate was appointed as Time Scale Clerk in the Department of Telecommunication. The petitioner was terminated from service vide order dated 01.06.1984, on the basis of Collector's letter, stating that there were no Kondareddis community in the said District. The petitioner challenged the same before this Court and the same was later transferred to the Central Administrative Tribunal in TA.No.6/92. The said TA was allowed on 16.03.1994. The District Level Vigilance Committee attempted to verify the petitioners community certificate, but as the District Level Vigilance Committee did not have the jurisdiction to verify the petitioners community certificate, the petitioner filed W.P.No.6409 of 2004 challenging the same. The said writ petition was allowed stating that the competent authority was the



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State Level Scrutiny Committee. Meanwhile the petitioner was superannuated from service on 30.11.2014. Long after superannuation of the petitioner, the petitioner received summons from the Vigilance Cell for enquiry in February 2019. The petitioner replied raising several objections including the objection that she had already superannuated and it was not proper to harass her. The Vigilance Cell submitted its report to the Scrutiny Committee stating that the petitioner was not co-operating. The respondent summoned the petitioner for enquiry on 30.11.2020. The petitioner on 28.11.2020, sent a representation pointing out that without furnishing the report of the Vigilance Cell the respondent could not summon her for enquiry. The petitioner also pointed out that she had undergone surgery in left hip bipolar due to fracture and was confined to bed. Again vide letter dated 20.01.2021, the respondent summoned the petitioner for enquiry on 29.01.2021 and the petitioner by letter dated 27.01.2021 referring to her earlier letters requested the respondent to drop the verification, as the same was undertaken 6 years after her retirement. To the subsequent notice, the petitioner sent further representation on 24.07.2021 reiterating her earlier submissions. Thereafter the respondent passed the impugned order



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cancelling the petitioners community certificate. Aggrieved by the cancellation order dated 17.08.2021, the petitioner has filed the above writ petition for the aforesaid relief.

4. The respondent filed detailed counter denying each and every allegation and contention raised in the writ petition. The respondent further stated that petitioner was given ample opportunities at every stage of proceedings, but the petitioner neither appeared for personal enquiry nor furnished any valid document to prove her communal status. The respondent referred to the notices sent by the Vigilance Cell calling upon the petitioner to appear for personal hearing and replies of the petitioner to the same. The respondent also referred to the notices issued by the respondent and the petitioner's replies to the same wherein she specifically stated that the verification of her community certificate should be dropped. The respondent further referred to the documents relied on by the petitioner in the writ petition and the reasons for rejecting the same. The respondent therefore submitted that there was absolutely no infirmity in the impugned order and the same deserved to be confirmed.



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5. The learned counsel for the petitioner submitted that there was gross violation of mandatory procedures set out in G.O (Ms). No. 108 dated 12.09.2007 and 106 dated 15.10.2012, as the petitioner was denied due and sufficient opportunities to substantiate her case. The learned counsel submitted that Vigilance report was not forwarded to her which was again a violation of the aforesaid G.Os'. The learned counsel further submitted that none of the reports relied on by the respondent were furnished to the petitioner and therefore the procedure adopted by the respondent was in violation of principles of natural justice. The learned counsel submitted that several of her close relatives belonged to the Kondareddis community, but the same was not considered by the respondent. The learned counsel therefore submitted that the impugned order deserved to be set aside and the writ petition allowed.

6. The learned Additional Government Pleader appearing for the respondent on the other hand submitted that the petitioner was given ample opportunities at every stage but she failed to utilise the same. The counsel



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submitted that it was the petitioner who had not co-operated in the proceedings and therefore she could not complain of violation of principles of natural justice. The learned counsel further submitted that respondent meticulously examined each and every document filed by the petitioner and also the reports of the Vigilance Cell and the Anthropologist, before concluding that the petitioner did not belong to the Kondareddis community. The learned counsel therefore submitted that there were absolutely no merits in the writ petition and the same deserved to be dismissed.

7. I have heard both the learned counsels and I have perused the entire materials placed on record.

8. At the outset, I would like to point out that the petitioner has suppressed material facts and hence on this ground alone the writ petition can be rejected at the threshold. The Hon'ble Supreme Court in the case of *Prestige Lights Ltd. V. State Bank of India* held that:

*“33. It is thus clear that though the appellant Company had approached*



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*the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."*

The Hon'ble Supreme Court in the case of *K.D.Sharma v. Steel Authority of India Limited and Others*, held as follows:

*"38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ*



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*courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".*

*39. If the primary object as highlighted in Kensington Income Tax Commrs.(supra) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."*

The aforesaid Judgments were followed by the Hon'ble Supreme Court in the case of *Shri K.Jayaram & Ors. v. Bangalore Development Authority & Ors.* vide Judgment dated 08.12.2021.

9. The petitioner did not divulge the fact that she had filed writ petition



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in W.P.No. 23957 of 2001 challenging the show cause notice issued by the Revenue Divisional Officer, wherein by order dated 06.12.2001 this Court dismissed the writ petition giving liberty to the petitioner to submit her explanation within the time stipulated therein. It is further seen that the petitioners employer BSNL filed writ petition in W.P.No.2827 of 2017 and this Court vide order dated 25.07.2017 directed as follows :

*‘There is doubtfulness in the claim of the second respondent Tmt. S.R.Krishnakumari that she belongs to Scheduled Tribe community and hence verification of the Community Certificate is necessary. However, she was provisionally allowed to retire.’* Further, the court observed that, “In the above stated circumstances, the third respondent, viz., *State Level Scrutiny Committee, is directed to verify the genuineness of the Community Certificate produced by the second respondent, viz., Tmt. S.R.Krishnakumari, in a proper perspective and pass appropriate orders in accordance with law, after hearing the second respondent Tmt. S.R.Krishnakumari* and a report to that effect shall be placed before the concerned authority, within a period of three months from the date of receipt of a copy of this judgment, *The second respondent, Tmt. S.R.Krishnakumari, shall co-operate with the State Level Scrutiny Committee for enquiry.* With the above observation and direction, the writ petition is disposed of. No costs.



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*Consequently, the connected miscellaneous petition is closed."*

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The aforesaid proceedings which are material to this case were not stated in the writ petition. Therefore it is clear that the petitioner has come with soiled hands and hence not entitled to the equitable relief prayed for.

10. In any event, even on merits, I find from the orders passed in the aforesaid proceedings that this Court specifically directed the petitioner to co-operate with the State Level Scrutiny Committee for enquiry. On the basis of the said order the State Level Scrutiny Committee referred the case to the Vigilance Cell, which issued notices to the petitioner on 20.02.2019 to which the petitioner replied on 26.02.2019 stating that she required time to produce the documents which were not readily available with her. The Vigilance Cell again sent letter on 07.10.2020 to the petitioner to which the petitioner replied on 17.10.2020 with a copy to the respondent to drop further verification of the Schedule Tribe community certificate. Thereafter the Deputy Superintendent of Police SC/ST Vigilance Cell, Salem sent a report to the Chief Secretary to Government, Adi Dravidar and Tribal Welfare



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Department, Secretariat, Chennai along with copy of the enquiry notices issued to the petitioner along with the replies to the enquiry notices. The

Deputy Superintendent of Police, Vigilance Cell reported that the petitioner was not co-operating for enquiry for the past one and half years. The Deputy Superintendent of Police further insisted the General Manager, BSNL, Chennai to instruct the petitioner to co-operate for enquiry. It is seen that the Parliamentary Committee on Welfare of SC/STs' in view of the request made by the employees, including the petitioner requested the respondent to dispose of the retired or soon to be retired cases pending with it expeditiously. In view of the Committee's request the respondent decided to call for personal enquiry directly, so as to expedite the verification process. The summons for enquiry was sent to the petitioner on 18.11.2020 to which the petitioner replied on 28.11.2020 requesting to drop verification of her community certificate. The petitioner was again issued summons on 10.12.2020, the petitioner in spite of the said notice failed to appear before the Committee. To give the petitioner further opportunity, the petitioner was issued enquiry summons on 29.01.2021 to which the petitioner replied on 27.01.2021 again requesting the 1<sup>st</sup> respondent to exclude her for verification



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of her Schedule Tribe community certificate. Thereafter again on 13.05.2021 a further summon was issued for appearance on 26.05.2021, but the petitioner neither appeared nor submitted any document to substantiate her communal status. On 09.07.2021, another enquiry summon was issued to the petitioner to which the petitioner replied on 24.07.2021 again requesting the respondent to exclude her for verification of her Schedule Tribe community certificate. It is pertinent to note here that the petitioner in spite of specific directions of this Court in W.P.No. 2827 of 2017 dated 25.07.2017 sent replies to the respondent asking them to drop the verification of her community certificate instead of co-operating with the respondent for the enquiry. As the petitioner failed to co-operate, the 1<sup>st</sup> respondent therein carefully examined the records, documents submitted by the Vigilance Cell, Revenue records and deposition/ statements of the petitioner before the competent authority during personal enquiry and the reply sent by the petitioner to the various enquiry notices sent by the 1<sup>st</sup> respondent and thereafter passed a detailed order cancelling the petitioner's community certificate.



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11. From the above narration of facts, it is clear that it is the petitioner who did not co-operate with the respondent for concluding the enquiry expeditiously even though she was directed to co-operate in the enquiry by this Court in the earlier proceedings. Be that as it may, I have gone through the report of the 1<sup>st</sup> respondent and I find that the 1<sup>st</sup> respondent has meticulously considered all the documents placed before it including the documents relied by the petitioner in the writ affidavit and has given cogent reasons for rejecting the same.

12. Before parting with the case, I would like to reiterate that a person who commits fraud in procuring the community certificate commits fraud not only against the society but also against the Constitution.

13. I am therefore of the view that there are absolutely no merits in the writ petition and hence the same deserves to be dismissed.

In the result, the writ petition is dismissed and the impugned order dated 17.08.2021 is confirmed. There shall be no order as to costs.



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Consequently connected Miscellaneous Petition is closed..

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(N.M,J.)  
27.03.2024

/dsn/

Index: Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

To

The Chairman and Secretary,

Tamilnadu State Level Scrutiny Committee-III

Adi Dravidar and Tribal Welfare Department,

Namakkal Kavignar Maligai,

Secretariat, Chennai-9.



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**J. NISHA BANU, J.**

**and**

**N.MALA, J.**

nvsri/dsn

**ORDER IN**  
**W.P.No. 31452 of 2022**

**ORDER DELIVERED ON**  
**27.03.2024**



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**W.P. NO. 31452 OF 2022**  
**AND**  
**W.M.P. NO. 30906 OF 2022**

|                    |                      |
|--------------------|----------------------|
| <b>Reserved on</b> | <b>Pronounced on</b> |
| <b>03.09.2024</b>  | <b>20.09.2024</b>    |

**M.DHANDAPANI, J.**

The present writ petition, on the orders of the Hon'ble The Chief Justice, is placed before me, in view of the conflicting decision rendered by two Hon'ble Judges of this Court, viz., J.Nishna Banu & N.Mala, JJ., with regard to an issue relating to community certificate for Scheduled Tribe Community.

2. Even before proceeding to advert to the issue placed before me, it would be relevant to point out that Clause 36 of the Letters Patent requires that if the opinion of the Judges should be equally divided, *"they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including who those first heard it"*. However, no specific point on which difference has arisen has been specified. However, the common conclusion arrived at by the learned Judges is as under :-



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*"2. The writ petition came to be allowed by me. After pronouncement of orders by me, Hon'ble Mr. Justice N.Mala, pronounced the order dismissing the writ petition.*

*3. In view of the contradictory views taken in the present case by us, Registry is directed to place the matter before the Honourable Chief Justice for further action in this regard."*

3. Even though points of difference have not been specifically pointed out by the Division Bench, the difference as apparent from various discussions and conclusions of the two learned Judges could be culled out and decided on the basis without returning the matter for spelling out the difference and, therefore, this Court proceeds to analyze the issue in toto to render its opinion on the issue which falls for consideration.

4. The gist of the case, as could be deciphered from the affidavit filed by the petitioner is as under :-

It is averred by the petitioner that she belongs to Hindu Konda Reddy community, which is classified as Scheduled Tribe under the Constitution Scheduled Tribes Order, 1950. The petitioner was issued with a community certificate by the Tahsildar, Mettur on 14.09.1978 based on which the petitioner was appointed as Time Scale Clerk in the Department of Telecommunication.



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5. It is the further averment of the petitioner that based on a communication of the District Collector, Salem, informing that there were no Konda Reddy community persons in Salem District, the employer of the petitioner, viz., the Telecommunications Department, terminated the services of the petitioner vide order dated 1.6.1984, which was assailed before this Court initially, but thereafter, the matter stood transferred to the file of the Central Administrative Tribunal and numbered as T.A. No.6/92. By order dated 16.3.1994, the Central Administrative Tribunal allowed the case of the petitioner with liberty to the authorities to verify the genuineness of the certificate and take action in accordance with law.

6. It is the further averment of the petitioner that pursuant to the said order, the District Level Vigilance Committee attempted to verify the certificate issued to the petitioner and as the certificate of the petitioner pertained to Scheduled Tribe, the District Level Vigilance Committee not being competent to verify the same, writ petition in W.P. No.6409 of 2004 was filed by the petitioner before this Court, which was allowed holding that the competent committee to conduct verification in respect of Scheduled Tribe certificates is only the State Level Vigilance Committee and, therefore, direction was issued that the said order would be without prejudice to any action to be taken by the concerned authority in future on the said community certificate. It is the further averment



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of the petitioner that when the matter stood thus, the petitioner superannuated from service on 30.11.2014.

7. It is the further averment of the petitioner that subsequent to the superannuation of the petitioner, the Vigilance Cell summoned the petitioner for enquiry in February, 2019, almost five years after the petitioner's superannuation in the year 2014 to which the petitioner submitted her objections pointing out that verification at that distant point of time is impermissible and was in violation of the guidelines of the Government. The petitioner further submitted that the said action on the part of the respondent is highly improper and is nothing but an act of harassment. It is the further averment of the petitioner that the Vigilance Cell submitted report to the Scrutiny Committee to the effect alleging that the petitioner was not cooperating with the enquiry.

8. It is the further averment of the petitioner that the respondent summoned the petitioner for enquiry on 30.11.2020 for which the petitioner submitted her representation on 28.11.2020 pointing out that the copy of the report of the Vigilance Cell was not furnished and further submitted that the said summons without providing the said report was improper. It was further averred by the petitioner that to the said summons, the petitioner had also submitted that she had undergone surgery to the left hip and is



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confined to bed and has been advised not to travel and that the summons for appearance was issued during the peak COVID-19 pandemic period and, therefore, sought adjournment.

9. It is the further averment of the petitioner that vide letter dated 20.1.2021, the respondent directed the appearance of the petitioner for enquiry on 29.1.2021 and the petitioner, pointing out her earlier letter, requested the respondent to drop the verification, more particularly pointing out that the verification is sought to be made after a period of six years from the date of her superannuation. The petitioner, to the subsequent notice of the respondent, sent her representation on 24.7.2021 reiterating the request made by her in the earlier letters and sought dropping of the proceedings by pointing out the directions of the Government of India and also the decisions of this Court and the Apex Court and also the prevailing pandemic situation.

10. It is the further averment of the petitioner that to her shock and surprise, the impugned proceedings dated 17.08.2021 came to be passed by the respondent cancelling her caste certificate placing reliance on the reports submitted by the Revenue Divisional Officer and other revenue authorities, to which the petitioner filed her protest vide her letter dated 20.01.2022 pointing out that the copy of the reports of the authorities were



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not provided to the petitioner and the enquiry was concluded without giving fair and reasonable opportunity of hearing to the petitioner. In spite of the said protest representation, as no action has been taken by the respondent on the same, the present petition came to be filed.

11. When the matter was taken up for hearing by the learned Division Bench, after hearing the parties, the learned Judges on the Bench gave divergent views, which has resulted in the listing of the present petition before this Court for adjudication.

12. The findings on the basis of which learned Sister Nisha Banu, J., has allowed the petition is that the action of the respondent in initiating the vigilance enquiry after the petitioner's superannuation and passing the order after an inordinate delay of 7 years after the superannuation is grossly unjust and unreasonable and not justified and, therefore, the petition came to be allowed.

13. However, learned Sister, N.Mala, J., in her dissenting order, has specifically held that there is suppression of material facts by the petitioner, as the earlier writ petition filed by the petitioner in W.P. No.23957/2001 had not been disclosed, which has been dismissed by this Court by order dated 6.12.2001 by giving a direction to the respondents



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therein to verify the genuineness of the community certificate of the petitioner. As the petitioner has suppressed the said material fact and also not participated in the enquiry process inspite of the opportunities granted to her, but had merely sought to exempt her from the verification process, the respondent had gone ahead with the enquiry and based on the materials available, had held against the petitioner, which is just and reasonable and does not require interference and, accordingly dismissed the writ petition.

14. In view of the aforesaid contradictory opinions expressed by the learned Judges, the present petition is placed before this Court on the orders of the Hon'ble Chief Justice, as stated supra.

15. Learned counsel appearing for the petitioner submitted that the mandatory procedures set out in the various Government Orders, more particularly G.O. (Ms) No.108 dated 12.9.2007 and G.O. (Ms) No.106 dated 15.10.2012 have not been followed. It is the further submission of the learned counsel that the said Government Orders mandate providing sufficient opportunities to the petitioner to substantiate her case. However, inspite of the fact that the petitioner was suffering from medical ailments and that the period during which the enquiry was scheduled being during the pandemic period and COVID-19 being at its peak, the petitioner also had expressed her inability to attend the



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enquiry and requested time. However, without advertng to the said aspect, the enquiry was conducted in the absence of the petitioner and the impugned order had come to be passed.

16. It is the further submission of the learned counsel that though this Court in W.P. No.2827 of 2017 had directed the respondent to conclude the enquiry within a period of three months from the date of receipt of a copy of the order, however, the respondent had kept silent and only on 20.02.2019, notice was issued to the petitioner. The respondent having kept silent for almost two years from the date of the order, cannot impose upon the petitioner to attend the enquiry, more so, when the petitioner had suffered ailments for which surgery was performed and she had been confined to the bed.

17. It is the further submission of the learned counsel that though action was taken at the first instance on the basis of the letter of the District Collector, Salem, by passing order dated 1.6.1984, which had been set aside by the Central Administrative Tribunal, as back as on 16.03.1994. However, after the said order, the employer did not take any effective steps and once again the matter was referred to the District Level Vigilance Committee, when the matter ought to have been referred to the State Level Scrutiny Committee. The delay caused by the respondent cannot be put against the petitioner.



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18. It is the further submission of the learned counsel that the findings recorded in the dissenting decision with regard to suppression is wholly misconceived, as there is no suppression by the petitioner and merely because certain facts have not been narrated cannot be held to be suppression. It is the further submission of the learned counsel that the order of this Court in W.P. No.23957/2001 dismissing the writ petition in and by which the show cause notice was challenged cannot be said to be suppression, as this Court, following the well laid precedents with regard to show cause notice had directed the petitioner to give her explanation to the show cause notice. This Court has not gone into the merits of the case and that being the case, the act of the petitioner in not divulging the details of the said writ petition cannot be labelled as suppression to deny any relief to the petitioner.

19. It is the further submission of the learned counsel that the enquiry conducted by the respondent was during the peak pandemic period and the medical condition of the petitioner had prevented her from attending the said enquiry. It is the further submission of the learned counsel that under medical advice and also her age, the petitioner was advised not to travel and that being the case, the petitioner had sought for adjournment.



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That being the case, the same cannot be put against the petitioner to come to the conclusion that the petitioner did not cooperate with the enquiry.

20. It is the further submission of the learned counsel that verification of community certificate has to be completed expeditiously, at least during the tenure of service of the petitioner. However, the matter was dragged on and it was taken up only after the superannuation of the petitioner and it was not due to the fault of the petitioner as between the time the Central Administrative Tribunal passed the order and the writ petition of the petitioner which was allowed by this Court by setting aside the enquiry taken up by the District Vigilance Committee, no concrete action was taken by the employer as also the respondent to have the certificate of the petitioner verified and the delay, which is attributable to the respondent cannot be put against the petitioner, at the distant point of time, after the superannuation of the petitioner.

21. It is the further submission of the learned counsel for the petitioner that the delay has not only caused prejudice, but also mental harassment to the petitioner, notwithstanding the fact that many of her relatives are in possession of the scheduled tribe certificate, which aspect has not been taken into consideration by the respondent. However, the petitioner, to show her bona fide, in view of the lapse of long length of time,



has shown her willingness not to claim the said community status with regard to her children and she has also not obtained any such certificate for her children and an affidavit in this regard has also been filed by the petitioner and, therefore, this Court may consider the bona fides of the petitioner before passing orders.

22. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance on the following decisions :-

- 1) *D.Illamaram – Vs – Govt. Of India & Ors. (1996 WLR 482);*
- 2) *R.K.Sekar Vs. The District Collector, Chengai MGR District, Kancheepuram & Ors. (1996 WLR 484);*
- 3) *Gulzar Singh Vs. Sub-Divisional Magistrate & Anr. (1993 (3) SCC 107);*
- 4) *G.Venkatasamy & Anr. Vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department (2016(1) MLJ 606 (DB);*
- 5) *Vilas Dinkar Bhar Vs. State of Maharashtra & Ors. (2018 (9) SCC 89);*
- 6) *V.Sathyamurthi Vs. The Secretary to Government, Government of Union Territory of Puducherry, Local Administration and Public Works Department, Puducherry & Ors. (W.P.No.5737 of 2022);*
- 7) *Union of India & others Vs. S.Renukar & Ors. (S.L.P.No.24458 of 2019);*



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- 8) *K.Ganesh Kumar Vs. The Collector, Coimbatore District & Anr.*  
( W.P.No.246 of 2020);
- 9) *V.Navajothi Vs. The Tamilnadu State Level Scrutiny Committee – III & Ors.* (W.P.No.31438 of 2022);
- 10) *Bank of Baroda Vs. V.Navajothi & Anr.* (S.L.P.No.13456 of 2024);
- 11) *R.Shanthi Vs. The State Level Scrutiny Committee and others*  
( W.P.No.29351 of 2023)
- 12) *The Bank of Baroda Vs. R.Shanthi & Ors.* (S.L.P.No.14135 of 2024);
- 13) *The Chairman, Chennai Port Trust, Chennai & Ors. Vs. M.Nagaraj & Ors.*  
(W.A.No.1319 of 2019).

23. Per contra, learned Addl. Advocate General appearing for the respondent placing reliance on the counter filed by the respondent submitted that the appointment of the petitioner was based on the community certificate produced by the petitioner showing herself to be Kondareddis Scheduled Tribe Community, however, upon reference as to its genuineness, the District Collector, Salem District, by his proceedings dated 5.11.1979 had stated that the community certificate issued to the petitioner by the Tahsildar Mettur Dam may be treated as cancelled, as it has been decided that there was no Kondareddis community people in Salem District. Pursuant to the said proceedings, the petitioner was terminated from service.



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24. It is the further submission of the learned Addl. Advocate General that upon transfer of the petition in WP No.6071/1984 from this Court to the file of the Central Administrative Tribunal, the termination order was set aside vide order dated 1.6.1984 in T.A. No.6/1992 on the ground that no opportunity was given to the petitioner before the order of termination. It was further ordered that the petitioner should be reinstated in service, but without backwages and liberty was given to the employer to take further action against the petitioner herein as per law in respect of the community certificate produced by her.

25. It is the further submission of the learned Addl. Advocate General that upon reinstatement of the petitioner, as against the direction of the employer to the petitioner to produce a community certificate issued by an authority not below the rank of Revenue Divisional Officer, the petitioner challenged the same before the Tribunal by filing O.A. No1049/1997, in which the Tribunal held that in respect of certificates issued during 1978 and 1981, which are not cancelled by the competent authority, the employers cannot insist on a fresh community certificate from the Revenue Divisional Officer and if the employer wants to question the genuineness of the certificate produced by the employee, it is for the revenue authority to take appropriate action against the applicant.



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26. It is the further submission of the learned Addl. Advocate General that on the basis of the direction issued by the Tribunal, the employer had requested the District Collector, Salem to cause verification of the above certificate produced by the petitioner. Pursuant to the said request, the Revenue Divisional Officer, Mettur caused verification with regard to the community status of the petitioner and after field enquiry, concluded that the petitioner does not belong to Navapatti Village and that she also does not belong to Kondareddis – Scheduled Tribe Community.

27. It is the further submission of the learned Addl. Advocate General that the Revenue Divisional Officer, Mettur has sent his field enquiry report to the District Collector, Salem, concluding that the certificate of the petitioner was fraudulently obtained from the Tahsildar, Mettur, based on which the District Collector, Salem, had issued a show cause notice to the petitioner by enclosing a copy of the report.

28. It is the further submission of the learned Addl. Advocate General that aggrieved by the show cause notice, the petitioner preferred W.P. No.23957/2001 in which, this Court, by judgment dated 6.12.2001 held that the impugned order is only a



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show cause notice calling upon the petitioner to submit her remarks for which the petitioner has to submit her explanation.

29. It is the further submission of the learned Addl. Advocate General that subsequently, the District Vigilance Committee issued show cause notice dated 3.3.2004 asking the petitioner to appear along with all documentary evidences to prove her community to be that of “Kondareddis”, a scheduled tribe community. However, without replying to the show cause notice, the petitioner challenged the same before this Court by filing W.P. No.6409/2004 alleging that the said committee was not validly constituted. This Court, vide its judgment dated 26.7.2005, while allowed the writ petition, held that with reference to G.O. (Ms) No.111 Adi Dravidar and Tribal Welfare (ADW-10) Dept., dated 6.7.2005 and the letter dated 6.7.2005, the District Level Committee consisting of two members has no authority to issue the show cause notice and, therefore, quashed the impugned show cause notice, however, without prejudice to any action in future to be taken by the concerned authority.

30. It is the further submission of the learned Addl. Advocate General that the petitioner, vide her letter dated 11.12.2001, pointed out that the verification proceedings begun nearly 21 years from the time of her appointment and, therefore, it cannot be



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continued at this belated stage and, therefore, requested to drop the proceedings. In the interregnum, the District Collector, Salem, had directed the Sub Collector, Mettur to conduct enquiry and on the basis of the field enquiry, it was held that the petitioner does not belong to Kondareddis Scheduled Tribe community.

31. It is the further submission of the learned Addl. Advocate General that in the meantime, on 1.4.2008, this Court, vide its judgment relating to genuineness of community certificate had held that in respect of Scheduled Tribe community certificates, the same should be considered only by the State Level Scrutiny Committee in terms of Government Order dated 12.09.2007. It is the further submission of the learned Addl. Advocate General that pursuant to the said order, the District Vigilance Committee, vide letter dated 19.09.2014, forwarded all the papers, along with its findings relating to the community of the petitioner to the State Level Scrutiny Committee for carrying out the verification process. The State Level Scrutiny Committee had, in turn, forwarded the papers to the Vigilance Cell to cause verification as to the genuineness of the community certificate of the petitioner.

32. It is the further submission of the learned Addl. Advocate General that in the meanwhile, on 30.11.2014 A.N., the petitioner was provisionally superannuated and she



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was given only provisional pension and other retirement benefits and full pension and other retiral benefits were not extended to her. However, in the application filed before the Tribunal seeking pension and full retiral benefits was affirmatively considered by the Tribunal and ordered the employer to release the retiral benefits to the petitioner, vide its order dated 19.4.2016 and 27.6.2016.

33. It is the further submission of the learned Addl. Advocate General that as against the said order, the employer filed W.P. No.2827 of 2017 and this Court, vide order dated 25.7.2017, doubted the claim of the petitioner, viz., the 2<sup>nd</sup> respondent therein with regard to her belonging to Scheduled Tribe community and, therefore, directed the State Level Scrutiny Committee to verify the genuineness of the community certificate of the petitioner after hearing the petitioner and pass appropriate orders within a period of three months from the date of receipt of a copy of the judgment. The petitioner was also directed to cooperate with the enquiry.

34. It is the further submission of the learned Addl. Advocate General that only on the basis of the aforesaid facts and circumstances, the respondent referred the case to Vigilance Cell vide its communication dated 22.8.2017 requesting to cause verification. It is the further submission of the learned Addl. Advocate General that the Deputy



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Superintendent of Police, SC/ST, Vigilance Cell, Salem Region, vide communication dated 20.02.2019, issued summon to the petitioner to appear in person on 27.2.2019 along with relevant documents to prove her claim so as to enable them for conducting spot enquiry. The petitioner, though acknowledged the said summon in her reply dated 26.2.2019, however, submitted that the documents are not readily available and sought a month's time to appear and submit the documents.

35. It is the further submission of the learned Addl. Advocate General that once again enquiry notice was issued to the petitioner on 7.10.2020 for her appearance for enquiry on 19.10.2020 for which the petitioner, vide letter dated 17.10.2020 with a copy marked to the State Level Scrutiny Committee, to drop further verification, based on DoPT orders dated 25.5.2005 and 30.05.2005. In the aftermath, the Deputy Superintendent of Police, SC/ST Vigilance Cell submitted report informing that the petitioner is not co-operating for the enquiry for the past one and half years.

36. It is the further submission of the learned Addl. Advocate General that the entire records would clearly reveal that the petitioner was following dilatory tactics and evading the enquiry with regard to verification of her social status and had further submitted that the field enquiry could be continued only if the petitioner appears before



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the Vigilance Cell and provides all the necessary evidences and documents relating to her community certificate.

37. It is the further submission of the learned Addl. Advocate General that in the interregnum the Parliamentary Committee on Welfare of SC/ST based on the request made by the employees, requested the State Level Scrutiny Committee to dispose of the retired or soon to be retired cases early, where verification is pending. It is submitted that in view of the above and also taking into consideration the act of the petitioner in not participating in the enquiry inspite of the continued and consistent notices sent to the petitioner, as the petitioner did not turn up for the enquiry, but only sought for further time and finally requested the State Level Scrutiny Committee to exclude her from the purview of verification of her community certificate, the present impugned order had come to be passed.

38. It is the further submission of the learned Addl. Advocate General that the continued insistence of the petitioner by abstaining to attend the enquiry necessarily shows her wilful non-cooperation and it is the tactics of the petitioner to delay the verification process and finalize the genuineness of the community certificate and considering all the above, the State Level Scrutiny Committee has carefully examined the



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records/documents and had come to the definitive conclusion that the petitioner does not belong to Kondareddis Scheduled Tribe Community, but has obtained the certificate fraudulently to derive constitutional benefits.

39. It is the further submission of the learned Addl. Advocate General that the respondent has followed the procedure outlined in G.O. Ms. No.108, Adi Dravidar and Tribal Welfare Department dated 12.09.2007 and G.O. Ms. No.106, Adi Dravidar and Tribal Welfare Department dated 15.10.2012. It is the further submission of the learned Addl. Advocate General that when the opportunities granted by the respondent as also the Vigilance Cell were not utilised by the petitioner, but adopting dilatory tactics, the petitioner refrained from attending the enquiry, the burden cast on the petitioner to prove her community certificate has not been established and, necessarily, the delay cannot be made attributable to the respondent and the failure of the petitioner to establish her community on the basis of documentary evidence has led to the impugned order being passed, which is based on careful consideration of all the materials and, therefore, no interference is warranted with the said order.

40. In support of the aforesaid submissions, learned Addl. Advocate General placed reliance on the following decisions :-



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- 1) *Kumari Madhuri Patil and another Vs. Additional Comissioner, Tribal Development and others reported in (1994) 6 SCC 241.*
- 2) *Order passed by the Hon'ble High Court, Madras in W.P.Nos.30368 & 31973 of 2015 Para 29.*
- 3) *Bank of India and another Vs. Avinash D.Mandivikar and others reported in (2005) 7 SCC 690.*
- 4) *Order of W.P.No.22446 of 2018, before the Hon'ble High Court of Madras Para 11*
- 5) *Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and others reported in 2008 SCC online SC 1133.*
- 6) *Additional General Manager - Human Resources, Bharat Heavy Electricals Ltd., Vs. Suresh Ramkrishna Burde reported in (2007) 5 SCC 336.*
- 7) *Chief Executive Officer, Bhilai Steel Plant, Vs. Mahesh Kumar Goonade and others reported in 2022 SCC online SC 866.*
- 8) *Chairman and MD, FCI and others Vs. Jagadish Balaram Bahira and others reported in (2017) 8 SCC 670.*
- 9) *R.Viswanatha Pillai Vs. State of Kerala and others reported in 2004 2 SCC 105.*
- 10) *Order of W.P.No.4484 of 2021 before the Hon'ble Court of Madras.*

41. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, as also the decisions relied on, on behalf of the parties.



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42. The sequence of flow of events in the present case is not in dispute. The actions taken by the employer and the consequent action of the employee, viz., the petitioner herein is also not disputed. The genesis of the controversy between the learned Judges with regard to the relief granted lies in two parallel lines. While J.Nishna Banu, J., had allowed the petition on the ground of delay caused in verification of the certificate, however, N.Mala, J., had dismissed the relief sought for by the petitioner on the ground of suppression of material. Therefore, this Court is ordained with the task of finding out whether the delay caused in verification of the certificate would have an overriding effect over the suppression or would the suppression have a march over the delay so as to deny the petitioner the relief sought for.

43. The petitioner joined the services of her employer in the year 1978 on the basis of the community certificate, alleged to have been issued by the Tahsildar, Mettur on 14.9.1978. The Collector of Salem, vide communication dated 5.11.1979 had cancelled the community certificates produced by the candidates as Kondareddis, as there is no Kondareddis community people in Salem District, based on which the termination order of the petitioner had come to be passed on 1.6.1984. Challenge was made to the said termination, which, upon transfer to the Tribunal, enured in favour of the petitioner, however, with liberty to the employee to take further action as against the petitioner as



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per law in respect of the community certificate produced by her. The said order of the Tribunal is dated 16.03.1994. Effectively, a period of almost 16 years had gone by from the date of appointment of the petitioner to the date when the order of termination was set aside by the Tribunal.

44. Thereafter, to the show cause notice issued on 25.09.1997, the same stood quashed by the order of the Tribunal dated 6.2.1998 on the ground that as on date the community certificate issued to the petitioner was valid, as it had not been cancelled by a competent authority and, therefore, insistence of a fresh community certificate by the employer cannot be sustained and no charge memo can be framed against the petitioner.

45. Thereafter, once again, enquiry was taken up by the Revenue Divisional Officer on the basis of the orders of the District Collector and examination of certain witnesses, a report came to be filed by the Revenue Divisional Officer on 17.09.2001 rendering a finding that the community certificate produced by the petitioner is not genuine and, therefore, the same may be cancelled.

46. Based on the said findings, the Chairman of the District Level Vigilance Committee issued show cause notice calling upon the petitioner to submit explanation by



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providing the report of the Revenue Divisional Officer, which was put to test before this Court in W.P. 23957/2001 and this Court, vide order dated 6.12.2001, had dismissed the writ petition granting liberty to the petitioner to submit her explanation.

47. In fact, the decision to dissent was premised on suppression of this document by the petitioner, as the petitioner in the present petition had not spoken about the dismissal of the writ petition as against the issuance of show cause notice. However, the suppression of the present document, in the considered opinion of this Court, would in no way have a bearing or distort the case to the benefit of either party, as it has been the consistent view of the Courts that as against a show cause notice, entertaining of a writ petition should be scarce only if the same is touching the realms of perversity and not otherwise. Therefore, the said order has not been passed on merits and, therefore, failure to spell out the same in the writ petition cannot be said to be suppression of material facts, which would adversely affect the case of the petitioner.

48. The case of the petitioner is with regard to the genuineness of the certificate obtained by her and the present impugned order, which had come to be passed on 17.08.2021, which is not only after a period of 43 years from the date of appointment of



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the petitioner, but curiously, it is after a period of about 7 years from the date of provisional superannuation of the petitioner.

49. Pursuant to the directions issued by this Court to submit explanation, the petitioner had submitted her explanation in and by which the petitioner has made a categorical assertion that the District Level Vigilance Committee has no power to enquire into the community certificate of the petitioner, as it is only the State Level Scrutiny Committee is empowered to look into the same as per the decision of the Apex Court in the case of ***Kumari Madhuri Patil & anr. – Vs – Commissioner, Tribal Development & Ors. (ARI 1995 SC 94)***. However, inspite of the specific stand taken by the petitioner, the District Level Vigilance Committee had called upon the petitioner to appear for enquiry, which was challenged before this court by filing W.P. No.6409/2004 and this Court, vide order dated 26.07.2005 had allowed the petition without prejudice to the right of the authority to take action. The aforesaid order in the writ petition came to be passed as early as on 26.07.2005, however, only on 30.01.2010, communication had emanated from the employer to the Collector, Salem, to verify the genuineness of the certificate of the petitioner. From the above it is clear that from the date of order, a period of five years elapsed in the employer communicating with the District Collector for verification of the genuineness of the community certificate of the petitioner.



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50. Even after the passing of the order by this Court in W.P. No.6409/2004 on 26.07.2005, the District Collector had called upon the Revenue Divisional Officer to cause verification of the community certificate of the petitioner vide communication dated 16.8.2011. Vide communication dated Sept. 2013, the Tahsildar, Mettur had addressed the Sub Collector, Mettur that the veracity of the community certificate could not be identified in the absence of serial number and registration number and the signature of the clerk and as the said document was issued without the signature of the Deputy Tahsildar, such documents were not issued and, therefore, the community certificate submitted by the petitioner is not genuine.

51. However, pursuant to the said communication, the District Collector, Salem, had forwarded the materials to the Chairman, State Level Scrutiny Committee for verification of the genuineness of the community certificate of the petitioner vide his communication dated 19.09.2014. Therefore, effectively, a period of almost a decade had passed since the order of this Court in W.P. No.6409/2004 to the time when the District Collector had addressed the Chairman, State Level Scrutiny Committee by placing the materials to look into the genuineness of the community certificate of the petitioner. To put it more bluntly, from the date of appointment of the petitioner, a period of three and a half



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decades had passed when the matter was placed before the State Level Scrutiny Committee to verify the genuineness of the community certificate of the petitioner, notwithstanding the fact that the decision of the Apex Court in *Madhuri Patil's case* had come to be passed as early as in the year 1995. Yet, for reasons best known to the Governmental machinery, the file relating to ascertaining the genuineness of the community certificate of the petitioner was lying in store with the office of the District Collector and was being going to and fro between the various officials, but who were not clothed with any power to verify the genuineness of the said community certificate.

52. Be that as it may. The file containing all the documents were transmitted by the office of the Collector to the Chairman, State Level Scrutiny Committee on 19.9.2014 and on 30.11.2014, the petitioner attained the age of superannuation and she was also provisionally retired from service. However, the ball, which started rolling from the date of her appointment with regard to the genuineness of the community certificate of the petitioner was still kept rolling without it being given a quietus to lay still by coming to a decision notwithstanding the fact that the decision in *Madhuri Patil case* had come way back in 1995 and relevant Government Orders were also issued in the year 2007 and 2012 in the form of G.O. Ms. Nos. 108 and 106 on 12.09.2007 and 15.10.2012.



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53. The alacrity with which the Governmental machinery ought to have worked is writ large, as the verification, which started in the year 1978 did not see the light of the day even on the superannuation of the petitioner on 30.11.2014. What was to follow after November, 2014, is also equally horrendous, as the constitutional mandate, which envisaged a benefit to persons belonging to a particular community, due to their social backwardness, was seldom cared for by the officials of the Government, as inspite of the directions of the Apex Court in *Madhuri Patil case*, the matter had moved in snail's pace.

54. What is more frustrating is the fact that this Court, in W.P. No.2827 of 2017 filed by the employer had, vide order dated 25.7.2017, directed the respondent to verify the genuineness of the community certificate produced by the 2<sup>nd</sup> respondent/petitioner herein, and pass orders in accordance with law after hearing the 2<sup>nd</sup> respondent/petitioner herein and a report to that effect shall be placed before the concerned authority within a period of three months from the date of receipt of a copy of the judgment. Though the said order was passed on 25.7.2017, the respondent had referred the case to the Vigilance Cell on 22.8.2017. However, inspite of the letter having been addressed to the Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem on 22.8.2017, the notice was issued to the petitioner calling her for personal enquiry on 27.02.2019 only on 20.02.2019. Though there is a specific direction by the Court in W.P. No.2827/2017 to complete the



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enquiry and file the report within three months from the date of receipt of a copy of the said order and communication in this regard had been addressed by the respondent on 22.08.2017, however, unmindful of the directions of this Court, action was taken by the Vigilance Cell only on 20.02.2019 calling upon the petitioner to appear for enquiry. It is more than six months from the date of the order passed by this court.

55. Further to the said communication, the petitioner had sought for time by her communication dated 26.02.2019 for producing certain documents. Subsequent to the said communication, no action seems to have been taken by the Vigilance Cell till 07.10.2020, which almost a period of a year and a half, when the Vigilance Cell slept over the matter and waking up on 7.10.2020, called upon the petitioner to attend the enquiry. However, by that time, almost six years had passed since the petitioner superannuated from service.

56. In this regard, useful reference can be had to the observations of the Division Bench of this Court in the case of **V.Sathyamurthi – Vs – Union of India & Ors. (W.P. No.5737/2022 – Dated 28.10.2022)**, wherein R.Subramanian, J., speaking for the Bench, observed thus :-

*“13. By the Office Memorandum dated 25.05.2005, the Central Government had directed that the community certificates of those persons,*



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*who were appointed prior to 1996 should not be verified. The said Office Memorandum was issued taking into account the passage of time and to attach certain finality to the issue relating to communal status. The State Level Scrutiny Committee had rightly sought for a clarification from the Government of Puducherry, as to whether the petitioner would be eligible to the exemptions as per instructions issued in the Office Memorandum dated 25.05.2005.*

*14. Unfortunately, the Government of Puducherry, by its letter dated 20.05.2021 had claimed that the reference having been made even in the year 1994 itself and the cancellation order was passed in the year 2015, the petitioner will not be entitled to the exemption granted by the Office Memorandum dated 25.05.2005. This claim of the Union Territory of Puducherry, in our opinion, cannot be sustained. ....”*

57. In the said case, the earlier enquiry had enured in favour of the employee, which was later sought to be disturbed which was in issue before the Bench, but in the present case it is not so, as the District Collector had initially held that the community certificate is not valid. However, what is more pertinent to be pointed out here is that the Central Government, by Office Memorandum dated 25.05.2005 had directed that community certificates of those persons, who were appointed prior to 1996 should not be verified. Though the verification process on the community certificate of the petitioner had started way back in the year 1979, yet, till her attainment of superannuation on 30.11.2014, it has not seen the light of the day, more curiously for no fault of the



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petitioner. When the employer as well as the respondent have not taken any diligent efforts to have the genuineness of the community certificate verified in an expeditious manner, more particularly, during the period of employment of the petitioner, verifying the said certificate, issued in the year 1978, even after the superannuation of the petitioner would be nothing short of harassment meted out to the petitioner.

58. True it is that the Apex Court in *Madhuri Patil's case* had deprecated the practice of wrongful gain in appointment on the basis of false social status certificate by holding that it has the effect of depriving the genuine Scheduled Caste or Scheduled Tribe or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution and if the benefits have been wrongly availed, the State resources cannot be strained to release terminal benefits to an employee who has wrongly claimed reservation. Nevertheless, in the same decision, the Supreme Court has also cautioned that in the absence of any verification during the early part of service of an employee, at least it needs to be verified at the time of retirement. However, it is to be pointed out that if the employer as also the State authorities are not diligent in verifying the certificate, thereby allow the employee to enjoy the benefits and also allow the employee to retire, the delay on their part in having the certificate verified cannot be put against the



employee, thereby depriving the employee of the fruits of the benefits that accrue upon retirement.

59. In this regard, useful reference can be had to the decision in **R.Sundaram – Vs – The Tamil Nadu State Level Scrutiny Committee & Ors. (2023 SCC OnLine SC 287)**, wherein the Apex Court has held as under :-

*“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’.”*

60. In the case on hand, the process of verification, though started as early as in the year 1979, immediately on the petitioner joining the services of BSNL, yet, it has not been done in accordance with law, either by the employer or by the State machinery, thereby, causing a delay of more than four decades in finalizing the veracity of the community certificate. The Damocle’s Sword cannot be allowed to hang on the head of an employee for no fault of his, though the petitioner, as the employee, had frequently knocked the doors of this Court with regard to certain illegal acts, which had ended in his favour and in some cases, going against her. However, the petitioner had only resorted to the legal



remedies available to her and it cannot be said that it was dilatory tactics adopted by the petitioner while in service to scuttle the verification process.

61. Had the respondent and the employer been diligent and shrewd, they would have followed the various Government Orders and the directions given by the Apex Court in *Madhuri Patil case* to give a quietus to the issue on hand. However, neither the employer nor the respondent acted diligently and when the period came during 2020, fate, in the form of pandemic started helping the petitioner and her age related ailments prevented the petitioner from moving outside, which resulted in the petitioner frequently seeking extension of time.

62. However, here too, as stated above, it has to be pointed out that after the first notice on 20.02.2019 calling the petitioner for enquiry and the petitioner seeking time of one month by her communication dated 26.02.2019, the Vigilance Cell was a mute spectator till 7.10.2020 when it caused further notice on the petitioner for enquiry, by which time, almost 6 years had passed from the date of superannuation of the petitioner. Therefore, the petitioner had sought for exemption from verification of her community certificate. Therefore, it could, without an iota of second thought, be concluded that the delay is mainly attributable to the employer and the respondent. May be, the petitioner,



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as is always the case in such issues, had taken some time seeking adjournments, but the delay attributable to the respondents is of gigantic proportion when compared to the period of delay, which could be fastened on the petitioner and, therefore, the impugned order, fastening the total delay on the part of the petitioner and her dilatory tactics cannot be accepted.

63. Though very many decisions touching the guidelines for scrutinizing community certificates, the delay in verification of community certificates and the disentitlement of benefits for persons with fraudulent community certificates have been pressed into service before this Court on behalf of the respondents, it is to be pointed out that the facts in the said cases relating to delay in verification of community certificates and disentitlement of benefits for persons with fraudulent community certificates stand on a totally different footing. Further, in all those cases, though there was delay, the delay had not in any manner impinged on the rights and constitutional guarantees. However, in the present case, the delay occasioned due to the employer and the respondent had affected the petitioner and had caused harassment, as even after retirement, the petitioner was made to suffer for no fault of hers, as all along, during her employment, either the employer or the authorities of the government had not properly acted in accordance with the guidelines framed by the Apex Court, which had been captured in the various



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Government Orders and, therefore, the delay being attributable to the Governmental machinery, the same cannot be transposed to the shoulders of the petitioner.

64. This Court, to satisfy itself that not only on the ground of delay, but even otherwise, the sustainability of the order required to be looked into, perused the impugned order passed by the respondent. The State Level Scrutiny Committee, which took up the matter comprising of three members, also comprised of the Anthropologist, who had given his expert opinion with regard to the customary practice of the Kondareddi community. A perusal of the impugned order reveals that while the committee had taken into consideration the materials, however, the report does not reveal the customary practice that is followed by the Kondareddis Community and also does not disclose that the petitioner was not following the said customary practices. There is no whisper that the petitioner, who claims herself to be a person belonging to Kondareddi Community was not practicing the said customary practice. In the absence of an affirmative finding in this regard, the report cannot be said to be wholesome report and any action on the basis of the said report cannot also form the basis to hold that the petitioner does not belong to the said community. Therefore, in that aspect also the report falls short and coupled with the delay, definitely, the said report requires interference at the hands of this Court.



65. Be that as it may. Pending the adjudication of the present writ petition, an affidavit had been filed by the petitioner, where it has been undertaken as follows :-

*"2) I submit that based on the community certificate dated 14.09.1978 issued by the Tahsildar, I joined service in the Department of Telecommunication. After completing 37 years of service I reached superannuation from the office of the Principal General Manager, BSNL, Coimbatore with effect from 30.11.2024. However, except provisional pension no other benefits have been sanctioned to me. Even the provisional pension has been stopped from March, 2023 onwards.*

*3) I submit that based on my caste certificate, none of my children have obtained caste certificates in their favour to the effect that they belong to the ST community. I further submit that neither myself nor my children/family members will, in future, make any claim or derive any concession or benefits on the basis of my caste certificate.*

*4) I humbly submit that recording the above, this Hon'ble Court may pass appropriate orders setting aside the impugned order passed by the 1<sup>st</sup> respondent committee and by directing the employer to pay pension from 01.12.2014 onwards along with commutation, gratuity, earned leave encashment and other admissible benefits. I further submit that I am presently aged 69 years. In this connection I pray this Hon'ble Court to place reliance on the judgment of the Hon'ble Supreme Court of India in SLP No.2458 of 2019 dated 03.03.2023 in the case of Union of India & Anr. – Vs – Renuka & Ors. As followed by this Hon'ble Court in several other cases."*

66. In the decision in **Union of India – Vs – S.Renuka (SLP (C) No.24458/2019)**, the Apex Court, vide order dated 03.03.2023, recording the submission of the learned senior



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counsel for the respondent No.1 therein, held 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, and considering the above, closed the proceedings.

67. Recently, the Apex Court in ***Bank of Baroda – Vs – R.Shanti & Ors. (SLP (C) No.14135/2024 – Dated 12.07.2024)***, held that the employee therein having already retired from service, the petition was closed with clarification that the employee's progeny would not be entitled to any benefit of belonging to the Scheduled Tribe Community unless they have a certificate duly validated by the competent authority. However, in the same breath, the Apex Court has also pointed out that the said the SLP was not being entertained only on the ground of superannuation of the employee and that the same shall not be treated as a precedent.

68. As held above, though the decision in *Renuka's case (supra)*, cannot be treated as a precedent, however, the fact remains, the petitioner in the present case has also retired on 30.11.2014 and the community certificate had been cancelled only on 17.08.2021, almost seven years after the superannuation of the employee. The delay is purely attributable to the employee and the respondent and the petitioner cannot be



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fastened with the delay. Such being the case, necessarily, the benefit should enure to the employee/petitioner.

69. Further, it should also not be lost sight of that the notice had been issued by the Vigilance Cell on 20.2.2019 and time of one month was sought and, thereafter, the second notice was issued only on 7.10.2020 for appearance on 17.10.2020. It is to be pointed out that the petitioner was not only suffering medical ailment during the said period, but the said period was also the peak of COVID-19 pandemic. At that point of time, the petitioner, being about 68 years of age then, with the raging pandemic, definitely would not have been advised to attend the enquiry, more so, when he is suffering medical complications including surgery. In such a backdrop, holding that it was wilful non-co-operation of the petitioner, which has led to the delay and, therefore, deciding the genuineness of the certificate in the absence of the petitioner is wholly unjustified, moreso, when the respondents have delayed the verification by more than four decades. Therefore, on the ground of delay caused by the respondent and the employer of the petitioner in not verifying the genuineness of the community certificate of the petitioner during the subsistence of employer-employee relationship and due to efflux of time and delay attributable to the employer and the respondent, the petitioner cannot be penalised and,



therefore, the order impugned herein definitely requires interference at the hands of this Court.

70. In the aforesaid circumstances, this Court is of the considered opinion that the result should definitely be in favour of the petitioner, thereby, the impugned order is liable to be quashed. However, while quashing the impugned order, it is also to be borne in mind that the genuineness of the petitioner's community certificate has not been established. Such being the case, the legal heirs of the petitioner cannot be allowed to claim caste certificate based on the caste certificate of the petitioner. In this regard, affidavit has already been filed by the petitioner, which is taken on record and recorded and this Court makes it clear that the legal heirs of the petitioner would not be entitled to claim any concession or benefits on the basis of the caste certificate of the petitioner. However, this Court makes it clear that it is open to the legal heirs of the petitioner to obtain Scheduled Tribe Community duly validated by the competent authority in the manner known to law.

71. In view of the aforesaid reasons, this Court is in agreement with the view expressed by learned Sister J.Nisha Banu, J., but for the reasons additionally recorded



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above and, accordingly, allow the present writ petition as prayed for. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**20.09.2024**

Index : Yes / No

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**M.DHANDAPANI, J.**

**GLN**

**PRE-DELIVERY ORDER IN  
W.P. NO. 31452 OF 2022**

**Pronounced on  
20.09.2024**



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