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Court : Chennai

Decided On : Sep-09-1998

Reported in : 1998(3)CTC638; (1998)IIIMLJ699

Judge : P. Sathasivam, J.

Appeal No. : W.P.No. 4134 of 1990

Appellant : M. Ramamurthy

Respondent : State of Tamil Nadu Represented by Secretary, Revenue Department, Fort St. George, Madras - 9 and 2

Advocate for Def. : Mr. S. Gopinathan, Govt. Adv.

Advocate for Pet/Ap. : Mr. R. Yashodvardhan, Adv.

Disposition : Petition allowed

Judgement :
ORDER

1. Aggrieved by the proceedings of the Second respondent dated 16.5.86, the petitioner has approached this court for quashing the same on various grounds.

2. The case of the petitioner is briefly stated hereunder:- He is a permanent resident of Padalayar Kulam Village, Nanguneri Taluk of Tirunelveli District. He belongs to Sholaga community. In the year 1975, heapplied for the post of Trainee Technician in the Telephone Department and on 23.4.75 he was appointed as a Trainee Technician. On 24.4.76 he was appointed as a Technician in the Department of Telephones, Pattukottai. He had submitted a certificate given by the Tahsildar, Nanguneri dated 26.7.74 to the effect that he belongs to Hindu Sholaga community which is recognised as a Scheduled Tribe. It is stated that while he was working as Transmission Assistant in the Telephone Exchange, Kovilpatti, due to some petitions given against him, the genuineness of the community certificate produced by him was referred by the Divisional Engineer (Telegraphs) Tuticorin to the Collector, Tirunelveli for field verification. Pursuant to the said reference an enquiry was conducted by the Sub-Collector, Cheranmahadevi, the third respondent herein. He appeared before the third respondent and produced his S.S.L.C. book to show that he belongs to Sholaga community. He also produced a certificate issued to his father by the Headmaster of T.D.T.A. Schools, Dhonavur Circle dated 27.10.1954 which also shows that his grandfather's name was Shanmugam Sholaga. Apart from this, he also produced the community certificate issued by the Tahsildar. He also produced two sale deeds executed in the year 1981 and 1985 in favour of his father wherein also the term sholaga appears. The enquiry was completed in the year 1985 itself. But the order passed thereon by the third respondent was not communicated to him. However, he received a chargesheet dated 27.1.90 issued by the Divisional Engineer, Telecommunications, Government of India, Tuticorin, wherein it is stated that he had furnished false information and suppressed factual information in the application for recruitment to the post of Technician. The order of the second respondent dated 16.5.1986 stating that he does not belong to Sholaga community has been communicated to him for the first time only along with the charge memo dated 27.1.90. In such circumstances, having no other remedy, he has approached this court by way of the present writ petition.

3. On behalf of the respondent, first respondent has filed a counter affidavit disputing various averments made by the petitioner. It is stated that the petitioner had applied for a community certificate in the year 1974 and the then Tahsildar,

Nanguneri had issued a certificate on 26.7.74 to the effect that the petitioner belongs to 'Sholaga community' which is recognised as a Scheduled Tribe, based on this, he was appointed as a Trainee Technician in Telephones Department. Subsequently the Divisional Engineer, Telegraphs Tuticorin, had requested the Collector, Tirunelveli, to intimate the actual community of the petitioner. The then Sub Collector, Cheranmahadevi had conducted a detailed enquiry and submitted a report dated 11.4.86 to the Collector, Tirunelveli, stating that the petitioner does not belong to sholaga community but belongs to 'Sholagar' community, which is classified as Most Backward. Based on this, the fact was intimated to the Divisional Engineer, Telegraphs, Tuticorin in Tirunelveli District Revenue Officer's R.Dis. 122400of 1985 dated 16.5.86. It is further stated that the records produced by thepetitioner before the Sub Collector was considered and found the particularsproduced by him are not genuine. It is further stated that the community certificate issued by the Tahsildar, Nanguneri is not based on any valid and acceptable evidence. Hence it has to be ignored in to as a void certificate and needs no specific cancellation by the competent authority. With these averments, first respondent prayed for dismissal of the writ petition.

4. In the light of the above pleadings I have heard the learned counsel for the petitioner as well as learned Government Advocate for respondents.

5. After taking me through the impugned order, learned counsel for the petitioner has raised the following contentions:-

i) Inasmuch as the Tahsildar had issued community certificate on 26.7.74, who was the competent authority at the relevant time, without cancelling the said certificate, the present order of the 2nd respondent cannot be sustained.

ii) Copy of the report said to have been submitted by the third respondent to the second respondent has not been furnished to the petitioner; and

iii) None of the documents presented before the third respondent was considered.

6. On the other hand, learned Government Advocate after taking me through the various averments in the counter affidavit has contended that the petitioner was

given adequate opportunity by the Sub-Collector, Cheranmahadevi, third respondent herein and on the basis of the report of the third respondent, the second respondent has passed the impugned communication to the employer of the petitioner; accordingly he prayed for dismissal of the writ petition.

7. I have carefully considered the rival submissions.

8. There is no dispute that petitioner was appointed initially in the year 1975 as Trainee Technician in the Department of Telephones and appointed as a Technician in 1976 in the Department of Telephones, Pattukottai. It is seen from the proceedings that nearly after 10 years, Divisional Engineer (Telegraphs) Tuticorin in his confidential letter dated 8.8.85 has requested the District Collector, Tirunelveli, to investigate and intimate the actual community of the petitioner. It is further stated that on the basis of the said communication, the District Revenue Officer, Tirunelveli, second respondent herein, requested the third respondent to conduct an enquiry and submit a report. No doubt it is stated by the petitioner that in pursuance of the notice from the third respondent, he appeared and submitted the community certificate issued by the Tahsildar, Nunguneri dated 26.7.74 S.S.L.C. Certificate of the petitioner and Record Sheet relating to his father in support of his claim that he belongs to Sholaga community. It is the definite case of the petitioner that thereafter he did not receive any information from the third respondent. It is seen from the order impugned that the second respondent on the basis of the enquiry of the third respondent, informed the DivisionalEngineer (Telegraphs), Tuticorin that the petitioner does not belong to Sholaga community.

9. In the light of the above factual position, now I shall consider the points raised by the petitioner. As stated earlier, Tahsildar, Nanguneri had issued a community certificate dated 26.7.74 stating that the petitioner belongs to Hindu Sholaga community which is recognised as Scheduled Caste under Scheduled castes and Scheduled Tribes List Modification Order, 1956. In other words, on the date of his appointment in the Telephones Department, the petitioner was having a valid community certificate issued by the competent authority. In such circumstances, as rightly contended by the learned counsel for the petitioner without cancelling the said certificate issued by the Tahsildar, Nanguneri, it is not open to the

respondents to pass or communicate contrary orders to the Divisional Engineer. It is also clear that as per the Government of India Notification at the relevant point of time, Tahsildar was empowered to issue community certificate. The first contention of the learned counsel for the petitioner is well-founded, in view of the Division Bench decision of this court reported in Sakthi Devi, S.P., v. The Collector of Salem, Salem etc., 1984 W.L.R. 535. Their Lordships in the Division Bench after considering earlier decisions of this court as well as Apex Court have formulated the following observations:-

'.....Hence, it is held that

1. A caste/community certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority.

2. Their contents are to be treated as correct and every public authority, undertakings, bodies, institutions, etc., which are bound by instructions relating to such certificates, are bound to act upon them, so long as they are not cancelled.

3. In no disciplinary proceedings, their genuineness or correctness of their contents can be gone into. It is open to the department or employer or organisation, to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued could be still valid, on materials which have since come to their knowledge. They can appear in the verification enquiry and place the materials.

4. If the certificate is cancelled, then disciplinary proceedings can be initiated for having furnished false information.

5. Appointing authorities have the right to verify the genuineness of the certificates by approaching the District Magistrate-Collector of the District or such other constituted authority and once the report is received that the certificate is genuine, thereafter the certificate holder cannot be further harassed to prove his caste / community in any other manner.

6. In causing verification, the Collector is bound to follow the procedure laid down in letter dated 7th July, 1983 of Government of Tamil Nadu'.

Among the above mentioned conclusion arrived at by the Division Bench, direction Nos.1 and 6 are relevant for our case. As pointed out by the Division Bench, till the community certificate issued by the competent authority is cancelled by another competent authority the same continues to be a valid document. Accordingly, I accept the first contention of the learned counsel for the petitioner.

10. Even though the petitioner has furnished documents such as community certificate, his transfer certificate as well as his father's certificate, it is not clear whether those documents have been considered by the third respondent. It is settled law that in a matter like this, particularly in an enquiry when relevant document are furnished, it is but proper for the authorities concerned to consider those documents and arrive at a conclusion. The said view of mine is supported by a decision of the Supreme Court reported in Gayatrilaxmi, B. Nagpure v. State of Maharashtra, : [1996]3SCR466 . As stated earlier, neither the third respondent nor the second respondent considered those documents; accordingly the second contention of the learned counsel for the petitioner is well- founded.

11. It is seen from the impugned proceedings of the second respondent that on the basis of the report of the third respondent, he had informed the Divisional Engineer, Telegraphs that the petitioner does not belong to sholaga community. Even though it is stated by the District Revenue Officer that his conclusion is based on the report of the Sub Collector, Cheranmahadevi, the said report has not been forwarded to the petitioner. In a similar circumstance, this court in D. Illamaran v. Government of India, 1996 W.L.R. 482 and C. Baskaran v. The District Collector, Trichy, 1997 W.L.R. 33 has held that the authority has to furnish copy of the report of the Enquiry Officer to the concerned person and also further opportunity to be given to file objections and adduce evidence if any. Such procedure has not been followed in this case. Accordingly, I accept the third and last contention raised by the learned counsel for the petitioner.

12. Taking note of all the above aspects, I am of the view that the proceedings of the second respondent dated 16.5.86 cannot be sustained and accordingly the

same is quashed. Net result, writ petition is allowed as prayed for. No costs. I make it clear that if the employer of the petitioner desires to ascertain the genuineness of the community certificate, it is open to them to make a request to the District Collector concerned and on the basis of the report of the District Collector they are entitled to take appropriate action in accordance with law. I also make it clear that if for any reason the District Collector wants to verify the genuineness of the Community certificate, the same has to be done as per the principles laid down in various decisions of this Court as well as Supreme Court and after affording adequate opportunity to the petitioner.

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