

(2002) 04 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No. 38606 of 1995

G. Sathya Murthy

APPELLANT

Vs

Director, Bangalore Complex, Indian Telephone Industries
and Others

RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 21

Citation : (2002) 3 KCCR 1994

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : G. Dayananda Murthy, for the Appellant; Udaya Holla, for Respondents 1 to 4 and Ashok S. Mensinkai, for Respondents 5 to 7, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—Jenu Kuruba community is a Scheduled Tribe in the State of Karnataka. On the basis of the certificate obtained from the Tahsildar to that effect, the Petitioner secured employment as Grade-II Officer in the Indian Telephone Industries in the year 1975. Thereafter, he was promoted from time to time against reserved vacancies upto Grade IV. When his case was not considered for promotion to Grade-V despite submitting representations and issuing legal notice, he filed Writ Petition No. 7910 of 1989 in this Court seeking a direction to the management to issue promotion order. In the meanwhile, there was some dispute about the caste certificate of his younger brother and the matter was ceased before the C.R.E. Cell. Petitioner alleges that to wreck vengeance against the Petitioner, the C.R.E. Cell addressed letter as per Annexure-A6 dated 10.4.1989 to the Vigilance Officer of I.T.I. to take necessary action as Petitioner does not belong to Jenu Kuruba Community. On the basis of the said letter, the management initiated disciplinary proceedings against the Petitioner by issuing charge sheet as per Annexure-A10 dated 27.11.1989.

Petitioner replied the same as per Annexure-A11. Upon enquiry, report dated 27.5.1991 as per Annexure-A91 was submitted holding that the charge against the Petitioner is proved. Accepting the enquiry report, the Disciplinary Authority dismissed the Petitioner from service by his order dated 29.7.1995, which was communicated with covering letter at Annexure-A. The Petitioner has filed this writ petition seeking to quash the said order and a direction to the management to reinstate him with all consequential benefits.

2. Elaborate statement of objections is filed on behalf of Respondents 1 to 4 along with several documents. Separate counter is filed by 5th Respondent. It is not necessary to refer to the various pleas pleaded and contentions urged in the statement of objections. The sum and substance of the statement of objections is denial of petition averments, justification of the impugned action and prayed for dismissal of the writ petition contending that the enquiry officer on the basis of facts and evidence on record recorded its findings which findings are accepted by the Disciplinary Authority and passed the order of dismissal which cannot be interfered with by this Court in exercise of its Judicial Review power under Articles 226 and 227 of the Constitution of India.

3. Heard the learned Counsel for the parties at length and perused the voluminous records.

4. The points for consideration are:

1) Whether the Disciplinary Authority had jurisdiction to initiate disciplinary proceedings against the Petitioner when there is no cancellation of the caste certificate issued to the Petitioner stating that he belongs to Jenu Kuruba Community, which is a Schedule Tribe?

2) Whether the order at Annexure-A dismissing the Petitioner is legal and valid?

3) Whether the Petitioner is entitled to any relief and if so, to what extent?

5. Point No. 1: The caste certificate issued by the Tahsildar, Bangalore North Taluk in favour of the Petitioner certifying that he belongs to Jenu Kuruba community, is not in dispute. It is also not in dispute that the Petitioner secured employment and promotions on the basis of such certificates. The caste certificates issued by the Tahsildar, Bangalore North Taluk in favour of the Petitioner are produced as Annexures-A16, A22, A23, A24, A25 and A32. MW-20 the Special Sheristedar attached to the Tahsildar's office admitted these documents in his statement before the enquiry officer in the enquiry proceedings conducted by the Disciplinary Authority. Therefore, it has to be held that the caste certificates issued in favour of the Petitioner were genuine and valid. The said certificates are neither cancelled nor withdrawn by the Tahsildar who has issued in favour of the Petitioner. The same are also not declared invalid by any Court. Tribunal or quasi-judicial authorities. In the case of Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, the Supreme Court has held that for initiating disciplinary proceedings, the caste

certificate shall be cancelled by the competent Authority affording opportunity to the person to whom it is issued. The Madras High Court in the decision reported in 1985 M LJ 182 in the case of S.P. Sakthi Devi v. The Collector of Salem and Ors. at paragraph 6 as held as hereunder:

6. The next point taken is, when the power to cancel a caste certificate has not been conferred on empowered authorities, there is no need for the concerned employer to await till the concerned authority cancels the certificate, and only thereafter take a decision about the correct caste of the candidate or employee or servant. u/s 21 of the General Clauses Act, a power to make an order includes the power to rescind it. Hence, the empowered authorities who had brought into existence the lawful and valid caste certificate or his higher authority alone could cancel a caste certificate. Unless and until it is done, all public authorities in Central Government and Public Sector Undertakings and bodies etc., which are under its control are bound to treat the contents of such certificate as correct.

In the absence of cancellation of the caste certificates issued in favour of the Petitioner as invalid, the initiation of disciplinary proceedings against the Petitioner by the Disciplinary Authority is not only bad in law but without jurisdiction. Accordingly, Point No. 1 is answered in favour of the Petitioner.

6. Point No. 2: The basis for initiation of disciplinary enquiry was the letter of C.R.E. cell at Annexure-A6. That letter was addressed by virtue of the dispute relating to the caste certificate of Dayananda Murthy, the younger brother of the Petitioner. Annexure-A21 is the order passed by the Division Bench of this Court in Writ Appeal No. 835 of 1982 filed by the younger brother of the Petitioner challenging the order of the learned Single Judge in Writ Petition No. 20081 of 1980. The Division Bench directed the Tahsildar to consider the application of the younger brother of the Petitioner for grant of caste certificate that he belongs to Jenu Kuruba community. Based on the said judgment, the certificate at Annexure-A22 was issued by the Tahsildar, Bangalore North Taluk certifying that Dayananda Murthy, the younger brother of the Petitioner belongs to Jenu Kuruba community. In view of this certificate, the basis upon which the disciplinary enquiry was initiated against the Petitioner disappears and the doubt or suspicion about the caste of the Petitioner does not stand to scrutiny. Neither the Enquiry Officer nor the Disciplinary Authority considered this important document. Non-consideration of the same vitiates the entire proceedings. It follows that the impugned order dismissing the Petitioner from service is void ab-initio. It was also without jurisdiction in the absence of cancellation of the caste certificate. The same cannot be sustained and liable to be quashed.

7. Even on merits also, since there is no prima facie case against the Petitioner, the order dismissing him from service is bad in law and liable to be quashed. It is pertinent to note that MW-4 has categorically stated that the Petitioner has produced the original certificates on the date of final interview. MW-14 admitted that Tahsildar was the competent authority to issue the caste certificate. MW-20 admitted that the caste certificate Ex.M-15 was issued by their office and it bears

the seal and signature of the issuing authority. As long as the caste certificates had not been either cancelled or withdrawn, the disciplinary proceedings initiated doubting the genuineness of the same are bad in law. It follows that the dismissal order is also bad in law and cannot be sustained.

8. It is pertinent to note that the reply submitted by the Petitioner to the Articles of charge has not at all been considered by the Disciplinary Authority while passing the order of dismissal. There is total non-application of mind on the part of Disciplinary Authority as he dismissed the Petitioner without there being any positive proof against him. On this ground also, the order of dismissal is liable to be quashed.

9. POINT No. 3: The charge against the Petitioner as per Annexure-A10 was that he deliberately suppressed the fact of his belonging to Kuruba community which is not a Scheduled Tribe and secured employment under the quota reserved for Scheduled Tribe. In fact, when the caste certificate obtained by the Petitioner was genuine and valid and not either withdrawn or cancelled, there was no scope for enquiry with regard to the community to which the Petitioner belongs. In addition to that, the disciplinary authority was not the competent authority to go into the genuineness or otherwise of either the caste certificate or the community to which the Petitioner belongs. It was the C.R.E. Cell which was competent to go into that aspect of the matter. The C.R.E. Cell has failed in this regard. Therefore, the initiation of disciplinary proceedings against the Petitioner was void ab-initio. The enquiry report submitted based upon such void proceedings has no value at all. Consequently, the impugned dismissal order passed based on such report cannot be enforced and the same is liable to be quashed.

10. It is also to be noted that the Petitioner was appointed in the year 1975 and the order of dismissal was passed in the year 1995, after a lapse of 20 years. Dismissal from service after such a long period entitles serious civil consequences upon the Petitioner and the members of his family. The settled life of the Petitioner will be stirred subjecting his family to mental agony and depriving their livelihood. Viewed from this angle also, the order of dismissal is wholly unsustainable and liable to be quashed.

11. Once impugned order is quashed, the relief to which the Petitioner is entitled to, has to be examined. The normal rule is once dismissal order is quashed, the employee or officer has to be reinstated with all consequential benefits unless gainful employment is proved by the management. In this case, the management has not produced any document to show that Petitioner was gainfully employed after his dismissal. Hence, the Petitioner is entitled to all consequential benefits.

12. Accordingly, the writ petition is allowed. The impugned order of dismissal is quashed. Respondents 1 to 3 are hereby directed to reinstate the Petitioner with all consequential benefits such as seniority, promotion, continuity of service and

other monetary benefits from the date of dismissal until reinstatement.