

**Central Administrative Tribunal
Ernakulam Bench**

OA No.265/2012

...~~Wednesday~~ this the ~~4th~~ day of September, 2013.

CORAM

Hon'ble Dr.K.B.S.Rajan, Member (Judicial)

Hon'ble Mr.K.George Joseph, Member (Administrative)

K.S.Kanthi, age 41 years
W/o Dinakara Das. I.C.
Customs Preventive Officer (Under suspension)
Office of the Commissioner of Customs
Customs House, Cochin.
Residing at IV/440-B, Injakkal Road,
Maradu, Ernakulam District.

Applicant

(By Advocate: Mr.P.V.Mohanan)

Versus

1. Union of India represented by
The Secretary
Ministry of Finance
Secretariat
New Delhi-110 001.

2. The Commissioner of Customs
Customs House
Wellington Island
Kochi-682 014.

Respondents

(By Advocate: Mr.Sunil Jacob Jose, SCGSC)

This application having been heard on 30th August, 2013, the Tribunal on ~~04.09.13~~ delivered the following order:-

ORDER

Hon'ble Dr.K.B.S.Rajan, Member (J)

In this OA, challenge is at the very stage of charge-sheet as according to the applicant from the charges framed read with imputation of charges, no misconduct can be said to have been made out.

2. Brief facts: The applicant belongs to a community called 'Thandaan' at Palakkad District. She had been offered appointment as Lower

Division Clerk in the Respondents' office under the Reserved Quota and in case of acceptance of the offer, her appointment was to be made provisional subject to production of necessary caste certificate, vide Annexure A-1 order dated 26-02-1996. The Tahsildar having refused to furnish any such certificate, the applicant moved the High Court in Writ Petition 8486 of 1996 and as an interim measure, the High Court had directed the respondents to admit the applicant to duty as Lower Division Clerk without insisting the caste certificate provided the applicant submitted an affidavit before the Scrutiny Committee, vide page 28 of the Paper Book. On the strength of the same, the respondents had entertained the applicant and the applicant had furnished necessary Affidavit before the Scrutiny Committee. By order dated 18th December, 2002 in OP No. 4829 of 1996, the interim order (supra) was to continue till appropriate orders are passed by the competent authorities under Section 11 of the Kerala (Scheduled Castes and Scheduled Tribes) Regulations of Issue of Community Certificate Act, 1996. Page 33 of the Paper Book refers. By the time the Scrutiny Committee considered the case, the applicant was promoted to the level of Preventive Officer (Inspector) vide Annexure A-21 order dated 01-06-2007.

3. The proceedings of the Scrutiny Committee, vide page 34 of the Paper Book considered the case of the applicant and found that the Vigilance Officer, KIRTADS submitted the Inquiry Report and notices were issued to the parties.

4. The Committee took into account the following:-

(a) The arguments of the counsel for the applicant herein (and other claimants), which included a decision by the Hon'ble Apex Court in the case of the Palghat Jilla Thandan Samudhaya Smrakshan Samiti and another vs State of Kerala (1994 (1) KLT 118)

(b) the vigilance report,

(c) removal by 1976, the area restriction on Scheduled Caste Thandan within the State.



- (d) The Constitution (Scheduled Caste) Order (Amendment) Act, 2007 wherein the item No. 61 of the Scheduled Castes List is modified as *"Thandan (excluding Ezhavas and Thiyyas, who are known as Thandan, in the erstwhile Cochin and Malabar areas and Carpenters who are known as Thachan, in the erstwhile Cochin and Travancore States"*

5. The Committee traced the anthropological history of the applicant that they belonged to Thiyya Community of Palghat District, who were also locally known as Thandan Community and some among such persons belonging to either Ezhuva/Thiyya Community got themselves identified as belonging to Thandan Community and. Ultimately, the Committee held -

"However, in the light of the judgment brought to the notice of the Committee by the Advocate for the claimants and the Constitutional (Scheduled Castes) order (Amendment) Act, 2007, the benefits enjoyed by the claimants as members of Scheduled Castes till 29-08-2007 will not be taken back. They are not eligible to any benefits meant for Scheduled Castes after 29-08-2007 and the benefits availed by them thereafter shall be recovered or withdrawn as the case may be."

6. The Government of Kerala, in turn has passed the order dated 27-12-2011 inter-alia holding -

"v. Smt. K.S. Kanthi, who is serving in Customs Commissionerate, Kochi will not be eligible for any benefits exclusively meant for Scheduled Castes after after 29-08-2007 i.e. the date of the Constitutional (Scheduled Castes) order (Amendment) Act, 2007. However, the benefits enjoyed by her till 29-08-2007 shall not be taken back. The Commissioner of Customs, Customs House, Kochi shall ensure that no such benefits are granted to Smt. K.S. Kanthi after 29-08-2007 and if any benefit has already been granted shall be recovered to be withdrawn as the case may be."

7. The respondents have, even prior to the issue of the above order by the Government of Kerala, on 04-11-201, issued an order of suspension on the basis a contemplated disciplinary proceedings vide Annexure A-22. The applicant moved OA No. 964 of 2011 against the aforesaid suspension, which was disposed of by order dated 10-02-2012 holding that since no charge sheet was issued, and the continuance or otherwise of suspension depends upon the decision to issue charge sheet, it was open to the applicant to make a representation to the authorities in which event, the

respondents may taken action on the same. The order of suspension was to be reviewed as per the provisions of the CCS (CC& A) Rules before the expiry of ninety days from the initial date of suspension. It was reviewed by the Review Committee on 19th April, 2012 and the period of suspension was extended for a further period of 180 days from 02-05-2012.

8. The respondents, vide Annexure A-1 dated 14-03-2012 issued a charge memorandum, the charges of which read as under:-

"Article-I

That Smt.K.S.Kanthi, a candidate sponsored by the Staff Selection Commission was served with an Advice memo No.S.45/97/95-Estt.Cus dated 26.2.1996, offering appointment for the post of lower Division Clerk in the quota reserved for Schedule Caste in Custom House, Kochi. She was informed that in case if she belongs to the Scheduled Caste/Scheduled Tribe Community, she should produce the Scheduled Caste/Scheduled Tribe Certificate in the prescribed form. Further she was informed that the terms and conditions of her appointment are that, "her appointment is provisional and is subject to the Caste Certificate being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the IPC for production of false certificates".

When Scheduled Caste Thandan Caste Certificate was denied by the Revenue authorities concerned, the officer approached the Hon'ble High court of Kerala and filed a OP No.4829/96 Y and CMP No.8486/96 and on the strength of orders in CMP No.8486/96 dated 12.4.1996, was appointed as Lower Division Clerk in the Custom House without producing any Caste Certificate but on the basis of filing an affidavit that she had already filed application before the Scrutiny Committee for verification of caste status and that it is still pending before the Committee, which is a statutory body constituted under section 11 of the Kerala (Scheduled Casts and Scheduled Tribes) Regulation of Issue of Community certificate Act, 1996.

She was allowed to continue in service on the strength of the Orders passed in OP No.4829/1996 dated 18.12.2002, that till appropriate orders are passed by the Scrutiny Committee, the interim order in CMP No.8486/96 shall continue.

Whereas, vide Order No.1362/G2/2003/SCSTDD dated 3.9.2011 the Scrutiny committee for Verification of Community Certificates held that the Scheduled Caste Thandan Claim of Smt K.S.Kanthi is unacceptable and that she belongs to Thiyya Community included in the OB list of Kerala. The above verdict of the Scrutiny Committee has unequivocally rendered Smt. K.S.Kanthi's claim for the status of

Scheduled Caste Thandan false and incorrect, and the verdict is a genuine evidence on record to prove that she hereby forfeits to enjoy the privileges and concessions entitled to only the members of Scheduled Caste Community, hitherto enjoyed by her, under the abuse of false claim and hence ineligible to continue in service.

In view of above, services of Smt.Kanthi is liable to be terminated under Rule 11 of CCS (CCS) Rules, 1965 on the following grounds:

1. The terms and conditions of appointment agreed upon by Smt.Kanthi K.S., as stipulated in the "Appointment Advice memo" that her appointment is provisional and is subject to the Caste Certificate being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the IPC for production of false certificates.

2. The DOPT instructions issued by the Department of personnel, Ministry of Finance in F.No.42011/22/2006-Estt dated 29.3.2007 (Res.) and OM No.11012/7/91Estt.(A) dated 19.5.1993 provides that "Whenever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary government servant, he should be discharged or his service should be terminated." It further states that if he has become a permanent government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

*3. Supreme Court decision in **KUMARI MADHURI PATIL Vs. ADDL. COMMISSIONER (1995 AIR 94)** contains the guidelines to be followed when the Scrutiny Committee finds out that the claim of a person to be false. Vdie para 13 (15) it is directed that as soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the appointing authority by registered post with acknowledgment due with a request to cancel the appointment. The appointing authority, should cancel the appointment without any further notice to the candidate and debar the candidate from further continual in the office in a post.*

From the above it is found that Shri Kanthi K.S. had submitted a false claim in order to secure initial appointment in this Custom House as an LDC on 26.2.1996.

Thus, smt. Kanthi.K.S. has furnished false information and submitted false claim before the government of India in order to

secure appointment in the Government Service, in the quota specifically earmarked for the Scheduled Caste Community, which amounts to a fraud on the public. by indulging in such fraudulent practice, Smt.Kanthi K.S. had committed an act of gross dishonesty and breach of trust, rendering herself liable for action under CCS (CCA) Rules, 1965."

9. The applicant has come up with this OA, challenging the legal validity of the above and has sought for the following reliefs:-

- a) To call for the records leading to Annexure A1 and set aside the same.*
- b) To declare that the appointment of the applicant as LD Clerk by proceeding dated 22.4.1996 is perfectly illegal. And the applicant is entitled to continue in service as Preventive Officer in Custom House.*
- c) To direct the second respondent to revoke the order of suspension and to reinstate the applicant as Preventive Officer forthwith with all attended benefits.*
- d) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.*

10. Respondents have contested the O.A. According to them, the very continuance of the applicant in service is on the strength of the interim order passed by the High Court and that now that the Scrutiny Committee have held that the applicant belongs to Thhiyya Community and not Thandan community, as initially the applicant had claimed that she belonged to Thandan Community, the same was false and hence, action taken is legal. Suspension preceding the issue of charge sheet is also legal.

11. Counsel for the applicant argued precisely on the following:-

(a) The applicant has never produced any false certificate of her caste. Her appointment was initially made provisional subject to production of Caste certificate. The Revenue authority had refused to issue any such certificate thereby the applicant was forced to move the High Court, which had been pleased to direct the respondents to permit the applicant to perform the duties and the same was complied with by the respondents.

(b) The applicant had filed due affidavit before the Scrutiny Committee as directed by the High Court. During the pendency of the case before the Scrutiny Committee, the applicant was afforded promotions and as on 01-06-2007 she was promoted on adhoc basis as Inspector (Preventive Officer).

- (c) In 1976, the State announced that the bar on the basis of area in respect of recognizing a caste as Scheduled Caste etc., had been removed. Thus, whatever the material was available to the government to distinguish the applicant from the Reserved Castes had been fully removed.
- (d) The issue regarding the status of Thandan Community in Palghat District had been settled by the Apex Court in the case of Palghat Jilla Thandan Samudhaya Smrakshan Samiti and another vs State of Kerala (1994 (1) KLT 118) (1994) 1 SCC 359. In the said case, the Apex Court in para 23 thereof directed that the directed to grant to all members of the Thandan community, including those belonging to the erstwhile Malabar District and the present Palghat District, the benefits due to a Scheduled Caste included in the Schedule to the Constitution Scheduled Castes Order as amended up to date and to issue to them community certificates accordingly.
- (e) The State of Kerala passed an amendment Act i.e. "The Constitution (Scheduled Caste) Order (Amendment) Act, 2007 wherein the item No. 61 of the Scheduled Castes List is modified as *"Thandan (excluding Ezhavas and Thiyyas, who are known as Thandan, in the erstwhile Cochin and Malabar ares and Carpenters who are known as Thachan, in the erstwhile Cochin and Travancore States"*
- (f) The scrutiny Committee had clearly held that the benefits afforded to the applicant till the enactment of the aforesaid Amendment Act of 2007 shall not be taken back, though they may not be entitled to any further benefits beyond 29-08-2007 and any such benefits afforded (after 29-08-2007) could well be withdrawn. In the case of the applicant the benefit granted was ad hoc promotion as Inspector which was anterior to 29-08-2007. No further benefits had been afforded to the applicant posterior to 29-08-2007 and prior to the date of pronouncement of the order dated 03-09-2001.
- (g) The order of suspension vide Annexure A-22 is illegal, more so that the same has not been extended within the time stipulated in the relevant CCS (CC&A) Order, 1965. The decision by the Apex Court in the case of **Union of India vs Deepai Mali (2010) 2 SCC 222** applies squarely to the facts of the case. Consequently, the order of suspension beyond 90 days is

illegal and the applicant is entitled to the full benefit of pay and allowances on and after the expiry of 90 days from the date of suspension, i.e. 04-11-2011.

12. Counsel for the respondents submitted that the applicant furnished certain certificates to the Staff Selection Commission at the time of her initial application for appointment to the post of LDC. The said certificate stood cancelled by the competent authority. Thus, her entry into the services under the reserved quota is without any caste certificate. The Scrutiny Committee also held that the applicant belongs to Thiyya Community and not Thandan community. The initial declaration that the applicant belonged to Scheduled Caste is thus false and hence, she was proceeded against by issue of charge sheet on 14-03-2012 preceded by order of suspension dated 04-11-2011. There is nothing illegal in the extension of the suspension period as recommended by the Review Committee. Counsel for the respondents also argued that there are multiple reliefs sought for – quashing of charge sheet and also revocation of suspension. The same is not permissible under the rules.

13 Arguments were heard and documents perused. The applicant held herself as belonging to Thandan Community of Palghat District, which according to her is a Scheduled Caste. The Matriculation certificate produced reflects her caste as Thandan community and the certificate issued by the Village Officer indicates that the said community is a Scheduled Caste. For entry into the Government service under the Reserve Quota Caste certificate from the competent authority is a sine-quo non. It was not a condition precedent to the initial appointment, and provisionally a person could be appointed pending issue of the caste certificate. The applicant tried her level best to obtain the certificate from the Revenue Authority but failed to get the same. Hence, she moved the matter before the High Court, which had by interim direction to the effect that the applicant be entertained on provisional basis and the scrutiny committee would decide the issue which be followed. The applicant was, no doubt, entertained on provisional basis on the strength of the Court's order.

14. The caste Thandan was predominantly a Scheduled Caste in majority part of Kerala and it was only the Thandans residing in Malabar District (current Palghat District to which the applicant belongs, that the Ezhavas/Thhiyyas had started identifying their caste as of Thandan. Thus, there was a doubt about the same, as to whether the Thandans of Palghat District could be treated as Scheduled Castes.

15. In 1976, the restriction of declaration of a particular community as belonging to Scheduled Caste on area basis was removed by a legislative order.

16. The Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976, came into force on July 27, 1977. In the First Schedule thereof, under Part VII relative to the State of Kerala, Thandan was specified at item 61. On May 17, 1979 the Government of Kerala issued an order which noted that upon the coming into force on July 27, 1977, of the Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976, the Thandan community throughout the State of Kerala came to be included in the list of Scheduled Castes. Complaints were received and reports showed "that there is a section of the Ezhavas/Thiyyas of Malabar area and of certain Taluks of Trichur District who were called Thandans. These Thandans have nothing in common with the Scheduled Caste Thandans. In fact these two categories of Thandans are quite different and distinct from each other." It was, therefore, ordered inter alia that the applications for the issue of Community Certificates to the Thandans of all the four Districts of Malabar area may be inquired into in detail to ascertain whether the applicant belongs to the Thandan Community of the Scheduled Castes or the Thandan section of the Ezhava/Thiyya Community and while issuing Community Certificates to the Thandans who are Scheduled Castes, the authorities issuing the certificates in respect of the areas mentioned above viz. the four Districts of Palghat etc., should note the name of the community in the certificates as Thandans other than Ezhava or Thiyya".

17. On October 15, 1984 the Government of Kerala issued an order which stated that, having reconsidered the matter in all its aspects, the 1979 order was cancelled and "Thandans throughout Kerala would be treated as members of Scheduled Caste as existing in the list of Scheduled Castes of this State as per Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and Community Certificate issued accordingly".

18. The 1984 order was modified by the order of the Government of Kerala dated November 24, 1987, the operative portion of which reads thus:

"Government have again considered the matter in all its aspects and in partial modification of the Government order read above as second paper Government now order that persons belonging to the Thandan Caste throughout Kerala would be treated as members of Scheduled Caste as existing in the list of Scheduled Castes of this State as per the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. While issuing such caste certificate the Revenue authorities should clarify after proper verification that the person concerned belongs to Thandan caste and not Ezhava/Thiyya."

19. This resulted in filing of a few writ petitions before the High Court one of which is ***Palghat Jilla Thandan Samudhaya Samrakshna Samithi v. State of Kerala***, The High Court not having accepted the contention of the petitioners therein, the case reached the Apex Court. In 1994, the Apex Court pronounced the judgment and the same inter-alia reads as under:-

2. The principal question that arises in these writ petitions and appeals is in regard to the validity of the decision of the State of Kerala not to treat members of the Thandan community belonging to the erstwhile Malabar District, including the present Palghat District, of the State of Kerala as members of the Scheduled Castes.

x x x x x

8. The Constitution (Scheduled Castes) Order, 1950, was promulgated by the President in consultation with the Governors and Rajpramukhs of the various States. Part XVI thereof related to the then State of Travancore-Cochin. At item 22 of Part XVI was specified the caste Thandan for the ³⁶²purposes of the entire State. The Constitution Scheduled Castes (Modification) Order, 1956,

modified the Scheduled Castes Order. In the list in Part V, applicable to the State of Kerala (the successor to the State of Travancore-Cochin), at item 14, was specified the caste Thandan for the purposes of the entirety of the State except Malabar District.

x x x x x x

12. In the first place, we must notice that the contention of learned counsel for the State Government does not accord with the case of the State Government put forward on its behalf in the counter-affidavit to the writ petition filed by R.B. Pathak, Secretary to the State Government in the Harijan Welfare Department, dated September 4, 1984. In paragraph 4 of the counter-affidavit it is stated that after the Amendment Act, 1976, was passed by Parliament, "it has come to the notice of the Government that in the erstwhile Malabar area, particularly in Palghat Jilla, a section of Ezhava/Thiyya community are called Thandans. These Thandans are different from the recognised backward Scheduled Caste Thandans. Such a section of Thandans who are allied to Ezhava/Thiyya Community are not entitled to the benefits meant for Scheduled Caste Thandans". In paragraph 6 it is stated that the High Court was satisfied "that the Thandan community of the erstwhile Malabar area, Palghat Jilla is a controversial community and that the position is not clear whether this community in these areas can be conclusively treated as a Scheduled Castes Thandan community". In paragraph 7 the controversy is stated to be "about the status of this community in the said Malabar area, by reason of which the High Court had directed the State Government to conduct an enquiry". In paragraph 11 it is stated, "Pending the proposed investigation into the status of the Thandan community in the Malabar area, the Thandans from all over Kerala will continue to be treated as a Scheduled Caste". In paragraph 12 it is stated, "Based on the report of the proposed enquiry, Government will consider the issue and, if necessary, the Government will submit necessary proposals to the Government of India. Parliament alone is competent to make any change in the law on the subject". In paragraph 14(e) it is stated that a study by various authors shows "that there are Thandans belonging to the Scheduled Caste as well in certain families belonging to backward classes. Because of this position, it is all the more necessary to identify the Thandans belonging to Scheduled Caste separating the other class of Thandans in the Malabar area". In paragraph 14(f) it is stated, "The scope of the proposed enquiry is to find out whether there is a community called Thandan distinct from Ezhava in Palghat District and also in other places in erstwhile Malabar District".


x x x x x x

16. Article 341 empowers the President to specify not only castes, races or tribes which shall be deemed to be Scheduled Castes in relation to a State but also "parts of or groups within castes, races or tribes" which shall be deemed to be Scheduled Castes in relation to a State. By reason of Article 341 a part or group or section of a caste, race or tribe, which, as a whole, is not specified as a Scheduled Caste, may be specified as a Scheduled Caste. Assuming, therefore, that there is a section of the Ezhavas/Thiyyas community (which is not specified as a Scheduled Caste) which is called Thandan in some parts of Malabar area, that section is also entitled to be treated as a Scheduled Caste, for Thandans throughout the State are deemed to be a Scheduled Caste by reason of the provisions of the Scheduled Castes Order as it now stands. Once Thandans throughout the State are entitled to be treated as a Scheduled Caste by reason of the Scheduled Castes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in the 1987 order.

19. The Thandan community in the instant case having been listed in the Scheduled Castes Order as it now stands, it is not open to the State Government or, indeed, to this Court to embark upon an enquiry to determine whether a section of Ezhavas/Thiyyas which was called Thandan in the Malabar area of the State was excluded from the benefits of the Scheduled Castes Order.

21. The enquiry that was ordered by the High Court in the order under appeal to "find out whether there was a community called Thandan distinct from Ezhavas in Palghat District in areas other than in the erstwhile Chittur Taluk and also in any other place in erstwhile Malabar District" has proceeded to a conclusion on the basis of an interim order passed by this Court on January 16, 1989. It is not for the State Government or for this Court to enquire into the correctness of what is stated in the report that has been made thereon or to utilize the report to, in effect, modify the Scheduled Castes Order. It is open to the State Government, if it so deems proper, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation. Until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Government must treat Thandans throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly.

X x x x x


 **23.** In the result, the writ petitions are allowed and the State Government is directed to grant to all members of the Thandan community, including those belonging to the erstwhile Malabar District and the present Palghat District,

the benefits due to a Scheduled Caste included in the Schedule to the Constitution Scheduled Castes Order as amended up to date and to issue to them community certificates accordingly. The order of the State Government dated November 24, 1987, is quashed and set aside. Civil Appeal No. 4807 of 1984 is allowed to the extent that the High Court's directions that Miss O.K. Lakshmikutty's admission to the MBBS course and to the postgraduate course were provisional are set aside. The appeals by the State of Kerala arising from SLP (C) No. 6457 of 1990 and SLP (C) No. 3746 of 1992 are dismissed.

20. The above judgment provided a latitude to the Government when the Chairman of the Kerala Scheduled Castes Protection Council submitted that in Malabar Ezhavas/Thiyyas are known as Thandans but this did not mean that they belonged to the Scheduled Castes. The Apex Court in para 22 of the above order held "*it is not for this Court to go into the question. It is for the appropriate authority to do so and, if satisfied, initiate proceedings to amend the Scheduled Castes Order.*" Invoking this latitude, on 29-08-2007 the Constitution (Scheduled Caste) order (Amendment) Act, 2007 (Act 31 of 2007) was passed, which has substituted entry No. 61 as under:-

(b) in Part VIII: KERALA, for entry 61, substitute: "61. Thandan (excluding Ezhavas and Thiyyas who are known as Thandan, in the erstwhile Cochin and Malabar area) and (Carpenters who are known as Thanchan in the erstwhile Cochin and Travancore State)"

21. In the case of the applicant, as already stated earlier, on the direction of the High Court the applicant filed an affidavit before the Scrutiny Committee which called for vigilance report and the case was heard by the Scrutiny Committee. The above decision of the Apex court was relied upon by the counsel for the applicant before the Scrutiny committee and the Committee took into account the above cited judgment as also the Act 31 of 2007 extracted above and held *the benefits enjoyed by the claimants as members of Scheduled Castes till 29-08-2007 will not be taken back. They are not eligible to any benefits meant for Scheduled Castes after 29-08-2007 and the benefits availed by them thereafter shall be recovered or withdrawn as the case may be.*



22. On the strength of the above, order dated 27-12-2011 vide Annexure A-2 was passed.

23. A glimpse at the comprehensive judgment of the Apex Court and the finding of the Scrutiny Committee on the basis of the said judgment as also subsequent amendment vide Act 31 of 2007, would clearly go to show that the applicant shall be treated as belonging to Ezhuva/Thiyya community and thus not a Scheduled Caste only on and after 29-08-2007 and all the benefits enjoyed by her prior to the aforesaid dated 29-08-2007 should not be taken back. Para 5 of the Government order dated 27-12-2011 also echoes the same. Thus, it would be indeed baffling for any man of common intelligence as to how the scrutiny committee report and the Government order passed in pursuance of the said Report could lead anyone to think that the applicant had "furnished false information and submitted false claim before the Government of India in order to secure appointment in the Government service, in the quota earmarked for the Scheduled Caste Community, which amounts to a fraud on the public." More puzzling is as to the suspension order dated 04-11-2011 issued even prior to the issue of the Government order dated 27-12-2011. Issue of suspension order as well as further issue of charge sheet is purely on account of a thorough misconception, misinterpretation and misunderstanding of the report of the Scrutiny committee by the respondents, which in our view is not one of an inadvertent error but a deliberate attempt to keep the applicant out of her employment. There is absolutely no question of any misconduct which could be culled out from the act of the applicant, especially when the Scrutiny Committee as well as the Government order clearly show that from 29-08-2007, the concession available to the Scheduled Caste cannot any longer be enjoyed by her and any such benefit enjoyed by her (i.e. on or after 29-08-2007) shall be recovered. In other words, the applicant's appointment in the reserved category, her promotion prior to 29-08-2007 and attendant benefits enjoyed by the applicant prior to 29-08-2007 cannot be touched by the respondents.


24. The Apex Court in the case of **Union of India vs Upendra Singh (1994) 3 SCC 357** the limited scope of judicial intervention by the Tribunal or court has been explained as under:-

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

25. The instant case does fall within the limited permissible ambit of the Tribunal to have the charge memorandum quashed. The impugned memorandum of Charge sheet is therefore, liable to be quashed and set aside. We have absolutely no hesitation to quash the same and so ordered.

26. Since the applicant has prayed for a direction to the respondents to revoke the suspension, the same has to be considered. The suspension order preceded the issue of charge sheet. The said order was passed even prior to the issue of the government letter dated 27-12-2011. Earlier the applicant approached the Tribunal in OA No. 964 of 2011 which was decided on 10-02-2012. That had not gone into the very legality or otherwise of the order of suspension. It only permitted representation to be made by the applicant and if so made, the respondent should consider the same, as by that time no charge sheet was issued. The order of suspension is dated 04-11-2011. Rule 10(6) and (7) of the CCS(CC&A) Rules, 1965 introduced by notification dated 23-12-2003 provides for extension or revocation of suspension and the same is as under:-

"10. (6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before the expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purposes and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before the expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.




(7) Notwithstanding anything contained in sub-rule (5), an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

27. The above rule came up for interpretation in the case of **Union of India vs Dipak Mali (2010) 2 SCC 222**, wherein the Apex Court has held as under:

10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioners' case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, **the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.**

11. In this case, what is important is that by operation of sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.

28. In the case of the applicant, admittedly, the order of suspension is dated 04-11-2011 and 90 days therefrom would expire on 02-02-2012. Any review that was to be conducted ought to have been conducted by then and decision taken whether to extend the period of suspension or revocation of

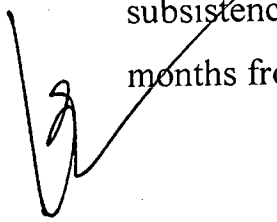


suspension. In the instant case, vide Annexure R-5 dated 20-04-2005, the review took place only on 19-04-2012 which is as many as 77 days after the expiry of 02-02-2012, the date before which the review ought to have taken place.

29. Telescoping the rule 10(6) and 10(7) of the CCS(CC&A) Rules, 1965, as interpreted by the Apex Court in the case of Dipak Mali upon the facts of the case, it is evident that on the expiry of 90 days from 04-11-2011, the continued suspension is rendered invalid and review conducted on 19-04-2012 cannot revive the order which had already become invalid after the expiry of 90 days from the date of suspension.

30. As regards the validity of suspension order dated 4-11-2011, since no misconduct could be alleged against the applicant, initial order of suspension preceding the charge sheet should also be held invalid. Accordingly, the same has declared invalid (Though the applicant did not specifically impugn, impliedly the same is available in the prayer). Justice demands that the said order of suspension dated 04-11-2011 is also held invalid and thus, the applicant is entitled to the consequential benefit of full pay and allowances from the date of suspension.

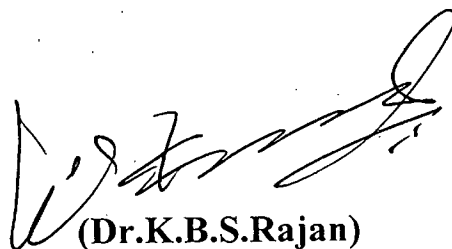
31. In view of the above, the OA fully succeeds. Respondents are directed to forthwith allow the applicant to join duties as Preventive Inspector. The second respondent shall on receipt of a certified copy of this order pass suitable orders for reinstatement of the applicant within a period of five working days. The consequential benefits i.e. pay and allowances for the entire period of suspension as discounted by the extent of subsistence allowance drawn shall be made available within a period two months from the date of receipt of the certified copy of the order.



32. Though this is a fit case where cost could be levied, since the applicant had not sought specifically for the same (though a residual prayer as any other appropriate order has been sought), the sober submission of the senior Central Government Standing Counsel dissuaded us from levying costs. Hence no costs.



(K. George Joseph)
Member (A)



(Dr. K. B. S. Rajan)
Member (J)

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