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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.11.2023
Pronounced on	30.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.30374 of 2023
and
W.M.P.Nos.29974 & 29976 of 2023

P.I.Ashokaramasekar

...Petitioner

Vs.

1.The Chairman (PHB)-cum-
 Secretary (Housing),
 Chief Secretariat,
 Puducherry – 605 001.

2.The Secretary,
 Puducherry Housing Board,
 Puducherry.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, to call for the records of the first respondent with No.012/PHB/Estt/E3/2021/1325 dated 09.10.2023 issued by the first respondent and with No.012/PHB/Estt/E3/2021/1325 dated 09.10.2023 issued by the first respondent and with No.012/PHB/Estt/E3/2021/1326 dated 10.10.2023 issued by the second



W.P.No.30374 of 2023

respondent, quash the same and consequently, to direct the respondents to reinstate the petitioner into service with all other consequential benefits.

For Petitioner : Mr.V.Prakash, Sr. Counsel
for Mr.G.Shanmugam

For 1st Respondent : Mr.R.Sreedhar,
Additional Government Pleader (Pondy)

For 2nd Respondent : Mr.T.P.Manoharan, Sr. Counsel
for Mr.T.M.Naveen

ORDER

Heard Mr.V.Prakash, learned senior counsel appearing for the petitioner, Mr.R.Sreedhar, learned Additional Government Pleader for the 1st respondent and Mr.T.P.Manoharan, learned senior counsel for the 2nd respondent.

2. The petitioner herein, who is residing at Kalmedupet District in the Union Territory of Puducherry, belongs to Adi Dravidar community, which is classified as Scheduled Caste community under the Constitution (Pondicherry) Scheduled Caste Order, 1964. The petitioner was appointed as a Technical Assistant on daily rated basis at Puducherry Housing Board



W.P.No.30374 of 2023

(hereinafter referred to as 'the Board') in the year 1988. His services were regularised in the post of Junior Engineer (Civil) with effect from 11.04.1991, through the orders of the Board dated 18.02.1992, which was subsequently revised on 22.01.1996. The declaration of confirmation in the said post was made on 29.02.1996. On 11.01.2002, he was promoted to the post of Assistant Engineer (Civil), through G.O.Ms.No.11/2005/Wel(SCW II), Chief Secretariat (Welfare), dated 05.08.2005. The reservation benefits in promotion and employment to Group-C and Group-D posts were extended to the Scheduled Caste origins of the Union Territory of Puducherry. When the petitioner's candidature came up for consideration for promotion to the post of Executive Engineer, the Board had raised a doubt with regard to his nativity, claiming that he was a born native of Poothurai Village in Vanur Taluk of Villupuram District, Tamil Nadu and therefore, called upon him to produce a fresh community certificate for consideration of his promotion. In the said order, the community certificate produced by the petitioner in the year 1992 was upheld, since there was no discrimination of status of origin and migrant prior to the year 2000. In the meantime, his ad hoc appointment in the post of Assistant Engineer (Civil) was regularised with effect from 06.12.2003.



W.P.No.30374 of 2023

WEB COPY

3. When the petitioner's son P.A.Hemash had applied for a community certificate before the Tahsildar, Villianur, Puducherry, a report came to be submitted before the concerned Tahsildar stating that during the enquiry, it was found that the father of the applicant/writ petitioner and his grandfather are natives of Poothurai Village, Tindivanam Taluk, Villupuram District, Tamil Nadu and held that the applicant had failed to prove that he belongs to Scheduled Caste community under the Constitution (Pondicherry) Scheduled Caste Order, 1964 and thereby recommended for cancellation of the community certificate issued to the petitioner and his son in the year 1992 and 1999 respectively. The District Collector, in his order dated 24.07.2014, had directed the certificates of the petitioner and his son, issued prior to the year 2000, to be cancelled with a consequential direction to the Tahsildar of Villianur to issue a Scheduled Caste migrant certificate to them.

4. In this background, when the petitioner's son had applied for a community certificate before the authorities in Villupuram District, Tamil Nadu, the Village Administrative Officer of Vanur Taluk, Villupuram District, had submitted a report stating the petitioner's father had migrated



W.P.No.30374 of 2023

and settled down in Puducherry about 60 years back and on enquiry, it was revealed that the petitioner, his father and his son belong to Adi Dravidar community and therefore, instructed him to obtain a community certificate in his native place of Puducherry. Further, on the strength of cancellation of the community certificate of the petitioner, the Board, through the impugned order dated 09.10.2023, had observed that as per Clauses 3(iv) and 5 of his initial appointment dated 18.02.1992, the service of the petitioner is liable to be discharged, if there is suppression of any material facts, or if the declaration or information furnished by the petitioner is found to be false, he is liable to be dismissed from service. By placing reliance on these clauses, the memorandum dated 18.02.1992, appointing him initially in the post of Junior Engineer, has been cancelled.

5. The learned senior counsels on either side placed arguments, attacking and defending the impugned order.

6. According to the learned senior counsel for the petitioner, the clauses relied upon in the impugned order do not apply to the petitioner, since the community certificate produced by him prior to the year 2000 is



valid and there was no discrimination between a migrant and an original resident belonging to Scheduled Caste community. He further submitted that when the appointment has been validly made and the community certificate produced by him was also legally sustainable, the same would not amount to false declaration or misinformation and therefore, the very reason assigned in the impugned order cannot be sustained.

7. Per contra, the learned senior counsel appearing for the Board placed reliance on the averments in the counter affidavit and submitted that the petitioner, who is a migrant from Tamil Nadu, cannot be deemed to belong to Scheduled Caste category in the Union Territory of Puducherry for the purpose of employment and education. Since the rule of reservation has been made applicable for promotions and appointments and the petitioner having been appointed through the rule of reservation, cannot continue in the services, since his community service itself has been cancelled.

8. The arguments of both the learned senior counsels were heard and orders came to be reserved on 02.11.2023. Before pronouncing orders, the learned senior counsel for the petitioner had mentioned before this Court to



W.P.No.30374 of 2023

make additional submissions and accordingly, the Writ Petition was listed on 09.11.2023. On this day, the learned senior counsel produced a copy of the community certificate issued by the Tahsildar of Vanur dated 06.11.2023, certifying that the petitioner belongs to Scheduled Caste community under the Constitution (Scheduled Caste) (Union Territories) Order, 1951. The certificate also states that the petitioner's family ordinarily resides in the Village of Kalmedupet in the Union Territory of Puducherry. In view of this new community certificate having been issued on 06.11.2023, the learned senior counsel for the petitioner submitted that the very basis on which the impugned order, cancelling his appointment, was passed, has become redundant and therefore, the order requires to be set aside.

9. Per contra, the learned senior counsel appearing on behalf of the Board submitted that since this Court had already adjudicated the matter finally, the petitioner is disentitled from bringing any new evidence and in support of such a submission, he placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Omprakash Verma and others Vs. State of Andhra Pradesh and others*** reported in ***(2010) 13 SCC 158***.



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10. The only ground on which the impugned order, cancelling the petitioner's original appointment dated 18.02.1992, was passed, was that the District Collector had already cancelled the community certificate of the petitioner on 13.06.2018 and therefore, his original appointment made on 18.02.1992 was *ab initio non-est* in the eye of law.

11. When the petitioner had originally joined the services of the Board in the year 1992, he had produced his caste certificates dated 27.05.1988 and 17.02.1992, certifying that he belongs to Adi Dravidar community, which is recognised as a Scheduled Caste under the Constitution (Pondicherry) Scheduled Caste Order, 1964. This fact is not under dispute. When the Board has asked for certain clarifications from the Deputy Collector (Revenue) of Government of Puducherry on the community certificate produced by the petitioner, it was clarified that prior to the year 2000, the Government department in the Union Territory of Puducherry had filled up the Scheduled Caste quota for various posts by persons belonging to Scheduled Castes irrespective of origin/migrant states and that there was no discrimination about the status of origin or migrant and the community certificates were



W.P.No.30374 of 2023

issued to all the Scheduled Caste persons in one format. After the Hon'ble

Supreme Court and the Government of India had clarified in the year 2000

that the reservation benefits for Scheduled Caste quota, shall be made eligible

to the persons belonging to Scheduled Caste community from Puducherry

origin only and the migrant Scheduled Caste persons shall get such benefits

only from the state of their origin, the clarifications came to be adopted by

the certificate issuing authorities of Puducherry in the year 2000. It was also

stated by the Deputy Collector (Revenue) that the allegation regarding the

genuineness or validity of the community certificate produced by the

petitioner in the year 1992 is not justifiable, since the community of the

petitioner was not questioned. Thus, the initial entry into service by the

petitioner on the strength of the community certificate produced by him

would be perfectly valid. It is only after the Collector had cancelled the

petitioner's community certificate on 24.07.2014, the Board had chosen to

place reliance on Clauses 3(iv) and 5, claiming that the petitioner had given

false information and suppressed material facts that he belongs to Scheduled

Caste based on the certificate produced by him and accordingly had cancelled

his initial appointment through the impugned order.



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12. The very reliance on these clauses of the appointment order is again vitiated, since there was neither any mis-declaration or wrongful information furnished by the petitioner at the time of appointment and also since his claim as a person belonging to Scheduled Caste community was supported by a community certificate, which was prior to 2000 and was legally valid.

13. Insofar as the cancellation of the community certificate is concerned, it is seen that when the petitioner's son Hamash had filed Review Application No.133 of 2022 in W.P.No.8813 of 2022, an Hon'ble Division Bench of this Court, while passing orders on 27.02.2023, had recorded the submissions of both the petitioner's son, as well as the Government Pleader and directed the Revenue Authorities to consider his application seeking for issuance of community certificate in the following manner:-

“5. The petitioner though claims that his forefathers hail from Puducherry, the Revenue Authorities of Puducherry state that the petitioner's grandfather came to Puducherry only in 1967. But, the Revenue Authorities of Vanur Taluk state that the



petitioner's grandfather returned to Puducherry in 1960.

6. Learned State Government Pleader submitted that if the petitioner makes an application, the Tahsildar of Vanur Taluk will consider the same and issue suitable direction after conducting enquiry, within two weeks.

7. In view of the above, the Tahsildar of Vanur Taluk is suo motu impleaded as the seventh respondent in this application. The petitioner is directed to make an application to the Tahsildar of Vanur Taluk, along with necessary documents, requesting to issue community certificate, within three days from the date of receipt of a copy of this order. On receipt of such application, the Tahsildar of Vanur Taluk is directed to hold an enquiry, pass an order on merits and issue a certificate to that effect within two weeks thereafter.”

14. In view of the above directions, a caste certificate came to be issued by the Tahsildar of Vanur on 06.11.2023, certifying that the petitioner belongs to Hindu Adi Dravidar caste, which is recognised as Scheduled Caste under the Constitution (Scheduled Caste) (Union Territories) Order, 1951 and also certified that the petitioner's family ordinarily resides at Kalmedupet in the Union Territory of Puducherry.



W.P.No.30374 of 2023

WEB COPY

15. The only objection raised by the respondents with regard to the present certificate issued is that the adjudication of the case has already ended and therefore, the petitioner cannot now produce this certificate. The judgment relied upon by the respondents on this aspect in the case of ***Omprakash Verma (supra)*** relates only to matters that have been conclusively and finally adjudicated, whereby the parties cannot be permitted to bring in fresh evidence for consideration. The submission does not weigh logic or reason, since no final orders were passed by me in the matter, when the fresh community certificate dated 06.11.2023 was permitted to be filed before the Court.

16. In a pending litigation, it is always the prerogative of the Court to receive any relevant document or record, which are material to the facts involved in the case for a proper adjudication. Unless and until the final orders are passed, this Court will always be at liberty to accept such documents and therefore, the introduction of this document, which incidentally was issued only after this Court reserved orders on 02.11.2023 and reopened the same on 09.11.2023, cannot be said to have been presented



W.P.No.30374 of 2023

after conclusion of the proceedings.

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17. In the light of the above observations, the other reason cited in the impugned order that the petitioner's community certificate has been cancelled, has now been set right, when a proper community certificate has been issued pursuant to the directions of this Court passed in the case of the petitioner's son.

18. Thus, when the petitioner has produced a valid community certificate, when he had initially entered into service and is also now in possession of a valid community certificate dated 06.11.2023, certifying him to belong to Scheduled Caste community, the reasoning adopted in the impugned order, for the purpose of cancelling the petitioner's initial appointment made about 30 years back, cannot be legally sustained.

19. For all the foregoing reasons, the impugned orders dated 09.10.2023 issued by the first respondent and 10.10.2023 issued by the second respondent are quashed. Consequently, there shall be a direction to the respondents to forthwith reinstate the petitioner back into service,



W.P.No.30374 of 2023

together with continuity of service and all other service and monetary benefits. Such orders shall be passed atleast within a period of two (2) weeks from the date of receipt of a copy of this order.

20. In the result, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

30.01.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk



W.P.No.30374 of 2023

To
WEB COPY

- 1.The Chairman (PHB)-cum-Secretary (Housing),
Chief Secretariat,
Puducherry – 605 001.
- 2.The Secretary,
Puducherry Housing Board,
Puducherry.



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W.P.No.30374 of 2023

M.S.RAMESH,J.

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**PRE-DELIVERY ORDER MADE IN
W.P.No.30374 of 2023**

30.01.2024