

IN THE HIGH COURT OF JUDICATURE AT MADRAS

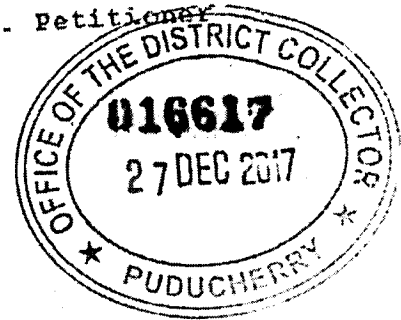
RESERVED ON	14/09/2017
PRONOUNCED ON	22/09/2017

CORAM

THE HONOURABLE MR. JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE P. D. AUDIKESAVALU

W.P.No.12920 of 2004

... Petitioner



... Respondents

M. Panchatcharam

-VS-

1. Union of India, rep. by
Government of Pondicherry,
through its Chief Secretary,
Pondicherry.

2. The Secretary to Government (Revenue),
Government of Pondicherry,
Pondicherry.

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to issue Scheduled Caste Certificates to such as of those persons who have been born and brought up in the Union Territory of Pondicherry whose caste have been notified as Scheduled Caste in the year 1964 Presidential Order.

For Petitioner : Ms. Usha Raman

For Respondents : Mr. Syed Mustafa
Special Government Pleader

O R D E R

The relief sought by the petitioner in the Writ Petition is to direct the Respondents to issue Scheduled Caste Certificates to such as of those persons who have been born and brought up in the Union Territory of Pondicherry whose caste have been notified as Scheduled Caste in the year 1964 Presidential Order.

2. Heard Ms. Usha Raman, learned counsel appearing for the Petitioner and Mr. Syed Mustafa, learned Special Government

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May pl write to all depts
Secy (Rev) / Secy (Law)
4/14/17

12/11/12

04/11/18

Take 2-1/2 hrs app
Shankar
12/11/18

Pleader appearing for the respondents and perused the materials placed on record.

3. Having regard to the aforesaid relief sought by the Petitioner which is purported to be prosecuted in public interest, it has been brought to the notice of this Court by Mr. Syed Mustafa, learned Special Government Pleader appearing for the Union Territory of Pondicherry that the Government of India by Letter No. BC-16014/1/82-SC & BCU-1, dated 22.02.1985 has issued instructions to the Chief Secretaries of All State Governments and Union Territory Administrations regarding the issue of Scheduled Caste / Scheduled Tribe Certificates to migrants from other States / Union Territories, as follows:-

"1. I am directed to say that it has been represented to this Ministry that persons belonging to Scheduled Castes / Scheduled Tribes who have migrated from one State to another for the purpose of employment, education, etc., experience great difficulty in obtaining caste / tribe certificate from the State from which they have been migrated. In order to remove this difficulty, it has been decided to modify the instructions issued in letter No. 12029/2/76-SCT.I dated 22.03.1977 and letter No. 12015/11/79-SC&BCD-1/(V) dated 29.03.1982 that the prescribed authority of a State Government / Union Territory Administration may issue the Scheduled Caste / Tribe Certificate to a person who has migrated from another State, on the production of the genuine certificate issued to his father by the prescribed authority of the State of the father's origin except where the prescribed authority feels that detailed enquiry is necessary through the State of origin before issue of the Certificate. The certificate will be issued irrespective of whether the Caste / Tribe in question is scheduled or not in relation to the State/Union Territory to which the persons has migrated. This facility does not alter the Scheduled Caste / Scheduled Tribe status of the person in relation to the one or the other State. The revised form of the Scheduled Caste / Tribe Certificate has already been circulated with this Ministry's letter of even number dated 06.08.1984.

2. It is also clarified that a scheduled Caste / Tribe persons who has migrated from the State of origin to some other State for the purpose of seeking education, employment, etc., will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated.

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3. This letter substitutes this Ministry's letter of even number dated 18.11.1982."

The Constitution Bench of the Hon'ble Supreme Court of India in Marri Chandrashekar Rao Vs. Dean, Seth G.S. Medical College and others [(1990) 3 SCC 130], at paras 3 and 23 upheld the view expressed in the said communication dated 22.02.1985 and negated the challenge that the said view was ultra vires Article 14, 15, 16 and 21 of the Constitution, which has been quoted with approval by another Constitution Bench of the Hon'ble Supreme Court of India in Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another vs. Union of India and Another [(1994) 5 SCC 244] at para 17. In view of the aforesaid letter of the Government of India, the prescribed authority of Union Territory of Pondicherry has been empowered to issue Scheduled Caste Certificate to such of persons who have been born and brought up in the Union Territory of Pondicherry irrespective of whether the Caste of the person in question is Scheduled or not in relation to the Union Territory of Pondicherry to which such person has migrated.

4. However it requires to be clarified that merely because a person obtains such Scheduled Caste Community Certificate from the administration of Union Territory of Pondicherry, it would not necessarily follow that such person would be entitled to all the benefits extended to Scheduled Caste persons who were "Resident" on 05.03.1964 when the Presidential Notification giving list of Scheduled Castes for the Union Territory of Pondicherry, was issued.

5. The legal position in this regard has been succinctly explained by the Constitution Bench of the Hon'ble Supreme Court of India in Bhaiya Lal Vs. Harikrishnan [1965 AIR 1557] as follows:-

"10. The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the

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examination of the social and educational backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question."

6. The question whether a migrant to the Union Territory of Pondicherry has to be given the status of a resident after completion of five years and their claim would be regarded as a member of the Scheduled Caste under the Constitution (Pondicherry) Scheduled Castes Order, 1964 for the purpose of availing the benefit under Article 15(4) of the Constitution of India came to be considered by the learned Single Judge of this Court in the judgment dated 13.08.2015 in W.P.No.17987 of 2015 etc., batch, in which it was held as follows:-

"The word "resident" will have to necessarily mean to apply to such of the Scheduled Caste members residing at the relevant point of time i.e., 05.03.1964 at the Union Territory of Pondicherry. In other words, merely because a person resides for various reasons in the Union Territory of Pondicherry, he cannot be given the status and he cannot be allowed to be brought under the umbrella of Presidential Order. Such a person does not lose his right to be considered for the purpose of availing the benefit under Article 15(4) of the Constitution of India in the State in which he is a permanent resident. A presidential Order enumerating the Scheduled Castes is made after a thorough research on empirical data. A certificate of resident given after completion of five years cannot be used to define a "resident" as mentioned in the Presidential Order. In fact, such a certificate has been given to every other person, who comes to the Union Territory of Pondicherry and resides therein for five years. It is given merely based upon the period of stay and therefore, nothing to do with the status. In other words, a Scheduled Caste person not having five years of a resident in Pondicherry is the same as that of

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the others living for five years in so far as seeking a benefit under Article 15(4) of the Constitution of India is concerned. A disadvantage would not arise merely after five years of residence. The purpose of reservation is meant to overcome backwardness and other disadvantages of a caste in a particular place and thus, it does not have any relevancy to the period of subsequent stay. The reason why the Presidential order refers to a resident as on that date was because of the peculiar situation prevailed at the relevant point of time. There was no difference between the "origin" and a "resident" as on 05.03.1964 as both are suffering from the same disadvantages. A mere issuance of certificate of "resident" issued to a migrant, would not give a vested right to be treated under the reservation category for the purpose of education."

The said decision was confirmed in appeal by the Division Bench of this Court by judgment dated 04.09.2015 in W.A.No.1225 of 2015 and etc. batch, in which it has been held in paragraph No.24 with reference to Scheduled Caste persons belonging to the State of Tamil Nadu who have migrated to the Union Territory of Pondicherry, as follows:-

"24. There is no question of considering them as Scheduled Castes in relation to the Union Territory of Pondicherry, in view of their migration after the cut off date. Even if the Government of Pondicherry wanted to extend other benefits to those who have migrated to the Union Territory from other States, it would be possible only by way of passing appropriate legislation as indicated in Marri Chandra Shekhar Rao. Such extension of benefits should not affect prejudicially the rights of Scheduled Castes of Pondicherry. No body can compel the Government to initiate such legislation."

The Special Leave Petition filed before the Hon'ble Supreme Court of India against that judgment has been dismissed by the Hon'ble Supreme Court of India on 24.09.2015 in SLP(C)No.27612 of 2015.

7. In view of the aforesaid legal position set out supra, the Writ Petition is disposed holding that persons who have been born and brought up in the Union Territory of Pondicherry whose caste have been notified as Scheduled Caste in the Constitution (Pondicherry) Scheduled Castes Order, 1964, would be entitled to obtain the Scheduled Caste Certificate from the prescribed authority of Union Territory of Pondicherry in terms of letter No.BC-16014/1/82-SC & BCD-I, dated 22.02.1985 of the Government of India and that if their ancestors and forefathers had

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migrated to the Union Territory of Pondicherry only after 05.03.1964, they will be deemed to be a Scheduled Caste of the State of their origin and will be entitled to derive benefits from the State of their origin and not from the Union Territory of Pondicherry. No costs.

r n s

Sd/-
Asst. Registrar

/true copy/

Gundaje 28/11/17

[Signature] Sub Asst. Registrar

TO

1. The Chief Secretary,
Government of Pondicherry,
Union of India, Pondicherry.
2. The Secretary to Government (Revenue),
Government of Pondicherry,
Pondicherry.

W.P.No.12920 of 2004

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