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Court : Chennai

Decided On : Jan-10-1996

Reported in : 1996(2)CTC182

Judge : Jayarama Chouta, J.

Acts : Constitution of India - Article 226

Appeal No. : W.P. No. 7963 of 1986

Appellant : S. Ilango

Respondent : Indian Overseas Bank, Represented by Its Chief Officer Personnel Department

Advocate for Def. : N.G.R. Prasad, Adv.

Advocate for Pet/Ap. : N. Kannadasan, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Jayarama Chouta, J.

1. In this writ petition, the petitioner has prayed to forbear the respondent from acting upon the report of the Revenue Divisional Officer, Gobichettipalayam and consequently, direct the respondent to consider him for promotion as Officer by issue of a writ of mandamus or any other appropriate writ, order or direction and pass such further or other orders.

2. In support of this writ petition, the petitioner has sworn to an affidavit in which, he has stated that he belongs to Kondareddy community which is one of the communities coming under the list of Schedule Tribes in the Constitution (Scheduled Tribes) Order, 1950 passed by the President by virtue of the powers conferred on him under Article 342 of the Constitution of India and listed as such under the Central Act 108 of 1976. He has applied for the post of clerical cadre to the Banking Service Recruitment Board, Southern Region against the quota reserved for Scheduled Tribes, arid was selected in the written test and was appointed as a clerk on 7.7.1982. He has produced the community certificate in proof of his claim that he belongs Konda Reddy Community obtained from the Judicial First Class Magistrate, Salem who is one of the list of authorities empowered to issue a community certificate. The respondent accepted the said certificate and acted upon the same and permitted him to join duty. Since he belongs to Kolathur Village of Salem District, he had obtained the certificate from the Magistrate, Salem.

3. He has further stated that prior to his appointment in the respondent bank, he was working as a lower division clerk from 1978 to 1982 in the office of the Deputy Regional Commissioner, Employees Provident Fund, Coimbatore and his community status has been verified by the Deputy Regional Commissioner from the District Collector, Salem and he had satisfied about his community.

4. The affidavit further reads that the respondent has referred about the community status of the petitioner to the District Collector, Periyar District for verification. The Revenue Divisional Officer, Gobichettipalayam has conducted an enquiry regarding the community of the petitioner by recording statement of certain persons including that of the father of the petitioner. His father, since he knows only to sign, but does not know to read and write, as directed by the Revenue

Divisional Officer, signed some statement recorded by the Revenue Divisional Officer without knowing the contents. The petitioner protested about the enquiry and requested to give him proper opportunity to participate in the enquiry, but no proper opportunity was given to him to produce all the documents before the authority to prove his community. Neither the Tahsildar, nor the Revenue Divisional Officer, Gobichettipalayam had informed him about the decision of the enquiry conducted by them. Suddenly, the petitioner received a communication dated 22.4.1986 from the respondent in which it has been stated that during enquiry by the Revenue Divisional Officer, it was disclosed that the petitioner does not belong to Kondareddy community but belongs to Periyakombu Reddy. The said communication issued by the respondent was in the form of a show cause notice for terminating the service within 15 days from the date of receipt of the said notice. The petitioner requested the respondent to furnish him the report of the Revenue Divisional Officer to submit his explanation which has not been furnished. Since the respondent is initiating the proceedings to terminate the service of the petitioner, he has filed this writ petition for the relief mentioned above.

5. On behalf of the respondent, the Assistant General Manager in charge of Staff matters has filed a counter- affidavit. In the said counter-affidavit, he has stated that the petitioner has not made the Collector, Periyar District and Revenue Divisional Officer, Gobichettipalayam as parties to the writ petition. The bank propsed to terminate his service because the Revenue Divisional Officer, Gobichcttipaiayam by his letter dated 25.4.1984 had informed the bank that the enquiry revealed that the petitioner did not belong to Kondareddy community, but he belongs to Periyakombu Reddy community, a sub- section among Hindu Reddiars. Since on perusal of the document and the certificate produced by the petitioner, it was noticed that there was a discrepancy regarding caste status, the Bank has asked the Revenue Divisional Officer, Salem to look into the matter and the Officer, after verification and enquiry has informed the bank that the petitioner docs not belong to Konda Reddy community. He has also further stated that the bank took up the matter with the Judicial First Class Magistrate, Salem and the said Magistrate, by his reply dated 13.7.1984 informed that he has issued the certificate to the petitioner on the strength of the certificate issued by the Tahsildar,

Mettur. Since the Revenue Divisional Officer, Gobichettipalayam has clearly stated about the status of the petitioner, the bank by its letter dated 22.4.1986 issued a show cause notice asking the petitioner as to why his services should not be terminated. After denial of all the other contentions raised in the affidavit by the petitioner, the respondent has prayed this Court to dismiss the writ petition as devoid of merits.

6. Heard Mr. Kannadasan, learned counsel on behalf of the petitioner and Mr. N.G.R. Prasad, learned counsel on behalf of the respondent bank. They took me through the relevant records. The main contention of the learned counsel for the petitioner was that it is only the District Collector who is competent authority to find out the community of a person and he is only competent to set aside the community certificate issued to the petitioner by the Judicial First Class Magistrate, Salem who is one of the list of authorities empowered to issue the community certificate. The respondent bank has no jurisdiction to verify the community certificate issued by an authority at Salem District through the revenue officials of another District i.e., Periyar District. Further, the bank cannot act upon the report of the Revenue Divisional Officer of Periyar District since the Collector is the final authority to arrive at a conclusion after conducting an enquiry and communicate the same. He has further urged that the action of the respondent to terminate the service of the petitioner is illegal, unlawful and violative of the judgment of a Divisional Bench of this Court inasmuch as the community certificate produced by him issued by the Judicial First Class Magistrate, Salem had not been cancelled or set aside.

7. In support of this contention, learned counsel invited my attention to a decision of this Court in Sakthi Devi v. The Collector of Salem, Salem etc, 98 L.W. 105. He invited my attention to the following portion of the said decision found at page 109:

'What is paramount is to find out whether in the course of discharge of public duties, the concerned public authority is enjoined to discharge the public duty, and if so, then the document which comes into existence consequent to such public duties, issued with seal and authority of his office would be a public document. Once a caste certificate comes into existence in this form any other public functionary is duty bound to act upon the same. On being issued, it is a lawful and valid document. So long as it is not cancelled in the eye of law, it being a valid document, the holder of it, could rely upon it to establish his caste. Except the prescribed authority, no other authority or public bodies or undertakings, etc., having been conferred with powers to issue caste certificates, he cannot choose to declare in any proceeding and more so in disciplinary proceedings, that the valid caste certificate contains false particulars. Further, in G.O. Ms. No. 9, Social Welfare, dated 3rd January, 1983, instructions were given that records of local enquiry must be maintained, as permanent records for verification in future, which is also indicative of the fact that caste certificate is a public document. Hence, it is held that a caste certificate is a public document.'

8. He also further pointed out the following portion of the judgment aforementioned at page 111 and 112:-

'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, etc. which are bound by instructions relating to such certificates, are bound to act upon them, so long as they arc 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 certificate 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.

7. In view of that is stated in Chapter 19 of Brochure on Reservation for Scheduled Caste and Scheduled Tribes, in services, 6th edition (1982), the instructions issued by the Central Government from time to time relating to Scheduled Castes and Scheduled Tribes, pertaining to issue of caste certificates are binding upon public sector undertakings, statutory and semi- Government bodies and voluntary agencies receiving grant-in-aid from the Central Government, as provided therein.'

9. On the otherhand, Mr. N.G.R. Prasad, learned counsel for the respondent has contended that the respondent has the necessary disciplinary jurisdiction to hold enquiry and on the basis of the report submitted by the Revenue Divisional Officer wherein he has stated that the petitioner docs not belong to Kondarcddy Community, the bank is well within its jurisdiction in proceeding with the enquiry. He also pointed out that without impleading the Revenue Divisional Officer and the Collector as parties to this writ petition and without asking for quashing of the report of the Revenue Divisional Officer, the relief asked for by the petitioner in the present form cannot be granted. On these grounds, he submitted that the writ petition is liable to be dismissed.

10. When a valid certificate had been secured from the Judicial First Class Magistrate, Salem who is one of the prescribed authority to issue a caste certificate, the respondent is bound to act upon such a certificate until and unless the said certificate is cancelled. The caste certificate has been issued by a public authority authorised to issue. It is a public duty to be discharged by a public servant, on authority conferred upon him to issue such certificate. If the authority which has issued the certificate or the District Collector cancels the certificate then of-course the respondent can act upon it and can proceed against the petitioner. In

the present case, admittedly the certificate issued by the competent authority i.e., the Judicial First Class Magistrate, Salem has not been cancelled or set aside, The Respondent Bank wants to proceed against the petitioner on the basis of the report submitted by the Revenue Divisional Officer. The Revenue Divisional Officer has no power to set aside the certificate issued by the Judicial First Class Magistrate, Salem. Unless the said certificate has been set aside by a competent authority, the respondent cannot proceed against the petitioner overlooking the community certificate produced by the petitioner at the time of joining the duty. It has been laid down by this Court on more than one occasion that unless and until a community certificate issued in favour of an employee is cancelled in a manner known to law, no disciplinary action could be taken against such employee on the basis of the validity of the community certificate.

11. So far as the Central Government Organisations and statutory authorities arc concerned, the Division Bench has held that a certificate issued by the Tahsildar is a valid certificate. It has also held that if the genuineness of the certificate is disputed, it is open to the authorities to refer the matter to the Collector of the District and the Collector shall cause an enquiry to be made following the principles of natural justice. If on the basis of such an enquiry, it is found that the community certificate earlier produced by the employee is not genuine, the competent authority must cancel the certificate. It is only on such cancellation that the employer gets right to initiate disciplinary action on the ground that the community certificate is not a valid certificate.

12. As far as the second submission of the learned counsel for the respondent is concerned, regarding non-impleading of the Revenue Divisional Officer and the Collector, it should be remembered that the petitioner has not claimed any relief either against the Revenue Divisional Officer or against the Collector. His prayer is against the respondent bank to for bear the bank from acting upon the report of the Revenue Divisional Officer and consequently to direct the bank to consider the case of the petitioner for promotion as officer by is of a writ of mandamus or any other appropriate writ. Under these circumstances, without impleading the said Revenue Divisional Officer and the Collector, the relief as claimed by the petitioner could be granted. Hence, there is no force in this contention and necessarily it has

to be rejected. However, it will be open to the respondent to approach the competent authority to verify the genuineness of the certificate and get an appropriate order regarding cancellation of the said certificate.

13. For the reasons stated above, the writ petition is allowed. Rule nisi is made absolute and I issue a mandamus directing the respondent bank not to act on the report of the Revenue Divisional Officer, Gobichettipalayam and also direct the bank to consider the case of the petitioner for promotion, if he is otherwise eligible. No costs.