

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.340/97

Friday this, the 25th day of April, 1997.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

R.Viswanatha Pillai,
Superintendent of Police,
Crime Branch,C.I.D.,
Kozhikode.

... Applicant

(By Advocate Mr. T.R.G.Warrier &
Advocate Ms. V.P.Seemanthini)

vs.

1. The Union of India, represented by its Secretary to Government, The Ministry of Home Affairs, New Delhi.
 2. The Secretary to Government of India, Ministry of Personnel & Public Grievances, New Delhi.
 3. The Secretary to Government of India, Ministry of Welfare, Sastri Bhavan, New Delhi.
 4. The State of Kerala, represented by its Chief Secretary, Govt. Secretariat, Trivandrum.
 5. The Secretary to Government, SC/ST Development Department, Govt. Secretariat, Trivandrum.
 6. The Secretary and Commissioner to the State of Kerala, Home Department, Govt. Secretariat, Trivandrum.
- ..Respondents

(By Shri M.K.Damodaran, Advocate General)
Advocate Mr.M.A.Shafik for SCGSC(R1-3)
Advocate Mr.C.A.Joy, Govt. Pleader(R4-6)

The Application having been heard on 8.4.97, the Tribunal on 25.4.97 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

In this application filed under Section 19 of the

Administrative Tribunals Act, the applicant has prayed for the following reliefs:-

- a) to pass an order directing respondents 1 to 6 not terminate the service of the applicant based on the proceedings of the Scrutiny Committee for verification of the Scheduled Caste/Scheduled Tribe claims bearing No.2685/E2/93(S.C-4/95) SCSTDD dated 18.11.1995.
- b) to pass an order directing respondents 1 to 6 not to terminate the applicant's service based on the Scrutiny Committee Report dated 18.11.1995 without satisfying the conditions in Article 311 of the Constitution.
- c) to pass an order directing respondents 1 to 6 not to take any action against applicant based on the Scrutiny Committee Report dated 18.11.1995 otherwise than by following the procedure stipulated in the various provision of All India Services(Discipline and Appeal)Rules 1969.
- d) to pass an order directing respondents 1 to 6 not to terminate the applicant's service based on the Scrutiny Committee Report dated 18.11.1995 without following the provisions of All India Services (Discipline and Appeal)Rules, 1969.

The facts relevant for adjudication of the dispute involved in this case can be briefly stated thus. Pursuant to an application made by the applicant for issue of a community certificate showing his caste as 'Kuravan' the Tahsildar, Ambalapuzha on 14.10.1969 issued a certificate certifying that the applicant belonged to 'Vettuvan' community. On the basis of the above certificate the applicant was selected for appointment as

an Assistant to the Legislative Assembly in special recruitment quota in 1973. 'Vettuvan' community is one of the communities notified as Scheduled Castes. Thereafter he was selected and appointed as Deputy Tahsildar in the year 1974 and Tahsildar in the year 1976. While working as Tahsildar he was selected and appointed as Deputy Superintendent of Police in the special recruitment quota for Scheduled Castes in the year 1977. After ten years of service as Deputy Superintendent of Police he was inducted into the Indian Police Service in accordance with the provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955. While so, on the basis of a complaint by one Shri Kuriakose, the Government of Kerala directed the Kerala Institute for Research, Training & Development Studies ('KIRTADS' for short) to conduct an enquiry into the Caste status of the applicant. The KIRTADS on 11.4.94 submitted a report holding that the applicant did not belong to any of the Scheduled Castes. Thereafter a Scrutiny Committee constituted by the State Government pursuant to the observations of the Hon'ble Supreme Court in Kumari Madhuri Patil vs. Addl. Commissioner (1994(6)SCC 241) rejected the applicant's claim that he is a member of the Scheduled Caste in its report dated 18.11.95. The applicant challenged the report of the Scrutiny Committee in O.P.No.963/96 before the High Court of Kerala. The High Court vide judgment dated 26.2.1997 dismissed the Original Petition and upheld the report of the Scrutiny Committee. While the O.P.No.963/96 was pending apprehending that steps would be taken by the

respondents 1 to 3 to terminate the services of the applicant on the basis of the report of the Scrutiny Committee without complying with the mandates of Article 311 of the Constitution and the provisions of the All India Services(Discipline and Appeal)Rules, the applicant filed O.A.56/96 to restrain the respondents from terminating his services. On 12th January 1996 the Tribunal directed the Government Pleader for the State and Standing Counsel for the Government of India to submit whether the applicant would be removed from service without following the constitutional mandate of Article 311 and the rules framed under Article 309 and adjourned the case for hearing on admission on 6.2.1996. It was also ordered that status quo as on date would be maintained until further orders are made on admission. When the O.A. came up for hearing on admission on 7th November 1996 the learned counsel for the respondents 1 to 3 submitted that there was no proposal at the moment to remove the applicant from service and that the case before the High Court was still pending. Taking note of the above submission, the application was dismissed reserving freedom to the applicant to move the Tribunal in case there was any need for the applicant to do so. Now that the O.P. has been dismissed upholding the decisions of the Scrutiny Committee, the applicant apprehending that the respondents would terminate his services without following the mandates of Article 311 of the Constitution and without complying with the provisions of the All India Services(Discipline and Appeal) Rules, has filed this application praying for the reliefs aforementioned. The main ground on which the

applicant seeks the relief are :

- a) the directions issued by the Hon'ble Supreme Court in Madhuri Patil's case are not applicable to the applicant's case as a close scrutiny of the directions contained in paragraph 13 of the judgment would show that the directions were only prospective in operation and were not intended to annul the appointments made decades ago.
- b) the decisions of the Hon'ble Supreme Court in Madhuri Patil's case cannot be treated as a binding precedent under Article 141 of the Constitution as it cannot be presumed that the Hon'ble Supreme Court has directed termination of service of officials appointed without following the mandatory provisions of the Constitution, and
- c) as the applicant has been appointed as a member of the Indian Police Service substantively his services are not liable to be terminated in any manner, otherwise than in accordance with due process of law enshrined in Article 311 of the Constitution and the provisions of the All India Services (Discipline and Appeal) Rules.

2. The respondents 4 to 6 filed a reply statement in which they contend that as the applicant had been given adequate opportunity to prove his Caste status in the enquiry conducted by the KIRTADS as also by the Scrutiny Committee in view of the directions contained in the judgment of the Hon'ble Supreme Court in Madhuri Patil's case, no further opportunity need be given to the applicant before terminating his services. They have stated that the State Government has informed the Union Government and it is for that Govt. to decide the matter. They further contend that the application is premature and that the Tribunal has no jurisdiction to restrain the respondents from acting on the report of the Scrutiny Committee.

3. The Senior Central Government Standing Counsel on behalf of respondents 1 to 3 stated that the Central Government would be taking action to terminate the services of the applicant strictly in accordance with the directions contained in the ruling of the Supreme Court in Madhuri Patil's case and that in that process it would not be necessary at all to give any further opportunity to the applicant. The Central Government Standing Counsel further stated that apart from the above statement made at the Bar, the Central Government did not intend to file any reply statement.

4. The counsel for all the parties agreed that the matter could be heard at this stage for a final disposal.

5. We have perused the application, annexures thereto as also the reply statement filed on behalf of respondents 4 to 6. We have also heard the arguments of Shri T.R.G.Warrier, Senior Counsel appearing along with Smt.Seemanthini for the applicant, of the learned counsel for respondents 1 to 3 and of the learned Advocate General on behalf of respondents 4 to 6. The short question that falls for determination in this application is whether the services of the applicant who was appointed to the State Police Service in the year 1977 and inducted into the Indian Police Service substantively in the year 1989 is liable to be terminated without holding an enquiry as contemplated in All India Services(Discipline and Appeal) Rules and without complying with the provisions of Article 311(2) of the Constitution on the basis of the report of the Scrutiny Committee finding that he did not belong to a Scheduled Caste in accordance with the directions contained in sub paragraph 15 of paragraph 13

of the judgment of the Hon'ble Supreme Court in Madhuri Patil's case. Shri T.R.G. Warriar, Senior Counsel appearing for the applicant argued that as it is well settled that a person who has been appointed substantively to a permanent post acquires a legal right to continue in that post until the age of superannuation or compulsory retirement according to relevant rules, abolition of post in the exigencies of service or removal or dismissal in conformity with Article 311 of the Constitution, the respondents have no right to terminate the services of the applicant without following the mandate of Article 311(2) of the Constitution even if it is accepted for arguments sake that the Hon'ble Supreme Court has in Madhuri Patil's case held that if the report of the Scrutiny Committee shows that the Caste certificate on the basis of which the appointment was made is not genuine, the appointment should be cancelled. He further argued that what is contained in sub paragraphs 1 to 15 of paragraph 13 of the judgment of the Hon'ble Supreme Court in Madhuri Patil's case is a scheme streamlining the process for issue and scrutiny of Caste certificate and the scheme considered as a whole the direction contained in sub paragraph 15 can be understood to have application to the appointments made and admissions given pending finalisation of the proceedings before the Scrutiny Committee in accordance with sub paragraph 10 which provides for making appointments and giving admissions pending finalisation of the proceedings subject to the result of the enquiry by the Scrutiny Committee. These directions according to the learned Senior Counsel are prospective in operation and cannot be extended to cases where the appointments were made decades ago and much

before the judgment as also the constitution of the Scrutiny Committee.

6. Learned Advocate General on the other hand argued that the appointment secured by the applicant based on the false community certificate did not confer on the applicant any title to hold the post and therefore the guarantee under Article 311(2) of the Constitution is not available to him. He further argued that a reading of sub paragraph 15 of paragraph 13 of the judgment of the Hon'ble Supreme Court in Madhuri Patil's case would clearly show that no distinction is made there between appointments made earlier and appointments made during the pendency of the proceedings before the Scrutiny Committee.

7. To understand whether the directions contained in the judgment of the Hon'ble Supreme Court in Madhuri Patil's case amounts to a declaration of law under Article 141 of the Constitution and whether the direction contained therein are prospective in operation only or whether it would apply to the appointments made long prior to the judgment, it is necessary to read and understand the directions carefully. For the purpose of easy reference, the entire paragraph 13 of the judgment in Madhuri Patil's case is being extracted below:

" 13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the

certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Government shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should

personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other person who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the

objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.
8. Notice contemplated in para 6 should be issued to be parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.
9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent /guardian and the applicant.
10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result the inquiry by the Scrutiny Committee.
11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.
12. No suit or other proceedings before any other authority should lie.
13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is

disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.
15. 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 educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post. "

A careful reading of paragraph 13 of the judgment as quoted above clearly shows that the directions were issued for guidance in issuing social status certificates, their scrutiny and approval which can only be considered prospective in operation. The procedure for making applications, requirement of affidavits by the candidates or their parents, the modalities to be adopted by the Scrutiny Committee are all detailed in various sub paragraphs 1 to 15. Sub paragraph 10 provides for provisional appointments to be made and provisional admission to be given in cases where the proceedings before the Scrutiny Committee would be delayed. Sub paragraph 15 directs that as soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained is false, on its cancellation and

confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment and that the principal of the educational institution or the appointing authority should cancel the admission/appointment without any further notice to the candidate and debar the candidate from any further study or continue in office in a post. A harmonious construction of the directions contained in sub paragraph 10 and sub paragraph 15 especially in the context of the use of the word 'candidate' in sub paragraph 15 would undoubtedly show that the cancellation of admission or appointments directed in sub paragraph 15 relate only to the admission/appointment made provisionally pending finalisation of the proceedings before the Scrutiny Committee as provided for in sub paragraph 10. The sub paragraphs 1 to 15 of paragraph 13 which lay down a composite scheme has to be read and understood in its entirety and a particular paragraph cannot be dissociated from the scheme and read in isolation. Viewed in this respect, we are of the considered view that the argument of the learned counsel of the applicant that the directions contained in sub paragraph 15 of paragraph 13 in the judgment of the Hon'ble Supreme Court in Madhuri Patil's case do not empower the respondents to terminate the services of the applicant without following the mandates of Article 311(2) of the Constitution and the provisions of the All India Services (Discipline and Appeal) Rules, is well founded.

8. Learned Advocate General argued that by terminating the service of the applicant on cancellation of the Caste certificate issued to him without holding an enquiry as provided under the Discipline and Appeal Rules, it cannot be said that the applicant would suffer any prejudice, as opportunities had been given to him during the enquiry by the KIRTADS as also by the Scrutiny Committee and that even if a further enquiry is held, the result would only be the same. As no Court will issue a direction which is futile, the claim of the applicant that it is necessary to give him one more opportunity is unsustainable, argued the Advocate General. In the enquiry before the KIRTADS as also in the enquiry by the Scrutiny Committee what was considered was whether the Caste certificate issued to the applicant was correct or not. The question whether the applicant was liable to be removed from service or not, was a matter which was not in issue in those proceedings. The applicant was not told either in the notice issued by the KIRTADS or by the Scrutiny Committee that his appointment was liable to be cancelled or that his services would be terminated if the Caste certificate basing on which the appointment was made, turned out to be false as a result of the enquiry. Therefore, an opportunity to show cause against the termination of his service or cancellation of his appointment was never given to the applicant. If the services of the applicant is terminated or his appointment cancelled without giving him such an opportunity, it would amount to violation of the principles of natural justice. In Annamunthodo vs. Oilfields Workers' Trade Union, (1961) 3 All ER 621(HL), Lord Denning in his speech

said(at p. 625) :

"Counsel for the respondent union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man to be denied justice."

In Margarite Fuentes et al vs. Robert L. Shevin, (1972) 32 L Ed 2 d 556, it was held :

".... To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defence upon the merits."

In S.L. Kapoor vs. Jagmohan and others, AIR 1981 SC 136, the Hon'ble Supreme Court observed as follows:

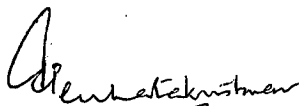
"In our view the principles of natural justice know of any exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that a person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."


Since the cancellation of the Caste certificate and termination of service cannot be considered as one though as a result of the cancellation of the Caste certificate, the services of the applicant may be terminated after giving him an opportunity to be heard, it is not correct to say that giving the applicant another opportunity will be a futile exercise. Since the direction contained in sub para 15 of paragraph 13 in the judgment in Madhuri Patil's case relates only to cancellation of provisional appointment/admission made pending proceedings before the Scrutiny Committee, it cannot be presumed that even in cases where appointments were made decades ago before the constitution of the Scrutiny Committee, the appointing authority has been divested of any discretion in the matter of cancellation of appointments or termination of service or allowing the appointee to continue in service awarding any lesser penalty taking into account the facts and circumstances of each case. The argument that as the Caste certificate on the basis of which the appointment of the applicant was made has been proved to be false, the appointment is invalid and inconsequential and therefore it can be cancelled without any more enquiry, does not appeal to us. It is worthwhile in this context to remember the observations of Redcliffe in Smith vs. Easteloe Rural District Council, (1956) A.C.376 at p.769:

"An order even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. In the light of the above discussion, we are of the considered view that the respondents 1 to 6 are not entitled to terminate the services of the applicant without compliance with the mandatory provisions of Article 311 of the Constitution and the provisions of the All India Services (Discipline and Appeal) Rules, 1969. In the result the application is allowed and the respondents are directed not to terminate the services of the applicant solely basing on the proceedings of the Scrutiny Committee for verification of the Scheduled Castes/Scheduled Tribes claims dated 18.11.95 without complying with the mandatory provisions of Article 311 of the Constitution and the provisions, of the All India Services (Discipline and Appeal) Rules. There is no order as to costs.

Dated the 25th April, 1997.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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