



W.P.No.31450 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

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. 31450 of 2022

and

WMP.No. 30902 of 2022

L.Thamburaj

...Petitioner

Vs.

1.The Chairman

Tamilnadu State Level Scrutiny Committee-III
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai,
Secretariat, Chennai-9.

2.The Assistant General Manager

State Bank of India (HR) Section,
Zonal Office, "Kurinju Complex,"
Coimbatore-18.

...Respondents



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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 1st respondent in its Proceedings No.5693/CV-5/2009-12 dated 29.06.2022 and quash the same.

For Petitioner : Mr. V.Vijayashankar

For Respondents : Mr.Stalin Abimanyu

Additional Government Pleader for R-1

Mr.G.Anandakrishnan

for T.S.Gopalan & Co. 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 29.06.2022.

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 19.01.1979 and on the basis of the said community certificate the petitioner joined the 2nd



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respondent bank in the year 1979. After completing 35 years of service, the petitioner superannuated on 30.06.2014 and all the pensionary benefits were sanctioned to the petitioner and paid to him. Earlier, the District Level Vigilance Committee, Erode cancelled the community certificate of the petitioner by order dated 20.08.2000. The appeal filed by the petitioner was also rejected and so the petitioner filed the writ petition in W.P.No. 23325 of 2002. Based on the cancellation orders, the 2nd respondent bank terminated the petitioner from service and the same was challenged in W.P.No.32176 of 2002. Both the writ petitions i.e. W.P.Nos. 23325 and 32176 of 2002 were allowed by orders dated 27.07.2005. The petitioner was thereafter reinstated into service and continued till June 2014 and he also attained superannuation. The State Level Scrutiny Committee long after the petitioner's superannuation forwarded the petitioners caste certificate for verification to the Vigilance Cell, Salem. The Vigilance Cell sent notice to the petitioner for enquiry in 2018, to which the petitioner replied that he was suffering from illhealth and further as he retired 4 years back there was no necessity for verification. The Vigilance Cell inspite of the said reply



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conducted the enquiry and submitted a report to the 1st respondent in August 2019. Two years thereafter, the 1st respondent summoned the petitioner for enquiry on 31.05.2022, the petitioner on receipt of the said notice of enquiry replied on 26.05.2022 informing the 1st respondent that he retired from service 8 years back and since 2nd respondent bank had withdrawn the request for verification, there was no need for further verification. The 1st respondent instead of dropping the proceedings passed the impugned order dated 29.06.2022, cancelling the petitioners caste certificate. The petitioner therefore filed the above writ petition challenging the impugned order dated 29.06.2022.

3. The 1st respondent filed a detailed counter denying all the averments and contentions raised in the petitioner's affidavit apart from reiterating the stand taken in the impugned proceedings. According to the respondent inspite of communications requesting the petitioner to appear on 06.12.2010, 18.12.2010, 27.07.2011 and 23.03.2013, the petitioner was absent for enquiry on the said dates. According to the



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respondents, the Director Tribal Welfare forwarded the report of the Vigilance Cell report to the Government vide communication dated 26.06.2020, wherein he categorically stated that the petitioner refused to receive the copy of the show cause notice. The respondent therefore stated that inspite of ample opportunities given to the petitioner to substantiate his claim for community certificate, the petitioner failed to provide valid evidence and therefore the respondent based on the records, documents and reports filed by the Vigilance Cell and the Revenue Divisional Officer, Mettur passed the impugned order which could not be faulted.

4. The learned counsel for the petitioner submitted that the Vigilance Cell report was not furnished to the petitioner and therefore he had no opportunity to submit his explanation. The learned counsel therefore submitted that there was not only gross violation of principles of natural justice but also violation of procedure set out in G.O (Ms). Nos. 108 dated 12.09.2007 and 106 dated 15.10.2012. The learned counsel further submitted that the contention of the 1st respondent in the counter



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affidavit that the show cause notice issued by the Director of Tribal Welfare was refused by the petitioner was erroneous, because no such notice was ever sent to him nor had he refused to receive the notice. The counsel further submitted that the petitioner produced abundant documents in support of his caste status even before the District Level Vigilance Cell in the year 2001, but the same were not considered by the 1st respondent. The learned counsel therefore submitted that the impugned order was unsustainable and the same deserved to be set aside.

5. The learned Additional Government Pleader appearing for the 1st respondent submitted that the petitioner's contention that he was not given an opportunity is unsustainable, because the Director Tribal Welfare while forwarding the Vigilance Cell report to the Government vide order dated 26.06.2020 had clearly stated that the petitioner refused to receive the copy of the show cause notice, further the petitioner inspite of notices failed to appear for enquiry on 06.12.2010, 18.12.2010, 27.07.2011 and 23.03.2013. The learned counsel therefore submitted that



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ample opportunity was given to the petitioner which he failed to utilise and therefore the impugned order could not be faulted.

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

7. It is seen that the petitioner was issued with a community certificate as belonging to Hindu kondareddis Schedule Tribe community by the Tahsildar, Mettur on 19.01.1979. The petitioner was appointed under the 2nd respondent bank in the year 1979 and after completing 35 years of service, the petitioner retired on 30.06.2014. It is stated that the petitioners pensionary benefits were sanctioned and paid to him. Earlier the petitioners community certificate issued by the Tahsildar was cancelled by the District Level Vigilance Committee vide order dated 20.08.2000 and even appeal preferred against the said order was rejected. Based on the cancellation orders 2nd respondent bank terminated the service of the petitioner. The petitioner therefore filed two writ petitions challenging the cancellation order in W.P.No. 23325 of 2002 and termination order in W.P.No. 32176 of 2002. Both the writ petitions were allowed on 27.07.2005 by this Court and the petitioner



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was reinstated in service. The petitioner continued to serve the 2nd respondent bank till June 2014 when he superannuated. According to the petitioner long after superannuation, the State Level Scrutiny Committee proceeded to verify the petitioners caste certificate by referring the same to the Vigilance Cell, Salem. To the notice issued by the Vigilance Cell in 2018, the petitioner objected stating that he was unwell and further stated that there was no necessity to verify the certificate post retirement. According to the petitioner, the Vigilance Cell submitted a report to the 1st respondent in August 2019 but the copy of the same was not sent to the petitioner calling for his explanation as mandated in G.O (Ms). Nos. 108 and 106 of the Government of Tamil Nadu. The petitioner therefore complains that there was a gross violation principles of natural justice and violation of provisions of the aforesaid G.Os. The respondent contends that the Director Tribal Welfare while forwarding the Vigilance Cell report to the Government stated that the petitioner refused to receive copy of the show cause notice and therefore the contention of the petitioner that he was not served with the show cause notice on the Vigilance Cell report is



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unsustainable. When the petitioner has taken a categorical stand that he was not served with the show cause notice and the Vigilance Cell report was not given to him, it is for the respondents to prove that the notice was served and the petitioner refused to accept it. In the counter affidavit of the 1st respondent as also the impugned order, the respondent only states that the Director Tribal Welfare stated that the petitioner refused to receive copy of the show cause notice, but, nowhere it was stated in what mode it was sent and refused. In the absence of proof of service of notice by registered post, as mandated in G.O.(Ms).No. 106 dated 15.10.2012, the respondents contention cannot be accepted. It is trite in law that if the rule requires a thing to be done in a particular way then it should be done only 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 said G.O.(Ms).No. 106 dated 15.10.2012 mandates that the show cause notice along with the report of the Vigilance Cell has to be sent by registered post with acknowledgment due or through the head of the concerned institution in which the candidate is employed or studied. In the absence



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of any document to prove the service of notice, mere statement of the Director Tribal Welfare in her letter addressed to the Government about service cannot be taken as gospel truth. We therefore find that there is gross violation of principles of natural justice as no opportunity was given to the petitioner to object to the Vigilance report. We also find that the petitioner was not served with the copy of the Vigilance Cell report as mandated by G.O (Ms). No. 106 dated 15.10.2012 of the Government of Tamil Nadu. In this regard we refer to 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, following paragraph in this regard is relevant which is 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."



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8. In the light of the above facts and the law laidown by the Hon'ble Supreme Court, we are of the view that the impugned order cannot be sustained and hence the same is set aside.

9. The next question would be whether the matter has to be remanded to the 1st respondent for fresh enquiry. We find that the petitioner is 69 years of age and he superannuated from service as early as in June 2014. It is also the petitioners case that all pensionary benefits have been sanctioned and paid to him and the same is not disputed by the respondents. As stated by the Hon'ble Supreme Court in the aforesaid Judgment, we are of the view that by remanding the matter to the 1st respondent we would only further harass the petitioner who is now 69 years old. We are of the view that the Damocles sword of verification of caste certificate cannot be kept hanging over the petitioners head eternally. We therefore abstain from remanding the matter to the 1st respondent for fresh consideration.



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10. It is seen that the petitioner has filed an affidavit on 16.12.2023

wherein in paragraph '4' the petitioner has stated as follows:

"4. I submit that based on my caste certificate, neither my daughters nor 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 statement made in the sworn affidavit by the petitioner.

In view of the above discussions, the writ petition is allowed. 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

Neutral Citation: Yes/No

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To

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Tamilnadu State Level Scrutiny Committee-III
Adi Dravidar and Tribal Welfare Department,
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2.The Assistant General Manager
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J. NISHA BANU, J.

and

N.MALA, J.

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PREDELIVERY ORDER IN
W.P.No. 31450 of 2022

ORDER DELIVERED ON
08.03.2024

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