

W.P.No.54 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.04.2022

Pronounced on : 28.04.2022

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.54 of 2020

and

W.M.P. No.59 of 2020

Indira Gandhi Centre for Atomic Research,
Kalpakkam,
Rep. by its Director,
Kalpakkam- 603 102.

... Petitioner

Vs.

1.Shri.D.Ganesan,
I.C.No.5367,
Scientific Assistant,
Indira Gandhi Centre for Atomic Research,
Kalpakkam (PO).

2.The Registrar,
Central Administrative Tribunal,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records relating to the



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order passed by the 2nd respondent in O.A.No.754/2013 dated 06.09.2013,
quash the same.

For Petitioner : Mr.V.Chandrasekaran

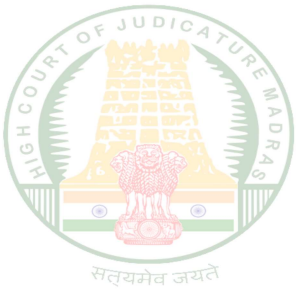
For Respondent 1 : Mr.L.Chandrakumaran for
Mr.P.Anbarasan

For Respondent 2: Tribunal

ORDER

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

The short question that arises for consideration is whether the 1st respondent who has admittedly submitted a fake/ false certificate as belonging to Scheduled Caste (SC) Community, though the 1st respondent admittedly belonged to Back ward Class (BC) and thereby enjoying relaxation by 5 years of the upper age limit in terms of the advertisement calling for applications for appointment as Trainee in Bhabha Atomic Research Centre (hereinafter referred to as "BARC") under the In-plant Training Programme vitiates and renders entire process of appointment as void.

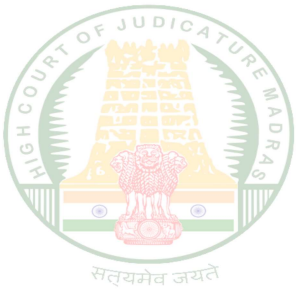


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2. In 1986, BARC issued an advertisement inviting applications for in

In-plant Training, the 1st respondent submitted his application indicating his caste as "Adi Dravidar" and submitted a certificate bearing number CA 13257/84 A2 dated 30.07.1986 issued by Special Duty Tahsildar (Certificate) Saidapet. The attestation form dated 08.04.1987 submitted by the 1st respondent consequent to his selection had indicated "Adi Dravidar" against the column regarding caste.

3. It may be relevant to note that the advertisement calling for applications to the post of Trainee in BARC prescribed that the age limit of the applicant should not be less than 18 years and not more than 20 years as on 01.07.1986. However, an exception was made to Scheduled Caste / Scheduled Tribe candidates and upper age limit was relaxed by 5 years. The date of birth of the 1st respondent is 24.04.1962. Thus, in terms of the age limit prescribed therein, the 1st respondent may not be eligible for appointment. But, for the relaxation by 5 years in the case of SC/ST candidates, inasmuch as the 1st respondent was 24 years old on the date of application to the post.



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4. The 1st respondent upon successful completion of the training programme was appointed as Tradesman/C in BARC, Mumbai with effect from 31.03.1989, thereafter he was promoted to the post of Tradesman/D and was transferred on his own request to Indira Gandhi Centre for Atomic Research Centre, Kalpakkam (hereinafter referred to as "IGCAR") and joined on 12.10.1992. Upon further promotion under the merit promotion scheme was promoted as Scientific Assistant/D. While so, on the basis of the complaint lodged by the General Secretary, SC/ST Association of Department of Atomic Energy (hereinafter referred to as "DAE") against the 1st respondent vide FIR No.343/2012 on 21.10.2012 under Sections 420, 468, 471 of IPC on the charge of gaining Government Employment by submitting fake certificate. The 1st respondent was initially arrested and was placed under deemed suspension. Thereafter, was released on bail on 02.11.2012 and the suspension was revoked.

5. On verification by the Competent Authority, it was found by the District Vigilance Committee (Community Certificate Verification), Kancheepuram that the 1st respondent belongs to Hindu Thuluva Vellalar,



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which is listed as Backward Community (BC). Consequently, a charge memo was issued on the premise that the 1st respondent has while applying for the post of Stipendiary Trainee in BARC, Trombay, Mumbai submitted a fake community certificate claiming that he belongs to Schedule Caste (SC) Community and secured Central Government Employment reserved for Scheduled Caste candidate availing relaxation of age under the order on reservation.

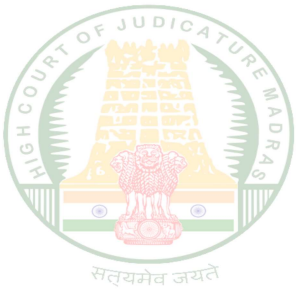
6. The 1st respondent submitted his explanation to the charge memo wherein he had admitted that he belonged to Backward Class (BC) Community and not Schedule Caste/ Schedule Tribe (SC/ST). Subsequently, a representation was submitted by the 1st respondent dated 31.05.2013 by seeking to defer the departmental action till the final disposal of Criminal Case which was rejected to by the petitioner against which an Original Application was filed before the Central Administrative Tribunal the simultaneously proceedings should not be allowed. The learned Tribunal held that the appointment had completed close to 26 years of service and earned as many as 5 promotions on merit basis which is not under dispute



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and that the respondent had not claimed any benefit of reservation at the time of initial recruitment wherein he was selected for the Open Category upon category. Though, the respondent was given age relaxation but there is no denial that the appointment / selection on the basis of the merit. The respondent has also received certificate of merit by the Prime Minister of India as well as the Government of India. It was further found that the order posted by the District Level Vigilance Committee was cryptic and not based on any documentary evidence. Importantly, the Tribunal found inasmuch the Criminal case is pending on the order same set of facts, the disciplinary proceedings ought to be got in abeyance until a finality is reached in the criminal proceedings.

7. The submission of the petitioner was that the disciplinary proceedings and criminal proceedings can be proceeded simultaneously/ independently was rejected on the premise that the criminal case which is pending is also on the very same set of facts. In this regard, reliance was placed on the following decisions of the Hon'ble Supreme Court:



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i) **Noida Entrepreneurs Association vs. Noida and others** reported in

(2007) 10 SCC 385:

"13. There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

.....

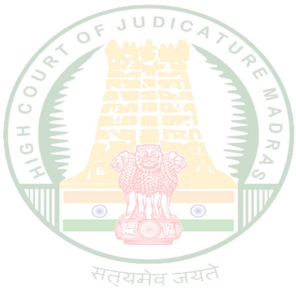
16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

ii) **M. Paul Anthony v. Bharat Gold Mines Ltd., reported in (1999)**

3 SCC 679 :

"22.....(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

iii) **Addl. GM-Human Resource, Bharat Heavy Electricals Ltd. vs. Suresh Ramkrishna Burde** reported in **(2007) 5 SCC 336:**



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"6. Respondent 1 employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to the Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of the law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate."

8. It was concluded by the Tribunal that the disciplinary proceedings ought to be kept in abeyance till the finality is reached in the criminal proceedings initiated against the petitioner. It was against this order of the Tribunal, the petitioner further filed this writ petition on the premise that the petitioner having admitted to the fact that a fake certificate belonging to SC Community has been submitted at the time of appointment/ selection. The Tribunal erred in keeping the disciplinary proceedings in abeyance. The Tribunal ought to have seen that once a fabricated Community Certificate is furnished, the initial employment/ appointment itself is questionable as being void ab initio, in the circumstances, the Tribunal ought to have seen that, but for the fake Community Certificate, the petitioner would have been eligible to be considered for the post as he had crossed the upper age limit and it is only in view of the fake/ bogus Community Certificate, the petitioner was eligible for the benefit of age relaxation which enabled him



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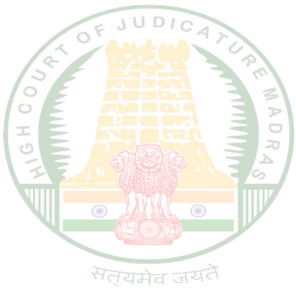
to participate in this selection process. In this regard, it may be relevant to

refer to the decision of the Hon'ble Supreme Court in the case of ***State of Odisha vs. Sulekh Chandra*** reported in ***(2022) SCC Online SC 476***, wherein it was held that it is trite law and the appointment made in contravention of the statutory proceedings are void ab initio, the relevant portions of the order reads as under:

"32. It is not in dispute that the appointment of all the applicants/respondents/teachers have been made directly by the respective Management without following the procedure as prescribed under the Rules/Statute. It is a trite law that the appointments made in contravention of the statutory provisions are void ab initio. Reference in this respect could be made to the judgments of this Court in the cases of Ayurvidya Prasarak Mandal v. Geeta Bhaskar Pendse (Mrs) J&K Public Service Commission v. Dr. Narinder Mohan, Official Liquidator v. Dayanand, and Union of India v. Raghuwar Pal Singh "

8.1 It may also be relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***Lillykutty v. Scrutiny Committee, SC & ST***, reported in ***(2005) 8 SCC 283***, wherein it was held as under:

"28. Any action by the authorities or by the people claiming a right/privilege under the Constitution which subverts the constitutional purpose must be treated as a fraud on the Constitution. The Constitution does not postulate conferment of any special benefit on those who do not belong to the category of people for whom the provision was made.



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29. The fraud committed by the appellant for obtaining unlawful gain has been found as of fact by a statutory committee. The said finding of fact has not been interfered with by the High Court. No case has been made out for us to take a different view."

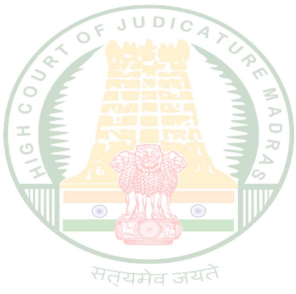
9. It is submitted that submission of a false Community Certificate and taking advantage on the basis of such bogus certificate is wholly unacceptable. Reservations and relaxation on the basis of community are made with social objective and that cannot be frustrated by submission of fraudulent certificates. In this regard, it may be relevant to refer to the following decisions of the Hon'ble Supreme Court:

i) *Shrisht Dhawan (Smt) v. Shaw Bros.* reported in *(1992) 1 SCC 534* wherein the Hon'ble Supreme Court held that fraud would vitiate the most solemn proceedings, which reads as under:

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence....."

ii) *Food Corporation of India vs. Jagdish Balaram Bahira* reported in *(2017) 8 SCC 670*:

"48.However, it is important to notice that even before the State Legislature stepped in to confer a statutory form to the directions which were issued by this Court in Madhuri Patil [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] the

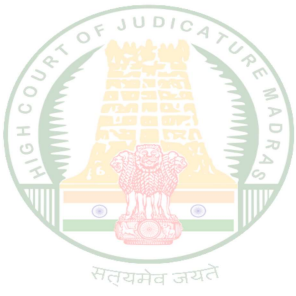


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regime, as it then obtained prior to the enactment of the law, also envisaged consequences upon a caste or tribe claim being found to be false upon a verification by the Scrutiny Committee. The cancellation of a certificate would, as a necessary consequence, involve the invalidation of the appointment to a post or admission to an educational institution. Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained.....The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is



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intended. This was the position under the regime which prevailed following the decision in Madhuri Patil [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] ."

10. It is well-settled that fraud vitiates the most solemn proceedings and though the petitioner was appointed only under the OC category and as a matter of fact, the subsequent promotions were also on the basis of merit and not on the basis of reservation overlooks the facts that the petitioner may not have even been eligible to apply in terms of the advertisement but for the fact that he had submitted a SC certificate, which enabled him to obtain the relaxation of the upper age limit by 5 years inasmuch as the petitioner had crossed the upper age limit.

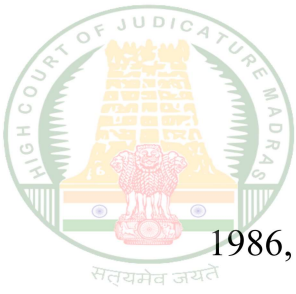
11. The Applicant before the Tribunal / 1st Respondent herein has entered the job clandestinely (jpUI;Lj;jdkhf) by production of fake certificate and is going to retire from service. This is a classic example where Court should be blamed, as the departmental proceedings have been stayed, thereby allowing the departmental proceedings to be continued after completion of the criminal case. Such act of the Court has resulted in paying benefits to an undeserving person, as the entry into service itself is void ab



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initio. Of course, the Applicant, during the period of service, has received Presidential Award. Though it has been contended by Mr.L.Chandrakumar, learned counsel for R1 that in case the Writ Petition is going to be dismissed, no enquiry can be proceeded with, as he is going to attain superannuation and therefore, compulsory retirement alone is sufficient. The punishment that is going to be imposed just few days prior to the date of superannuation is nothing, but making mockery of the system, as an undeserved candidate has entered the job, bypassing all other eligible SC/ST candidates, who were on the roll.

12. From the records, it could be seen that the Applicant was born on 24.04.1962 and he applied for the post of Fitter, pursuant to the Advertisement No.3/86(R-II). In the application, he had stated that he belongs to Adi Dravida SC/ST and in proof, he had put a tick in the row (5.2) of the check list annexed along with the application, in order to be doubly sure that he had attached the SC/ST Certificate. A glance at the advertisement annexed in the typeset of papers unravels that the age limit is mentioned as not less than 18 years and not more than 20 years as on July 1,



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1986, by granting relaxation of 5 years in the case of SC/ST candidates and

2 years in the case of FTA staff on BARC rolls. For the sake of brevity, the

relevant portion of the Advertisement is extracted hereunder:

“BHABHA ATOMIC RESEARCH CENTRE

ADVERTISEMENT NO.:3/86(R-II)

LAST DATE FOR RECEIPT OF APPLICATION: NOVEMBER 19, 1986

Application are invited for in-plant training in the following workshop trades in Central Workshops:-

GROUP A

Turner Welder
Miller Mill-Wright
Inspector Mechanic General Electronics
Fitter Electrician

GROUP B

Auto/Diesel Mechanic
Sheet Metal Worker
Auto Electrician
Painter

EDUCATIONAL QUALIFICATIONS:	SSC Passed or equivalent (10 years of school) with Science and Mathematics plus ITI certificate of not less than 2 years duration in the respective trades. (For trades for which the duration of the ITI course is less than 2 years, the candidate should have at least one year's experience after completion of the course Note: A pass in English is essential.
AGE	Not less than 18 years and not more than 20 years as on July 1, 1986 Upper age limit relaxable: i) By 5 years in the case of SC/ST Candidates ii) By 2 years in the case of FTA staff on BARC rolls

13. The Applicant was 24 years old at the time of applying for the



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post and hence, was not eligible to compete under BC category. In view of that, he had suppressed the community and submitted the application as if he belongs to SC/ST Community, availed the benefit of 5 years and entered the job. Thus, it is clear that the Applicant was overage and did not fall within the eligibility criteria and therefore, the initial appointment obtained on the basis of relaxation of age itself is bad, which is a clear ground to deprive the entire benefits due to the Applicant. However, on account of the fault of the Department in not proceeding with the matter, more so, not questioning the order of the Tribunal passed in O.A.No.754 of 2013 and that there was a delay of 7 years, the Writ Petition needs to be dismissed. But, on technicalities, a meritorious case cannot be thrown out, especially in the case of this nature, where fraudulent entry into service has been made. That apart, attention was drawn to the application for admission in the school in respect of the Applicant's daughter, wherein it has been stated that she belongs to Thuluva Vellalar (BC).

14. As on date, no enquiry proceedings have been completed and that there is a fault on the part of the Department / Writ Petitioner in



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approaching the Court, challenging the order of the Tribunal belatedly.

However, the mistake committed by the Department cannot be taken advantage of by the Applicant and he cannot be let off scot-free on technicalities, as moral value will have to prevail over legal values and it is adjudged based on moral values, as held by the Supreme Court that it must be remembered that we are living in a democratic society governed by the Rule of Law and every Government, which claims to be inspired by ethical or moral values must do what is fair and just, regardless of legal technicalities. Further, in the absence of society with moral values, there would be no social order. For this, the following judgments may be referred relevant:

i) **Hindustan Sugar Mills vs. State of Rajasthan and others**, reported in **1980 (1) SCC 599**;

ii) **Aruna Roy and others vs. Union of India and others**, reported in **2002 (7) SCC 368**.

There was admission by the Applicant himself before the Tribunal and before this Court that he had entered the job, by production of fake

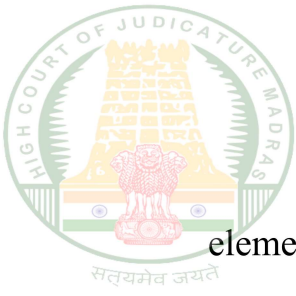


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community certificate, as if he belongs to SC community, as, otherwise, he would not have been inducted into service and he would have been disqualified on various reasons, such as overage, etc.

15. It is needless to mention that both criminal proceedings as well as departmental proceedings can go on simultaneously, as there is no hindrance on the part of the employer to proceed with the departmental proceedings, if the Criminal Proceedings are not initiated or concluded within one year from the date of FIR (not from the date of filing of Charge Sheet, as filing of Charge Sheet in the Criminal Court is a herculean task and will take years together), in view of the fact that the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities.

16. The Department is also to be blamed, as they have kept quiet for nearly 7 years in challenging the order of the Tribunal, which is purely a fault committed by the inefficient Officer in not questioning the order of the Tribunal within time, thereby allowed an undeserving / unscrupulous



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element to continue in the job and receive salary all these years. As there is a clear material available about the fake certificate that has been admitted in the Original Application as well as in the Writ Petition, the Applicant cannot be allowed to get the benefits on technical ground and he cannot get a premium or bounty, as, in the light of the judgment of the Apex Court (supra), the initial appointment itself is *void ab initio*. However, taking note of the fact that he had received Presidential Award, a sympathetic view is taken, by granting only 40% of the pensionary benefits, in exercise of the powers of this Court.

17. In the result, this Writ Petition is disposed of. The Applicant / 1st Respondent is imposed with the punishment of Compulsory Retirement, which will take effect from today. The Applicant / 1st Respondent is entitled to only 40% of the pensionary benefits. Though an order of Compulsory Retirement is passed, it cannot be construed as a punishment, as he will be enjoying the benefit of pension to which he is not at all entitled to. This Court ought not to have granted even this relief to the Applicant, had the Department approached the Court well within time. It is made clear that the



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Applicant / 1st Respondent is not eligible for any other terminal benefits, such as gratuity, DCRG and the like, excluding the PF contribution, if any made by the Applicant. The Government should also think of amending the Rules to enable the Department to proceed against the employee even after retirement / superannuation. No costs. Consequently, connected Miscellaneous Petition is closed.

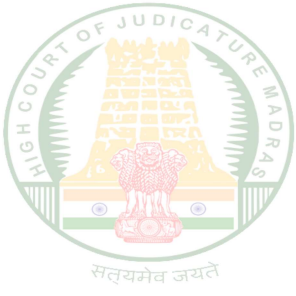
(S.V.N., J.) (M.S.Q., J.)
28.04.2022

Speaking order/Non-speaking order
Index: Yes/No
mka/ar

Note: Issue order copy on 28.04.2022

To:
The Registrar,
Central Administrative Tribunal,
Chennai.

S.VAIDYANATHAN, J.
and



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MOHAMMED SHAFFIQ, J.
mka/ar

PRE-DELIVERY ORDER IN
W.P. No.54 of 2020

28.04.2022