

R.Amutha Vs. Superintending Engineer

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Court : Chennai

Decided On : Dec-06-2013

Judge : Honble Mr.Justice R.Sudhakar

Appellant : R.Amutha

Respondent : Superintending Engineer

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

06. 12 2013 CORAM: THE HONBLE MR. JUSTICE R. SUDHAKAR AND THE HONBLE TMT. JUSTICE PUSHPA SATHYANARAYANA W.P. No.20764 of 2013 and M.P. No.1 of 2013 R. Amutha .. Petitioner Vs.

1. The Superintending Engineer Salem Electricity Distribution Circle Salem - 14 2. The Chief Engineer (Personnel) Tamil Nadu Electricity Board Chennai .. Respondents Petition filed under Article 226 of the Constitution of India seeking for issuance of Certiorarified Mandamus calling for the proceedings of the 1st Respondent in M.No.678/Adm.III/A.2/F.Suspension/2013 dated 31.5.2013 and Memorandum No.Adm.III/A.2 /F.dkt./2013 dated 31.5.2013 and quash the same and consequently direct the respondents to grant Full Pension, DCRG, Earned Leave Encashment, half Pay Leave and Security Fund Balance and all other admissible terminal benefits. For Appellant : Mr. V. Vijay Shankar For RR1& 2 : Mr. P.R. Dilip Kumar

ORDER

PUSHPA SATHYANARAYANA, J.

The Petitioner has filed this Writ Petition seeking to quash the proceedings of the First Respondent / Superintending Engineer passed in M. No.678/Adm.III/A.2/F.Suspension/2013 dated 31.5.2013 and Memorandum No.Adm.III/A.2/F.dkt/2013 dated 31.5.2013 and for a consequential direction to the Respondents to grant Full Pension, DCRG, Earned Leave Encashment, Half Pay Leave and Security Fund Balance and all other admissible terminal benefits.

2. The short facts that are necessary for disposal of this Writ Petition are as follows:- The case of the Petitioner is that she belongs to Konda Reddi Community, which is a Scheduled Tribe as per the Presidential list and she has obtained a Community Certificate as early as in the year 1981. It is stated that several of her relatives including her sister also possess the Community Certificate issued by the Tahsildar and other Revenue Authorities certifying them as belonging to the said Community. The Petitioner is said to have joined service as an Assessor in the Respondent Tamil Nadu Electricity Board, which was subsequently changed as Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), [for short, Respondent Corporation']. and later on, she was given Selection Grade and also Special Grade. She was last serving as Special Grade Assessor, Dadagapatty. It is stated that during February 1986, the Collector, Trichy, had sent a report to the Respondent Corporation, viz., her employer, that she did not belong to Konda Reddi community. According to the Petitioner, she was not afforded an opportunity before passing the above order and, therefore, she filed a Writ Petition in W.P. No.7620 of 1988 which was disposed of finally on 15.4.1997 setting aside the order, however, granting liberty to the Collector to conduct the verification afresh. The relevant passage of the order of this Court reads as under:- The impugned order merely states a conclusion without setting out any reason. Learned Government Advocate has not been able to produce any records to show that a proper enquiry had been conducted and that the documents had been properly considered. The impugned order, therefore, is set aside reserving liberty to the respondents to hold a fresh

enquiry in accordance with law, if so advised. 3. Despite the opportunity granted by this Court, to the Respondents to verify and conduct an enquiry, the Respondents have been sluggish and never did any enquiry. The Petitioner also had not received any notice or date of enquiry from the State Level Scrutiny Committee or from any Revenue Authority. While so, the Petitioner has reached her superannuation on 31.5.2013. On the last day of her service, she was issued orders stating that she was placed under suspension and was not allowed to retire on the ground that her Community Certificate is still under verification. Further, the Petitioner's service was extended from the date of her superannuation in the impugned order and the relevant passage is extracted hereunder:- During the period of Suspension the said Thirumathy. R.Amutha Special Grade Assessor, Dadagapatty Section will be paid amount equal to provisional Pension as she was under extension of Service beyond the date of her superannuation i.e. 31.05.2013 as per rule 17(f) TANGEDCO Service regulation till the finalization of the issue. It is the said order that is now being challenged in this Writ Petition.

4. The Respondent Corporation has denied all the averments set out in the affidavit and stated that the Petitioner belonged to Reddiyar Community and not to Konda Reddi Community as claimed by her. The Respondent Corporation had further contended that the suspension is under Clause 17(f) of the TANGEDCO Service Regulations as the enquiry against the Petitioner is still pending. It was further stated that the employees who were suspended on the date of superannuation, will not be entitled to receive the terminal benefits as per the working instructions format communicated vide Memo No.12311/A18/A181/2002-1 dated 20.3.2002. The Respondent Corporation further alleged that only on the basis of the order in W.P. No.7610 of 1988, the Petitioner was allowed to continue in service and as directed therein, the District authorities have forwarded the report of the bogus Community Certificate obtained by the Petitioner only during May 2013. Therefore, the Respondent Corporation justified the action of keeping the Petitioner under suspension.

5. It is seen from the above facts that though this Court had directed the District Collector and the Revenue Authorities to conduct an enquiry about the community of the Petitioner way back in 1997, the Respondent had not taken any action till

May 2013 when the Petitioner was about to retire. The Respondent Corporation has not given any reason in the counter for not approaching the District Level Vigilance Committee from the year 1997, to verify the genuineness of the Community Certificate issued to the Petitioner. After the passage of 16 years, at the fag end of service, by order dated 31.5.2013, the Petitioner has been suspended on an allegation that she produced bogus Community Certificate. It is a fact that the Petitioner obtained the Community Certificate as early as in 1981. But, till the date of her superannuation, the Certificate has not been cancelled as per law. When the District Collector attempted to take action against her, this Court quashed the same stating that no opportunity was afforded to the Petitioner, however, opportunity was granted to the Respondents as well as the Revenue authorities to approach the District Level Vigilance Committee. It is to be seen that the petitioners Community Certificate remains valid and subsisting as the same has not been cancelled so far as stated in R. Kandasamy vs. The Chief Engineer, Madras Port Trust reported in JT1997(7) S.C.

660. ".4. On a doubt being raised regarding the validity of certificates issued by the Tahsildar prior to 11.11.89, the Joint Secretary to the Government of Tamil Nadu on 3.04.1991 informed the Collectors of various districts in Tamil Nadu that ".the Permanent Community Certificate issued to Scheduled Tribes by Tahsildars up 11.11.89 is valid".. This communication had been placed on record in the High Court. From a combined reading of G.O.M.S.No.2137 dated 11.11.89 and letter of the Joint Secretary dated 3.04.1991 (supra) it follows that whereas a Community Certificate after 11.11.89 is required to be issued by the Revenue Divisional Officer, but the Community Certificates issued by the Tahsildar prior to 11.11.89 are valid certificates. In view of this position, it was not proper for the respondent to have insisted upon a fresh certificate to be produced by the appellant from the Revenue Divisional Officer as admittedly the Community Certificate produced by the appellant had been issued by the Tahsildar concerned in 1987, that is, prior to 11.11.89."

6. It is to be seen that as per the terms and conditions of the rules and regulations governing the employees working in the TANGEDCO, the payment of pension and other terminal benefits will be automatic for an employee on attaining the age of

superannuation and the Respondent Corporation has got no power to withhold the grant of pension or other terminal benefits. The Respondents, despite the permission granted by this Court to approach the Vigilance Committee to enquire into the matter, having slept over the same for more than 16 years, cannot be allowed to take advantage of their own wrong at the fag end of her service. The State Level Scrutiny Committee also had sufficient time to make verification. However, not even a preliminary enquiry has been made in this case. In the circumstances, for the failure and inaction on the part of the Respondents, the Petitioner cannot be made to suffer and be denied of benefits. The action of the respondent is, therefore, arbitrary in nature.

7. For all the above reasons, we hold that the impugned order suffers from illegality and arbitrariness. Whenever the employer finds that a Community Certificate produced by an employee is not genuine, action should be taken promptly with the competent authority to cancel such Certificate. It is only on such cancellation, the employer gets a right to initiate disciplinary action on the ground that the Community Certificate is not a valid one. This exercise has not been followed in the present case. The impugned order of suspension cannot be allowed to stand for the reasons set out above. Accordingly, the order of suspension dated 31.5.2013 passed in M. No.678/ Adm. III/A.2/F. Suspension/2013 is quashed and the Writ Petition is allowed. No costs.

8. In view of the setting aside of the impugned order, the petitioner is deemed to have been relieved from service as on the date of her superannuation, i.e., 31.5.2013. The authorities are further directed to grant Full Pension, DCRG, Earned Leave Encashment, half Pay Leave and Security Fund Balance and all other admissible terminal benefits, to the petitioner as prayed for. However, we make it clear that this order will not stand in the way of the Respondent Corporation from making a reference to the District Collector concerned for necessary enquiry and report. In view of the disposal of the main writ petition, connected Miscellaneous Petition is closed. The respondent Board is directed to comply with the above order within 8 weeks from the date of the receipt of the copy of this order. [R.S., J.]. [P.SN., J.]. 06 12 2013 Index : Yes Internet : Yes gri Note to Registry: Issue order on 09.12.2013 B/o gri R. SUDHAKAR, J.

AND PUSHPA SATHYANARAYANA, J.

(gri) To 1. The Superintending Engineer Salem Electricity Distribution Circle Salem - 14 2. The Chief Engineer (Personnel) Tamil Nadu Electricity Board Chennai Pre-Delivery Order in W.P. No.20764 of 2013 Delivered on 06 12 2013

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