
(2012) 04 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 1142 of 2012

Union of India and Others

APPELLANT

Vs

R. Ramesh and Others

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Citation : (2012) 4 MLJ 447

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : M. Vaidyanathan, for the Appellant; S. Sathiyamurthy, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The third respondent/applicant belongs to Kattunaicken community. He has obtained a Community Certificate dated 21.9.1997 from the Personal Assistant (General) to the District Collector of Chennai to support his claim of Kattunaicken community (ST community). According to the first respondent/applicant, the said certificate has been issued only after verification of the concerned records including the school records which point out that he belongs to Scheduled Tribe community. According to the first respondent/applicant, he has been selected and appointed as Technical Operator (Drilling) in the office of the Third Respondent on 1.5.1998 under the quota reserved for Scheduled Tribe. At the time of his appointment, his community certificate has been verified. Later, he has been permitted to continue in service. In November 2005, while he has been travelling in a bus to attend an interview in the Defence Department, he is said to have lost his whole file inclusive of his educational records as well as the Community Certificate. Therefore, he has been forced to lodge a Police complaint. He has also obtained duplicate certificates for educational records but he has not been issued with the community certificate by the fourth respondent herein. He has also not pursued the matter with the fourth respondent any further.

2. In the meanwhile, it transpires that the first writ petitioner/first respondent before the Tribunal requested the District Collector to cause verification of his Community Certificate based on the direction issued by the High Court, Delhi to the effect that Community Certificates submitted by the employees belonging to ST community, are to be scrutinised. But the first respondent/applicant is unaware of these details. The District Collector has informed the first respondent/applicant on 18.9.2007 to the effect that the Community Certificate produced by him is forged one.

3. It is the case of the first respondent/applicant that the District Collector of Chennai has not conducted any enquiry by issuance of notice to him before sending the adverse report. Based on the said report submitted by the District Collector, Chennai, the third respondent/third petitioner has directed the first respondent/applicant to furnish another Community Certificate. Once again, the first respondent/applicant has applied for the issuance of fresh Community Certificate. He has not been successful to obtain a Community Certificate at the instance of the second respondent/Personal Assistant (General) to Collector of Chennai.

4. Also, the third petitioner/third respondent has issued a Charge Memo dated 12.8.2008 to the first respondent/applicant informing him that he has produced a forged certificate and he has been directed to offer his explanation. The said Charge Memo has been received by the first respondent/applicant and on receipt of the same, he has sought for three weeks time to give a reply. Moreover, he has made mention that he will produce another Community Certificate afresh.

5. The grievance of the first respondent/applicant is that the third petitioner/third respondent, without conducting any disciplinary proceedings has dismissed him from service through an order dated 29.8.2008. Therefore, he has filed O.A. No. 1109 of 2010 before the Third Respondent Tribunal to quash the order dated 29.8.2008.

6. The Tribunal, after going through the entire gamut of the matter and taking into account the Division Bench judgment of this Court in W.P. No. 19697 of 2010 in which it has been observed that the Tribunal, considering the substance of the aforesaid CO., rightly observed that the authorities of the Department are not competent to cancel the community certificate issued by the competent authority and has come to the conclusion that the third petitioner/third respondent has passed the impugned order of dismissal dated 29.8.2008 based on a communication received from the District Collector, Chennai even without awaiting for the order cancelling the Community Certificate from the competent committee and accordingly, granted the relief in favour of the first respondent/applicant but denied backwages on the basis of "no work -no pay" basis.

7. The third respondent Tribunal while quashing the impugned order of dismissal passed by the third petitioner/third respondent dated 29.8.2008, also issued a resultant direction to the petitioners /respondents to reinstate the first

respondent/applicant in service with continuity of service by granting two weeks time to comply with the said exercise, from the date of receipt of a copy of the order.

8. Being aggrieved against the said decision of the Tribunal in O.A. No. 1109 of 2010 dated 26.4.2011, the petitioners/respondents have preferred the writ petition before this Court.

9. The Learned counsel appearing for the petitioners/respondents 1 to 3 contends that the third respondent/Tribunal has failed to note that the first respondent/applicant has been charged with a Charge Memo and he has been provided with an opportunity to defend himself and further, he has also sought to delay the proceedings by seeking additional time for projecting his reply.

10. Added further, the Tribunal has also held wrongly that it is only the State Level Committee that could decide as to whether the Community Certificate is forged one or otherwise.

11. The Learned counsel appearing for the petitioners/respondents 1 to 3 urges before this Court that the Petitioners have the authority to terminate the services of the first respondent/applicant as per Clause 5 of the Appointment order and also that the third respondent/Tribunal has incorrectly held that the principles of natural justice have not been adhered to. In any event, the reasons assigned by the Tribunal in setting aside the impugned order dated 29.8.2008 are not valid in the eye of law and prayed for allowing the Writ Petition.

12. The Learned counsel appearing for the petitioners/respondents 1 to 3 informs this Court that the District Collector (in-charge) and District Revenue Officer has addressed a letter dated 28.12.2011 to the Secretary of the Adi Dravidar and Tribal Welfare Department, Chennai, in which it has been mentioned that the matter has been referred to the State Level Committee to conduct an enquiry, viz., to go into the genuineness, truth and veracity of the Certificate produced by the first respondent/applicant. As on date, the matter is said to be pending.

13. At this juncture, it is pertinent for this Court to point out that the authority, who issued the Community Certificate, has denied the issuance of very certificate. Therefore, the Petitioners have got ample powers to dismiss the first respondent/applicant as per Clause 5 of the Appointment Order issued to the first respondent/applicant. A perusal of the contents of Office Memorandum dated 27.4.1998 in No. Estt/4-3/98-560, Government of India, Central Ground Water Board, Division IV, 35 Vijayaraghava Road, T. Nagar, Chennai, would show that as per Clause 5 of the Appointment Order, it is mentioned that if any declaration given or information furnished by the candidate proved to be false or if the candidate is found to have wilfully suppressed any material information, he will be liable to removal from service and such other actions as Government may deem necessary. Therefore, it is candidly clear that as per sub-clause 5 of the Office Memorandum, the petitioners/respondents 1 to 3 have requisite power to dismiss the first respondent/applicant from service inasmuch as the first

respondent/applicant has given a declaration that he belongs to Kattunaicken community, which is included in the Scheduled Tribe community. As per the District Collector's report, the declaration furnished by the first respondent/applicant is not correct. As such, Clause 5 of the Office Memorandum dated 27.4.1998 is squarely applicable for the applicant and the petitioners have rightly passed the impugned order of dismissal dated 29.8.2008 in respect of the first respondent/applicant which calls for no interference in the hands of this Court.

Viewed in the above perspective, we are not in agreement with the view taken by the third respondent/Tribunal in O.A. No. 1109 of 2010 to the effect of quashing the impugned order of dismissal dated 29.8.2008 passed by the third petitioner (third respondent in Original Application) and ordering reinstatement of the first respondent/applicant in service with continuity of service, etc. and in the interest of justice and to prevent an aberration of justice, accordingly, we set aside the said order passed by the third respondent/Tribunal. Resultantly, the writ petition is allowed. No costs.