



W.P.No.31433 of 2022

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

ORDER RESERVED ON : 22.12.2023  
ORDER PRONOUNCED ON : 08.03.2024  
**CORAM**

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

**W.P.No. 31433 of 2022**

**and**

**WMP.No. 30882 of 2022**

M.A.Lalitha

...Petitioner

Vs.

1. The Chairman,  
Tamil Nadu State Level Scrutiny Committee III,  
Adi Dravidar and Tribal Welfare Department  
Namakkal Kavingar Maligai,  
Secretariat, Chennai-9.

2. The Chairman,  
Chennai Port Trust,  
Chennai.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India  
praying to issue a Writ of Certiorarified Mandamus, calling for the



W.P.No.31433 of 2022

records of the 1<sup>st</sup> respondent in its Proceedings No.546/CV-6/2013-27 dated 06.09.2021 and quash the same and consequently direct the 2<sup>nd</sup> respondent to grant pension, commutation, gratuity, leave encashment and all other admissible terminal benefits.

For Petitioner : Mr. V.Vijayashankar

For Respondents : Mr.Stalin Abimanyu

Additional Government Pleader for R-1

Ms.Harshini Jhothiraman, for R2

### **ORDER**

**(Order of the Court was made by N.Mala,J.)**

Writ Petition is filed challenging the order dated 06.09.2021 of the 1<sup>st</sup> respondent cancelling the petitioner's community certificate and for consequential direction to the 2<sup>nd</sup> respondent to grant pension, commutation, gratuity, leave encashment and all other admissible terminal benefits.

2. The petitioner belongs to Kondareddis community which is Scheduled Tribe as per the Constitution Scheduled Tribes order 1950. The petitioner was issued with the community certificate by the



W.P.No.31433 of 2022

Tahsildar dated 16.03.1981. The petitioner was appointed as Lower

Division Clerk in the Chennai Port Trust, 2<sup>nd</sup> respondent herein, got further promotions and retired as Superintendent on 30.04.2012. The petitioner's community certificate was cancelled by the Collector, Madras in December 1993. Challenging the same, the petitioner filed writ petition in W.P.No.2764 of 1994 and the said writ petition was disposed of by this Court on 12.01.2001 directing the petitioner to prefer an appeal to the State Level Scrutiny Committee. The petitioner preferred the appeal to the State Level Scrutiny Committee on 23.01.2001. During the pendency of the appeal before the 1<sup>st</sup> respondent Scrutiny Committee, the petitioner attained superannuation on 30.04.2012. The 2<sup>nd</sup> respondent, employer of the petitioner permitted the petitioner to superannuate but directed that only provisional pension would be paid and the other terminal benefits such as pension, gratuity, leave encashment etc. would not be released as the verification of the community status was pending before the State Level Scrutiny Committee. The petitioner therefore filed W.P.No. 30779 of 2012 challenging the order of the 2<sup>nd</sup> respondent withholding the terminal



W.P.No.31433 of 2022

benefits. In the said writ petition, the 1<sup>st</sup> respondent State Level Scrutiny

Committee was added as a party in pursuance of the directions of this

Court. The Hon'ble Division Bench vide order dated 18.06.2013 directed

the 2<sup>nd</sup> respondent to disburse all terminal benefits to the petitioner

within a period of four weeks from the date of receipt of a copy of the

order and further directed the 1<sup>st</sup> respondent Scrutiny Committee to

pass orders on the appeal filed by the petitioner within a period of two

weeks from the date of receipt of a copy of the order. This Court

considering the inordinate delay in the conduct of the verification

proceedings by the 1<sup>st</sup> respondent, imposed cost of Rs.5,000/- on the 1<sup>st</sup>

respondent. Aggrieved by the orders passed by this Court in

W.P.No.30779 of 2012, the 2<sup>nd</sup> respondent preferred an SLP in SLP.

No.36701 of 2013. The SLP initially was dismissed for non prosecution,

but later restored at the instance of the 2<sup>nd</sup> respondent. During the

pendency of SLP, the 1<sup>st</sup> respondent cancelled the petitioner's

community certificate vide order dated 25.09.2013. The petitioner

challenged the cancellation order in W.P.No. 27856 of 2013, this Court

allowed the writ petition vide order dated 21.11.2016 by setting aside the



W.P.No.31433 of 2022

order of the 1<sup>st</sup> respondent and giving liberty to the 1<sup>st</sup> respondent to conduct fresh verification in accordance with law. Meanwhile the SLP preferred by the 2<sup>nd</sup> respondent which came for hearing in August 2021 and was adjourned by 4 months. Thereafter the 1<sup>st</sup> respondent cancelled the petitioner's community certificate vide order dated 06.09.2021. Aggrieved by the cancellation of the community certificate of the petitioner by order dated 06.09.2021, the petitioner has preferred the present writ petition.

3. The 1<sup>st</sup> respondent filed counter denying all the averments and contentions raised in the writ petition and stated *inter alia* that when the director of Tribal Welfare sent the report of the Deputy Superintendent of Police, Vigilance Cell to the petitioner's residence, it was found that the petitioner was not residing there, but was currently residing at United States of America. While she was contacted over phone she refused to provide any details with regard to her community status. It was stated that the petitioner conveyed her unwillingness to co-operate with the Vigilance Cell. As the personal enquiry could not be conducted,



W.P.No.31433 of 2022

the Superintendent of Police, Vigilance Cell based on the available documents concluded that the petitioner did not belong to Hindu-'Kondareddis' Scheduled Tribe community. The 1<sup>st</sup> respondent relying on certain Judgments of this Court as also Hon'ble Supreme Court stated that on the basis of the available documentary evidences, it was concluded that the petitioner did not belong to Hindu-Kondareddis Scheduled Tribe community and that the certificate issued by the Deputy Tahsildar dated 16.03.1981 was a bogus one. The 1<sup>st</sup> respondent therefore cancelled the community certificate of the petitioner.

4. The learned counsel for the petitioner submitted that no notice of enquiry was sent to the petitioner and without even conducting the enquiry the 1<sup>st</sup> respondent passed the impugned order. The learned counsel further submitted that the 1<sup>st</sup> respondent violated the procedures set out in G.O (Ms). Nos. 108 dated 12.09.2007 and 106 dated 15.10.2012 and therefore the impugned order deserved to be set aside. The learned counsel submitted that the 1<sup>st</sup> respondent failed to serve copy of the Vigilance report to the petitioner and passed the impugned



W.P.No.31433 of 2022

order in haste. The learned counsel further submitted that the petitioner entered service in the year 1982 and after completing 30 years of service superannuated in 2012. Despite the orders of this Court in 2001, no proceedings were taken by the 1<sup>st</sup> respondent for nearly 15 years thereafter. The counsel submitted that due to the inordinate delay in verifying the petitioner's community certificate, the petitioner was put to irreparable hardship. The counsel further submitted that inspite of 30 years service, the petitioner was not paid pensionary or terminal benefits and even the provisional pension which was paid was also stopped after the impugned order. For all the reasons, the learned counsel stated that the impugned order deserved to be set aside and the writ petition allowed.

5. The learned Additional Government Pleader appearing for the respondent submitted that the petitioner cannot complain of want of opportunity, because the petitioner was not residing in the address given by her and that even while contacted over phone she refused to provide any details with regard to her communal status. She also



W.P.No.31433 of 2022

expressed her unwillingness to co-operate for vigilance enquiry. The learned counsel submitted that it was under the said circumstances that the Vigilance Cell was constrained to submit a report on the basis of available documents that the petitioner did not belong to Hindu-Kondareddis Schedule Tribe community.

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

7. From the facts narrated in the affidavit which are not denied in the counter, it is seen that this is a second round of litigation as far as cancellation of community certificate of the petitioner is concerned. Early in W.P.No. 27858 of 2013 by order dated 21.11.2016, this Court set aside the cancellation order with a direction to the 1<sup>st</sup> respondent to refer the matter to the Vigilance Cell for enquiry and thereafter to pass orders as per the guidelines issued by this Court in G.Venkitasamy and another vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department. The said



W.P.No.31433 of 2022

order was passed in the year 2016 and after lapse of almost 5 years, the present cancellation order is passed by the 1<sup>st</sup> respondent. The main objection of the petitioner is that the impugned order has been passed without giving the petitioner an opportunity of hearing and also in violation of the procedure laid down in G.O (Ms). Nos. 108 dated 12.09.2007 and 106 dated 15.10.2012. It is no doubt true that the petitioner was not in India at the relevant time. It is the case of the respondent that when the petitioner was approached telephonically, she refused to co-operate. Be that as it may, it is to be seen whether on the facts of the case the impugned order can be sustained.

8. It is seen that the petitioner is 70 years old and she retired on 30.0.2012 as Superintendent from Chennai Port Trust, the 2<sup>nd</sup> respondent herein. Initially the petitioners community certificate was cancelled by the Collector, Madras in December 1993 and the same was challenged by the petitioner in W.P.No. 2764 of 1994. This Court vide order dated 12.01.2001 disposed of the writ petition directing the petitioner to prefer an appeal before the State Level Scrutiny Committee.



W.P.No.31433 of 2022

The petitioner filed the appeal on 23.01.2001 to the 1<sup>st</sup> respondent herein.

The enquiry was kept pending for nearly 12 years. The 2<sup>nd</sup> respondent on superannuation of the petitioner on 30.0.2012 permitted the petitioner to superannuate with provisional pension by withholding other terminal benefits such as pension, gratuity, leave encashment etc. stating that same would be released only on verification of her communal status.

The petitioner filed W.P.No. 30779 of 2012 challenging the aforesaid decision of the 2<sup>nd</sup> respondent. By order dated 18.06.2013, a Division Bench of this Court directed the 2<sup>nd</sup> respondent to pay the petitioner her terminal benefits within the time stipulated therein. As the 1<sup>st</sup> respondent was added in the said proceedings, a direction was also issued to the 1<sup>st</sup> respondent to conclude the proceedings within the time stipulated therein. The 2<sup>nd</sup> respondent preferred SLP in SLP.No. 36701 of 2013 against the order dated 18.06.2013 in W.P.No.30779 of 2012.

During the pendency of the SLP, the 1<sup>st</sup> respondent cancelled the petitioners community certificate on 25.09.2013 which was challenged in W.P.No. 27856 of 2013. In the said writ petition by order dated



W.P.No.31433 of 2022

21.11.2016, the cancellation order was set aside giving liberty to the 1<sup>st</sup>

respondent to conduct fresh verification. In pursuance of the aforesaid order, the 1<sup>st</sup> respondent conducted fresh proceedings vide impugned order dated 06.09.2021 and again cancelled the community certificate of the petitioner. It is seen that the SLP preferred by the 2<sup>nd</sup> respondent came up before the Hon'ble Supreme Court on 04.01.2022 and the Hon'ble Supreme Court disposed of the Civil Appeal as infructuous, as the cancellation order of the 1<sup>st</sup> respondent was challenged before this Court and pending. The Hon'ble Supreme Court further directed that payment of terminal benefits would be subject to the result of the writ petition.

9. We are not able to comprehend as to how the 1<sup>st</sup> respondent based on an telephonic conversation which is not supported by any evidence passed the impugned order. Nothing prevented the 1<sup>st</sup> respondent from sending registered letter to the petitioner to her known address. The respondent delayed the matter by 5 years and all of a sudden decided to give quietus to the matter by simply stating that



W.P.No.31433 of 2022

when the petitioner was contacted over phone, she conveyed her unwillingness to co-operate. From the impugned order, it is seen that the report of the Vigilance Cell, Deputy Superintendent of Police, SC/ST was not sent to the petitioner as mandated by G.O.(Ms). No. 106 of 2012. Clause IV of the said G.O. mandates the State Level Scrutiny Committee to issue a show cause notice supplying a copy of the Vigilance report to the candidate by registered post with acknowledgment due or to the head of institution to which candidate was employed or studied. It is settled law that when the law / rules mandate a thing to be done in a particular way, it should be done in that way and not otherwise (useful reference is made in this regard in the case of *Nazir Ahmed vs. King Emperor* reported in 63 Ind App 372). The counter as well as the impugned order narrates that while the DSP conducted the spot enquiry at the petitioners residence, she was not present and from her neighbours they came to know that she was currently living in USA. It was further stated that while contacting her over phone she refused to give any details as regards her community and conveyed her unwillingness to co-operate for Vigilance enquiry. In our view the respondent could not on the basis of an uncorroborated statement, fail



W.P.No.31433 of 2022

to send the Vigilance report to the petitioner through registered post and

acknowledgment due. It is pertinent to note here that even in the earlier

occasion the 1<sup>st</sup> respondent had failed to comply with the mandate of

law and so this Court set aside the cancellation order, the very same

mistake is committed even in the present proceedings. Considering the

fact that the petitioner has long retired i.e in 2012, that this is a second

round of litigation and further since the proceedings have been pending

over a decade before the 1<sup>st</sup> respondent, we are of the view that no

purpose will be served by remanding the matter to the 1<sup>st</sup> respondent

for fresh consideration. At this juncture, we would like to refer to the

Judgment of the Hon'ble Supreme Court in the case of *R.Sundaram vs.*

*The Tamil Nadu State level Scrutiny Committee and Ors.* reported in 2023

SCC OnLine SC 287 dated 17.03.2023. The facts are similar to the facts

before us. Even in that case, the appellant therein had superannuated

long back and the Scrutiny Committee long after the appellants

superannuation submitted its first report which was struck down by the

High Court on grounds of violation of the principles of natural justice

and thereafter a fresh enquiry was conducted and another report was



submitted and it was found that even the second report suffered from the same flaws as the previous report. The Hon'ble Supreme Court in the light of the said facts concluded as follows:

*“21. At this stage we would like to clarify that in cases where employment is based on a fake community certificate the law is settled that post-retirement benefits cannot be granted. In the present case however, there exists a very clear difference. While the Respondents have claimed the Appellant's community certificate to be fake, such a claim has not been proven. Even though two reports declaring the community certificate of the Appellant as fake were submitted after inordinate and unexplained delay, however, both the reports have not allowed the participation of the Appellant.*

*22. A community certificate in cases of scheduled tribe communities, unlike any other piece of paper, is an acknowledgment of a person belonging to a community which has faced years of oppression. The Constitution of India guarantees certain rights to people from Scheduled Tribe communities on grounds of historical injustice, and for the translation of such rights from paper to real life, the community certificate in most cases becomes an essential document. This certificate, whilst being an acknowledgment of history, is also a document that tries to rectify such historical injustice by becoming a tool that fabricates constitutional rights into reality. In such a scenario where the validity of a community certificate is put to question, keeping in mind the importance of the*



W.P.No.31433 of 2022

*document and the effect it has on people's rights, the proceedings questioning the document cannot, except in the most exceptional circumstances, be done ex-parte.*

*23. Any person, whose entire identity, and their past, present and future rights are challenged, must at the least be given an opportunity to be fairly heard. In the case at hand however, such a right has been denied to the Appellant, and hence the burden of proof on the respondents to disprove the nature of the certificate, has not been discharged. In the absence of the discharge of such burden of proof, this Court must presume the community certificate of the Appellant to be genuine."*

10. In the light of the facts of the present case and the law declared by the Hon'ble Supreme Court in the aforesaid Judgment, we allow the present writ petition by setting aside the order of the 1<sup>st</sup> respondent and direct the 2<sup>nd</sup> respondent to pay all the eligible pension and service benefits to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

11. The petitioner has submitted an affidavit dated 16.12.2023 and the relevant paragraph reads as follows:



W.P.No.31433 of 2022

*“4. 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 submits 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.”*

We record the sworn affidavit submitted by the petitioner.

In the result, writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(J.N.B,J.)

(N.M,J.)

08.03.2024

(1/4)

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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W.P.No.31433 of 2022

To

WEB COPY

1.The Chairman,

Tamil Nadu State Level Scrutiny Committee III

Adi Dravidar and Tribal Welfare Department

Namakkal Kavingar Maligai,

Secretariat, Chennai-9.

2.The Chairman,

Chennai Port Trust,

Chennai.



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W.P.No.31433 of 2022

**J. NISHA BANU, J.**

**and**

**N.MALA, J.**

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**PREDELIVERY ORDER IN**  
**W.P.No. 31433 of 2022**

**ORDER DELIVERED ON**  
**08.03.2024**

(1/4)