

Case relating to non-enclosure of certificate:

Parties : T. Chandrasekaran Versus The Secretary, Tamil Nadu Public Service Commission

Court : High Court of Judicature at Madras

Case No : W.P.No.23189 of 2008

Judges: THE HONOURABLE CHIEF JUSTICE MR. A.K. GANGULY & THE HONOURABLE MR. JUSTICE K. CHANDRU

Appearing Advocates : For the Petitioner: P. Vijendran, Advocate. For the Respondent: K. Surendranath, Standing counsel for TNPSC.

Date of Judgment :

08-12-2008 **Head**

Note :-

Constitution of India - Article 226 - Writ of mandamus, to direct the respondent to give suitable appointment to the petitioner on the basis of marks secured in the examination, Group-II (Combined Subordinate Service Examination-1-2007) conducted by the respondent - The petitioner has produced a valid community Certificate obtained from the Tahsildar, Ottapidaram dated 11.9.1995, showing his community status as a Scheduled Caste. The said Certificate has not been cancelled in the manner known to law and it is valid as on date - In the absence of any material controverting the validity of the said Certificate, the reliance placed by the TNPSC vide the Government's letter Ms.No.81/Adi Dravidar and Tribal Welfare Department dated 19.9.2000 which order has also been set aside by this Court in Prof.Elangovan's case ((2007) 3 MLJ 209), it is not open to them to refuse to consider the case of the petitioner. This Court is of the view that once a candidate produced a valid Certificate from a competent Authority, unless the said Certificate is cancelled in the manner known to law, the respondent-TNPSC being a recruiting agency for Government employment, should abide by the said Circular - Therefore, in the present circumstances, the stand taken by the respondent-TNPSC cannot be countenanced by this Court. In the light of the above, the writ petition stands allowed to the extent indicated above. The respondent-TNPSC is hereby directed to process the application of the petitioner in the light of the community Certificate dated 11.9.1995 produced by him and declare his results, by considering that the petitioner as a Schedule Caste candidate and thereafter proceed to issue appropriate orders in accordance with law.

Para 8 to 10

Cases Referred:

Prof. I. Elangovan V. State Of Tamil Nadu, Rep. By The Chief Secretary To Government, Chennai And Another, (2007) 3 MLJ 209 (Relied)

Judgment :-

(Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a writ of mandamus, to direct the respondent to give suitable appointment to the petitioner on the basis of marks secured in the examination, Group-II (Combined Subordinate Service Examination-1-2007) conducted by the respondent.)

K. Chandru, J.

Heard Mr. P. Vijayendran, learned counsel appearing for the petitioner and Mr. K. Surendranath, learned counsel appearing for the Tamil Nadu Public Service Commission and perused the records.

2. The prayer in the writ petition is for a direction to the respondent-TNPSC to give suitable appointment to the petitioner on the basis of marks secured in the examination held for Group-II (Combined Subordinate Service Examination-1-2007) conducted by the respondent.

3. The petitioner belongs to Schedule Caste community and he has a Community Certificate issued by the Tahsildar, Ottapidaram describing the petitioner's community as "Hindu Pallan" vide Certificate dated 11.9.1995. Admittedly, the said caste is listed in the Presidential order issued in terms of Article 341 of the Constitution of India. When the petitioner wrote Group-IV examination in the year 2000, he was selected to the post of Junior Assistant under the S.C. category. Thereafter, when the petitioner wrote Group II examination and got selected, the respondent refused to accept his community status and treated him as a B.C. Category. The petitioner filed W.P. No.22940 of 2001 to declare his results. The respondent gave a memo dated 31.12.2001 and treated the petitioner belongs to B.C. community. Afterwards, the Circular issued by the Government dated 19.9.2000 on which reliance was placed was set aside by this Court on 13.4.2007.

4. Earlier, the petitioner came before this Court by way of filing a writ petition in W.P. No.5381 of 2008, seeking direction to dispose of the representation dated 7.5.2007 and this Court, by an order dated 17.4.2008, directed the respondent-TNPSC to dispose of the petitioner's representation dated 7.5.2007 on merits. The petitioner again wrote the examination for Group II post for which results were published on 22.2.2008.

5. The petitioner also moved TNPSC for information under the Right to Information Act regarding his results. The TNPSC, by letter dated 26.8.2008 informed the petitioner that the

process of selection for appointment by direct recruitment has not been completed. After finding that his results have been withheld without publishing (his registration number being 40013089), the petitioner moved this Court. On 23.9.2008, this Court directed notice to be issued to the respondent-TNPSC. On notice from this Court, they have entered appearance and they have also filed counter affidavit dated 5.12.2008.

6. In the said affidavit, it is stated that the petitioner though claimed in his application that he belongs to Hindu Pallan, (a Schedule Caste community) and produced the community Certificate issued by the Tahsildar, Ottapidaram, his community status is in dispute and hence in the light of the Government letter Ms.No.81/Adi Dravidar and Tribal Welfare Department dated 19.9.2000, the TNPSC sought for clarification from the State Government. Until the said clarification is forthcoming, they cannot process the application of the petitioner and declare his results.

7. The said Circular dated 19.9.2000 relied on by the TNPSC came to be challenged before this Court in a Public Interest Litigation. The said judgment rendered by the Division Bench in that Court has subsequently been reported in PROF. I. ELANGO VAN v. STATE OF TAMIL NADU, REP. BY THE CHIEF SECRETARY TO GOVERNMENT, CHENNAI AND ANOTHER, ((2007) 3 MLJ 209). This Court had set aside the Circular and also gave further direction to the State of Tamil Nadu to issue appropriate Circular as per the earlier Larger Bench decisions of the Supreme Court. It is held as follows:-"16. We, accordingly, set aside the aforesaid clarification, as given in sub-paragraph to paragraph-2 of the letter dated 19.9.2000, issued by the Secretary to Government, Adi Dravidar and Tribal Welfare Department and remit the case to the Authority concerned with direction to issue a fresh clarification giving reference to the other judgments rendered by the Supreme court, as discussed above within a period of two months. The rest part of the order contained in Letter Ms.No.81, dated 19.9.2000, issued by the Secretary to Government, Adi Dravidar & Tribal Welfare Department is upheld."

8. It is fairly stated by the learned Government Pleader present in the Court that no such comprehensive circular, as directed by this Court has been issued. In this context, the learned counsel appearing for the respondent-TNPSC stated that until such revised Circular is issued, they will not be able to decide the matter. The stand of the respondent-TNPSC cannot be appreciated. The respondent-TNPSC itself is a creature of the Constitution and they should act in terms of law. In the present case, the petitioner has produced a valid community Certificate obtained from the Tahsildar, Ottapidaram dated 11.9.1995, showing his community status as a Scheduled Caste. The said Certificate has not been cancelled in the manner known to law and it is valid as on date.

9. In the absence of any material controverting the validity of the said Certificate, the reliance

placed by the TNPSC vide the Government's letter Ms.No.81/Adi Dravidar and Tribal Welfare Department dated 19.9.2000 which order has also been set aside by this Court in Prof.Elangovan's case (cited supra), it is not open to them to refuse to consider the case of the petitioner. This Court is of the view that once a candidate produced a valid Certificate from a competent Authority, unless the said Certificate is cancelled in the manner known to law, the respondent-TNPSC being a recruiting agency for Government employment, should abide by the said Circular.

10. Therefore, in the present circumstances, the stand taken by the respondent-TNPSC cannot be countenanced by this Court. In the light of the above, the writ petition stands allowed to the extent indicated above. The respondent-TNPSC is hereby directed to process the application of the petitioner in the light of the community Certificate dated 11.9.1995 produced by him and declare his results, by considering that the petitioner as a Schedule Caste candidate and thereafter proceed to issue appropriate orders in accordance with law. This exercise should be completed within a period of two weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.