

(2012) 07 SHI CK 0189

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4011 of 2010-E

Chanchla Bhardwaj

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Citation : (2012) 3 ShimLC 1511

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Ranjana Parmar, for the Appellant; Vikas Rathore, D.A.G., for the Respondents No. 1, 2 and 4 and Ms. Vidushi Sharma, Advocate, for the Respondent No. 3, for the Respondent

Judgement

Rajiv Sharma, J.—Petitioner joined her duties as Staff Nurse on 9.7.1976. Her name was shown in the seniority list at Sr. No. 239 issued on 21.4.1984 as on 31.12.1980. Petitioner made a representation on 22.3.1985 on the basis of Scheduled Tribe certificate dated 25.4.1984. The same was forwarded by the Chief Medical Officer to respondent No. 2 on 23.3.1985. Petitioner was promoted as Ward Sister by treating her belonging to Scheduled Tribe category with effect from 6.2.1984. In the seniority list of Nursing Staff, issued in the month of February 1988, as it stood on 31.10.1986, petitioner was shown at Sr. No. 91 and respondent No. 3 was shown at Sr. No. 104. Petitioner was promoted to the post of Matron on 26.11.1992. Respondent No. 3 filed a complaint against the petitioner. In view of this, petitioner was directed to supply parentage Scheduled Tribe certificate vide Annexure P-6 on 17.8.1993. Petitioner submitted reply on 14.9.1993. Petitioner was reverted from the post of Matron to Ward Sister on 23.2.1994 and respondent No. 3 was promoted to the post of Matron. Petitioner filed O.A. No. 192/1994 against the order of reversion. It was assigned CWP (T) No. 2216/2008 after being transferred to this Court. The same was decided on 15.9.2009. Petitioner in sequel to the judgment of this Court dated 15.9.2009 in CWP (T) No. 2216/2009 was issued show cause notice on 8.6.2010. Petitioner filed reply to the same vide Annexure P-16. It was rejected on 30.6.2010 vide

Annexure P-17 by the competent authority. In these circumstances, the present petition has been filed.

2. According to Ms. Ranjana Parmar, petitioner belongs to Gaddi Sippi tribe of village Garola of Bharmour, District Chamba. She has also argued that the name of the petitioner was sponsored for the training under Scheduled Tribe category. She then contended that the action of respondent-State to revert the petitioner initially on 23.2.1994 and the rejection of the case of petitioner on 23.6.2010 is arbitrary and unreasonable.

3. Mr. Vikas Rathore, learned Deputy Advocate General and Ms. Vidushi Sharma have supported the order dated 23.6.2010.

4. Respondent-State was directed to produce the record.

5. I have heard the learned Counsel for the parties and have perused the pleadings as well as records carefully.

6. Petitioner has filed copy of the reply filed to CWP (T) No. 2216/ 2008, but the Annexures were not filed with the same. In order to go through the Annexures, the record of CWP (T) No. 2216/2008 was called for from the Registry.

7. Petitioner was appointed as Staff Nurse on 9.7.1976. She made representation for the first time only on 22.3.1985 seeking status of Scheduled Tribe category. Respondent-State on the basis of Scheduled Tribe certificate issued on 25.4.1984 promoted the petitioner as Ward Sister with effect from 6.2.1984 and in the seniority list; her name was shown in the category of Scheduled Tribe. She was assigned new seniority number and was further promoted to the post of Matron on 26.11.1992. It has come in the reply filed to CWP (T) No. 2216/2008 that service book of the petitioner was sent to the Director Vigilance for investigation regarding cutting/erasing made in the service book at page 3, Sr. No. 2 vide Director of Health Services, Himachal Pradesh letter dated 23.2.1994. The complaint of respondent No. 3 was received in the Directorate through Secretary (Health) to the Government of Himachal Pradesh on 16.6.1993 and 7.12.1993, respectively. The Directorate sent the case to the Secretary (Health) on 15.12.1993. According to the instructions issued vide Annexure RJ dated 21.7.1982, if a candidate is allowed reservation as Scheduled Caste or Scheduled Tribe, as the case may be, at the time of initial recruitment, he/she would continue to be so throughout his/her service and any claim contrary to the same is bound to be rejected. Petitioner had also been called upon by the Directorate to supply original parentage Scheduled Tribe certificate on 17.8.1993. Petitioner submitted reply on 14.9.1993. Since the Directorate was not satisfied with the reply, it decided to revert the petitioner from the post of Matron to the post of Ward Sister on 23.2.1994.

8. It has come on record that name of the petitioner was sponsored vide registration No. W-95/70 on 3.6.1970 for training under Scheduled Caste category. It is also apparent from the service record that expression "Scheduled

Caste" in Sr. No. 2 has been scored off and instead word "Tribe" has been written. The word "Tribe" is also in a different handwriting. This can only be attributed to the petitioner. Petitioner has also submitted Scheduled Caste certificate, as is evident from Annexure RB dated 15.7.1976 annexed to reply in CWP (T) No. 2216/2008, sent by the Medical Officer, Nalagarh to Chief Medical Officer, Solan. Petitioner has also submitted two medical certificates of fitness vide Annexure RC and RD. In these certificates also, petitioner has also been shown as Scheduled Caste against the column of caste or race. Petitioner has submitted Scheduled Caste Annexure RE at the time of her appointment. According to Annexure RE, the Magistrate 1st Class, Chamba has certified that the petitioner daughter of Sh. Pakhandi, resident of village Garola of Sub-Tehsil Bharmour, District Chamba belongs to Scheduled Caste and her sub caste is Sippi. Petitioner has also submitted Annexure RF dated 6.9.1971 whereby it is specifically stated that the petitioner and her family ordinarily reside in Chamba District of the State of Himachal Pradesh and she belongs to Sippi community, which is recognized as Scheduled Caste under the Scheduled Castes/Scheduled Tribes Lists (Modification) order 1956 read with the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956. Petitioner has submitted certificates as per appointment letter Annexure RG, office order dated June, 1976. It is also clear from Annexure RH that only caste Sippi is mentioned. There is no caste by the name as "Gaddi Sippi".

9. It has already been discussed that the name of the petitioner has been sponsored against the Scheduled Caste category by the Employment Exchange, Chamba. Petitioner has placed strong reliance upon Annexures P-18, P-19 and P-20. Annexure P-18 has only been issued by the Gram Panchayat Avam Dev. Officer, Gram Panchayat, Garola, Development Block, Bharmour on 4.9.1993. In Annexure P-19, petitioner has been shown as Mrs. Chanchal Devi wife of Sh. Mahesh Chand. Petitioner was required to show parental tribal certificate and not her status after the marriage. Annexure P-20 dated 25.4.1984 is also after her appointment of the petitioner on 9.7.1976.

10. The District Employment Officer has informed the Director on 4.10.1993 that the name of the petitioner was sponsored against the Scheduled Caste category. As per averments contained in the reply filed to CWP (T) No. 2216/2008, the Commissioner-cum-Secretary (Health) has also sought the information from the Additional District Magistrate-cum-Deputy Commissioner, Chamba about the status of the petitioner. The Additional District Magistrate-cum-Deputy Commissioner, Chamba has informed the Commissioner-cum-Secretary (Health) on 7.1.1994 that as per report of the Patwari Halqua, Garola, which was counter-signed by the Executive Magistrate, Bharmour, petitioner before her marriage belonged to Scheduled Caste category and after her marriage the caste was entered as Gaddi Sippi. According to the certificate issued by the Gram Panchayat, Garola, petitioner has married with Mahesh Chand. The Additional District Magistrate-cum-Deputy Commissioner has certified that the petitioner belongs to Scheduled Caste category by birth.

11. It is evident from the discussion made hereinabove that petitioner, in fact, belongs to Scheduled Caste category and not Scheduled Tribe category. Her name was sponsored in the category of Scheduled Caste. She has supplied Scheduled Caste certificate at the time of her appointment. She, in her declaration after appointment, has also shown her status as Scheduled Caste. It is clear from the instructions dated 21.7.1982 that once a person is allowed reservation as S.C./S.T., he or she will continue to be so throughout in his/her service. Petitioner has also failed to prove that there is any tribe by the name of Gaddi Sippi. Only expression "Sippi" finds mention in Annexure RH. It is mentioned in the Scheduled Caste certificate issued to the petitioner that she belongs to Sippi caste. The expression used in the certificate "Gaddi Sippi" Annexure P-20 dated 25.4.1984 is against law. Petitioner was issued notice on 8.6.2010, to which she has filed reply vide Annexure P-16. Order passed by the competent authority is reasoned order. The Director has called upon the petitioner to submit original certificate of her belonging to Scheduled Tribe category issued during the relevant period of her selection and initial appointment in the Department as Staff Nurse. She could not do so. The Director has also taken into consideration the tempering/over-writing in the service book whereby word "Tribe" has been written instead of "Caste". Since the petitioner has been appointed against the category of Schedule Caste, she could not change her category to Scheduled Tribe. The status of the petitioner could not be changed from Scheduled Caste to Scheduled Tribe in the seniority list on the basis of which she has been promoted initially as Ward Sister on 6.2.1984 and thereafter as Matron on 26.11.1992. In the seniority list, petitioner was required to be shown as Scheduled Caste. Promotions granted to the petitioner after changing her status from Scheduled Caste to Scheduled Tribe are illegal. Consequently, there is no merit in the petition and the same is dismissed. Interim order dated 15.7.2010 stands vacated. Pending application(s), if any, also stands disposed of. No costs.