

(2014) 12 KAR CK 0225

In the Karnataka High Court

Case No : Writ Petition No. 46918/2013 (S-RES)

D. Anappa

APPELLANT

Vs

Oriental Insurance Company Limited

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0225

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M. Naga Prasanna, Advocate for the Appellant; E.S. Indires, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner obtained a Certificate Dated: 31.08.1978 from the Tahsildar, Bangalore North Taluk, declaring him to belong to "Jenu Kuruba", a Scheduled Tribe, Annexure-A, where afterwards, responded to a Notification inviting application for filling the post of "Assistant", reserved for S.T. on 16.4.1979, following which respondent Oriental Fire and General Insurance Company Limited, accepted the said Certificate, and appointed the petitioner as "Assistant[T]" by Order dated 15.12.1979 Annexure-B, which was confirmed by correspondence dated 1.4.1980 Annexure-C of the respondent.

2. The State Government by Order SWD.713.SAD.93 Bangalore, dated 11.3.2002 Annexure-D, partially modified the orders dated 23.1.1986 and 2.9.1986 where under the benefits of reservation in admission to Educational Institutions and Educational Concessions extended to Parivara, Talawara, Maaleru, Kuruba Communities and Besta and Koli Communities ceased and all persons of the said Communities who had obtained "Scheduled Tribe" caste certificate, were required to surrender them immediately to the issuing authority for cancellation, and would not be liable for penal action provided they surrender the certificates and the issuing authority cancels such certificates. Clause-4 of the said order states that such of those persons belonging to those Communities who obtained employment under Scheduled Tribe quota as Nayaka, Maaleru, Kadu Kuruba,

Jenu Kuruba, Gond, Rajgond, Kolidhor and Tokrikoli be treated as appointed under "general merit" category with effect from the date of the order and not eligible for promotion or benefits as "Scheduled Tribe" in future though could claim benefits as backward class to which they belong as per the existing Government Order.

3. Petitioner is said to have surrendered the caste certificate Annexure-A and sought for the benefit of Clause-4 of the Government Order dated 11.3.2002 Annexure-D.

4. Petitioner is said to have attained the age of superannuation on 30.1.2012 where afterwards , petitioner was not extended the retirement benefits. Petitioner, when placed under suspension, pending enquiry for furnishing a false caste certificate led to WP Nos. 2888-2890/2012, whence a learned Single Judge by order dated 24.5.2012 Annexure-J, disposed of the petitions, keeping open all contentions advanced by the petitioner in the light of the fact that a special Committee was constituted by Government Order dated 6.5.2009 to enquire into the caste certificate issued to the petitioner, and similarly placed persons.

5. On 12.6.2012, petitioner is said to have made a representation Annexure-K requesting for payment of all retirement benefits, which when not acceded to, WP No. 37905/2012 was filed. A learned Single Judge by Order dated 10.10.2012 Annexure-L, recorded the submission of learned Counsel for the respondent - Oriental Insurance Company Limited and directed consideration of petitioner's request for benefits if there are no other legal impediments. On the allegation that the Insurance Company did not comply with that order, CCC No. 549/2013, was filed whence a division Bench observing that the enquiring over the fake caste certificate was pending adjudication, before the S.T. Directorate, Krishi Bhavan and Additional Director General of Police, Directorate of Civil Rights Enforcement, Bangalore for short "ADGP", held that there was no cause for contempt and accordingly dropped the proceeding. There afterwards , respondent/Insurance Company by letter dated 12.12.2012 Annexure-N, communicated to the petitioner stating that the adjudication before the aforesaid two Authorities were pending and therefore the consideration of the claim of the petitioner was subjudice. Hence this petition.

6. Petition is opposed by filing statement of objections, inter alia, contending that in the light of the pendency of the proceeding before the Committee as well as the ADGP, Directorate of Civil Rights Enforcement, no action can be initiated for payment of retirement benefits to the petitioner. In addition, it is pointed out that when the very same submission was made before the Division Bench in CCC No. 549/2013 was accepted by Order dated 27.6.2013 Annexure-R6.

7. Learned Counsel for the petitioner reiterates the averments set out in the memorandum of writ petition while not disputing the fact that the contempt petition was rejected on the premise that proceeding relating to alleged fake certificate obtained by the petitioner was pending before the specially constituted

Committee as well as the ADGP.

8. It is the assertion of learned Counsel that Clause-4 of the Government Order Annexure-D, squarely applies to the facts of the case and petitioner having voluntarily surrendered the caste certificate declaring him to belong to "Jenu Kuruba" Community, Annexure-A, the proceeding before the Special Committee as well as before the ADGP, would be of no consequence, in the matter of release of terminal benefits to the petitioner.

9. Per contra, learned Counsel for the respondent/Insurance Company submitted that the petitioner is a Central Government Employee, having regard to the provisions of the General Insurance Business [Nationalization] Act, 1972, indicating that all the shares of the respondent/Company are owned by the Central Government and that the control of the business management and affairs of the respondent/Insurance Company is by the Central Government.

10. At the outset, it must be noticed that such a contention is not advanced in the Statement of Objections or in any of the pleadings in the earlier writ petitions or in the contempt proceeding. Moreover, there is not an iota of evidence on record to establish that petitioner was employed by the Central Government since the order of appointment Annexure-B is based upon a notification inviting applications by the respondent/Insurance Company and not the Central Government. The appointment order Annexure-B is signed by the Manager of the Insurance Company and not by the Central Government. Therefore, it is too far fetched to assert that the petitioner is a Central Government employee.

11. The submission that the Division Bench of this Court in "Smt. Shobha Lakshmi v. Divisional Commissioner and Others" DD 31.7.2012 in W.A. No. 530/2007, held that the order Annexure-"D" of the State Government cannot be extended to Central Government employees in the light of the decision of the Apex Court in Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, , and therefore petitioner being a Central Government employee, the benefits of the Government Order are not available to the petitioner, cannot be countenanced and must necessarily fail.

12. There is force in the submission of learned Counsel for the respondent that the proceeding before the Special Committee constituted for the purpose of enquiring into the alleged fake certificate submitted by the petitioner has not reached its conclusion. According to learned Counsel for the petitioner the order appointing the Special Committee is withdrawn and if that is so, it is for the State Government to constitute a separate Committee, since all cases are said to have been transferred to the Social Welfare Department, by order dated 22.5.2013. Hence petitioner must await the decision in his case.

13. As far as proceeding before the ADGP, learned Counsel for the respondent submits that by correspondence dated 24.7.2014, not part of the paper book, since furnished to the respondent after the filing of the statement of objections, it is said, the proceeding is culminated and ADGP has directed not to disburse

any monetary benefits to the petitioner.

14. It is needless to go into the question as to whether ADGP, has the jurisdiction to direct the respondent not to disburse the terminal benefits to the petitioner since Rule 7-A of the Karnataka SC/ST and Other BC [Reservation of appointments etc.,] Rules, 1992, does not invest a jurisdiction in the ADGP to direct the employer not to make payment of any dues, though what is invested in the ADGP, is a jurisdiction to prosecute the person who has obtained a false caste certificate after the Committee decides that the caste certificate is false. Therefore, the direction of the ADGP in his letter dated 24.7.2014 is inconsequential.

15. If regard is had to the fact that petitioner surrendered the certificate Annexure-A declaring him to belong to "Jenu Kuruba", then that voluntary action establishes a fact that he did not belong to "Jenu Kuruba" Community. Although in the letter of the ADGP noticed supra, it is stated that petitioner claimed to belong to "Halu Mathada Kuruba", the question as to whether petitioner belonged to "Halu Mathada Kuruba" or "Jenu Kuruba", is a matter pending adjudication before the Social Welfare Department and hence parties must await that decision which would perhaps throw light as to whether or not Clause-4 of the Government Order Annexure-D is or is not applicable.

16. In that view of the matter, no exception can be taken to the communication Annexure-N and the petitioner must await the decision of the Social Welfare Department over the adjudication of false caste certificate.

17. Petition is disposed of.