

Writ Petition No. 2738 of 2010 and M.P. No. 1 of 2010

Union of India v. D. Yogeswaran

2012 SCC OnLine Mad 3570

(BEFORE ELIPE DHARMA RAO AND R. SUBBIAH, JJ.)

1. Union of India, rep.by the General Manager, Southern Railway, Chennai.
2. The Additional General Manager and Appellate Authority, Southern Railway, Chennai.
3. The Member Secretary, Railway Recruitment Board, No. 5, Dr. P.V. Cherian Crescent Road, Egmore, Chennai.
4. The Chief Personnel Officer, Personnel Branch, Chennai
Petitioners

v.

1. D. Yogeswaran
2. The Central Administrative Tribunal, Madras Bench, rep.by its Registrar, Chennai Respondents
For petitioners: Mr. V. Radhakrishnan, S.C. for Mr. N. Nanmaran
For R.1: Mr. G. Jeremiah for Mr. W.M. Abdul Majeed

Writ Petition No. 2738 of 2010

And

M.P. No. 1 of 2010

Decided on September 17, 2012

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the entire records relating to the order passed by the second respondent/Central Administrative Tribunal, Madras Bench in O.A. No. 666 of 2009, dated 13.11.2009 and quash the same.

ORDER

ELIPE DHARMA RAO, J.

The first respondent herein has applied for the post of Senior Clerks, Group 'C' services, pursuant to the notification issued by the third petitioner/Railway Recruitment Board in the year 2005 and got selected under the ST quota. By letter dated 11.3.2006, he was called for verification of certificates with a condition that he should produce caste certificate in the enclosed prescribed format. Accordingly, he appeared for certificates verification on 28.3.2006 and submitted all the certificates including the community certificate dated 24.7.1993 in a permanent card format issued by the Government of Tamil Nadu. However, the fourth petitioner herein, by letter dated 20.6.2006, has directed the first respondent/applicant to produce a new/fresh community certificate issued by the R.D.O./Deputy Collector and that too in the prescribed format. Since the explanation of the applicant/first respondent, that there is no need to insist upon new/fresh certificates as has been time and again instructed by the Government of Tamil Nadu, has not been accepted by the fourth petitioner, the applicant/first respondent requested to grant time, vide his letter dated 12.7.2006 to produce the community certificate as required. According to the

applicant/first respondent, in the meanwhile, he has made vain requests with the fourth petitioner time and again to accept the community certificate produced by him. According to the first respondent/applicant, he received a letter dated 8.5.2009 from the fourth respondent stating that the panel of appointment got lapsed on 29.3.2007 and as such, his requests for appointment cannot be processed. To verify the same, he filed an application under the Right to Information Act, on 8.4.2009, for which a communication was received by him on 22.5.2009 stating that the currency of the panel for recruitment to the post of Sr. Clerk in the scale of Rs. 4500-7000 notified by RRB on 29.3.2006 was for a period of one year and the panel lapsed on 29.3.2007 and there is no vacancy of Sr. Clerk at present against direct recruitment quota. Therefore, the applicant/first respondent has filed O.A. No. 666 of 2009 before the Tribunal praying for a direction to the authorities/writ petitioners herein to accept the community certificate dated 24.7.1993 produced by him as valid and sufficient and issue order of appointment and other consequential and ancillary orders in favour of him for the post of Senior Clerk pursuant to the offer of appointment dated 3.4.2006 with all concomitant benefits.

2. Since the Tribunal has allowed the said Original Application, the Administration has come forward to file this writ petition.

3. It is the case of the petitioners/Administration that the applicant was provisionally selected for the post and he was required to submit his community certificate in the prescribed format and instead of producing the certificate as required, he chose to represent through letters and also through RTI Act. It has been stated by them that the Railway Administration by the communication dated 20.6.2006 has called upon the first respondent to produce certificates including age and community certificates, in original, on or before 28.6.2006 and the first respondent appeared before the authorities concerned and submitted a letter stating that he is not able to submit age proof certificate and community attestation form and sought for a time of 15 days to submit the certificates, but subsequently, he has again submitted another letter dated 12.7.2006, seeking one more month's time to submit the community certificate in the prescribed format and also prayed to stop processing his appointment formalities till then.

4. The Administration has further stated that though the petitioner is completely aware of his obligation to produce all the certificates, including the community certificate in the prescribed format and only knowing the same, he has addressed the letter dated 12.7.2006 by post to the authorities, he never kept his promise and not submitted the community certificate in the prescribed format to the authorities so as to complete his appointment formalities. Instead of complying with the obligations created on him and also accepted by him to produce the community certificate in the prescribed format, the applicant/first respondent has started filing applications under the Right to Information Act to 'know' the position of his appointment.

5. The Administration would further submit that on verification of the educational certificates produced by the first respondent at the time of interview, they are able to find that he discontinued VIII Standard in Sathyaa Matriculation School, Chennai-87 and thereafter pursued his degree through Open University, without undergoing the regular stream of 10+2+3 and not in possession of SSLC/HSC certificates and the community certificate produced by him was issued by the office of the Collector of Madras on 24.7.1993 i.e. 13 years prior to his applying to the post of Senior Clerk and since the Railway Administration has come across many cases of fake community certificates produced by the candidates, particularly of old certificates, the Administration has adopted the policy of requiring the candidates to submit the

community certificates in the prescribed format, so as to prove their genuineness in order to better protect the interest of the genuine reserved category candidates.

6. It has further been submitted by them that in the usual process of verifying the certificates submitted by the candidates, the community certificate dated 24.7.1993 submitted by the applicant/first respondent was also referred for verification to the District Collector, Chennai by the Railway Administration, vide their letter No. P(GS) 268/XII/Vol.XII, dated 29.6.2006 and the District Collector, Chennai has forwarded the same to the State Level Committee for verification, vide their letter dated 1.10.2009 and the same is still pending and during pendency of this procedure, the first respondent has hurriedly moved the Tribunal by initiating these proceedings, by enclosing a community certificate issued by the XVII Metropolitan Magistrate, Chennai. It has also been submitted by them that the Administration is able to know that the first respondent/applicant was doing law course in the Dr. Ambedkar Government Law College, Chennai from the year 2005 to 2008 and only because of this reason, he prolonged the issue of submitting his community certificate in the prescribed format, since at no point of time, he disclosed this aspect and even though the Tribunal has produced the certificate issued by the Principal of the College before the Tribunal, this fact has not been appreciated by the Tribunal. According to the petitioners/Administration, the Tribunal on erroneous appreciation of the facts, has allowed the said original application of the applicant and hence, they would pray to set aside the order of the Tribunal.

7. During the course of arguments, Mr. V. Radhakrishnan, learned senior counsel appearing for the petitioners/Administration would argue that when the applicant was instructed to submit his community certificate in the prescribed format, he prolonged the issue to his convenience since at that point of time, he was pursuing his law course at Dr. Ambedkar Government Law College, Chennai and even though he has taken time to produce the community certificate, he never kept his promise and after the panel lapsed, he came forward to initiate the present proceedings. According to the learned senior counsel since the community certificate frauds are rampant now a days, the Administration has insisted the applicant to produce the community certificate in the prescribed format.

8. On the other hand, the learned counsel appearing for the first respondent/applicant would argue that there are umpteen number of instructions by the Government of India to the Railway Administration not to insist fresh community certificate from the selected candidates and in spite of the same, unnecessarily, the applicant was instructed to produce the community certificate in the prescribed format. The learned counsel would further argue that the applicant has produced the community certificate issued by the learned XVII Metropolitan Magistrate, Chennai before the authorities concerned to prove the genuineness of his community, but the same was also not considered by the administration. According to the learned counsel for the first respondent/applicant, the Tribunal has correctly analysed all these facts and circumstances and therefore, no interference of this Court is required into the order passed by the Tribunal.

9. The applicant/first respondent would place reliance a Master Circular No. 32 (Recruitment Rules and Recruitment of Non-gazetted Staff) and also a letter addressed by the Director of Tribal Welfare, Chepauk, Chennai, dated 23.5.2005 to the General Manager, Southern Railway, Chennai-3 (issued in a similar matter and made available by the first respondent at Page No. 10 of his typed set of papers). In this letter dated 23.5.2005, the Director of Tribal Welfare, Chennai has mentioned as follows:

"In the petition cited the petitioner has reported that one Smt. J. Kalpana D/o. O. Jagadeesan of Thokkampatti village in Dharmapuri district was issued a community certificate that she belongs to "kurumans" S.T. community and got appointment as Pharmacist Grade-III in Southern Railways under S.T. quota. After joining in Southern Railways, the railway authorities insisted her to produce a fresh community certificate in the format supplied to her by the railway authorities.

In their letter No. 12017/10/97-SCD (R-cell), Ministry of Welfare has stated that the community certificates issued by the competent authority may be accepted as sufficient proof in support of the candidate's claim and requested the Ministries and Depts. not to ask SC/ST candidates to produce community certificates in the forms prescribed by them. A copy of the GOI letter is enclosed for ready reference. Hence I request you to adhere the instructions issued by the Govt. of India, Ministry of Welfare."

10. The applicant/first respondent has also placed reliance on Master Circular No. 32, clause No. 18(9) of which reads as follows:

"SC/ST candidates should be appointed provisionally on the basis of whatever prima facie evidence they are able to produce in support of their caste including M.Ps/MLAs certificates and such claims should be verified in due course through the D.M. of the place where the candidate and his/her family ordinarily resides. In proved cases of false claim, action should be taken under relevant orders and Rules. In such cases punishment is removal from service."

11. At this juncture, it is to be pointed out that the Honourable Apex Court in *Madhuri Patil v. State of Maharashtra* [(1994) 6 SCC 241], inter alia, has issued directions to introduce a scheme for issuance of caste/tribe certificates as a stopgap arrangement in absence of effective legislation procedure/mechanism. In compliance of the said directions of the Honourable Apex Court, the Government of Tamil Nadu issued G.O. (Ms.) No. 111, Adi Dravidar and Tribal Welfare (ADW-10) Department, dated 6.7.2005, constituting a three-member Committee at the District level to verify the genuineness of the community certificates issued to Scheduled Castes/Scheduled Tribes, with a further direction that the District Collector shall co-opt an anthropologist, who is serving in any of the Government Departments or Educational Institutions, as a member in the District Vigilance Committee. Thereafter, the Government decided to constitute two Committees, one at the District level and another at the State level and issued G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.9.2007. As per the clarifications issued by the Government, now, the scrutiny of the genuineness of the Scheduled Caste certificates can be made only by District Level Vigilance Committee and the scrutiny of the genuineness of the Scheduled Tribe certificates can be made only by State Level Scrutiny Committee constituted by the State Government in terms of G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007.

12. In para No. 4 of G.O.(2D) No. 108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.9.2007, it has been clearly mentioned that

"All the HODs, District Collectors, Universities, Educational Institutions, Central/State/Public Sector Undertakings in respect of persons belonging to their institutions and other recruiting agencies which are implementing constitutional reservation benefits to Scheduled Castes/Scheduled Tribes are directed to follow the orders issued in para 2 and 3 above strictly for the verification of the genuineness of

Community Certificates issued as Scheduled Castes/Scheduled Tribes.”

13. G.O. (Ms.) No. 111, Adi Dravidar and Tribal Welfare (ADW-10) Department, dated 6.7.2005 and the G.O.(2D) No. 108, dated 12.9.2007 have been issued by the Government of Tamil Nadu in exercise of their powers under Article 162 of the Constitution of India in due compliance of the directions issued by the Honourable Apex Court in *Madhuri Patil's* case. Therefore, these orders will supercede the earlier orders or directions issued by the Government. The communication of the Director of Tribal Welfare, Chennai dated 23.5.2005 is prior to the issuance of G.O.(Ms) No. 111, dated 6.7.2005. Though the communication of the Ministry of Welfare in Letter No. 12017/10/97-SCD (R-Cell) has been insisted on by the Director of Tribal Welfare in his letter dated 23.5.2005, the date of issuance of the said letter by the Ministry of Welfare has not been mentioned anywhere so as to assess whether the said directive is before or after the judgment of the Honourable Apex Court in *Madhuri Patil's* case. Even the circulars filed in the Master Circular by the applicant/first respondent are all prior to the judgment of the Honourable Apex Court. As could be seen from the Master Circular, the clause 18(9) (extracted above) the same seems to have been inducted by letter No. E(NG) III/79/RR-1/11, dated 15.12.1980. Therefore, when once the field is occupied by the judgment of the Honourable Apex Court in *Madhuri Patil's* case and the Government has issued necessary orders/directions in compliance of the said judgment of the Honourable Apex Court, all the earlier orders, which are in contradiction to the legal dictum of the Honourable Apex Court, get superceded. Therefore, we are not able to appreciate the stand of the first respondent/applicant as if some illegality has been committed by the petitioners/Administration in referring his community certificate for verification. No fresh order/circular of any competent authority (issued subsequent to the above said Government orders of the State Government) has been placed before us by the applicant/first respondent to say that the action of the Administration is illegal.

14. Further, the applicant/first respondent is quite aware that his selection is only provisional and he must act swiftly before the panel period lapses. However, without doing so, he conveniently dragged on the issue, since at that point of time, he was pursuing his law course at Dr. Ambedkar Government Law College, Chennai, as could be seen from the letter issued by the Principal of the college. Though he has stated that the revenue officials are dodging the issuance of the certificate, he has never furnished any details to substantiate his case.

15. As has already been observed by us supra, the applicant has conveniently dodged the matter till he completed his law course and now trying to throw heat onto the Administration. The panel has lapsed on 29.3.2007 and the present litigation has been initiated by the applicant/first respondent before the Tribunal in the month of July, 2009 i.e. two years after the panel has lapsed, that too after he completed his law course at Dr. Ambedkar Law College, Chennai.

16. In this case, a community certificate issued to the applicant/first respondent by the XVII Metropolitan Magistrate, Chennai has been placed before us. The applicant/first respondent has submitted the same to the Administration also in compliance of their demand of producing the community certificate in the prescribed format, of course long after lapse of the panel. All these aspects, would draw us to an irresistible conclusion to set aside the order of the Tribunal.

17. In this matter, at Page No. 9 of the typed set of papers filed by the applicant/first respondent, a community certificate issued to him by the XVII Metropolitan Magistrate, Saidapet, Chennai-15 has been filed. We verified from the Registry that

Mr. N. Arunachalam was functioning as XVII Metropolitan Magistrate at the relevant point of time. The signature in the said community certificate also proves this factum.

18. No power has been vested with the said Judicial Officer to 'issue' a community certificate as the field is completely occupied by the orders of the Government, issued in pursuance of the judgment of the Honourable Apex Court in *Madhuri Patil v. State of Maharashtra* [(1994) 6 SCC 241]. G.O.(Ms) No. 111, has been issued on 6.7.2005 and G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare (CV-I) Department has been issued on 12.09.2007 and under G.O.Ms. No. 108, dated 12.09.2007, the State Level Scrutiny Committee alone is empowered to scrutinize the genuineness of the Scheduled Tribe Certificate issued.

19. While that being the case, we wonder, as to how and under what authority the said Judicial Officer has 'issued' the said community certificate to the applicant on 6.5.2009, stepping into the shoes of the authorities concerned and ignoring the directions issued by the Honourable Apex Court in *Madhuri Patil's* case and the scheme of things propounded in the above referred Government Orders. It is not the case of the applicant/first respondent that pursuant to any judicial order, the said Judicial Officer has 'issued' the community certificate to him. Therefore, the said community certificate issued by the said officer under an assumed power cannot have any legal bearing and will not bind anybody, much less the Administration. For perpetrating such an illegal action, we warn the said Judicial Officer not to repeat such things in future. The Registrar-General of this Court is directed to communicate this to the said officer, so as to be vigilant in future.

20. In these circumstances, in the best interest of the general public and to curb the practice of assuming powers by the judicial officers, we also direct the Registrar-General of the High Court of Madras to immediately issue a circular to all the judicial officers in the State not to issue any such community certificates, as it is bereft of their jurisdiction, further mentioning that any violation would attract disciplinary proceedings against them.

For all the above reasons, we do not see any justification in the prayer of the applicant/first respondent and since the Tribunal has failed to assess the true facts and circumstances of the case, we set aside the order of the Tribunal and allow this writ petition filed by the Administration. No costs. Consequently, connected miscellaneous petition is closed.