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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

C.A.No. 105/93.

Dt. of Order? 9-2-96

Between :-

I. Rajiyya

.. Applicant.

AND

1. The Addl. Central Provident Fund Commissioner, South Zone, O/o the Regional PF Commissioner, Barkatpura, Hyderabad.
2. The Regional Commissioner, Employees' Provident Fund, Sub-Regional Office, VUDA Layout, Marripalem, Visakhapatnam-530 009.
3. The Dy. Director, Vigilance, South Zone, O/o the Regional Provident Fund Commissioner, Barkatpura, Hyderabad.

.. Respondents.

Counsel for the Applicant : Shri. N. Rama Mohan Rao

Counsel for the Respondent : Shri. Vilas V. Afzalpurkar
SC for PF.

CONAM:

THE HON'BLE JUSTICE SHRI V. NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

... 2.

O.A.No.105/93.

Date: 9 -1-1996.

J U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri N.Rama Mohan Rao, learned counsel for the applicant and Sri Vilas V.Afzalpurkar, learned counsel for the respondents.

2. The applicant in this OA hails from 'Mala' Community which is included in the schedule list of Scheduled Castes. He was treated as a member of S.C. and during his school education he was given necessary concession both by way of financial support and otherwise as available to S.C. community candidates.

3. He was recruited to the Indian Army as Wireless Operator during 1971 and he joined that post in July, 1971. In the year 1979 he had developed acute pain in the lower region of the back and hence he was undergoing treatment in Visakapatnam. During the said period he had developed friendship with one Miss Mary Gold - an Aadi Andhra Christian working as Staff Nurse in King George's Hospital, Visakapatnam which friendship resulted in their marriage. The marriage between the applicant and Miss. Mary Gold who belongs to Aadi Andhra Christian community took place on 29.11.1979 and the said marriage was solemnized in accordance with the Indian Christians Marriage Act.

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4. The applicant was in employment of Indian Army till April, 1981 when he was discharged on the ground of his medical ^{un-}fitness. After discharge from the Army he settled down in Visakapatnam where his wife was in employment. He enrolled his name in the local employment exchange for absorption in a civilian post. The said employment exchange sponsored his name for recruitment in Employees Provident Fund Organisation. On the basis of the recommendations, he was selected as LDC under R-2 and was appointed to the post by Memo No. Ap/Adm(R)/82/397 dt. 12.2.1982 (Annexure A.1). As required by the appointment order, he also obtained a Social Status certificate from Mandal Revenue Officer, Visakapatnam stating that he belongs to 'Mala' community. After complying ^{with} the formalities he joined the post of LDC in Employees Provident Fund Organisation at Visakapatnam on 25.2.1982.

5. In August, 1984 he appeared for an examination for promotion to the post of UDC in terms of Recruitment Rules. He had passed in the said examination and joined the post of UDC on 31.12.1984. It is stated for the applicant that he came ~~from~~ very meritoriously in the departmental examination conducted for the post of UDC and that there were number of OC candidates who had secured lesser marks than him and consequently they ranked junior to him in the said examination.

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6. It is further stated by the applicant that during the year 1986 he changed his faith from Hindu Religion to Christianity and he was Baptised on 19th May, 1986 in Layman Evangele's Fellowship Church, Madras. and thus ever since 1986 he became a follower of faith of Christianity. The above change of his faith from Hinduism to Christinity was informed to his superiors i.e. Employees Provident Fund organisation, Sub-Regional office, Visakapatnam on 11.6.1986. He also sought for change in his name in terms of rules; but that could not be materialised due to procedural formalities which are very circuitous and difficult to comply with.

7. R-3 herein enquired into the Social status certificate issued in favour of the applicant during 1982 by the M.R.O., Visakapatnam and he referred this case to the District Collector, Visakapatnam for ascertaining the social status. It is stated for the applicant that the District Collector, Visakapatnam concluded that the applicant does not belong to S.C. community and cancelled the casee certificate issued to the applicant ~~xxxxxx~~ through proceedings dt. 19.10.92. It is the case of the applicant that proceedings dt. 19.10.1992 de-recognising the social status certificate is erroneous. It is stated for the applicant that the Dist. Collector, Visakapatnam relied upon the instructions of the State Government in G.O.Ms.No.43, Social Welfare Department dt. 8.3.1990 ^{to cancel his caste Certificate} whereas the said GO itself was withdrawn through G.O.^Ms.No.94, Social Welfare Dept. dt. 6.7.1992 (Annexures 7 & 8).

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8. As the social status of the applicant was de-recognised by the District Collector, Visakapatnam through his proceedings dt. 19.10.1992 he moved the High Court of A.P. by filing a Writ Petition bearing W.P.No.709/93. The said Writ Petition was admitted in W.P.M.P.No.886/93 and an interim order dt. 28.1.93 was passed/suspending the proceedings of the District Collector, Visakapatnam (Annexure A.12).

9. When the matters stood thus, the applicant was placed under suspension by R-1 by orders dt. 25.1.1993 (Annexure A.11) pending further disciplinary proceedings.

10. Aggrieved by the above, he has filed this OA praying for a declaration that the action of the respondents in instituting disciplinary proceedings against the applicant based on the orders issued by the District Collector and Magistrate through his proceedings dt. 19.10.1992 as unsustainable, illegal and arbitrary and liable to be quashed and for a further direction to the respondents to refrain from proceeding any further into the disciplinary proceedings initiated against him pending disposal of this O.A.

12. An interim order dt. 11.2.1993 was issued in this O.A. considering the fact that the proceedings of the District Collector dt. 19.10.1992 having been suspended by the A.P.High Court by its order dt. 8.1.1993 in W.P. M.P.No.886/93 in W.P.No.709/93 is in force. As the Writ Petition filed in the High Court of A.P. is still issued to the applicant was kept in abeyance pending the order of suspension dated 25.1.1993 and applicant is continuing under R-1 on the basis of the stayal of suspension order.

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13. The main contention of the applicant in this case is that the social status certificate was issued in the year 1982. Though he married a Christian lady, he had not converted himself to Christianity till he was Baptised on 19.5.1986. As per Indian Christian Marriages Act, it is not necessary that both the partners should be Christians to get married. If one of them is a Christian the marriage can be solemnized in accordance with Indian Christian Marriages Act. As his wife is a Christian, his marriage is in order and that there is no proof that he was converted to Christianity before his marriage. As he was embraced Christianity only on 19.5.1986 he can be treated as Christian only from that date and earlier to that he has to be considered only as a member of Mala community which is Scheduled Caste community. When he had applied for the post of LDC, his social status was S.C. and the certificate obtained by him during 1982 before joining as LDC in Provident Fund Department is in order. His promotion to the post of UDC on the basis of examination held in 1984 is also in order and even if he had been promoted on the basis of reservation meant to S.Cs. his promotion to the post of UDC against reservation quota cannot be challenged. Immediately after his conversion to Christianity on 19.5.1986 he had informed the Assistant Commissioner of Provident Fund Department, Visakapatnam regarding his conversion. The District Collector without ~~making~~ making proper enquiry and coming to know of the position as explained above had come to erroneous conclusion that the applicant does not belong to S.C. community and because of that erroneous conclusion he de-recognised the

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the certificate by his proceedings dt. 19.10.1992.

Issuance of Suspension order on the basis of erroneous order issued by the District Collector and Magistrate, Visakapatnam is illegal and cannot be sustained at all. Hence, he prays for the reliefs as noted above.

14. The respondents have submitted a reply dt. 1.8.1995. The respondents on the basis of proceedings issued by the District Collector, have come to conclusion that he had changed his faith from the year 1979 (i.e. the year of marriage with the Christian lady) changing of christian name of In view of his name as Samuel Philip and his children names, the respondents concluded that he had converted himself as Christian at the time of his marriage. Thus, they further submit that it is evident from the naming of his children who are in the age group of 5-8 years. It is also urged for the respondents that the physical atmosphere in the house as found out by the M.R.O. supports the contention that he embraced Christianity long before he came to Baptism in the year 1986. In view of the above, they come to the conclusion that the social status certificate obtained by him as S.C. candidate is fraudulent one and hence the respondents submit that their action in suspending him and initiating necessary disciplinary proceedings are in order.

15. It is a fact that Indian Christian Marriages Act permits solemnization of marriages if one of them belongs to Christian community. It does not insist that both the

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partners should be Christians. It is not doubted that the applicant's wife viz. Smt. Mary Gold belongs to Aadhi Andhra Christian. The applicant need not be a Christian to marry her as his partner is christian. Hence, the marriage between him and Ms. Mary Gold, who belongs to Aadi Andhra Christian cannot be said as illegal. Neither the Collector's ~~xxxxxxx~~ proceedings dt. 19.10.1992 (Annexure A.10) nor the Reply statement of the respondents show that the applicant had converted himself to Christianity at the time of his marriage. Though the respondents state that the MRO had found Christian ^{atmosphere} around his house, because of hanging of photographs of Jesus Christ and naming of his children with christian names, this cannot be taken as a conclusive proof to come to a definite conclusion that he embraced Christianity at the time of his marriage. As his wife is a Christian which is an accepted fact, she would have kept the house surroundings following her faith and named their children with Christian names. - Such an evidence cannot be taken as a conclusive proof to decide that the applicant is a Christian and to de-recognise his social status certificate. It may be possible that his wife is ^{in respect of her religion} having a dominant role/and hence she had decorated the house of her faith.

16. It is not disputed that the applicant changed his faith from Hinduism to Christianity by Baptising himself on 19.5.1986, i.e. ~~xxxxxxx~~ 4 years later to his joining as LDC and 2 years after his promotion as UDC.

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The applicant, on his own, had informed the Assistant Commissioner of Provident Fund regarding his change of faith and also applied for change of his name to a christian name viz. Samuel Philip after his conversion. If he had got any intention to fraudulently use his social status certificate he need not have informed his conversion to christianity to the higher authorities. He had made known his position and also requested the authorities to treat him non S.C. candidate and thus forgone the benefit of being treated as a member belonging to S.C. community.

17. The above factors, in our opinion, have ^{not} been weighed properly by the respondents before suspending him in terms of suspension order dt. 25.1.1993. Even G.O.Ms.No. 43 dt. 8.3.1990 which cancels the appointment in the Government if one changes his social status on the basis of which he or she obtained job in Government has been withdrawn by G.O.Ms.No. 904 dt. 6.7.1992.

18. In all his records, right from school days and also in the records maintained by the Army the caste of the applicant has been referred to as S.C. This fact has not been refuted by the respondents. He has also obtained social status certificate from the M.R.O., Visakapatnam on the basis of the evidence produced by him. If the M.R.O. had any inclination that the applicant had changed his faith from Hinduism to Christianity due to his marriage he could have checked the same before issuing the certificate. Normally when such certificates are issued,

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the revenue authorities have to make extensive enquiries by visiting the locality in which he resides, examining his marriage and other factors. When a social status certificate was issued by MRO, it has to be presumed ^{has} that he/made necessary checks indicated above and hence the revenue authorities cannot turn back later to say that the social status certificate issued is erroneous. The very fact that the employee himself has confessed his social status, having ~~been~~ embraced christianity on/or from 19.5.1986 shows his sincerity to report the facts to his departmental superiors. There is no proof or reliable evidence to show that he had converted himself as Christian even before joining the department in 1982 and also at the time of his promotion to the post of UDC.

19. In view of what is stated above, it has to be held that he was a member of S.C. community till 19.5.86 when he Baptised himself as a Christian. There is no doubt that he will not get any benefit of being treated as a member belonging to S.C. community after his conversion to christianity on 19.5.1986.

20. In view of what is stated above, we are constrained to state that issuance of suspension order pending disciplinary proceedings against the applicant based on the ^{cancellation of} social status certificate by the District Collector, Visakapatnam by his proceedings dt. 19.10.1992 is unsustainable. In the result, the suspension order dt.25.1.1993 bearing No.AP/Adm/Vig/189/21 is set aside and any disciplinary proceedings processed consequently, are quashed. However,

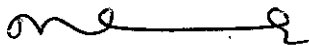
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the applicant is not entitled for any privileges/
benefits being extended to the members of S.C. commu-
nity on and from 19.5.1986.

21. O.A. is ordered accordingly. No costs. //


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 9th Feb.
January, 1996.

Grh.


Deputy Registrar (J) CC

To

1. The Addl. Central Provident Fund Commissioner,
South Zone, O/o the Regional Provident Fund
Commissioner, Barkatpura, Hyderabad.
2. The Regional Commissioner, Employees'
Provident Fund, Sub Regional Office,
VUDA Layout, Marripalem, Visakhapatnam -9
3. The Deputy Director, Vigilance, South Zone,
O/o the Regional Provident Fund Commissioner,
Barkatpura, Hyderabad.
4. One copy to Mr. N. Rammohan Rao, Advocate, CAT. Hyd.
5. One copy to Mr. Vilas V. Afzal Purkar, SC for PF, CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

8. Copy to all reporters as per standard list of CAT. Hyd.
pvm.

Q/43/96

I COURT

TYPED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M(A)

Dated: 9-2-1996

~~ORDER~~/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No.

105/93

T.A.No.

(w.p.No.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

