

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.8.2007

COMES:

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P. (MD) No.558 of 2007

and

M.P. (MD) Nos.1 and 2 of 2007

P.Ramachandran

... Petitioner

vs.

1. The Assistant General Manager
State Bank of India
Region II, (Operation Wing)
Zonal Office
Dr.Rambadar Road
Madurai

2. State Bank of India
Rep. by Its Manager
Rameswaram Branch
Ramanad District

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned order dated 18.01.2007 in ref. AGM (O) 12.8420 and quash the same.

For petitioner : Mr. S.Natarajan

For Respondents : Mr. K.M.Vijayakumar

ORDER

The petitioner in the present writ petition challenges the order of the first respondent dated 18.01.2007

directing him not to report for work as his appointment in the Bank was void *ab initio* and his services are incapable of being continued.

2. I have heard the arguments advanced by Mr.S.Natarajan, learned counsel appearing for the petitioners and Mr. K.M.Vijayakumar, learned counsel appearing for the respondents and have perused the records.

3. Notice of motion was ordered on 22.01.2007 and interim stay was granted against the impugned order and subsequently, the same was extended from time to time. But the stay was not extended on 12.4.2007 since the petitioner was absent on that day. Thereafter, the learned counsel mentioned for an early hearing of the writ petition and thus, the matter was posted for final disposal.

4. The petitioner joined the services of the respondent Bank as an Assistant on 23.8.1981. He produced a Community Certificate dated 13.12.1980 obtained from the competent authority certifying that the petitioner belongs to Hindu Pallar community, which comes under the Scheduled

Caste category under the Presidential Order. Thereafter, the Certificate was sent for verification before the District Vigilance Committee comprising of two members contrary to the Madhuri Patil's case. The petitioner appeared before the Committee on 21.3.2005 and produced all the relevant records. The said two member Committee cancelled the Community Certificate given to the petitioner.

5. The Committee while holding that the petitioner did not belong to Hindu Pallar Community as his family had converted to Christianity and the petitioner's parents named all the children into Christian names. The statement that he got converted as a Hindu even as early as 17.6.1979 was not accepted by them and because they were having Christian names, it cannot be accepted that they are Hindus and that the Certificate granted by the Tahsildar is to be revoked.

6. The order passed by the said District Committee was taken on appeal before the State Level Vigilance Committee and the said Committee revoked the order passed by the District Committee and remanded the matter to the District Committee by which time it became a three Members Committee.

7. On remand, heavy reliance was placed by the District Level Committee on the Circular Letter No.81 dated 19.9.2000 issued by the State Government and, therefore, once again his Community Certificate was cancelled holding that he was a Christian convert and he had not come back to Hinduism as per law. Once again, the petitioner has challenged the said order before the State Level Committee and the State Level Committee had granted an interim stay by an order dated 15.02.2001 against the proceedings of the District Level Committee. Therefore, there is no disqualification as on date suffered by the petitioner and there is no material for the respondent Bank to pass the impugned order declining that the petitioner was no longer in their employment.

8. If the respondent Bank wanted to take advantage of the judgment reported in 1991 (6) SCC 241 (*Manari Madhuri Fatil and another v. Additional Commissioner, Tribal Development and others*), then they will also have to await for the decision of the State Level Committee, which had granted stay of the proceedings of the District Level Committee. The action of the Bank is not only hasty but contrary to the law of the land. Even otherwise, prima

facie, the District Level Committee's opinion itself is unsustainable because there is no law by which a person born of Scheduled Caste converted to Christianity, cannot reconvert into the Hindu fold and that turn is accepted by the community, still he cannot be considered as Scheduled Caste for the purpose of claiming benefits conferred to the reserved categories.

9. Reliance placed upon the circular of the Government in Letter No.81 dated 15.9.2000 is impermissible as the said circular was held to be invalid by a Division Bench of this Court in the decision reported in 2007 (3) M.L.J. 209 [Prof. I.Mangovan v. State of Tamil Nadu and another]. In fact, the Division Bench in paragraph 14 of the order had observed as follows:

Para 14: "Learned Additional Advocate - General, while assisting the Court, submitted that it would be prudent if most of the important judgments of the Supreme Court on the subject concerned is also brought to the notice of the officers concerned. We are also of the view that while giving instruction to the concerned officer, the Secretary should have also brought to their notice the important decisions rendered by the Supreme Court on the issue in question, such as the case of

C.M. Arumugam v. S.Rajagopal and others (supra), the Constitution Bench decision in Guntur Medical College, Guntur and others v. Y.Mohan Rao (supra), apart from the decision in S.Swigeradoss v. Bondal Manager, FCI (supra). It should be brought to their notice that the Supreme Court in the case of Guntur Medical College, Guntur and others v. Y.Mohan Rao (supra) observed that "there is no absolute rule applicable in all cases that whenever a member of a caste is converted from Hinduism to Christianity, he loses his membership of the caste". Paragraph 7 of the said judgment, as quoted above, should also be brought to the notice of the Authority for proper appreciation. Giving reference to such judgments, the Secretary, instead of forming any opinion without looking into the relevant facts of a claimant, should leave it open to the concerned Authority to determine any individual case on its own merit."

10. In paragraph 16 of the order, the following direction was given by the Division Bench:-

Para 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 Dravida & 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 19.3.2000, issued by the Secretary to Government, Adi Dravida & Tribal Welfare Department is upheld."

11. So far, the State Government had not come up with any clarification pursuant to the order of the Division Bench of this Court. Therefore, placing reliance upon the circular dt. 19.9.2000 by the District Level Committee was impermissible. If any action to be taken by a Committee will have to take note of the two earlier judgments of the Supreme Court which have greater force of law.

12. In view of the above circumstances, the writ petition will stand allowed. The petitioner is directed to be reinstated in service with all consequential benefits. As and when the State Level Committee takes any further action pursuant to the Appeal dated 15.02.2007 filed by the petitioner, the respondent Bank can revive its

proceedings. However, there will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar(T & P)

/True Copy/

M. Shanthi 26.10.07.

Sub Asst. Registrar

To

1. The Assistant General Manager
State Bank of India
Region II (Operation Wing)
Zonal Office
Dr.Ambedkar Road
Madurai

2. The Manager
State Bank of India
Ramasthanam Branch
Ramanad District

+ I.C.C. to Mr. K.M. Vijayakumar, Advocate (SR.No.32417)

+ I.C.C. to Mr. S. Natarajan, Advocate (SR.No.31947)

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BB:25.10.2007

W.P. (MD) No.558 of 2007