

(2017) 08 MAD CK 0025

In the Madras High Court

Case No : 19151 of 2017 & W M P Nos 20654 & 22589 of 2017

D.Jayam

APPELLANT

Vs

The District Collector, Kanchipuram District, & Anr.

RESPONDENT

Date of Decision : 24-08-2017

Acts Referred:

Citation : (2017) 08 MAD CK 0025

Hon'ble Judges : M.Venugopal, P.D.Audikesavalu

Bench : DIVISION BENCH

Advocate : M.Venugopal, P.D.Audikesavalu

Final Decision : Allowed

Judgement

1. The Petitioner was appointed as a Typist on 09.11.1995 in the Revenue Department of the District Collectorate, Kancheepuram against a

vacancy exclusively reserved for Scheduled Tribes on the strength of the Community Certificates, dated 14.09.1978 and 27.10.1988 issued by the

Tahsildar, Mettur and the Revenue Divisional Officer, Mettur Dam, respectively, pursuant to the Notification for the various posts of Group-IV

Services during the year 1993-94 by the second respondent / Tamil Nadu Public Service Commission (in short "TNPSC"). The aforesaid

Community Certificates of the Petitioner had been referred for verification to the District Collector, Salem. The Sub Collector, Mettur, by letter

dated 24.02.2017 informed the second respondent-TNPSC that the signature of the Revenue Divisional Officer in the Community Certificate

dated 27.10.1988 that had been produced by the Petitioner had been forged, that no such Scheduled Tribe Community Certificate bearing

No.388999 had been issued to anyone and that the said Certificate was bogus

and not genuine. In pursuance thereof, the second respondent-

TNPSC issued a notice vide Memorandum No.6159/PSD-C1/1990, dated 19.07.2017 to the Petitioner to Show Cause as to why she should not

be debarred permanently from appearing for any of the Commission's Examinations and Selections besides cancellation of her application in the

post of Typist included in the Group-IV Services. In response thereto, the Petitioner submitted her explanation dated 05.06.2017. The TNPSC /

second respondent, by Proceedings bearing Memorandum No.6159/PSD-C1/1990, dated 19.07.2017 held that the reply given by way of

explanation was not satisfactory and that she had been debarred permanently with effect from 19.07.2017 from appearing for any of its

examinations and selections besides rejecting her application for the post of Group-IV Services and that selection to the post had been cancelled.

In that backdrop, the Petitioner filed the present Writ Petition with the following prayer:-

For issuance of a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's Order made in

Memorandum No.6159/PSD-C1/1990 dated 19.07.2017, to quash the same and to consequently direct the respondents to extend

all accrued service benefits.

2. When the Writ Petition came up for admission before the learned Single Judge of this Court on 26.07.2017, on finding that the matter relating to

the Community Certificate of Scheduled Tribes, the case was directed to be listed before the appropriate Division Bench of this Court after

obtaining necessary Orders from the Hon'ble Chief Justice. The matter then came to be listed before this Court on 07.08.2017, when

Mr.Elumalai, Government Advocate and Ms.C.N.G.Niraimathi, learned Standing Counsel took notice on behalf of the first and second

respondents respectively and on their request the matter was adjourned to 16.08.2017 for filing counters of the respondents. This Court also

granted an interim order of stay of the impugned order dated 19.07.2017 till 16.08.2017 on that hearing.

3. In the meanwhile, by proceedings bearing Rc. No.14384/2000 A4, dated 02.08.2017, the District Collector, Kancheepuram, acting upon the

aforsaid Communication dated 19.07.2017 of the TNPSC/second respondent

terminated the Petitioner from the post of Typist with immediate effect.

4. During the hearing on 16.08.2017, it was informed by the learned counsel for the Petitioner that the Petition bearing W.M.P.No.22588 of 2017

had been made in this Writ Petition by the Petitioner for amending the prayer in the Writ Petition to the following effect:-

For issuance of a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's Order made in

Memorandum No.6159/PSD-C1/1990 dated 19.07.2017 and that of the consequential order of the first respondent made in

Rc.No.14384/2000 A4 dated 02.08.2017 received on 07.08.2017, to quash the same and to consequently direct the respondents

to extend all accrued service benefits.

The said Petition for amendment filed by the Petitioner was ordered by this Court on 17.08.2017.

5. Heard Mr.L.Chandrakumar, learned counsel appearing for the Petitioner; Mr.E.Elumalai, learned Government Advocate appearing on behalf of

the first respondent and Mr.C.Manishankar, learned Additional Advocate General assisted by Ms.C.N.G.Niraimathi, learned counsel appearing

for the second respondent.

6. The pivotal ground of attack of the impugned orders made by the learned counsel for the Petitioner is that the second respondent- TNPSC

grossly erred in acting upon the Communication dated 24.02.2017 received from the Sub Collector, Mettur informing that the Scheduled Tribe

Community Certificates produced by the Petitioner were bogus and not genuine, without having regard to the fact that the State Level Scrutiny

Committee constituted by the Government of Tamil Nadu in terms of G.O.(2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated

12.9.2007, was alone competent to scrutinise the genuineness of Scheduled Tribes Certificates in terms of the directions issued by the Hon''ble

Supreme Court of India in Kumari Madhuri Patil and another Vs. Additional Commissioner [(1994) 6 SCC 241] as ruled by the Full Bench of this

Court in Tamil Nadu Public Service Commission Vs. R.Manikandan [(2011) 5 CTC 1].

7. The learned Additional Advocate General made a plausible distinction between

correctness of claims of Scheduled Tribe status and genuineness

of Scheduled Tribe Certificates, and contended that the verification by the State Level Scrutiny Committee is confined only in respect of

correctness of claims of Scheduled Tribe status and that the TNPSC is not required to refer the matter to the State Level Scrutiny Committee for

verifying the genuineness of Scheduled Tribe Community Certificates which involves cases where such bogus certificates have been procured

through forgery and the like, which are void on the face of it and cannot be acted upon.

8. The question whether TNPSC could verify the genuineness of the Community Certificates for selection or their power to test the correctness of

the information given in the Certificates is limited only to see whether the service are true or not, had been referred for consideration to the Full

Bench of this Court in Tamil Nadu Public Service Commission Vs. R.Manikandan and others [2011 (5) CTC 1] and had been answered as as

follows:-

(A) The scrutiny of the genuineness of the Scheduled Caste certificates can be made only by District Level Vigilance Committee

constituted by the State Government in terms of G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated

12.9.2007;

(B) The scrutiny of the genuineness of the Scheduled Tribe Certificates can be made only by State Level Scrutiny Committee

constituted by the State Government in terms of G.O. (2D) No. 108, Adi-Dravidar and Tribal Welfare Department, dated

12.9.2007;

(C) Such scrutiny of certificates, be it Scheduled Caste or Scheduled Tribe, cannot be made by the Tamil Nadu Public Service

Commission;

(D) For the purpose of processing the Application and allowing a candidate to take part in the written examination and the

consequential oral examination, the Service Commission would be entitled to verify as to whether the Candidate has produced a

Caste Verification Certificate obtained from the respective Committees and in the event such certificate is produced, the selection of

the candidate cannot be withheld and the name should be forwarded to the Appointing Authority for making appointments;

(E) In the event a candidate does not produce such a Caste Verification Certificate and in the event he is selected, his name cannot

be withheld and can be forwarded for appointment with a clear indication that the selection is subject to the verification of the

Community Certificate;

(F) In terms of paragraphs 10 & 15 of the directions of the Apex Court in Kumari Madhuri Patil's case, which we have extracted, a

candidate who is selected and appointed subject to verification of the Community Certificate, shall not claim any benefit of such

selection and in case if the certificate is found to be false, the candidate should consequently lose his employment.

In the teeth of the aforesaid authoritative pronouncement holding the field, we are of the considered view that there is no scope for making any

such subtle distinction between correctness of claim and genuineness of certificate for the purpose of verification of Scheduled Tribe status by the

State Level Scrutiny Committee as sought to be projected.

9. Even when the genuineness of a caste certificate is found to be false, it would still be the obligation of the authority examining the same to

incidentally determine the actual caste status of the applicant in order to avoid multiplicity of proceedings. As such, the recognition of such

dichotomy suggested, if accepted, is fraught with practical difficulties as it is likely to lead to undesirable consequences of causing delay in the

verification process defeating the avowed object of the time bound and cost effective procedure devised for ensuring that the achievement of the

constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes / Scheduled Tribes, are not usurped by

unscrupulous persons. Moreover, from a combined reading of the directions issued by the Hon''ble Supreme Court of India in Kumari Madhuri

Patil and another Vs. Additional Commissioner [(1994) 6 SCC 241], particularly Clauses 3, 10 and 15 thereof, to expeditiously complete the

process of verification of Caste Certificate, it is discerned that a Caste Certificate is required to be verified by the State Level Scrutiny Committee

even before the selected candidate is appointed to the post and it is only by way

of exception when the last date of appointment is getting expired and there is delay in finalizing the proceedings for verification of the Caste Certificate in the Scrutiny Committee that the selected candidate could be permitted to join duty on duly swearing an affidavit before the Competent Officer to the effect that the appointment is only provisional and subject to the enquiry by the Scrutiny Committee. In other words, when a Caste Certificate apparently issued by the Competent Authority is produced by the candidate for the purpose of appointment to a post exclusively reserved for Scheduled Tribes, the verification of that Caste Certificate, whether in respect of the correctness of the claim or genuineness of that Certificate itself, has to be necessarily made only by the State Level Scrutiny Committee. Hence, we have no hesitation to hold that such claims relating to genuineness of Scheduled Tribe Certificates including questions as to whether the same had been forged would have to be determined by the State Level Scrutiny Committee in terms of the relevant Government Orders. Resultantly, we are of the considered view that the TNPSC / second respondent totally erred in straight away acting upon the communication from the Sub Collector, Mettur to cancel the appointment of the Petitioner and instead, ought to have referred the Scheduled Tribe Certificates of the Petitioner to the State Level Scrutiny Committee for verification and awaited its result before taking such decision.

10. It is submitted by the learned counsel appearing for the Petitioner that though the first respondent has issued a consequential proceeding order bearing Rc.No.14384/2000 A4, dated 02.08.2017, terminating the Petitioner, who was working temporarily, with immediate effect, the same had been actually served on her only on 07.08.2017 after this Court granted an interim order staying the order dated 19.07.2017 passed by the second respondent and as such, the Petitioner should be treated as having been allowed to continue in service. Per contra, the learned Government Advocate appearing on behalf of the first respondent has brought to our notice that the order dated 02.08.2017 issued by the first respondent had been despatched to the Petitioner by Registered Post on 03.08.2017 itself, well before the interim order came to be passed on 07.08.2017.

11. In *State of Punjab v. Khemi Ram* [AIR 1970 SC 214] the Hon''ble Supreme Court of India answered the question whether the communicating

the order means its actual receipt by the concerned Government Servant, as follows:-

17. ... It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be

essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is

issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and

modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would

be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the

concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it

difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes

effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order

by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and

despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given

by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat

its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so

provides. ...

Applying the aforesaid legal principles to the facts of the instant case, we have to come to the inescapable conclusion that the order dated

02.08.2017 issued by the first respondent terminating the Petitioner was communicated to the Petitioner on 03.08.2017, when it was despatched

to her residential address by Registered Post, irrespective of the fact that the Petitioner actually received the same in person only on 07.08.2017.

12. In *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association* [(1992) 3 SCC 1], the Hon"ble Supreme Court of India

considered the effect of an interim order staying the operation of the order under challenge and held as follows:-

""10. ... distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in

the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an

order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the

date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. ...

Inasmuch as it has been held that the order dated 02.08.2017 issued by the first respondent terminating the Petitioner was communicated to her on

03.08.2017 itself, it cannot be accepted that the Petitioner can claim that the interim order dated 07.08.2017 passed by this Court in this Writ

Petition would entitle the Petitioner to be treated as having continued her in service despite its issuance.

13. It is next urged that the Petitioner is entitled to automatic reinstatement in service when the order dated 19.07.2017 passed by the second

respondent / TNPSC gets set aside, on the strength of the observations of the Hon"ble Supreme Court of India in R.Kandasamy v. Chief

Engineer, Madras Port Trust [(1997) 7 SCC 505], to the effect that a Community Certificate issued to a Scheduled Tribe candidate by the

Tahsildar prior to 11.11.1989 is good and valid for all purposes so long as a such Certificate is not cancelled and that the Authorities cannot

decline to take that into consideration. We are unable to accede to that submission in the light of the dictum laid down by the Hon"ble Supreme

Court of India in Ambica Quarry Works v. State of Gujarat and others [AIR 1987 SC 1073] that the ratio of any decision must be understood in

the background of the facts of that case and that a case is only an authority for what is actually decides and not what logically follows from it. The

aforesaid observations in R.Kandasamy v. Chief Engineer, Madras Port Trust [(1997) 7 SCC 505] were made in the context of the employer

insisting upon production of a fresh Community Certificate from the Revenue Divisional Officer after 11.11.1989 for continuance of the

employment of the Petitioner in that case and a reading of that decision indicates that unlike the instant case, the question of verification of the

Community Certificate was not the matter in issue therein, as evident from the following clarification made at the end of that judgment:-

8. We clarify that we have only dealt with the legal aspect of the matter and have not pronounced upon the genuineness and the

correctness of the Community Certificate for which if there is any doubt (though none appear to have been raised in the High Court

and none was projected before us either) the respondent shall have to hold a proper enquiry but till that certificate is not cancelled,

the certificate shall be treated as a valid certificate issued by the competent authority.

14. In the present case, there exists a serious dispute regarding the issuance of the Scheduled Tribe Community Certificate itself by the Revenue

Divisional Officer, which was the basis for the Petitioner to be appointed to a post against a vacancy exclusively reserved for persons belonging to

Scheduled Tribe. Further, as already pointed out a combined reading of the directions, particularly Clauses 3, 10 and 15 therein, issued in Kumari

Madhuri Patil and another Vs. Additional Commissioner [(1994) 6 SCC 241], contemplate that the process of verification of Community

Certificate should be ordinarily completed before appointment and only when there is delay in finalising those proceedings, the candidate could be

provisionally permitted to join duty subject to swearing an affidavit of undertaking to that effect. Inasmuch as the appointment of the Petitioner has

taken place after 02.09.1994 when the regime under the directions issued in Kumari Madhuri Patil and another Vs. Additional Commissioner

[(1994) 6 SCC 241], have come into force, it is rather a fortuitous circumstance that the petitioner was permitted to join duty before her

Scheduled Tribe Community status had been verified, which cannot be perpetuated. That apart in Director of Tribal Welfare Vs. Laveti Giri [AIR

1995 SC 1506] it has been categorically held that the burden of proof of social status is always on the person who profess it to seek constitutional

socio-economic advantages and it is no part of the duty of the State to disprove or otherwise. Having regard to these facts and circumstances of

the case in hand, we are of the considered view that it would be neither prudent nor in the interests of justice to permit the Petitioner to rejoin the

duty till the verification of Scheduled Tribe Community Certificate is completed by the State Level Scrutiny Committee. However, in order to

balance equities, it is made clear that the petitioner would be entitled to continuity of service with all attendant and consequential monetary benefits

on her reinstatement in service in the event of the State Level Scrutiny Committee confirming her Scheduled Tribe Community status, subject to

deductions to the extent of the remuneration earned by her through gainful employment, if any, in the interregnum.

15. In the result, the Writ Petition is partly allowed on the following terms:-

(i) The Memorandum No.6159/PSD-C1/1990, dated 19.07.2017 passed by the TNPSC/second respondent is alone set aside;

(ii) The second respondent is directed to take necessary steps forthwith for the verification of the Scheduled Tribe Community Status of the

Petitioner before the State Level Scrutiny Committee by transmitting all relevant records including Scheduled Tribe Community Certificates

produced by the petitioner;

(iii) The State Level Scrutiny Committee shall, after affording full opportunity of hearing to petitioner, including production of documents and

examination of witnesses, if any, pass reasoned orders on merits in accordance with law taking note of the relevant Government Orders and

binding judicial decisions on the subject and expeditiously complete the verification of the Scheduled Tribe Community Status of the Petitioner and

in any event on or before 30.11.2017, uninfluenced and uninhibited by the reasons that have weighed in this judgment for declining the relief of

automatic reinstatement in service to the Petitioner, and immediately thereafter file a report of compliance before the Registrar (Judicial) of this

Court;

(iv) In the event of the State Level Scrutiny Committee confirming the Scheduled Tribe Community Status of the Petitioner, the first respondent

shall reinstate the Petitioner in service with continuity of service and all attendant and consequential monetary benefits within a period of 10 days

from the date of receipt of such order, after making deductions to the extent of the remuneration earned by her through gainful employment, if any,

during the interregnum;

(v) If the State Level Scrutiny Committee holds that the Petitioner does not belong to the Scheduled Tribe, the order bearing Rc. No.14384/2000

A4, dated 02.08.2017 passed by the first respondent terminating the Petitioner

from service shall stand confirmed;

(vi) There shall be no order as to costs and the connected miscellaneous Petitions are closed.