

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.260/09

Tuesday, this the 16th day of November 2010

C O R A M :

**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER
HON'BLE Dr.K.B.SURESH, JUDICIAL MEMBER**

K.G.Sasidharan,
S/o.late K.T.Govindan,
Section Officer,
Office of the Accountant General, Trivandrum.
Residing at Quarter No.51, Type III,
CGO Quarters, Melethmele, Vattiyoorkavu PO,
Thiruvananthapuram – 695 013.

...Applicant

(By Advocate Mr.Shafik MA)

V e r s u s

The Principal Accountant General (Audit),
Kerala, Thiruvananthapuram.

...Respondent

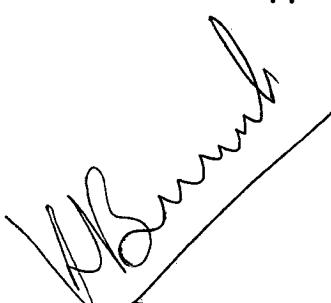
(By Advocate Mr.V.V.Asokan & M/s.Iyer & Iyer)

This application having been heard on 10th November 2010 this
Tribunal on 16th November 2010 delivered the following :-

O R D E R

HON'BLE Dr.K.B.SURESH, JUDICIAL MEMBER

How wrong is a wrong is the crux of the matter. The applicant while
at the age of 22 years and 11 months applied for the post of Auditor in the
office of the respondent and had indicated in the column that he belongs to
Scheduled Tribe. He was selected for the post and appointed. But the
concerned authority now says that had he stated that he belongs to a
Scheduled Caste Bakuda community at that time, his position of 32 in the
rank list would not have entitled him to an appointment as the Scheduled
Caste candidate appointed was at a rank of 20. Therefore, they would say



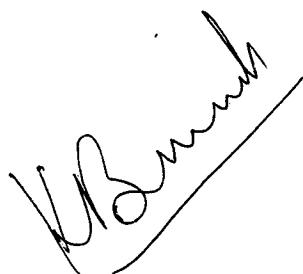
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that the caste certificate which was produced by him and which was later cancelled after KIRTADS enquiry was the reason for his obtainment of an employment and since he had produced such a certificate which is against the extent of integrity expected of a Government servant, it cannot be allowed to continue. The applicant has been clearly made aware of the consequences of submitting false certificate for applying to the post and a charge sheet was issued and the applicant had already confirmed and certified that the statements/information furnished in the application were true. The authority rely on the Writ Appeal No.121/03 and its order therein which state that the Government is not debarred from taking any action as observed by learned Single Judge and therefore they have issued the Annexure A-1 charge sheet, which the applicant now challenges.

2. The genesis of the issue is available in Annexure A-2 proceedings of the Scrutiny Committee for verification of community certificate which passed an order after due deliberation on 31.1.2009. It will be worthwhile to quote from paragraph 5 of the said report which says as follows :-

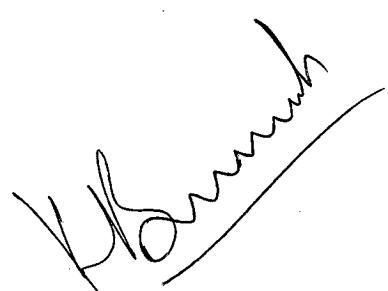
"The Claimants' family has a history of being migrant labourers in European Tea Company at Peerumedu Taluk since 1920. About 20 families belonging to Bakuda Community was brought to Peerumedu by the Europeans. There was a settlement of Mala Arayans in nearby Valliyankavu. Therefore the customs and traits of the migrant settlers were similar to that of Malai Arayan Community. Hence the entry in the school records of the claimants indicated as being a member of the Scheduled Tribe Community. The claimants later accepted Christianity along with the Mala Arayans."

3. The Bakuda community's traditional means of livelihood begging.

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The Mala Arayans subsisted by utilising the fruits of the forests. Therefore, naturally there might have appeared similarities in their eking out a livelihood. But since the Europeans had brought them to work in the tea plantation and as the same Europeans were running the missionary schools they were entered in the schools as Mala Arayans, may be as an easily distinguished group available locally. In all probability there would have been a degree of lateral integration as well as historically Mala Arayans were utilised by Europeans as plantation labourers and who were also converted into Christianity and some among them had later on returned to Hinduism and vice-versa. Therefore, in 1920 it hardly mattered whether a person was Bakuda or Mala Arayans. They were equally untouchables whether they were Bakuda or Mala Arayans. They suffered the same social stigma with the same degree of intensity and there was hardly any difference. Only with the SCST order of 1950 some degree of difference emerged among them. In all probability, if one had to trace the genesis of the school admission, it may be found that for historical reasons that it was the missionary themselves who admitted the children and never labourers themselves. It was in those times considered part of their godly duty to educate the children of the labourers and they may have as a part of convenience entered all these people as Mala Arayans. In all probability, what this Bakuda is they may not have known and if known would not have cared less. It was all the same. For the missionary it was just a word to express a distinction and nothing more. In all probability, the same thing continued and at the age of 22 years and 11 months and on the threshold of employment the applicant could not have gone to the Tahsildar

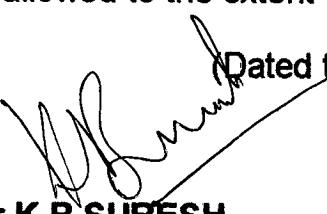
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and lectured him on historical origins of difference between the Bakuda and Mala Arayans. His school certificate would have shown that he belongs to Mala Arayans. The Village Officer who conducted the enquiry would have found that at least to an extent there is some similarity between Bakuda and Mala Arayans and a certificate would have been issued. Therefore, the second limb of the consideration that he fraudulently obtained a certificate may be absent from the activity of the applicant. In all probability, it may have been said that he had in fact followed the practice which was followed for decades together. From 1920 to 2009 when he gave a certificate 89 years have already passed. So there may not be mens rea.

4. This and other pertinent matters are now under challenge before the High Court of Kerala and apparently it is advised that Annexure A-2 and Annexure A-3 are stayed. Annexure A-2 and Annexure A-3 and the finding that in fact the applicant had issued a fraudulent certificate has to be decided before any action in Annexure A-1 can be taken. Annexure A-1 is, therefore, pre-mature and without a legal foundation it cannot lie. We, therefore, quash Annexure A-1 but hold that the respondent can re-agitate the Annexure A-1 on the completion of judicial process now pending. OA is allowed to the extent stated above. No order as to costs.

Dated this the 16th day of November 2010)


Dr. K.B. SURESH
JUDICIAL MEMBER


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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