REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2023

(Arising out of Special Leave Petition (Civil) No. /2023
Diary No.15448 /2020)

R SUNDARAM … APPELLANT(S)

VERSUS

THE TAMIL NADU STATE LEVEL

SCRUTINY COMMITTEE & ORS. … RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Delay condoned. Leave Granted.

2. The present Appeal is directed against the final order and judgment dated 13.02.2020 in Review Application No. 157 of 2019 passed by the High Court of Madras, and against order dated 16.04.2019 in W.P. No. 28295 of 2018 passed by the High Court of Madras (hereinafter referred to as "**High Court**") whereby the Appellants' challenge to the denial of his post-retirement benefits was dismissed.

BACKGROUND FACTS

3. The Appellant was appointed as a clerk-cum-shroff in the Respondent bank on the basis of a community certificate dated 15.11.1975 certifying that he was from the Konda Reddy Community. After a tenure of 38 years, the Appellant retired as a Scale 3 officer, however, two days before his superannuation, he received a cessation order on grounds of his caste certificate being false, and all his retirement benefits except PF were withheld from him.

4. During the Appellant's tenure in the respondent bank, The District collector (sixth respondent herein), without conducting any enquiry, cancelled the community certificate granted to the Appellant. Aggrieved by the same, the Appellant filed WP No. 12546 of 1998. The High Court vide order dated 09.08.2009 remanded the matter back to the Tamil Nadu State Level Scrutiny Committee (first respondent herein) to conduct a fresh enquiry. However, even after the High Court order, the verification with regard to the communal status of the Appellant was still not concluded, and this led to the Appellant's retirement without realization of his retirement benefits.

5. The Appellant then, to seek his post-retirement benefits filed WP No. 19006 of 2013 in the High Court, however the same was disposed off vide order dated 04.07.2014 , and the first respondent was directed to complete the enquiry within a

period of eight weeks. The Appellant then preferred an SLP in the Supreme Court against the above mentioned High Court order, and during the pendency of the SLP, an interim order was passed by this Hon'ble Court directing the Appellant to appear before the first respondent for enquiry. Subsequently, the said SLP was withdrawn.

6. In the meantime, the fifth respondent concluded the enquiry and submitted a report dated 29.11.2017 with the finding that the Appellant in fact did not belong to the Konda Reddy Community. Based on this report, a show cause notice was issued to the Appellant dated 07.12.2017. As against this, the Appellant filed another W.P No. 33207/2017 seeking to set aside the show cause notice and the enquiry report. The High Court, vide order dated 19.12.2017 allowed the same, and remanded the matter back to the scrutiny committee whilst quashing the show cause notice and the enquiry report.

7. Subsequent to the order of the High Court remanding the matter back to the scrutiny committee, the committee again proceeded and held that the caste certificate of the Appellant was not correct based on vigilance reports and other expert reports.

8. The Appellant, aggrieved by the above mentioned report of the scrutiny committee filed another W.P No. 28295/2018 and along with a contempt petition seeking for a restoration of the community certificate, however both were dismissed

by the High Court vide impugned judgement dated 16.04.2019 on grounds that despite fair opportunity being granted to the Appellant, he had not abided by the same; The Appellant then preferred a Review Application No. 157/2019 in the High Court, however, this was also dismissed vide second impugned judgement dated 13.02.2020.

ANALYSIS

9. Mr. R. Balasubramanian and Mr. S. Prabakaran, Senior Counsel appearing on behalf of the Appellant vehemently argued that as per the directions of the High Court in order dated 19.12.2017, the Appellant was to be given due opportunity to cross-examine the witnesses, and copies of all documents relied on by the Respondents was to be furnished to the Appellant, however, the same was not done. It has been further contended that at the time when the Appellant was given the cessation order, no enquiry against him was pending, and that in the entire process he has been subject to harassment for almost 19 years.

10. Per Contra, Mr. Gopal Sankaranarayanan, Senior Advovate and Mr. Joseph Aristotle, AOR, appearing on behalf of the respondents argued that notice was duly served on the Appellant, and it was the Appellant who did not show up in the proceedings. It was also argued that due to the Appellant not showing up, the proceedings were adjourned, but even after the adjournment the Appellant did not

show up, and hence the committee had no option but to pass its decision ex-parte.

11. Keeping in mind the submissions of both the parties, at the very outset we would like to state that the right to pensionary benefit is a constitutional right and as such cannot be taken away without proper justification as has been held in the case of ***State Of Jharkhand & Ors. vs Jitendra Kumar Srivastava & Anr.***[1]. The relevant paragraph of the judgment is being extracted herein:

> *"15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.*
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> ***16.*** *The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property"…Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

12. Further, in the case of ***Dr. Uma Agarwal vs. State of U.P.***[2]**,** this Court held that

1 (2013) 12 SCC 210

2 (1999) 3 SCC 438,

the grant of pensionary benefits is not a bounty, but a right of the employee, and as such cannot be denied without proper justification.

13. At the very beginning, we would like to state that this Court is appalled at the treatment given to the Appellant by the Respondents herein. The Appellant, before applying to the post reserved for ST candidates supplied all documents required in support of his claim as a ST candidate, and got the documents verified and approved. After being given employment however, the re evaluation of the authenticity of the documents of the Appellant have been kept pending for 19 years, dangling like a sword on the Appellants head.

14. After serving the Respondent bank for 38 years, the Appellant, two days before his superannuation received his cessation order without there being any proper enquiry. Further, on communication made to the respondent no.1, it was found that on the date of passing the cessation order, no case was pending against the Appellant. To us, a very clear pattern of harassment is visible, and there appears to be a sinister motive against the Appellant and his right to pensionary benefits. Even after 38 years of service, irrespective of the merits of the case, the fact that the Appellant has not been treated with any respect is sad to see, and the use of delayed procedure as a dangling sword can only be interpreted as harassment.

15. In the case of ***Madhuri Patil and Another Vs Additional Commissioner, Tribal Development and Others***[3], this Court gave fifteen guidelines as to how the exercise of verification of community certificate ought to be completed. The relevant extract from the said judgment are reproduced hereunder:

> *"The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the , constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate.* ***It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude.***
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> ***For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following****: (emphasis supplied)*
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> *9…****The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.***
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> *10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority*

3 (1994) 6 SCC 241

competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

*15…. **As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post."***

16. It has been explicitly stated by this Court that the exercise of verification of community certificate must be completed expeditiously. In the present case however, as has been mentioned above, there has been an inordinate and unexplained delay of 19 years, an amount of time which cannot be fathomed within the ambit of "reasonable time".

17. Further, the Respondent committee finally, after years of superannuation of the Appellant submitted its first report, however the same was struck down by the High Court on grounds of it being violative of principles of natural justice, as the appellant was not given an opportunity to lead his evidence and cross examine the witnesses. Subsequent to this, a fresh enquiry was conducted, and another report was submitted again, however even this report suffers from the same fallacy as the previous report because even here, the Appellant has not been afforded the

opportunity to be heard.

18. The High Court in its findings in the impugned judgment stated that the subsequent report was passed ex-parte because the Appellant, even after receiving notice of the proceedings did not attend the same. The Appellant however claims that he never received notice. A bare perusal of the material at hand would show that the notice which was to served to the Appellant was in fact served upon one Mr. Sudarshan, and the same has been admitted by the postal department and can be seen in the postal sheet.

19. This fact was brought upon by the Appellant during the review proceedings, however, the High Court failed to consider such finding and dismissed the review without adverting to the grounds raised therein and thus the judgment suffers from an error apparent.

20. By not allowing the Appellant an opportunity to be heard, the principle of *"Audi Alteram Partem"*, a principle of natural justice has also been violated. The Appellant, in proceedings where the genuineness of his belonging to a community is under question, must have a right to be heard, and must be given the right to cross-examine the witnesses, for the nature of the proceedings are not just a question pertaining his employment, but also something that strikes at the core of his being, i.e., his identity.

CONCLUSION

21. At this stage we would like to clarify that in cases where employment is based on a fake community certificate the law is settled that post-retirement benefits cannot be granted. In the present case however, there exists a very clear difference. While the Respondents have claimed the Appellant's community certificate to be fake, such a claim has not been proven. Even though two reports declaring the community certificate of the Appellant as fake were submitted after inordinate and unexplained delay, however, both the reports have not allowed the participation of the Appellant.

22. A community certificate in cases of scheduled tribe communities, unlike any other piece of paper, is an acknowledgment of a person belonging to a community which has faced years of oppression. The Constitution of India guarantees certain rights to people from Scheduled Tribe communities on grounds of historical injustice, and for the translation of such rights from paper to real life, the community certificate in most cases becomes an essential document. This certificate, whilst being an acknowledgment of history, is also a document that tries to rectify such historical injustice by becoming a tool that fabricates constitutional rights into reality. In such a scenario where the validity of a community certificate is put to question, keeping in mind the importance of the document and the effect it has on people's rights, the proceedings questioning the document cannot, except in the most exceptional circumstances, be done ex-parte.

23. Any person, whose entire identity, and their past, present and future rights are

challenged, must at the least be given an opportunity to be fairly heard. In the case at hand however, such a right has been denied to the Appellant, and hence the burden of proof on the respondents to disprove the nature of the certificate, has not been discharged. In the absence of the discharge of such burden of proof, this Court must presume the community certificate of the Appellant to be genuine.

24. On the basis of the abovementioned discussions, we are of the opinion that both the impugned orders are liable to be set aside, and the Appellant is held to be entitled to the post-retirement benefits accrued to him by way of his 38 year long service. The Respondent bank is directed to grant all post-retirement benefits to the Appellant which were denied to him along with 6% Simple Interest on account of unnecessary withholding of payment, from the date the payment was due to the date of actual payment.

25. As a consequence, the appeal stands allowed. No order as to costs.

……..…….....……,J.
(ANIRUDDHA BOSE)

……..…….....……,J.
(KRISHNA MURARI)

NEW DELHI;
17TH MARCH, 2023