

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.7.2009

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.43632 of 2006

J.Loganathan

... Petitioner

Vs.

- 1.Union of India,
rep.by its Secretary to Government,
Department of Personnel & Training,
New Delhi.
 - 2.Union Public Service Commission,
rep.by its Secretary,
Dholpur House,
Shajahan Road,
New Delhi.
 - 3.The Secretary,
National Commission for Backward Classes
Tricot Bhikaji Cana Place,
New Delhi.
 - 4.The Secretary,
Ministry of Social Justice and Empowerment,
Shastri Bhavan,
NewDelhi.
 - 5.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.
- ... Respondents

* * *

Writ petition filed under Article 226 of the Constitution, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 19.4.2006 in O.A.No.1129 of 2004 of the 5th respondent upholding the Resolution No.12011/4/2002-BCC, dated 13.1.2004 issued by the 4th respondent insofar as it operates prospectively and Order No.22012/62/2003-AIS(I), dated 30.9.2004 issued by the 1st respondent; quash the same and direct the

respondents to allot the petitioner to any All India Service on the basis of the selection conducted pursuant to the Civil Services Examination-2001 by treating him as a candidate belonging to Other Backward Caste community with all consequential benefits arising therefrom.

* * *

For petitioner : Mr.Karthick

For R.1, R.3, R.4: Mr.C.V.Ramachandramoorthy

For R.2 : Mr.K.Sridhar

* * *

O R D E R

ELIPE DHARMA RAO, J.

This case would narrate as to how the slumberous attitude exhibited on the part of the Governmental authorities, in rectifying the mistakes committed by them, would dig a deep pit in the career of an individual and spoil his prospects and opportunities.

2. The facts, shedding out the unnecessary details, required for the disposal of this matter are that the petitioner, belonging to Kannadiyar community, declared as 'OBC' in the State of Tamil Nadu, had applied for the Civil Services Examination held by the 2nd respondent during 2001, but the claim of the petitioner that he belong to 'OBC' was not accepted by the Government of India, on the ground that as per the notification issued by the Union Government, the community 'Kannadiyar' was declared as OBC only in three districts of Tamil Nadu viz. Coimbatore, Periyar and Nilgiris and inasmuch a the petitioner belonged to the Cuddalore District, he was not considered to be belonging to OBC.

3. The petitioner would submit that on the recommendation of the Tamil Nadu State Backward Classes Commission, the State of Tamil Nadu has enumerated the lists of castes which are considered to be backward classes; that the 'Kannada Sainegar' and 'Kannadiyar' are considered to be Backward Class communities throughout the State of Tamil Nadu, whereas the 'Dasanalanjika' community is considered as Backward Class only in three Districts; that in G.O.Ms.No.437, Social Welfare Department, dated 15.5.1972 issued by the State of Tamil Nadu, the 'Kannada Sainegar' and 'Kannadiyar' communities were declared as Backward Classes throughout the State and without any area restriction; that subsequently, by G.O.Ms.No.72, Social Welfare Department, dated 1.2.1980, the list was amended by including a new caste in Sl.No.38 as 'Dasapalangika'; that though an area restriction

was intended for the 'Dasapalangika' community as applicable only to Coimbatore, Erode and Nilgiris Districts, by mistake the area restriction was included for all the three communities covered by Sl.No.38, which reads as follows:

"Kannada Saineegar, Kannadiyar and Dasapalangika (Coimbatore, Erode and Nilgiris)"

4. It has been further stated by the petitioner that subsequently, this mistake was noticed and corrected in G.O.Ms.No.1962, Social Welfare Department, dated 1.8.1984 and Sl.No.38 was modified as follows:

"Kannada Saineegar, Kannadiyar (throughout the State) and Dasapalangika (Coimbatore, Periyar and Nilgiris Districts)"

Thereafter, a fresh list was prepared in G.O.Ms.No.824, Social Welfare Department, dated 29.5.1987 by including some more communities and the petitioner's community was changed from Sl.No.38 to Sl.No.71 and it reads as follows:

"Kannada Saineegar, Kannadiyar (throughout the State) and Dasapalangika (Coimbatore, Erode and Nilgiris Districts)."

5. It has been further submitted by the petitioner that after the judgment of the Honourable Supreme Court in Indra Sawhney's case [INDRA SAWNEY vs. UNION OF INDIA, 1992 SUPP. (3) SCC 217], the fourth respondent herein prepared a list of backward classes for reservation of 27% vacancies in civil posts and services under the Government of India; that the enumeration of the backward classes in respect of various States was made on the basis of the recommendation made by the third respondent and this recommendation was based on the enumeration done by various Backward Classes Commissions of the States, however, when the third respondent made a recommendation to the fourth respondent, by error, it relied upon the earlier enumeration included in G.O.Ms.No.72 Social Welfare Department dated 1.2.1980 of the State of Tamil Nadu, even though the same had been corrected and rectified in the two latter orders dated 1.8.1984 and 29.5.1987.

6. It has been further submitted that on the basis of the recommendation of the third respondent, the fourth respondent has issued a Resolution No.12011/68/93-BCC(C), dated 10.9.1993, which has enumerated various backward classes, who are eligible for reservation in civil posts and services under the Government of India; that when the State Government has realized that a mistake had crept in the Resolution dated 10.9.1993, they have addressed a letter dated 1.3.1994 to the third respondent, pointing out the mistakes, but since no corrections have been effected by the fourth respondent, the

petitioner filed O.A.No.477 of 2002 before the Tribunal praying to direct the third respondent to recommend to the 4th respondent to amend the caste name as has been recommended by the State Government and to appoint the petitioner to the Civil Services in the quota reserved for Other Backward Class; that the said Original Application was disposed of on 3.1.2004 with a direction to the fourth respondent to consider as to whether 'Kannada Saineegar' and 'Kannadiyar' communities are to be treated as OBC throughout the State of Tamil Nadu and pass orders within a period of three months and in case the 4th respondent accepts the case that the above communities are to be treated as OBC throughout the State, then consider the case of the petitioner whether he can be allowed to any All India Service, which he has opted.

7. The petitioner would further submit that he made several representations to the respondents 3 and 4 and the Government of India, finally had issued the notification on 13.1.2004 treating 'Kannadiyars' of the whole State of Tamil Nadu as 'OBCs' and thereupon he made a representation on 4.2.2004 to the respondents, requesting to allot him IPS in the Tamil Nadu cadre and filed O.A.No.599 of 2004 before the Tribunal to direct the respondents to consider his representation and take a decision within a fixed time frame and by the order dated 9.7.2004, the said application was allowed by the Tribunal with a direction to consider and dispose of the representation in the light of the Resolution of the Central Government dated 13.1.2004 and the earlier directions of the Tribunal in O.A.No.477 of 2004; that the petitioner made a further representation on 6.9.2004, but by the order dated 30.9.2004, his representation was rejected by the first respondent on the ground that the Resolution of the Government of India was only prospective in nature and therefore the same could not apply to the selection made earlier. Aggrieved by the same, the petitioner filed Original Application No.1129 of 2004, challenging the above said order of the first respondent as well as the resolution passed by the 4th respondent in No.12011/4/2002-BCC, dated 13.1.2004 and for a consequential direction for allotment of the petitioner to any All India Service on the basis of the selection conducted pursuant to the Civil Services Examination held in 2001 with all consequential benefits.

8. Initially, before the Tribunal, only respondents 1 and 2 were impleaded as parties, but thereafter, the petitioner filed an application to amend the relief by seeking to challenge the resolution passed by the 4th respondent, dated 13.1.2004 inasmuch as it was to operate only prospectively and also to implead the respondents 3 and 4 in the Original Application. The said application having been allowed, the respondents 3 and 4 were brought on record, but though the respondents 1 and 2 have filed a reply, the respondents 3 and 4 did not file any reply and by the order dated

19.4.2006, the Tribunal has dismissed the Original Application filed by the petitioner. Aggrieved by the same, the petitioner has come forward to file this writ petition. In the meantime, the petitioner was allotted to the Pondicherry Civil Service and thereafter, the petitioner was selected for the Indian Forest Service (IFS) as an OBC candidate pursuant to the selection in the Indian Forest Service Examination conducted in 2003 and at the time of filing of the writ petition, he was undergoing training at Dehradun, Uttaranchal.

9. Before the Tribunal, the respondents 1 and 2 have filed a reply stating that the Ministry of Social Justice and Empowerment has issued a Resolution on 13.1.2004, including the caste of the applicant i.e. 'Kannadiyar' for the entire State of Tamil Nadu and the inclusion was made effective from the date of issue of the Resolution i.e. 13.1.2004 and therefore, no retrospective effect could be given to the Resolution.

10. Though no counter affidavit has been filed by the respondents 3 and 4 before the Tribunal below, in spite of several opportunities given, as has been observed by the Tribunal in its order, in these writ proceedings, they have filed a counter affidavit stating that as per the records available in the Commission, no specific request from the State Government of Tamil Nadu is found to have been received with regard to amending the relevant entry; that the Commission acted upon the request from one Mr.R.Sundaram, Cuddalore District, Tamil Nadu for amending the entry, which was received in the Commission in February, 2002 and the matter was taken up with the State Government who subsequently clarified and thereafter, the matter was considered by the Commission in its meeting held on 20.8.2002 and on its recommendation to amend the entry, amendment was effected; that the Commission/Ministry of Social Justice and Empowerment cannot take decisions on their own with regard to addition/removal of area restrictions in the entries in the Central List of OBCs.

11. It has further been submitted that giving benefit with retrospective effect will have repercussions and also attract several cases; that it is likely that similar cases may have arisen in the State of Tamil Nadu, since the amendment in question was notified by the Government of Tamil Nadu only in 1994 and in such a scenario, the State Governments themselves would have requested the National Commission/Government of India to amend the entry without waiting for any representation immediately after making the correction in the State List in the year 1994; that the National Commission did not receive the request/representation for amending the entry only in 2002, from Mr.R.Sundaram of Tamil Nadu, as per the records available and the National Commission immediately acted upon the request and tendered its recommendation to the Government of India accordingly; that there are still many castes/communities which appear in the

State List, but not in the Central List, as the Commission has not yet received any representation from individuals, organizations etc. in respect of the above concerned castes/communities; that the Commission does not examine the cases for inclusion of castes/communities on its own and as and when the requests are received, the same are examined as per the laid down procedures. It has also been submitted that the individuals, belonging to such castes/communities which appear in the State List, but not in the Central List, cannot enjoy the benefit of reservation till such time their caste/community is notified by the Government of India for inclusion in the Central List of OBCs and hence, as in practice, the notification can have only prospective operation.

12. The careful scrutiny of the entire materials placed on record would enlighten a gloomy picture and the desperate appeals made on the part of the respondents. As we have already commented in the opening para of this judgment, the case on hand would tell tales about the manner in which a citizen can be made to run from pillar to post, because of the negligence and carelessness of the Government officials, who are at the helm of affairs.

13. The contention of the petitioner that his caste 'Kannadiyar' has been declared as OBC throughout the State of Tamil Nadu is not in dispute.

14. The Government of Tamil Nadu, through its Secretary, Backward Classes and Most Backward Classes Welfare Department, realising the mistakes published in the Other Backward Classes List notified by the Government of India in Resolution No.12011/68/93 BCC (C), dated 10.9.1993, has addressed the Member Secretary, National Commission of Backward Classes, New Delhi, by the Letter No.2068/BCC/94-1, dated 1.3.1994, pointing out the discrepancies in the list. From entry No.64 to the annexure appended to this communication, it is seen that the State Government wanted to correct the entry, pertaining to the community of the petitioner, as follows:

Sl.No. in the Govt. of India's List	Spelling in Government of India's List	Correct spelling to be adopted
64	Kannada Saineegar, Kannadiyar and Dasanalanjika (Coimbatore, Periyar and Neelgiri Districts)	Kannada Sainegar, Kannadiyar (throughout the State) and Dasapalanjika (Coimbatore, Periyar and Nilgiris Districts)

15. When the Government of Tamil Nadu, as early as on 1.3.1994,

has addressed such a letter to the third respondent, seeking to carry out the corrections and clarify the position, so as to benefit the needy, no action has been taken by the third respondent and the officials of the respondents 3 and 4, who are at the helm of affairs at the relevant point of time have slept over the matter for years together, waiting for somebody to bell the cat again.

16. Even though such a telling evidence is available on record, showing that the Government of Tamil Nadu has addressed a communication to the third respondent on 1.3.1994 itself, the respondents 3 and 4 have asserted before this Court by filing a counter affidavit that from the records available with the Commission, no specific request from the State Government of Tamil Nadu is found to have been received with regard to amending the relevant entry and the Commission acted upon a request from one Mr.R.Sundaram, Cuddalore District of Tamil Nadu, for amending the entry, which was received in the Commission in February, 2002 and the matter was taken up with the State Government, who subsequently clarified, vide their letter dated 21.3.2002 and thereafter, the matter was considered by the Commission in its meeting held on 20.8.2002 and its recommendation to amend the entry accordingly was sent to the Government of India on 3.9.2002. Subsequently, by the Resolution No.12011/4/2002-BCC, Dated 13.1.2004, published in the Gazette of India of the even date, the correction has been carried out.

17. In this way, the respondents 3 and 4 are trying to cover-up the mistake as if no such communication was ever received by them. It is not a communication from an individual to the respondents 3 and 4, so as to say that a falsity is being asserted by the individual. It is the Government of Tamil Nadu, which has addressed an official letter to the respondents 3 and 4 and it should have been given due priority by the respondents 3 and 4, having regard to the fact that uncorrected, the Central List will not serve the purpose for which it has been prepared. It shows the utter dereliction of duty on the part of the officials of the third respondent at the helm of affairs at the relevant point of time. When such things have been clearly asserted before the Court, in all fairness, the respondents 3 and 4, particularly the third respondent ought to have taken all the steps to trace out the communication dated 1.3.1994 sent by the Government of Tamil Nadu and would have passed orders accordingly, besides initiating necessary disciplinary proceedings against the errant officials at the helm of affairs during the relevant time, in the manner known to law. Instead of doing so, the respondents 3 and 4 have filed the counter affidavit before this Court as if they are very prompt in acting upon the requisition from an individual Mr.R.Sundaram of Cuddalore District. At the cost of repetition, we have no hesitation to say that such an inaction on the part of the respondents 3 and 4 at the relevant point of time, has affected the

prospect and career of many persons, which have, ultimately, been brought to light in the form of the case of the petitioner. Many unknown cases, who are the silent sufferers because of the inaction on the part of the respondents 3 and 4, are yet to be heard.

18. Taking advantage of the situation, now a stand is taken on the part of the respondents that the amended list published by the third respondent by the Resolution dated 13.1.2004 is only prospective in operation and no retrospective effect can be given.

19. Can the respondents get back the age of the petitioner now, so that he can get himself eligible for claiming the benefits under OBC quota and get selected for IPS? From the materials placed on record, we are able to see that as per the result of the 2001 examination, the applicant had obtained the rank of 208 and the next OBC candidate with a rank of 220 hailing from Tamil Nadu had been allotted to the Indian Police Service in the Tamil Nadu cadre and just because of the lacunae committed on the part of the respondents 3 and 4, the applicant had been deprived of the posting to IPS in Tamil Nadu and he was recommended for appointment to a service, against an unreserved vacancy, on the basis of the merit in the general category and he was allocated to Pondicherry Civil Service, Group 'B' as per his 13th preference. Had this been done to any other OBC candidate of lesser rank, he would not even get any posting in the general category and thus an irreparable loss would have occasioned to him. Similar would be the situation of many other candidates belonging to the same community for any other service and because of the slackness exhibited on the part of the respondents 3 and 4.

20. Even though the Government of Tamil Nadu, by their Letter No.154/BCC/2001-1, dated 7.1.2002, pursuant to the representation of the petitioner, has clarified the position to the Union Public Service Commission, thereby mentioning that 'Inasmuch as the Kannadiyar community has been declared as backward class throughout the State by the government of Tamil Nadu, the request of the petitioner deserves to be considered', his claim was rejected by the second respondent, by their communication dated 21.2.2002 on the ground that no amendment to Central List of OBCs in respect of Tamil Nadu State recognising Kannada Saineegar and Kannadiyar as OBC throughout the Tamil Nadu State and Dasapalanijika in Coimbatore, Periyar and Nilgiri Districts of Tamil Nadu State, issued by the Central Government was received by them and hence the community status of the petitioner was treated as 'general'.

21. The respondents have maintained that the Resolution dated 13.1.2004 issued by the fourth respondent is only prospective and therefore, no retrospective benefit could flow to the petitioner. True, the orders issued by the Governmental authorities are only

prospective, unless specifically it provides for retrospective operation. But, one thing must be made clear, an extraordinary situation like the one in hand, will call for an extraordinary remedy and Courts are not handcuffed or prevented in any manner from dealing with such situations in an appropriate manner, particularly to cure the illegality perpetrated on a citizen and there was complete inaction on the part of the Executive. By the impugned action of the respondents, we have no hesitation to hold that, that they have violated Articles 15 (1) and 16(1) of the Constitution of India.

22. Further more, the Resolution passed by the fourth respondent dated 13.1.2004 is in the nature of clarification to the Resolution published by them earlier in No.12011/68/93 BCC (C), dated 10.9.1993, in which event, it will have the effect of retrospective operation, as has been held by the Honourable Apex Court in S.S.GREWAL vs. STATE OF PUNJAB AND OTHERS [1993 SUPP. (3) SCC 234], wherein it has been held that 'the explanatory or clarificatory statute or statutory rules or order to be read as part of the main statute/rules/order and as such would operate retrospectively'.

23. By applying this principle as has been enunciated by the Honourable Apex Court, it must be held that the present Resolution dated 13.1.2004 passed by the fourth respondent, being in the nature of clarification to its earlier notification dated 10.9.1993, it would operate retrospectively i.e. from 10.9.1993 onwards.

24. Another argument advanced on the part of the respondents is that if the plea of the petitioner is entertained, many such pleas would flood the authorities and the Courts and therefore, such an attempt on the part of the petitioner should be nipped and thrown to winds.

25. This argument advanced on the part of the respondents does not appeal to us. In a series of judgments like ZEE TELEFILMS LTD. vs. UNION OF INDIA [(2005) 4 SCC 649] and GURUVAYOOR DEVASWOM MANAGING COMMITTEE vs. C.K.RAJAN [(2003) 7 SCC 546], which are followed in COAL INDIA LTD. AND OTHERS vs. SAROJ KUMAR MISHRA [(2007) 9 SCC 625], the Honourable Apex Court has consistently held that 'only because there is possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away.' This proposition laid down by the Honourable Apex Court would be a straight answer to the desperate argument advanced on the part of the respondents.

26. Placing reliance on the impugned order dated 30.9.2004 passed by the first respondent, another argument advanced on the part of the respondents is that in the year 2001, there were 36 vacancies, including 11 vacancies reserved for OBC candidates in the Indian Police Service to be filled on the basis of Civil Services

Examination, 2001 and against this, equal number of candidates have been allocated and allocation is not made against drop out vacancies due to chain reaction and hence there is no vacancy available against which the petitioner can be allocated to IPS. It has also been submitted that the allocation of candidates to various services, including IPS has been finalised on the basis of the Civil Services Examinations, 2002 and 2003 also.

27. As has been repeatedly observed by us supra, only because of the slackness/derelection of duty committed on the part of the officials of the respondents 3 and 4 at the helm of affairs during the relevant point of time, the petitioner has been denied of his due, which, in the ordinary course, would have flown to him. Had the mistake was rectified in due time i.e. in the year 1994 itself, when the Government of Tamil Nadu has pointed out the mistakes in the Resolution dated 10.9.1993 published by the third respondent, such problem would not have occasioned to the petitioner or for that matter to anybody who is likely placed as that of the petitioner.

For all the above discussions held, this writ petition is allowed. The respondents, particularly the respondents 1 and 2 are directed to allot the petitioner to the Indian Police Service in Tamil Nadu cadre or any All India Service on the basis of the selection conducted pursuant to the Civil Services Examination, 2001, with all consequential benefits, treating him as a 'OBC' candidate even at the time of his selection in the year 2001. For the purpose of such an allotment of the cadre to the petitioner, the respondents can even create a supernumerary post, since all these years the petitioner has been deprived of his due and since the extraordinary situation like the one in hand will always require an extraordinary remedy. The entire process shall complete within twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst.Registrar

Rao

To

1.The Secretary to Government of India,
Department of Personnel & Training,
New Delhi.

2.The Secretary,
Union Public Service Commission
Dholpur House,
Shajahan Road,
New Delhi.

3.The Secretary,
National Commission for Backward Classes
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4.The Secretary,
Ministry of Social Justice and Empowerment,
Shastri Bhavan,
NewDelhi.

5.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.

+1 cc to Mr.Karthik, Advocate, SR.No.35455

+1 cc to M/s.K.Sridhar Associates, Advocate, SR.No.33827

+1 cc to Mr.C.V.Ramachandra Murthy, Advocate, SR.No.33698

Order in W.P.No.43632 of 2006

RSY {CO}
TP/10.8.2009.

सत्यमेव जयते
WEB COPY