



W.P.No.31438 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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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. 31438 of 2022

and

WMP.No. 30894 of 2022

V.Navajothi

...Petitioner

Vs.

1. 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.

2.The General Manager CMR
Bank of Baroda,
No.10, C.P. Ramasamy Road, 2nd floor,
Alwarpet, Chennai- 18

...Respondents



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Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its Proceedings No.20799/CV-6/2015-10 dated 28.01.2022 and quash the same and consequently direct the 2nd respondent bank to settle the Pension, Gratuity, Earned Leave Encashment and other admissible pensionary benefits to the petitioner along with arrears.

For Petitioner : Mr. V.Vijayashankar

For Respondents : Mr.Stalin Abimanyu

Additional Government Pleader for R-1

Mr.G.Anandakrishnan for R-2

ORDER

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

Writ Petition is filed challenging the order of the 1st respondent dated 28.01.2022 and for a consequential direction to the 2nd respondent bank to settle the pension, gratuity, earned leave encashment and other admissible pensionary benefits to the petitioner along with the arrears.



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2. The petitioner belongs to Hindu-Kondreddis community which is classified as Scheduled Tribe community under the Constitution of Scheduled Tribes order 1950. The petitioner was issued with the community certificate by the Tahsildar, Mettur on 15.03.1982. The petitioner was appointed in the 2nd respondent bank in the year 1982 on the basis of community certificate issued to her by the Tahsildar. The petitioner retired on 31.05.2020 after putting in 38 years of service. According to the petitioner long after her appointment, the District Level Vigilance Committee, Thiruvallur cancelled her community certificate vide order dated 17.12.2005. In pursuance of the cancellation order, the 2nd respondent bank terminated the petitioner from service. Challenging the termination order the petitioner filed W.P.No. 586 of 2007 before this Court. The said writ petition was allowed and accordingly the petitioner was reinstated in service and continued to serve the 2nd respondent bank till her superannuation on 31.05.2020. The 1st respondent took up the caste verification by referring the matter to the Vigilance Cell. The Vigilance Cell submitted its report on 09.08.2021 and the same was forwarded to the petitioner. The petitioner submitted a detail



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representation on 05.09.2021 raising objections to the report and further sought an opportunity to cross examine the witnesses from whom the statements were taken. The 1st respondent Committee summoned the petitioner for hearing on 21.10.2021 and the petitioner appeared and reiterated the request made by her in her representation dated 05.09.2021. The petitioner further produced documents in support of her communal status. Thereafter the 1st respondent directed the petitioner to appear for further enquiry on 10.01.2022, but the petitioner was not well and so she sent a letter on 07.01.2022 requesting to postpone the enquiry. While the petitioner was hoping that the enquiry would be adjourned, she was shocked to receive the impugned order dated 28.01.2022 of the 1st respondent cancelling her community certificate. The petitioner therefore filed the above writ petition challenging the same for the aforesaid relief.

3. The 1st respondent filed a counter denying all the averments and contentions raised in the petitioners affidavit stating *inter alia* that to the



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letter of the Director Tribal Welfare, Chennai forwarding the report of the Deputy Superintendent of Police dated 21.09.2021, the petitioner did not send any reply within the permitted time limit. The respondent further submitted that from the Vigilance Cell report and the Anthropologist report, it was found that petitioner did not belong to Kondareddis community and that community certificate produced by her was not genuine. The respondent referring to the communications sent to the petitioner submitted that the petitioner was given ample opportunity which she did not utilise. The respondent therefore submitted that it was justified in cancelling the community certificate of the petitioner on the basis of the documents and the reports filed before it.

4. The learned counsel for the petitioner submitted that there was gross violation of the procedure laid down in G.O (Ms). Nos. 108 dated 12.09.2007 and 106 dated 15.10.2012 by the 1st respondent and therefore impugned order could not be sustained. The learned counsel further submitted that in spite of the petitioner's request for cross examining the witnesses, the 1st respondent failed to give an opportunity to the



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petitioner which was against the principles of natural justice as also infringement of the provisions of the aforesaid G.Os. The learned counsel further submitted that the respondent passed the impugned order without even referring to the petitioners objections raised in the representation dated 05.09.2021 which clearly shows the biased and one sided approach of the 1st respondent. The learned counsel for the petitioner further submitted that inspite of the petitioner's letter along with the doctors certificate requesting for postponement of enquiry, the 1st respondent passed the impugned order which cannot be sustained.

5. The learned Additional Government Pleader appearing for the respondent on the other hand submitted that from the proceedings narrated in the impugned order as also the counter affidavit filed by the 1st respondent, it is clear that ample opportunity was given to the petitioner but she failed to utilise the same and hence the impugned order cannot be assailed.



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

7. It is seen that the petitioner retired from service of the 2nd respondent bank on 31.05.2020 after completing 38 years of service. When the petitioners community certificate dated 15.03.1982 issued by the Tahsildar, Mettur was cancelled by the District Level Vigilance Committee, Thiruvallur on 17.12.2005, the petitioner challenged the same in W.P.No. 586 of 2007. The said writ petition was allowed and the petitioner was reinstated. The petitioner gave a detailed representation dated 05.09.2021 to the show cause notice issued by the Director Tribal Welfare but the same was not considered while passing the impugned order eventhough the respondent did not deny the receipt of the reply. The petitioner appeared for enquiry on 21.10.2021 and reiterated her request in the letter dated 05.09.2021 and she also submitted documents in support of her communal status. The 1st respondent admitted the appearance of the petitioner before it on 21.10.2021 but stated that the petitioner had requested time to produce original documents to



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substantiate her claim.

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8. When the presence of the petitioner on 21.10.2021 is admitted and the receipt of the objections to the show cause notice of the director is indirectly admitted stating that it was not submitted within the permitted time limit, the 1st respondent ought to have given the petitioner an opportunity to cross examine the witnesses as requested by her in her letter dated 05.09.2021. It is seen from the reply letter dated 05.09.2021 of the petitioner to the show cause notice against the Vigilance report that the petitioner raised several objections. But none of the objections has been considered by the 1st respondent in the impugned order. In our view, the right to cross examine is a facet of the 'Audi Alteram Partem' Rule. When the petitioner has requested for an opportunity to cross examine the witnesses from whom statements were obtained by the Vigilance Cell, the 1st respondent ought to have given the petitioner an opportunity. The failure to provide the opportunity to the petitioner in our view is violative of the basic principles of natural



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justice and we are therefore of the view that the impugned order cannot be sustained on this ground alone. We are fortified in this view of ours by the Judgment of the Hon'ble Supreme Court in the case of *R. Sundaram vs. The Tamil Nadu State Level Scrutiny Committee* reported in 2023 SCC OnLine SC 287. The following paragraph in this regard is relevant and it reads as follows:

"20. By not allowing the Appellant an opportunity to be heard, the principle of "Audi Alteram Partem", a principle of natural justice has also been violated. The Appellant, in proceedings where the genuineness of his belonging to a community is under question, must have a right to be heard, and must be given the right to cross-examine the witnesses, for the nature of the proceedings are not just a question pertaining his employment, but also something that strikes at the core of his being, i.e., his identity."

9. In the light of the above discussions, we are of the view that impugned order cannot be sustained and hence same is set aside.

10. It is seen that the petitioner is 62 years old and has retired as early as on 31.05.2020. It is seen from the impugned order that the



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request for verification of community certificate was sent by the 2nd

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respondent bank to the 1st respondent as early as on 01.12.2015 and 30.05.2017. The Vigilance Cell report was forwarded to the petitioner only in August 2021 i.e., 6 years thereafter, meanwhile the petitioner had retired from service on 31.05.2020 itself. Considering that the petitioner has retired from service and she is aged about 62 years and further considering that the 1st respondent has proceeded lethargically in verifying the communal status of the petitioner, we are not inclined to remand the matter to the 1st respondent for fresh verification. In our view an order of remand would only result in further harassment of the petitioner who is 62 years of age. We are of the view that the damocles sword of verification of community certificate should not hang on the petitioner's head post retirement. We therefore set aside the order of the 1st respondent and we further direct the 2nd respondent bank to settle the pension, gratuity, earned leave encashment and other admissible pensionary benefits to the petitioner along with arrears etc.



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

“4. I submit that based on my caste certificate, neither of my two sons 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 and the impugned order dated 28.01.2022 is set aside. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

(J.N.B,J.)

(N.M,J.)

08.03.2024

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Index: Yes/No

Speaking Order:Yes/No



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Neutral Citation:Yes/No
dsn

To

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Represented by its Chairman and Secretary,
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J. NISHA BANU, J.

and

N.MALA, J.

dsn

PREDELIVERY ORDER IN
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ORDER DELIVERED ON



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