

M. Yadamma Vs. Joint Collector and Additional District Magistrate and anr.

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Court : Andhra Pradesh

Decided On : Jan-20-2005

Reported in : 2005(2)ALD165

Judge : P.S. Narayana, J.

Acts : Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993; Classification Control and Appeal Rules - Rule 4; Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Rules; [Constitution of India](#) - Article 226; [Administrative Tribunals Act, 1985](#)

Appeal No. : WP No. 8050 of 1997

Appellant : M. Yadamma

Respondent : Joint Collector and Additional District Magistrate and anr.

Advocate for Def. : Government Pleader for Social-Welfare

Advocate for Pet/Ap. : W.B. Srinivas, Adv.

Judgement :

ORDER

P.S. Narayana, J.

1. 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 v. Union of India*, : [1997]228ITR725(SC) , 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 v. Union of India, : (1987)ILLJ255SC , M.B. Majumdar v. Union of India, : (1991)ILLJ585b SC , Amulya Chandra Kalita v. Union of India, : (1990)ILLJ523SC , R.K. Jain v. Union of India, (1993) 4 SCC 119, Dr. Mahabal Ram v. Indian Council of Agricultural Research, : (1991)ILLJ112SC , 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 advertng 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.