
(2005) 01 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8050 of 1997

M. Yadamma

APPELLANT

Vs

Joint Collector and Additional District Magistrate and Another

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 4
Constitution of India, 1950 — Article 226

Citation : (2005) 2 ALD 165

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : W.B. Srinivas, for the Appellant; Government Pleader for Social-Welfare, for the Respondent

Judgement

P.S. Narayana, J.—The writ petition is filed for a writ, order or direction more particularly in the nature of certiorari or any other appropriate writ calling for records in respect of Proceedings No.D5/3401/96 dated 20-11-1996 of the 1st respondent and the Proceedings No. NFC/P.A.IX/1(01)/4820/ 278(A) dated 13-12-1996 of the 2nd respondent and to declare the said proceedings of the 1st and the 2nd respondents as illegal, arbitrary and unconstitutional being violative of Articles 14, 16 and 21 of the Constitution of India and consequently declare that the petitioner is entitled to continue in employment under the 2nd respondent as Helper/Attender with all benefits and to pass such other suitable orders.

2. The husband of the writ petitioner was working under the 2nd respondent as a Helper bearing E.C.No.3265 who died in harness on 10-2-1988. The husband of the petitioner belonged to Yerukula Community which is a Scheduled Tribe. The petitioner got married and the marriage was approved by the caste custom and also by the elders. It is stated that though initially the petitioner belonged to Budaga Jangam Community which is under B.C."A" category by virtue of marriage her status became that of her husband as per the custom prevailing

and thus she became part and parcel of Yerukula Community. The petitioner gave birth to five children after marriage. In fact the Central Association for marriages of Inter Castes had approved the marriage only after the petitioner got converted into Schedule Tribe community. In view of the death of the husband while in service on 10-2-1988, the petitioner approached the 2nd respondent and the 2nd respondent requested the petitioner to fill up an application for appointment on ad hoc basis along with necessary certificates. It is further stated that the petitioner is an illiterate woman and with the help of some well wishers she filled up the application form. Along with the application the petitioner had submitted a certificate issued by the Mandal Revenue Officer, Musheerabad dated 27-1-1989 wherein the petitioner was declared as belonging to Yerukula Community, a Scheduled Tribe. The 2nd respondent gave the petitioner a job as a Helper on compassionate grounds due to the demise of her husband and the petitioner was appointed on 7-11-1990 and from then she had been continuously working. It appears on some complaint made by certain individuals, the matter was referred to C.I.D. and after the said enquiry by the police, the 1st respondent had issued the impugned Proceedings No.D5/3401/96 dated 20-11-1996 and on the strength of the same, the 2nd respondent also issued the impugned proceedings dated 13-12-1996 charging the petitioner with misconduct under Rule 4 of C.C.A. Rules with a charge that the petitioner produced false Caste Certificate claiming to be belonging to S.T. Community.

3. In the counter-affidavits filed by the 1st and the 2nd respondents specific stand had been taken that inasmuch as this is a matter relating to service dispute, the writ petitioner cannot straight away approach this Court under Article 226 of the Constitution of India. Several other details also had been narrated. The specific stand taken in the counter-affidavit filed by the 1st respondent is that after conducting proper enquiry, inasmuch as the 1st respondent is the Competent Authority, the Caste Certificate had been duly cancelled. The 2nd respondent, apart from the maintainability of the writ petition, had narrated in detail the events which had ultimately led to the issuance of the proceedings dated 13-12-1996.

4. Ms. Usha Kiran, Counsel representing Mr. Srinivas, the learned Counsel for the petitioner would contend that in the relief prayed for in the writ petition there are two prayers - one relating to the proceeding of the 1st respondent cancelling the Caste Certificate and the other disciplinary proceeding issued by the 2nd respondent, and the proceeding issued by the 2nd respondent is only consequential which had been issued in pursuance of the proceeding relating to cancellation of the Caste Certificate. The learned Counsel would submit that inasmuch as the 1st respondent had cancelled the Caste Certificate without following the proper procedure and in violation of the principles of natural justice and inasmuch as the 1st respondent is not the Competent Authority under the provisions of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 and the Rules framed thereunder, the writ petition is definitely maintainable. The learned

Counsel also had drawn the attention of this Court to Sections 5 and 21 of the said Act and had taken the Court through the impugned proceedings issued by the 1st respondent and would contend that the reports on which reliance was placed by the 1st respondent had not been furnished to the writ petitioner and hence reasonable opportunity was not given and the same is in violation of the principles of natural justice. The learned Counsel also would contend that even otherwise inasmuch as the writ petitioner was appointed on compassionate grounds, the question of appointing the writ petitioner as against S.T. quota would not arise at all since in the case of compassionate appointment no quota privilege as such is applicable. The learned Counsel also placed reliance on certain decisions in this regard. The learned Counsel also brought to the notice of the Court that the criminal case which had been registered as against the writ petitioner in fact had ended in acquittal.

5. The learned Government Pleader for Social Welfare on the contrary would contend that inasmuch as the impugned order, so far as it relates to the 1st respondent is concerned, was made in the year 1996, prior to the Act coming into force, the 1st respondent was the Competent Authority at the relevant point of time and hence there is no jurisdictional flaw so as to interfere with the said order of cancellation. The learned Counsel also would contend that even otherwise the remedy of Revision even in such cases also is available to the writ petitioner and the Counsel had drawn the attention of this Court to a decision of the Division Bench in W.A. No.267/2003 dated 27-6-2003.

6. The Senior Central Government Standing Counsel on the contrary would contend that it is a service dispute and without approaching the Central Administrative Tribunal, straight away the writ petitioner cannot approach this Court and in the light of the ratio laid down in *L. Chandra Kumar Vs. Union of India and others*, , the writ petition as such is not maintainable without exhausting the remedy before the appropriate Tribunal.

7. Heard the Counsel at length.

8. As can be seen from the relief prayed for in the writ petition, the cancellation of the Caste Certificate by the Proceedings No.D5/3401/96 dated 20-11-1996 by the 1st respondent-Joint Collector and the Additional District Magistrate, Hyderabad District and also the consequential proceedings of the 2nd respondent dated 13-12-1996 had been questioned. The main ground of attack is relating to the maintainability of the writ petition before this Court under Article 226 of the Constitution of India without exhausting the remedy under Administrative Tribunals Act, 1985.

9. A Five Judge Constitution Bench decided *Sampath Kumar v. Union of India* AIR 1987 SC 386 , and the post *Sampath Kumar* cases viz., *J.B. Chopra and Others Vs. Union of India (UOI) and Others*, , *M.B. Majumdar Vs. Union of India*, , *Amulya Chandra Kalita Vs. Union of India (UOI) and Others*, , *R.K. Jain v. Union of India* (1993) 4 SCC 119 , *Dr Mahabal Ram Vs. Indian Council of Agricultural*

Research and Others, , had led to the reference which had resulted in the decision in *L. Chandra Kumar v. Union of India* (supra) by a seven Judge Constitution Bench of the Apex Court wherein clauses of Articles 323A and 323B of the Constitution of India excluding the jurisdiction of High Courts and Supreme Court under Articles 226 and 227 and 32 of the Constitution of India, were held to be unconstitutional. No doubt submissions at length were made that inasmuch as this is a service dispute, the writ petitioner could not have approached this Court straight away without exhausting the remedy before the concerned Tribunal.

10. The Administrative Tribunals Act, 1985, hereinafter referred to as "Act" for the purpose of convenience, is an Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto. Section 3 of the Act deals with definitions and Section 3(q) specifies :

"In this Act, unless the context otherwise requires,-

"service matters" in relation to a person, means all matters relating, to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation or society owned or controlled by the Government, as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever"

It is no doubt true that Section 3(q)(iv) refers to disciplinary matters and Section 3(q)(v) refers to "any other matter whatsoever" and the term "service matters" has a wide connotation in the light of the definition referred to supra. Section 14 of the Act dealing with jurisdiction, powers and authority of the Central Administrative Tribunal, reads as hereunder:

"(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) of Clause(b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation:-For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory."

Section 19 of the Act dealing with Applications to Tribunals reads as hereunder:

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation:-For the purposes of this subsection, "order" means the order made-

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation or society owned or controlled by the Government; or

(b) by an Officer, Committee or other body or agency of the Government or a local or other authority or Corporation or society referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

(3) On receipt of an application under subsection (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

There cannot be any dispute or controversy that as far as the second relief which had been prayed for in relation to the charge memo issued by the 2nd respondent is concerned, the same would fall under service dispute and hence in view of the same the writ petitioner should have exhausted the remedy by approaching the appropriate service Tribunal before invoking the jurisdiction of this Court under Article 226 of the Constitution of India. However, the learned Counsel representing the writ petitioner made it clear that this is only a consequential action and the writ petitioner is more aggrieved of the cancellation of the Caste Certificate by the impugned proceeding issued by the 1st respondent. In the counter-affidavit filed by the 2nd respondent apart from the aspect of the maintainability of the writ petition straight away before this Court, several other aspects had been narrated in detail. It is stated that the writ petitioner was appointed as a Helper on 7-11-1990 on compassionate grounds as her husband who was working as a Helper expired while in service on 10-2-1988 and her husband belonged to S.T. Community "Yerukula". At the time of appointment, the writ petitioner submitted a Caste Certificate dated 27-1-1989 issued by Mandal Revenue Officer, Musheerabad Mandal, Hyderabad District certifying that she belongs to Scheduled Tribe. However based on a complaint received from NFC SC/ST Association that a few of the employees appointed against SC/ST quota actually do not belong to those communities, the matter was referred to the Commissioner, Tribal Welfare Department, Government of A.P. with a request to verify the genuineness of the certificates and forward his findings. The Commissioner of Tribal Welfare Department in his Lr.No.629/10/95-TRI-VC-6 dated 8-11-1996 confirmed that the petitioner does not belong to S.T. "Yerukula" and that she belongs to "Balasanthu" Community which is notified as "Backward Class" under Group "A". The Commissioner of Tribal Welfare has also forwarded a copy of the Proceedings No.D5/3401/96 dated 20-11-1996 wherein the Joint Collector and Additional District Magistrate, Hyderabad District has cancelled the Caste Certificate issued to the petitioner by the Mandal Revenue Officer, Musheerabad. Based on the letter of the Commissioner of Tribal Welfare, Government of A.P., a charge-sheet for having produced a false Caste Certificate was issued to the petitioner in Office Memorandum No.NFC/PA.IX/1(01)/4820/778(a), dated 13-12-1996 calling for her explanation within 10 days of

receipt of the same and the petitioner submitted explanation dated 26-12-1996. It is also the specific stand that the petitioner produced a false Caste Certificate with mala fide intention to derive benefits available to S.T. Community and production of a false Caste Certificate amounts to furnishing false information for which the petitioner is liable for disciplinary action in accordance with CCS (Conduct) Rules, 1964 read with CCS (CCA) Rules, 1965. Further a specific stand was taken in the counter-affidavit of both the 1st and the 2nd respondents that by virtue of marriage the writ petitioner cannot claim the status as belonging to Scheduled Tribe.

11. Before adverting to the other aspects it may be appropriate to have a look at the impugned order made by the 1st respondent dated 20-11-1996, which reads as hereunder :

Sub: CASTE - Verification of Caste of Smt. M. "Yadamma, W/o. late Mallesh r/o. H.No.I-4-27/48, Ranganagar, Bholakpur, Hyderabad, Hyderabad District - Caste Certificate obtained as Yerukula Caste - Cancellation -S.T. Certificate issued by the then Mandal Revenue Officer, Musheerabad Mandal, Hyderabad District - Cancellation orders issued.

Read : (1) This office Prodgs.No.D5/I 077/95, dated 28-8-1995.

(2) From the Additional Director General of Police, C.I.D. Hyderabad Letter No. 4979/CII/ 93, dated 20-2-1996.

ORDER: The Additional Director General of Police, C.I.D. Andhra Pradesh, Hyderabad has reported vide reference 2nd cited that the investigation into the case relating to one Smt. Miryala Yadamma w/o. late Mallesh, resident of H.No. 1-4-27/48, Ranganagar, Bholakpur, Hyderabad working in N.F.C. as a helper, accused in Cr.No.52/94 under Sections 420, 182 IPC of CID Police, has secured appointment as Helper (A) in Nuclear Fuel Complex, Hyderabad under Schedule Tribe quota by producing a false Caste Certificate of Yerukula community issued by the M.R.O. Musheerabad Mandal, Hyderabad District vide his Certificate No.L.Dis.G/306/88 dated 27-1-1989. Further the Additional Director General, C.I.D. stated that the Inspector of Police has conducted preliminary enquiries into the caste status of Smt. M Yadamma w/o. late Mallesh and gathered the information that Smt. Yadamma w/o. late Mallesh who is an employee of N.F.C. belongs to "BALASANTHULA" community. On the allegation that Miryala Yadamma W/o. late Mallesh had secured job against the reserved vacancy of S.T. in N.F.C. at Hyderabad.

The above officer has further reported that on enquiry with the children of Smt. M. Yadamma, it was confirmed that she belongs to Balasanthula Caste which is recognized as B.C. and not S.T. Erukula Community. The Educational records of her children studied at Sri Venkateshwara Vidyalaya, Ranganagar, Hyderabad also supported the same findings Balasanthula caste. The Additional Director General of Police, C.I.D. has finally requested to cancel the S.T. certificate issued to Smt. M Yadamma w/o. late Sri Mallesh, so as to take further action in Cr. No.

52/94 already registered in C.I.D. (Police Station) against the accused.

The individual (Smt. Yadamma) has been issued a notice dated 28-3-1995 and 22-5-1995, 19-6-1995 and she has attended the office, but did not produce any evidence in support of her caste (Yerukula).

A report to this effect was also called for from the Mandal Revenue Officer, Musheerabad Mandal, Hyderabad District who reported that Smt. M Yadamma w/o. late Mallesh belongs to Budga Jangam community.

After completion of enquiry at the level of Inspector of Police, CIC P.C.R. Cell, Hyderabad and on the strength of his findings a case in Cr.No.52/94 under Sections 420 and 182 IPC has been registered and taken up further investigation for launching of prosecution against Smt. M. Yadamma. After careful perusal of report of the Inspector of Police it is established that Smt. M. Yadamma w/o. late Mallesh does not belong to S.T. Community "Yerukula" on the other hand it is crystal clear that she belongs to Balasanthula Community Certificate by fraudulent means and concealing the facts with an ulterior motive to avail the benefits of S.T. Community and intentionally deceived the N.F.C. Authorities and by misleading the appointing authorities grabbed the benefits reserved for S.T. Community.

In the circumstances stated above and in exercise of the power conferred by the Government in G.O. Ms. No.282, Social Welfare (J2) Dept., A.P. Hyderabad dated 19-12-1988, I hereby order that the Caste Certificate issued by the then Mandal Revenue Officer, Musheerabad Mandal, Hyderabad vide Certificate No.G/305/88 dated 27-1-1989 as Schedule Tribe "Yerukula" community in favour of Smt. M. Yadamma is hereby cancelled".

12. As can be seen from the impugned order made by the 1st respondent, the report of the Mandal Revenue Officer and also the report of the Inspector of Police had been relied upon as material for the purpose of recording certain findings and these reports were not furnished to the writ petitioner. In Bhakthavathsala Sukumar Vs. Hindustan Petroleum Corporation Limited and Others, , while dealing with the cancellation of certificate issued to the petitioner as belonging to Scheduled Tribe under A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 it was held that when prior to the order of cancellation enquiry was conducted by two different officers who gave conflicting reports, cancelling the Caste Certificate basing on the report given against the petitioner without furnishing copies of the report is illegal being violative of principles of natural justice. In D.V.V. Satyanarayana Vs. Collector, Rangareddy District and another, , while dealing with Section 5 of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 where the social status certificates issued by Tahsildar were set aside by the Joint Collector, it was held that the cancellation of social status certificates by the Joint Collector is without jurisdiction since Collector of the District alone is competent

to cancel any Caste Certificate. In Andhra Pradesh Scheduled Tribes Employees Association Vs. Aditya Pratap Bhanj Dev and Others, , it was held at para-109 as hereunder :

"The Act regulates issue of Community Certificates to persons belonging to SCs., STs., and BCs. In exercise of the power under sub-section (1) of Section 20 of the Act, the Governor had made Rules in G.O. Ms. No. 58, Social Welfare, dated 12-8-1997 known as A.P. Scheduled Castes, Scheduled Tribes and Backward Classes - Issue of Community, Nativity and Date of Birth Certificates Rules, 1997. The Competent Authority shall issue Community Certificate on receipt of applications, -Section 4 of the Act provides for issue of certificates by the Competent Authority. Rule 5 of the Rules provides for elaborate enquiry/ verification before an Integrated Community Certificate is issued u/s 4 of the Act. When any authority has a reason to believe either suo motu or on a written complaint that any Community Certificate was obtained fraudulently, it is only the District Collector who can initiate enquiry under the Act. Such enquiry shall be conducted in accordance with Rules 8 and 9 of the Rules. Section 21 of the Act provides that unless a Community Certificate is cancelled in accordance with the provisions of the Act, the Community Certificate issued by any authority shall be valid and the same shall be deemed to have been issued under the provisions of the Act."

Submissions at length were made relating to competency of the 1st respondent to make the impugned order by pointing out to different provisions of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 but however in view of the fact that the impugned order by the 1st respondent was made before the aforesaid Act coming into force, the said proceedings cannot be found fault on the ground of competency or on the ground of flaw of jurisdiction. Reliance also was placed on a decision of this Court in W.A. No.267/2003 dated 27-6-2003 wherein a Division Bench of this Court held that in such cases the Revisional power of the State Government u/s 8 of the aforesaid Act can be extended to cases of similar nature. Though the impugned order of the 1st respondent cannot be found fault on the ground of want of jurisdiction inasmuch as reliance was placed on the reports referred to supra, which were not furnished to the writ petitioner the impugned cancellation was made without providing reasonable opportunity and hence the same is in violation of the principles of natural justice and hence the said order cannot be sustained in this view of the matter. The other proceeding issued by the 2nd respondent is only consequential but it is needless to say that this proceeding squarely falls within the domain of service dispute and hence this Court is not inclined to express any opinion relating to the aspect of compassionate appointment and whether the writ petitioner was appointed as against reserved quota or whether the principle of reserved quota would be applicable in such cases of compassionate appointments and all other relevant aspects concerned with service dispute since all these aspects would fall within the domain of the concerned competent Tribunal under the provisions of the

Administrative Tribunals Act, 1985. It is also stated that the writ petitioner is continuing in service even to this date. In view of the same, the impugned order issued by the 1st respondent dated 20-11-1996 cancelling the certificate alone is hereby quashed. It is made clear that this will not preclude the Competent Authority under A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 and the Rules framed thereunder to initiate appropriate action if they so require in accordance with the procedure keeping in view the observations made by this Court supra.

13. Accordingly the writ petition is hereby allowed to the extent indicated above with the directions specified supra. No order as to costs.