

(2013) 12 AP CK 0073

Andhra Pradesh High Court

Case No: Writ Petition No. 17728 of 2003

T. Ch. Venkateswarlu

APPELLANT

Vs

The Zonal Manager, Zonal Office,
Food Corporation of India and
Another

RESPONDENT

Date of Decision: Dec. 30, 2013

Citation: (2014) 2 ALD 627 : (2014) 3 ALT 611

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: P. Gangaiah Naidu, for the Appellant; B. Krishna Mohan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.G. Shankar, J.

The petitioner seeks for a Writ of certiorari to cancel proceedings dated 06-8-2003 by the 2nd respondent ordering the terminating of the petitioner from service as illegal and for consequential reliefs. The petitioner belonged to Gundumeda Village in Guntur District. He belongs to Vaddera Community. He studied up to X Class. The school record and other certificates issued by the competent authorities showed the petitioner as belonging to the Scheduled Tribes being belonging to Vaddera Community. On 14-6-1976, the Deputy Tahsildar, Mangalagiri issued a Community Certificate that the petitioner belonged to the Scheduled Tribes, being belonging to Vaddera Community. Similar Certificate was issued by the Tahsildar, Guntur on 25-02-1977.

2. The petitioner joined the Food Corporation of India (the Corporation, for short) on 08-7-1976 under the reserved category as a Scheduled Tribe candidate. He was subsequently promoted as Assistant Grade-III (Depot) in 1983. It would appear that the promotion as Assistant Grade-III (Depot) was in the capacity as a reserved

candidate belonging to the Scheduled Tribes. The petitioner was further promoted on 27-12-1993 as Assistant Grade-II (Depot). At the time of his appointment as Assistant Grade-II (Depot), a condition was imposed that the petitioner should produce the latest Caste Certificate.

3. On 24-02-1994, the petitioner submitted a representation to the Corporation that the Revenue Officials refused to issue latest Caste Certificate claiming that from 1970 onwards, his community was recognized as Backward Classes Group-A Community vide G.O.Ms. No. 1793, Education, dated 29-9-1970. The petitioner, however, was promoted as Assistant Grade-I (Depot) on 23-7-1997. As the petitioner himself has submitted that Vaddera Community was a BC-A Community and not a Scheduled Tribe in the State of Andhra Pradesh, the promotion of the petitioner as Assistant Grade-I (Depot) had never been given effect to.

4. The Corporation passed orders on 07-02-2000 that the petitioner was not entitled to promotion to Assistant Grade-II (Depot) and Assistant Grade-I (Depot). He was consequently reverted as Assistant Grade-III (Depot) as a General candidate with a direction that his seniority should be fixed in the cadre of Assistant Grade-III (Depot) in the South Zone. The seniority of the petitioner was accordingly fixed at serial No. 3523 through proceedings dated 13-3-2000.

5. However, on 30-5-2002, a Show Cause Notice was issued to the petitioner as to why his services shall not be terminated on the ground that he obtained selection as a reserved category candidate on the basis of invalid Community Certificate and that once the petitioner did not belong to the Scheduled Tribes Category, he was not entitled for selection. The petitioner gave a detailed representation on 30-6-2002. Not satisfied with the explanation, the impugned orders dated 06-8-2003 were passed by the 2nd respondent terminating the petitioner from service.

6. The 1st objection raised by Sri B. Krishna Mohan, learned Standing Counsel for the respondents-Corporation is that there is provision to file a departmental appeal under the Staff Regulations and that consequently this writ petition is not maintainable.

7. It may be noticed that the petitioner filed W.P.M.P. No. 22067 of 2003 along with the writ petition seeking for suspension of the termination orders. The termination orders were suspended and the petitioner continued to be in service till 31-7-2013 on which date he attained superannuation. When the question of alternative remedy should have been raised and considered at the time of the miscellaneous petition and has not been done, it is not open for the Corporation now to raise a contention that the petitioner ought to have invoked the alternative remedy.

8. I may also point out that when the Revised Pay Scales were not applied to the petitioner who was continuing in service on the basis of interim orders, the petitioner preferred W.P.M.P. No. 17204 of 2010. That petition was allowed on 07-7-2010 directing the respondents-Corporation to extend Revised Pay Scales to

the petitioner. Even at that time, this question of alternative remedy has not been considered. At this length of time, the Corporation is not entitled to raise the question of alternative remedy as noted by the Supreme Court in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another,

9. It is next contended by the learned Standing Counsel for the Corporation that the very appointment of the petitioner was in the reserved category as a Scheduled Tribe candidate. There is no dispute that the petitioner was selected initially as a Scheduled Tribe candidate. However, it cannot be claimed by the respondents-Corporation that the petitioner deliberately produced an invalid Community Certificate claiming Schedule Tribe category. There is no doubt that the Certificates dated 14-6-1976 issued by the Deputy Tahsildar, Mangalagiri and 25-02-1977 issued by the Tahsildar, Guntur are true. It also is true that G.O.Ms. No. 1793, Education, dated 29-9-1970 placed Vaddera Community in Backward Classes Group-A category in the State of Andhra Pradesh. However, either Vaddera Community was in the category of Scheduled Tribes by the date the petitioner started studying or the Revenue Officials themselves were not aware that Vaddera Community was not a Scheduled Tribe Community, for the Certificates dated 14-6-1976 and 25-02-1977 would not have been issued by the Deputy Tahsildar, Mangalagiri and the Tahsildar, Guntur, if Vaddera Community was not a Scheduled Tribe. There appears to be some confusion for the Revenue Officials whether Vaddera Community belonged to Scheduled Tribes or Backward Classes Group-A.

10. The learned Standing Counsel for the respondents-Corporation contended that whether the petitioner was aware that he did not belong to the Scheduled Tribes or otherwise, the Certificate issued by the Deputy Tahsildar, Mangalagiri and the Tahsildar, Guntur are invalid and that the petitioner consequently is liable to be terminated from service.

11. Sri P. Gangaiah Naidu, learned Senior Counsel representing the petitioner placed reliance upon Section 21 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (1993 Act, for short), which contemplates that a Community Certificate issued by any authority competent to issue the same shall be valid and shall be deemed to have been issued under the provisions of 1993 Act unless the same is cancelled under the provisions of 1993 Act. Admittedly, the Certificates obtained by the petitioner had never been cancelled. The learned Standing Counsel for the Corporation contended that Section 21 of 1993 Act applies in the event the Certificates were validly issued. He claimed that the Certificates obtained by the petitioner are *ex facie* invalid Certificates and that there is no need for the competent authority to cancel the Certificates. I am not able to agree with this contention of the learned Standing Counsel for the Corporation. Section 21 of 1993 Act in unambiguous words adumbrates that Caste Certificate obtained stands valid unless cancelled. Where two Community Certificates obtained by the petitioner have not been cancelled by the

competent authority, the Certificates hold good so far as the employment of the petitioner is concerned.

12. The learned Senior Counsel for the petitioner also pointed out that the respondents-Corporation had inflicted punishment upon the petitioner by reverting him as Assistant Grade-III (Depot) on the ground that the Community Certificate produced by the petitioner was invalid and that the respondents-Corporation cannot impose further penalty of terminating the services of the petitioner.

13. The learned Standing Counsel for the Corporation contended that the petitioner has submitted himself to the reversion orders dated 07-02-2000 without protesting and that the petitioner thus has accepted that the Community Certificate was invalid. His claim is that once the petitioner has directly or indirectly agreed that the Community Certificate was not correct, he shall be treated as a General candidate and further action is liable to be initiated against him.

14. Where the respondents-Corporation ought to have taken a composite action against the petitioner and have not chosen to do so, I do not consider that it would be appropriate for the respondents-Corporation to take piecemeal action, revering the petitioner through one step and terminating the petitioner through another step. Once steps had been taken by the respondents-Corporation on the basis of invalid Community Certificate and passed orders dated 07-02-2000 and confirmed the same through fixation in the seniority list by proceedings dated 13-3-2000, the respondents-Corporation are estopped from taking further action against the petitioner. Above all, the Community Certificate continued to hold sway as the same had never been cancelled in accordance with Section 21 of 1993 Act together with other provisions of 1993 Act. Further, by virtue of the interim orders, the petitioner was continued to be in service and has retired from service on 31-7-2013 on attaining superannuation. I therefore consider that the order of termination of the petitioner through the impugned order is illegal and cannot be sustained. The impugned order dated 06-8-2003 passed by the 2nd respondent consequently is set aside. The petitioner shall be entitled to all retirement benefits to which he is otherwise entitled to. The writ petition is allowed accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.