

(2008) 03 JH CK 0013
In the Jharkhand High Court

Dr. Sushama Sara

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Constitution of India, 1950 — Article 15, 16

Citation : (2008) 3 JCR 338

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Heard the parties finally.

2. This writ petition has been filed for a direction upon the respondents to consider the petitioner's case for appointment against Scheduled Caste vacancy.

3. Mr. Prem Chand Yadav, learned Counsel, appearing for the petitioner, submitted that pursuant to an advertisement No. 2 of 2004-05 for filling up the post of Veterinary Doctor in the Animal Husbandry Department, petitioner applied as a Scheduled Caste candidate with a caste certificate. She was declared successful in the examination. Pursuant to a Press Notice issued by Animal Husbandry Department, she appeared on 20.9.2006 with the required documents, but thereafter she did not receive the letter of appointment and therefore she made representation but as nothing was done, she has filed this writ petition. Relying on certain documents, Mr. Yadav submitted that still there is vacancy in Scheduled Caste category.

4. Learned Counsel appearing for the respondents submitted that petitioner is a Schedule Tribe by birth though her husband belong to Scheduled Caste. It is further submitted that petitioner cannot be allowed to claim consideration of her case against the Scheduled Caste or Scheduled Tribe vacancy as it suits her. It is further submitted that if petitioner has crossed the age bar during this dispute, which is a bona fide one, she cannot be considered.

5. In the case of Mrs. Valsamma Paul Vs. Cochin University and others, the girl

born in Forward Caste married with a person of , Backward Caste. It was inter alia held that "...on marriage the wife becomes an integral part of husband's marital home entitled to equal status of husband as a member of the family. Therefore, the lady, on marriage, becomes a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted" (Paragraph 31). It was further held in Paragraph 34 that "A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution." But the present case is converse case. The petitioner who born in Scheduled Tribe family might not have an advantageous start in life and she must have suffered the disadvantages. After marriage to a person belonging to Scheduled Caste. she got transplanted in the said family and is entitled to be considered against Scheduled Caste vacancy, if any.

6. In the circumstances, petitioner will be liberty to make a representation before the Secretary, Animal Husbandry and Fishery Department. Jharkhand, Ranchi (respondent No. 3). If she has not crossed the age limit and if there is any vacancy in Scheduled Caste category, which is required to be filled up, petitioner's case will be considered in that category and order will be passed in accordance with law as early as possible and preferably with a period of four weeks from the date of receipt of such representation.

7. It is made clear that if in future, any occasion arises, petitioner will be entitled to apply only against Scheduled Caste vacancy and she will enclose a copy of this order alongwith the documents required to be enclosed with such application.

8. With these observations and directions, this writ petition is disposed of. No costs.