
(2002) 08 AHC CK 0088
In the Allahabad High Court
Case No : C.M.W.P. No. 38076 of 1997

Dhiwar Samaj Samiti

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16, 16(4)

Citation : (2002) 4 AWC 2989

Hon'ble Judges : M.P. Singh, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : H.N. Shukla and R. R. Shukla, for the Appellant; K.S. Kushwaha, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and M.P. Singh, JJ.—Whether the Government has committed any constitutional wrong in not providing reservation for the people belonging to Dhiwar (Mallah) Caste on the strength of their population is the sole question which falls for our adjudication in this writ petition in which "Dhiwar Samaj Samiti, Maryad Patti", has come up with a prayer to command respondent Nos. 1 and 2 to extend the benefit of reservation under Articles 15 and 16 of the Constitution of India to the people belonging to Dhiwar Caste according to their proportion in the Society excluding those who fall in the creamy layer.

2. It is alleged inter alia, that the main object of the Society is to guard the interest and welfare of the Dhiwar Samaj ; that even though the caste Dhiwar figures in the list of backward classes published by the Government, it has not been given an opportunity in the Employment or Education or even in Elections in proportion to their population and hence, this writ petition.

3. Mr. H.N. Shukla, learned counsel for the petitioner, contended that the Government has committed an apparent constitutional wrong in not providing reservation for the Dhiwar caste (i.e., to Mallahs) as per their population in

different walks of public life including providing employment to them in the Government service and accordingly, the prayer made by the petitioner is fit to be allowed in view of the decision of the Hon''ble Supreme Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,

4. Sri K.S. Kushwaha. learned standing counsel appearing on behalf of the respondents contends that the judgment relied upon by Mr. Shukla does not support him and the prayer made is thoroughly misconceived inasmuch as the Government has already provided reservation for backward classes of the State which includes the Dhiwar (Mallah) Caste. To secure employment, the various Castes have to compete. As the reservation cannot exceed beyond 50%, it was/ is not possible for the State Government to extend the benefit of reservation to each and every caste belonging to backward class. This writ petition is thus fit to be dismissed.

5. Mr. Shukla, learned counsel for the petitioner, however, failed to put his finger to any sentence of the judgment of the Hon''ble Supreme Court which even remotely warrants acceptance of his arguments. We think that this writ petition is thoroughly misconceived. On its own case, set up by the petitioner, the caste Mallah figures at serial No. 13 of the Government order by which the benefits of reservation have been granted. The stand taken by Sri Kushwaha that it is not permissible or even reasonably possible to provide benefit of reservation to each and every caste on the basis of their population being correct is accepted. Articles 15(4) and 16(4) talk of making special provisions for advancement of socially and educationally backward classes of citizens though caste is not the sole criteria. Therefore, reservation on the basis of population of caste is not permissible under the constitutional scheme.

6. Consequently, we dismiss this writ petition, however, without making any order as to cost.