

[2008] 2 S.C.R. 604

A UNION OF INDIA & ORS.
v.
S. KRISHNAN & ANR.
(Civil Appeal No. 1103 of 2008)

FEBRUARY 8, 2008

B [DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C *Service Law: Termination – Appointment of employee claiming to be member of Scheduled tribe-Malayalee Community – Termination of, for producing false community certificate – Subsequently employee’s case that he belonged to Lambadi Community, a Scheduled Tribe, relying on the letter of Director of Welfare Officer – Accepted by High Court and termination order set aside – Sustainability of – Held: Not*
D *sustainable since employee applied as a member of Scheduled Tribe, Malayalee Community and was appointed in respect of a post earmarked for Scheduled Tribes – Community certificate was false – More so, Lambadi was not part of Scheduled Tribes – High Court wrongly relied on the letter as it was in the nature of recommendation and did not*
E *relate to any entry in the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950.*

F **The respondent was appointed in the Railway Department. He claimed to be a member of Scheduled Tribe, Malayalee Community. He was removed from service for producing a false community certificate. Meanwhile, respondent filed an application for declaration that he belonged to the Malayalee Community. The respondent challenged the termination order and order of compulsory retirement was passed. Respondent then**
G **filed a writ petition on the ground that he belonged to Hindu Lambadi caste which is a Scheduled Tribe. High Court relying on the letter of Director of District Welfare that Lambadi is a Scheduled Tribe in the State of Tamil**

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Nadu held that the respondent belonged to Scheduled Tribe and set aside the termination order. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 It appears from the appointment order of the respondent that he was appointed in respect of a post earmarked for Scheduled Tribes. With regard to the respondent's plea that he was appointed as a general category candidate and not a member of the Scheduled Tribe, if in reality the respondent was appointed in respect of a post belonging to the general category, there was no need for filing a Community Certificate. Further, there was also no need for seeking a declaration that he belongs to the Malayalee Community. From the records produced it is crystal clear that the respondent applied as a member of the Scheduled Tribe claiming to be a member of the Malayalee Community. The Community Certificate produced was found to be bogus. That essentially is the end of the matter. His further stand that though he may not belong to the Malayalee Community, he belongs to Lambadi Community is really of no consequence. The document referred to by the counsel for the State giving details of the communities belonging to the Scheduled Castes and Scheduled Tribes clearly falsifies the claim of the respondent that Lambadi Community was a part of the Scheduled Tribes. The document was issued under the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950 as amended subsequently. [Para 7] [608-F, G; 609-A, B, C]

1.2 There is no scope for making any alteration by way of addition or deletion from the Entry made in the Constitution Order. The High Court clearly misdirected itself on relying on the letter of the Director of Welfare Office. A bare look at it goes to show that the same was really not relatable to any Entry in the Constitution (Scheduled Castes and Scheduled Tribes) Order but at

A the most was in the nature of a recommendation. Thus, the order of High Court is unsustainable and is set aside. [Paras 8 and 9] [609-D, E, F]

B *Palghat Jilla Thandan Samudhaya Samithi and Anr. 1994 SCC 359; State of Maharashtra vs. Milind and Ors. 2000 (5) Suppl. SCR 651 – relied on.*

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1103 of 2008.

C From the Judgment and Order dated 17.08.2005 of the High Court of Judicature at Madras in Writ Petition No. 24911 of 2001.

Ashok Bhan, T.A. Khan, B.K. Prasad and D.S. Mahra for the Appellants.

D A.K. Ganguli and R. Sudaravardan, P.R. Kovilan Poongkuntran, Naresh Kumar, S. Joseph Aristotle, S. Prabhu Ramasubramanian and V.G. Pragasam for the Respondents.

The Judgment of the Court was delivered by

E **Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

F 2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court allowing the writ petition filed against the order passed by the Central Administrative Tribunal, Chennai (in short, 'the Tribunal').

3. Background facts, in a nutshell, are as follows:

G The respondent was appointed as Gangman by the Railway Department in the year 1.976. He claimed to be a member of Scheduled Tribe, i.e., Malayalee Community. After he joined service, he was directed to produce the Community Certificate. The Deputy Tehsildar, Dharmapuri, issued a certificate on 16.8.1976. In the year 1991, the General Manager, Southern Railway, Dharampuri requested the District Collector of the District to verify the respondent's Community Certificate.

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UNION OF INDIA & ORS. v. S. KRISHNAN & ANR. 607
[PASAYAT, J.]

The Collector sent a report stating that the Community Certificate filed by the respondent was a bogus one and cancelled the same. After receipt of the report, charge sheet was issued and departmental inquiry was conducted. During pendency of the departmental inquiry, respondent filed a Civil Suit in the District Munsif Court, Dharampuri, i.e., O.S.No.4/1998, for decree of declaration that he belonged to Malayalee Community. In the suit, a prayer was made for direction for production of the original community certificate. The Inquiry Officer closed the inquiry and submitted his report on the basis of which order of removal from service was passed on 23.12.1998. A challenge was made to the said order by filing an Original Application, i.e., O.A.No.1156/1999. The same was disposed of with the observation that if a departmental appeal is preferred, the same shall be disposed of within a particular time. Since the appellate authority dismissed the appeal, a revision was filed. As, according to the respondent, there was some delay in disposal of the revision petition, again the Tribunal was moved in O.A.No.832/2000. By order dated 28.7.2000, the Tribunal directed the Revisional Authority to pass the order within a particular time. The Revisional Authority modified the order of removal from service to one of compulsory retirement with effect from 23.12.1998. Another Original Application, i.e., O.A.No.1403/2000, was filed before the Tribunal which was dismissed.

4. The stand of the respondent in the writ petition was that though the controversy was whether he belonged to a Scheduled Tribe, i.e. Malayalee Community, he, in fact, belonged to Hindu Lambadi caste which comes within Scheduled Tribes. Reliance was placed on certain communications, more particularly, the letter dated 3.2.1971 of the Director of Welfare Officer's Office, Vellore where it was accepted that throughout the State except Kanyakumari district and another Taluk, Lambadi (Sugalis) was considered as Scheduled Tribe. The appellants, Union of India and State of Tamil Nadu, opposed the Writ Petition stating that Lambadi community does not come under Scheduled Tribes and, in fact, the respondent having obtained employment in

A respect of the post earmarked for Scheduled Tribes, he cannot
take the plea that he belongs to Lambadi community, which is
at variance with his earlier claim.

B 5. The High Court, placing reliance on the letter of the
Director of District Welfare, referred to above, came to hold
that the respondent belonged to Scheduled Tribe and, therefore,
the orders passed by the departmental authorities were set
aside. It is to be noted that during the course of the hearing of
this appeal, the learned counsel for the respondent took the
stand that the respondent was appointed as a general category
C candidate and not as a member of the Scheduled Tribe and,
therefore, it hardly matters whether he belongs to Scheduled
Tribe or not.

D 6. The stand of the learned counsel for the Union of India
and the State of Tamil Nadu is that Lambadi is not a Scheduled
Tribe in the State of Tamil Nadu. In any event, it is not factually
correct, as contended by the respondent, that he was appointed
as general category candidate. Learned counsel for the State
of Tamil Nadu has filed Order No.1773 of the Social Welfare
E Department, dated 23.6.1994, giving details of the communities
belonging to the Scheduled Castes and Scheduled Tribes. With
reference to the same, learned counsel for the State submitted
that Lambadi is not a Scheduled Caste.

F 7. Pursuant to the directions of this Court, the original
service records of the respondent were produced. It appears
from the appointment order that he was appointed in respect of
a post earmarked for Scheduled Tribes. If in reality the
respondent was appointed in respect of a post belonging to the
general category, there was no need for filing a Community
G Certificate. Further, there was also no need for seeking a
declaration that he belongs to the Malayalee Community. From
the records produced it is crystal clear that the respondent
applied as a member of the Scheduled Tribe claiming to be a
member of the Malayalee Community. The Community
H Certificate produced was found to be bogus. That essentially is

UNION OF INDIA & ORS. v. S. KRISHNAN & ANR. 609
 [PASAYAT, J.]

the end of the matter. His further stand that though he may not belong to the Malayalee Community, he belongs to Lambadi Community is really of no consequence. Even then, it needs to be noted that the document referred to by learned counsel for the State giving details of the communities belonging to the Scheduled Castes and Scheduled Tribes clearly falsifies the claim of the respondent that Lambadi Community was a part of the Scheduled Tribes. The document referred to by learned counsel for the State of Tamil Nadu was issued under the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950 (in short, 'the Constitution Order'), as amended subsequently. The same clearly shows, as noted above, that Lambadi was not part of the Scheduled Tribes.

8. As has been observed by this Court in *Palghat Jilla Thandan Samudhaya Samithi & Anr. v. State of Kerala & Anr.* (1994) SCC 359, and *State of Maharashtra Vs. Milind & Ors.* (2000) 5 (Suppl) SCR 651, there is no scope for making any alteration by way of addition or deletion from the Entry made in the Constitution Order. The High Court clearly misdirected itself on relying on the letter dated 3.2.1971 of the Director of Welfare Office. A bare look at it goes to show that the same was really not relatable to any Entry in the Constitution Order but at the most was in the nature of a recommendation as has been rightly contended by learned counsel for the State of Tamil Nadu.

9. Looking at from any angle, the impugned order of the High Court is clearly unsustainable and is set aside.

10. The appeal is allowed without any order as to costs.

N.J.

Appeal allowed.

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