
(1995) 03 MAD CK 0131
In the Madras High Court
Case No : Writ Petition No. 795 of 1986

S. Sundararaju

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 309

Citation : (1995) 2 MLJ 426

Hon'ble Judges : Mishra, J

Bench : Single Bench

Judgement

1. This case is a glaring example of an authority denying to one of its employees protection under Article 16(1) of the Constitution of India read with Article 14 thereof and also encroaching upon the employee's right under Article 21 of the Constitution of India. The employer, the facts disclose, has chosen to obstinately ignore the directions of this Court in W.P. No. 5400 of 1983 disposed of by a Division Bench of this Court as far back as August 1, 1984 and throwing on the face of the respondent in the instant proceeding some sort of an alleged recommendation by the Collector of the District of Tiruchirapalli dated August 23, 1993 to contend that it (the respondent) has good reasons to hold that the very initial appointment of the petitioner was illegal and thus, he is not entitled to seek any writ in the nature of mandamus in his substantive appointment and consequently, benefit as an employee under it.

2. Facts tell their own story. Petitioner, it is not disputed, claimed that he belonged/belongs to Konda Reddy Community, which is a Scheduled Tribe according to the Presidential Notification under the Constitution Scheduled Tribes Order. 1958 and the General Rules in Vol. I of the Tamil Nadu Service Manual. Petitioner was granted a Community Certificate by the Deputy Tahsildar, Salem on October 13, 1978 and appeared when called for interview, with the certificate. He was, however, advised to produce a Community Certificate from any of the Officers prescribed and that the certificate granted by the Deputy Tahsildar was

not one granted by the officer, who was authorised to do so. On January 12, 1979 the petitioner obtained a Community Certificate from a Judicial Magistrate (First Class) in the prescribed form and produced the same before the competent authority representing the respondent. Petitioner was selected for the post of clerk-cum-typist in the reserved category of Scheduled Tribe candidates and posted as clerk-cum-typist in Madurai Region. He joined duty on February 5, 1979 and has since been working in the said capacity. The respondent, however, directed the petitioner to obtain a fresh community certificate from the Revenue Divisional Officer in pursuance of a Government Order in G.O. Ms. No. 1139, SW, dated March 23, 1979, otherwise, was threatened with termination of service. Petitioner moved this Court in W.P. No. 5400 of 1983 and sought a direction to treat him as a Scheduled Tribe in pursuance of the Community Certificate dated January 12, 1979 given by the Judicial First Class Magistrate. The said writ petition was posted before a Division Bench. The Bench on August 1, 1984 passed final orders in these words :

"In the light of the decision rendered by this Court in W.P. No. 738 of 1982 and W.P. Nos. 1235 and 1236 of 1983, the certificate issued by the Judicial First Class Magistrate being a competent certificate, as prescribed by the circular issued by the Government of India, the first respondent was in error in directing the petitioner to secure a further community certificate from the Revenue Divisional Officer. Hence, the writ petition is allowed. There will be no order as to costs."

3. The respondent, however, did not confirm the petitioner in the service under it and also declined to admit to the Contributory Provident Fund. On October 30, 1984 the petitioner produced a photocopy in the order of the writ petition and requested the respondent to confirm him with effect from the due date and to give all attendant benefits. Respondent, however, gave no response to the said representation of the petitioner and reminders by him also were ignored except a communication from the Branch Manager of Kalkulam branch dated October 14, 1985 under which he (petitioner) was informed that the matter was under consideration. When, however, nothing transpired and time was running against the interest of the petitioner, the petitioner moved this Court in the instant petition.

4. There was no immediate response to the 1 allegation of the petitioner on behalf of the respondent and the only return on its behalf is filed on March 8, 1994. In the return, the respondent has said,

"The petitioner does not belong to the Konda Reddy Community and his appointment was only provisional subject to confirmation of his community status by the District Collector of Tiruchirapalli. Hence his appointment not being regular and in a permanent capacity the question of his confirmation in the Bank's service does not arise. Further there is no statutory public duty involved in the matter of confirmation and hence the writ of mandamus does not lie. He has been declared by the District Collector as not belonging to Konda Reddy Community and hence the writ petition is liable to be dismissed."

5. The case of the petitioner, however, that he appeared for the interview with a certificate granted to him by the Deputy Tahsildar, that petitioner was advised to file a community certificate issued by a competent authority, that he later produced a certificate granted by the Judicial First Class Magistrate, that he was appointed accordingly, that, however, when he was not confirmed and was not given the due benefits, he filed W.P. No. 5400 of 1993 and that this Court issued a direction to treat the certificate granted by the Judicial First Class Magistrate as valid is not denied and it is said,

"It is true that the said writ petition was allowed holding that the Judicial First Class Magistrate was competent to issue a Community Certificate and the said certificate could be sufficient for the purpose of appointment. The Bank allowed the petitioner to join duty provisionally."

The case, however, made out on behalf of the respondent is in these words :

"It is not correct to state that the petitioner has to be treated as a Scheduled Tribe without any further in materials. It is respectfully submitted that the Certificate by any of the authorities is entitled to be scrutinised and certified as genuine by the District Collector. This is an established and settled law. Hence, it is not correct to say that the Community Certificate issued by the Judicial First Class Magistrate, Kulithalai, is final and should be accepted in toto without any further scrutiny or verification. Till such time the Collector Certifies that the Community certificate issued to the petitioner is genuine, the Bank is entitled to continue him as a probationer and his confirmation will be subject to the decision of the District Collector who is the final authority in Revenue Department. The Bank is also bound to follow the decision of the highest authorities regarding community status. The Collector, being the highest authority in the Revenue Department, his decision regarding genuineness of a Community Certificate is final unless reversed by a decision of a court of law."

The respondent's stand is noticeable, however, in its statement in the counter-affidavit, which is as follows :

"It is absolutely incorrect to state that the respondent has a duty to confirm the petitioner and give the other attendant benefits in pursuance of the order of this Hon'ble Court In W.P. No. 5400 of 1983, as otherwise, it would amount to contempt of court order. It is respectfully submitted that the order of this Hon'ble Court directed the Bank to accept the Community Certificate issued by First Class Magistrate and permit him to continue in the service of the Bank. This Hon'ble Court never ordered to confirm him in the service with the attendant benefits nor did it hold the Community Certificate should not be got verified. The Bank has not violated the order passed in W.P. No. 5400 of 1983. The Bank is also justified in not confirming the petitioner in the post assigned to him. The certificate produced by the petitioner had been sent to the District Collector for verification. In spite of our best efforts, it took considerable time to get it verified by the Collector. The District Collector has passed an order holding that the

petitioner does not belong to Konda Reddy Community. Having been found by the highest revenue authority that the petitioner does not belong to Konda Reddy Community, the petitioner is not liable to be confirmed in the service of the Bank on the quota reserved for Scheduled Tribe".

There is a plea also of the alternative remedy available to the petitioner and it is stated in the counter-affidavit that the petitioner would have advisedly raised an industrial dispute.

6. The Collector's certificate in Tamil is given in its translation on behalf of the respondent to the Court and it reads as follows :

"Revenue Divisional Officer of Musiri conducted an enquiry on the issuance of a Community Certificate issued to Thiru C. Sundararajan, a Clerk of State Bank of India, a native of Shobanapuram Village, Thuraiyur Taluk, Trichy District with reference to its genuineness as per the correspondences cited above."

"The said Enquiry revealed that Thiru C. Sundararajan and the members of his family have relationship only with the members of the Forward Reddiar Community, that no members of the "Konda Reddy" class falling under the Scheduled Tribes Community are living in the said village, and that, he does not belong to "Konda Reddy" class of the Scheduled Tribes Community. Therefore, on the basis of the report of the Revenue Divisional Officer, I am advising you that Thiru C. Sundararajan is not a member of the "Konda Reddy" Class of the Scheduled Tribes Community, and that he belongs to "Forward Reddiar Community".

"Further in reply to the letter dated July 22, 1988 from this office, it has been stated in your letter dated May 8, 1991 that Thiru C. Sundararajan's Community Certificate has been sent to this office. The Community Certificate sent with your office letter dated October 1, 1982 is the one dated January 12, 1979 issued by Kulithalai First Class Magistrate to the effect that he belonged to "Konda Reddy" Community. This certificate was forwarded to the Branch Manager, State Bank of India, Thuckalay by registered post with letter No. 122540/88, dated May 19, 1988."

"Finally, I would advise that the Revenue Divisional Officer of Musiri has never issued a certificate to Thiru C. Sundararajan as belonging to "Konda Reddy" Class of the Scheduled Class Tribe Community."

7. It is difficult on the facts of the instant case to acknowledge that the respondent bank has a bona fide concern for the interests of the Scheduled Tribes and that it acted with a genuine desire to see that no one like the petitioner, who did not belong to any Scheduled Tribe, was allowed to usurp the opportunity of the Scheduled Tribe. There can be cases where a person who does not belong to a reserved category obtains a certificate by misrepresentation or fraud and enters a service as a candidate belonging to a reserved category. On detection of misrepresentation or fraud or a strong suspicion based, however, on

relevant materials, the employer may/might institute an enquiry and in course of the enquiry seek verification from competent authorities for affirmation or otherwise of the caste/community certificate. Any enquiry, however, which is held behind the back of the affected employee, will be of no avail to the employer and even if there are some information received from sources which the employer has explored, the employee shall be entitled to be informed about such materials which are likely to be used against him and afforded opportunity to rebut and being heard before any decision either to cancel the appointment or to terminate the service is taken.

8. In the case of community certificate, in particular, before cancellation of the certificate which is already issued, this Court has taken the view that the concerned person should get the opportunity to participate in the enquiry and being heard before the certificate is cancelled. (See : M. Shamsudeen v. The Principal Judge, City Civil Court, Madras, 1991 Writ L.R 471. That case (Shamsudeen's Case) was however, a case of the Revenue Divisional Officer granting the certificate and the Collector cancelling the same. The instant case is one in which a Judicial First Class Magistrate has granted the certificate and this Court in W.P. No. 5400 of 1983 has held that the same is granted by a competent authority. It is difficult to visualise the Collector's authority to sit in judgment over an act of a Judicial First Class Magistrate admittedly a competent authority, and to overlook the same on the basis of any ideas of his based either on some information of his own or at the behest of the employer. It is a case, in my opinion, on facts to think twice before any credence is given to the communication of the Collector to the respondent whether he is competent to sit in judgment over an act of a Judicial First Class Magistrate and advise the employer to ignore the certificate issued by the Judicial First Class Magistrate in favour of the petitioner, and further to see even if he (Collector) has the authority to sit in judgment over the caste/community certificate granted by the Judicial First Class Magistrate, to order cancellation or rescinding of the same without affording opportunity to the petitioner as indicated in the judgment of this Court in Shamsudeen's case, (supra).

9. In Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, , the Supreme Court has pointed out that "where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It is neither a case of suggestion falsi, or suppressio veri". The Supreme Court has dealt with a case of a candidate who was allowed to take the examination, rightly or wrongly, although he had not completed the required curriculum, The Supreme Court pointed out that before issuing the admission card to a student to appear at Part I Law Examination, it was the duty of the University authorities to scrutinize the admission form filed by the student in order to find out whether it was in order. The court also pointed out that equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements and observed :

"..... If neither the Head of the Department nor the University authorities took care to scrutinize the admission form, then in not disclosing the shortage of percentage in attendance the question of the candidate committing a fraud did not arise."

The court has, in the said judgment, pointed out as follows :

"... It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestion falsi or suppressio veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In the circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained allowed the appellant to appear in Part I Examination in April, 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant."

10. The respondent has to accept and it has no escape from this legal position that the caste/community certificate which the petitioner has produced at the first instance, i.e., that of the Deputy Tahsildar, was not accepted by it. It advised the petitioner to file a fresh caste/community certificate issued by a competent authority. The petitioner produced a certificate issued to him by a Judicial First Class Magistrate. Any doubts, which the respondent had about the competency of the Judicial First Class Magistrate to issue a caste/community certificate stood erased by the order of this Court in W.P. No. 5400 of 1983. The respondent cannot be sitting over a direction of this Court and ignore the certificate granted by the Judicial First Class Magistrate to the petitioner.

11. There would have been some cause for the respondent to enquire whether the certificate issued to the petitioner by the Judicial First Class Magistrate was a genuine certificate or was obtained by him on misrepresentation or by fraud. There is nothing, however, brought on the record of this case which would justify any doubt of the respondent about the genuineness of the certificate granted by the Judicial First Class Magistrate. The respondent obviously was not seeking an enquiry about the genuineness or otherwise of the certificate granted to the petitioner by the Judicial First Class Magistrate. It was seeking an enquiry, into the question whether the petitioner belongs to Konda Reddy Community, which is a Scheduled Tribe. The Collector has not himself held the enquiry. Some Revenue Divisional Officer, it appears, has conducted the enquiry. When he did conduct the enquiry, however, is not disclosed. The report of the Revenue Divisional Officer, is not brought before the court. The Collector has read in the report of the Revenue Divisional Officer as follows :

"Revenue Divisional Officer of Musiri conducted an enquiry on the issuance of a Community Certificate issued to Thiru C. Sundararajan The said enquiry revealed that Thiru C. Sundararajan and the members of his family have

relationship only with the members of the Forward Reddler Community, that no members of the "Konda Reddy" class falling under the Scheduled Tribes Community are living in the said village and that he does not belong to "Konda Reddy" class of the Scheduled Tribes Community".

The District Collector has assumed the role of an advisor and has said,

"..... On the basis of the report of the Revenue Divisional Officer, I am advising you that Thiru C. Sundararajan is not a member of the "Konda Reddy" class of the Scheduled Tribes Community", and that he belonged to Forward Reddler Community".

The Collector, however, has shown some restraint and has chosen not to comment upon the certificate issued by the Judicial First Class Magistrate but has almost chosen to outwit the certificate issued by the Judicial First Class Magistrate by saying in his letter.

"Further, in reply to the letter dated July 22, 1988 from this office, it has been stated in your letter dated May 8, 1991 that Thiru C. Sundararajan's Community Certificate has been sent to this office. The Community Certificate sent with your office letter dated October 1, 1982 is the one dated January 12, 1979 issued by Kulithalai First Class Magistrate to the effect that he belonged to "Konda Reddy" Community. This certificate was forwarded to the Branch Manager. State Bank of India, Thuckalay by registered post with letter No. 122540/88, dated May 19, 1988."

"Finally, I would advise that the Revenue Divisional Officer of Musiri has never issued a certificate to Thiru C. Sundararajan as belonging to "Konda Reddy" class of the Scheduled Tribes Community".

12. Learned Counsel for the Respondent-bank has however, cited two judgments : Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, and Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, , which reiterate with clarity that a student seeking admission to educational course by false claim to be a member of a certain tribe cannot lay claim to continue in studies on the ground of equity or promissory estoppel, a question which does not arise in the instant case at all. Had the petitioner been charged and subjected to an enquiry as I have observed earlier, that he had obtained a caste/community certificate on misrepresentation/ fraud and therefore, raised a false claim that he belonged/belongs to a Scheduled Tribe and as in the case of Madhuri Patil, (supra), a committee or any other person competent to hold enquiry would have looked into all the materials and in presence of the petitioner rendered a finding to the above effect, it is obvious that the petitioner would have deserved no equity and could claim estoppel. All efforts should be made to ensure that no one succeeds in getting the benefit of a reservation made for a weaker section of the society, by a false representation about his/her caste/community. It will undoubtedly be an act involving moral turpitude and such a person should be dealt with sternly. Madhuri Patil's.

(supra), case was of such nature that an enquiry was held to find out whether her claim was genuine and true. The procedure contemplated was further action need be taken in case the report was in favour of the candidate. When however, the report was against the candidate, that is, the claim was found to be false or that the certificate was Fraudulently obtained, action should be taken to deny such person any benefit of a false claim.

13. In Smt. Ravinder Sharma v. State of Punjab, (supra), (P. 591) there is only a cryptic statement,

"Admittedly, the appellant did not possess this qualification. That being so, the appointment is bad. The Commission recommended to the Government for relaxation of the qualification under Regn. 7 of the Regulations. The Government rejected that recommendation. Where, therefore, the appointment was clearly against Regn. 7, it was liable to be set aside. That being so, no question of estoppel would ever arise. We respectfully agree with the view taken by the High Court."

It is only a reiteration of the law aforementioned that a person who admittedly is not qualified or who has been found to have been afflicted by a disqualification or who succeeded on the basis of a false claim and committed a fraud in obtaining appointment, he should be denied any benefits or equitable grounds including equitable estoppel.

14. It is a matter, as I have noticed earlier, of concern for any law abiding person that an authority, who is bound to act in accordance with law to afford equal opportunity of employment to all concerned, and to extend equal protection of law to all concerned, has chosen to keep a person appointed as far back as 1979 as a Probationer and make him to stagnate as a clerk-cum-typist without any vestige of a dignified employee of the Bank, denied to him benefits of the Contributory Provident Fund and it is not known whether petitioner has been given even the time-scale increments in the service.

15. In Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, , the Supreme Court has pointed out "while temporary and permanent posts have great relevance in regard to the career of Government servants, keeping posts temporary for long, sometimes by annual renewals for several years, and denying the claims of the incumbents on the score that their posts are temporary makes no sense and strikes as arbitrary, especially when both temporary and permanent appointees are functionally identified. "The Supreme Court in the said case was taking notice of certain rules/regulations which made seniority dependent upon an appointment in substantive capacity, and considered the case of temporary employees vis-a-vis., those who were in permanent or substantive appointment in the cadre. The court also considered the rule which prescribed that all persons appointed to the service, who were not already permanent, would be placed on probation and that Government could extend the period of probation in any case. The court indicated the principles which should guide all

concerned in these words"

"While temporary and permanent posts have great relevance in regard to the career of Government servants. keeping posts temporary for long, sometimes by annual renewals for several years and denying the claims of the incumbents on the score that these posts are temporary makes no sense and strikes us as arbitrary, especially when both temporary and permanent appointees are functionally identified"

"If in the normal course, a post is temporary in the real sense and the appointee knows that his tenure cannot exceed the post in longevity, there cannot be anything unfair or capricious in clothing him with no rights. Not so, if the post is, for certain departmental or like purposes, declared temporary, but it is within the ken of both the Government and the appointee that the temporary posts are virtually long-lived. It is irrational to reject the claim of the "temporary" appointee on the nominal score of the terminology of the post."

"Official service in a post is for all practical purposes of seniority as good as service on a regular basis. It may be permissible, within limits, for Government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categoric and do not admit of any ambiguity and cruelly arbitrary cutoff of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts."

"While rules regulating conditions of service are within the executive power of the State or its legislative power under Proviso to Article 309, even so, such rules have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16."

16. The Supreme Court in the said case considered cases where posts were branded as temporary and incumbents were so continued as temporary incumbents and yet observed that if there is no functional difference between the incumbents of temporary posts and permanent posts they, for all practical purposes, reckon as substantively appointed and/or entitled to the placement in the order of seniority in the service. What to say about the respondent ? Petitioner has been occupying a regular post and as any other person, was put on probation. The doubt as to the defect in his appointment was in respect of the community/caste certificate. He was directed by the respondent to produce the caste/community certificate issued by the authority competent to do so. Petitioner produced the certificate issued by the Judicial First Class Magistrate. When the respondent, however, ignored the petitioner's claim for confirmation and the petitioner was given to understand that it was on account of a doubt the respondent had about the certificate issued by the Judicial First Class Magistrate, he moved this Court. This Court held that the Certificate issued by the Judicial First Class Magistrate was valid. When then the respondent did not follow the directions of the court and what prompted it to take a course of approaching the

Collector of the District without informing the petitioner about the contemplated action and sitting over the record of the appointment of the petitioner all the while to make him work at a point where he was initially appointed and ignore him altogether as if he did not exist in the service at all ? The respondent-Bank, it is not in dispute, is an authority under Article 12 of the Constitution of India. It is obliged to acknowledge the equality of opportunity of employment for the petitioner until his services are terminated or the appointment is cancelled in accordance with law. The respondent has an obligation to treat the petitioner as equal to any other employee in the cadre and to extend to him all benefits which he otherwise was/is entitled to receive under the contract of service and the conditions thereof. Any violation of the conditions of service is not only a violation of the equality rule of opportunity of appointment/employment but is also of the right under Article 21 of the Constitution of India. No employer can force an employee to stagnate and pick up others for the benefits of service. If there is any infirmity in the contract of service termination is the rule, but before termination is effected, as I have observed earlier, enquiry is required to be held in accordance with law. If conscience of statutory authority, is not shaken by the plight of one of its employees who is stagnated as a probationer under it for more than 15 long years when shall it feel that it has some obligations for its employees ? If continued for another five years, the petitioner shall qualify for voluntary/compulsory retirement. Will the conscience of the respondent-bank permit retiring the petitioner as a probationer after twenty completed years of service. If there is any equitable doctrine which can be invoked it can be only to tell the respondent that it has conducted itself in a very callous manner and has given to it a name which even a despot may not relish.

17. I am constrained in the instant case to observe that respondent-bank can redeem itself only by forthwith reckoning the petitioner's service for all the years of the past, for the purposes of all consequential benefits including a position to him above his next Junior treating him as substantively appointed in the service. By not doing it, the respondent shall create a history for those who even today do not find any merit in the commitments of the Indian Democracy to the rule of equality

18. Learned counsel for the respondent has not pressed the pleas of alternative remedy to defeat the instant application.. It is well settled, however, that alternative remedy is a plea entertained by the courts as a rule of prudence and not as a rule of law. In cases where a person has understandably a strong and his rights are so grossly violated that conscience is shaken, a court shall fail in its duty if it shall deny the remedy on the ground that the petitioner should have exhausted the alternative remedy before coming to this Court.

19. For the reasons aforementioned, I am inclined to order as follows :

(1) The respondent-bank is directed to treat the petitioner as substantively appointed irrespective of the nomenclature given to his appointment by it and give to the petitioner all consequential benefits including seniority over his next

junior and place him above his next junior and below the immediate senior, if necessary by extending to the petitioner fictional promotions and fixing seniority accordingly in each cadre to which his junior have progressed and place him above his next junior.

(2) Respondent-Bank shall fix the petitioner's seniority as above within the shortest possible time not later than one month from the date the order is made ready for being delivered to it and pay to the petitioner all emoluments calculated accordingly, if found in arrears, within a fortnight thereof.

(3) The above, however, shall not mean that the petitioner shall be promoted to a cadre or service only because his next Junior has been so promoted, if he is not qualified for such promotions."

20. In the result, the petition is allowed. It is ordered accordingly as above with costs. Hearing fee Rs. 1,500 (One thousand five hundred) each day.