

(2007) 08 MAD CK 0207
In the Madras High Court
Case No : W.P.No. 40843 of 2005

G. Sarath Raj

APPELLANT

Vs

Government of Tamilnadu

RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Citation : (2007) 5 MLJ 1409 : (2007) WritLR 917

Hon'ble Judges : S.J. Mukhopadhaya, J;K. Suguna, J

Bench : Division Bench

Advocate : A.R.L. Sunderesan for A.L. Gandhimathi, for the Appellant; K. Elango, Spl. G.P. for R1 and C.N.G. Ezhilarasi for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

K. Suguna, J.—This writ petition has been filed by a successful candidate in the selection process for appointment to the post of Civil Judge (Junior Division/Judicial Magistrate-I Class) in the Tamil Nadu State Judicial Service.

2. According to the learned senior counsel appearing for the petitioner, when applications have been called for, for appointment to the post of Civil Judge (Junior Division/Judicial Magistrate I-Class) in the year 2003, the petitioner also applied for the same under the Scheduled caste quota. The petitioner got through in the selection process. However, by the order of the third respondent dated 16.9.2005, the petitioner was informed that his request for publication of withheld result relating to the appointment to the post of Civil Judge(Junior Division/Judicial Magistrate I-Class) in the Tamil Nadu State Judicial Service 2002-2003 will arise only on receipt of clarification sought for from the Government regarding the communal status to be awarded to those who were born to Christian parents and later on converted to Hinduism.

3. According to the learned senior counsel for the petitioner, after securing Bachelor Degree in Law in the year 1995, the petitioner enrolled himself as an Advocate in the same year in the Bar Council of Tamil Nadu and he is practising

as an Advocate in the Sessions and District Courts and other Subordinate Courts also in and around Madurai District. Basically, the petitioner's family belongs to Hindu religion and they belonged to Paraiyan community which is one of the scheduled caste community in Tamil Nadu. The petitioner's family and their grand-parents both paternal as well as maternal grand-parents were practising only Hinduism. While admitting the petitioner's father in the School, due to ignorance, petitioner's grand-parents entered the petitioner father's name as "Gnana Prakasam" since the School wherein he was admitted was run by Catholic Sect of Christians. Consequence of this, the petitioner father's name was recorded as "Gnana Prakasam" and religion was recorded as Christian-Paraiyan wherein the petitioner's father studied upto 9th standard and he has also joined in the police department and retired in the year 1967 on attaining the age of superannuation. Since the petitioner's father had studied in the Christian School from his childhood and his name was also recorded as a Christian name, all the issues born to Gnana Prakasam had the Christian name. According to the learned senior counsel appearing for the petitioner, in fact that though the name appears to be a Christian name, they were worshipping Hindu God and Goddess as well as Jesus also. They are celebrating all the Hindu festivals. In the year 1991, since the family was practising Hindu rites and customs continuously, a decision was taken to re-embrace Hindu Religion in accordance with the substantial and established procedure through Arya Samaj. Consequence of this, all the members were requested to undergo "Suddhi" ceremony through Arya Samaj. Consequently, from 1991 onwards including the petitioner the entire family re-embraced Hindu Religion and they have become the members of the Hindu Religion.

4. According to the learned senior counsel, though the petitioner's family was recognised for long time by the community members as Paraiyan after undergoing "Suddhi" ceremony through Arya Samaj that was re-affirmed and the petitioner's name was changed as "G. Sarathraj". As a Hindu Paraiyan, the petitioner has to be treated as a member of the scheduled caste. Consequently, when applications have been called for, for appointment to the post of Civil Judge (Junior Division/Judicial Magistrate I-Class), the petitioner applied for the said post under the reserved quota earmarked for Scheduled caste and Scheduled Tribe along with his testimonials inclusive of community certificate issued by the Revenue authority. After screening of details furnished by the petitioner, he was permitted to sit for the written examination conducted by the second respondent. Since, the petitioner had scored qualifying marks in the written examination, he was permitted to attend the viva voce. But, when the selection results were published along with two other candidates, the petitioners' result was withheld.

5. According to the learned senior counsel appearing for the petitioner though the petitioner was repeatedly submitting representation to the second respondent demanding the publication of his withheld result, the same was not informed to the petitioner. Finally, the impugned order was passed. Though the petitioner was born to Christian parents, subsequently he converted to Hinduism

through proper procedure and he was recognised by the community members only as a Paraiyan. That apart, even the educational certificate which has been issued to him prior to his conversion also reveals that the petitioner belongs to Paraiyan community. That apart, according to the learned Senior counsel the fact of conversion of the petitioner to Hinduism is not disputed and also the fact that he belongs to Paraiyan community even while embracing Christianity and also subsequent to his conversion is also not disputed. Under such circumstances, according to the learned senior counsel, the petitioner is a member of Paraiyan community continuously from his birth. That apart, as per the certificate issued, he is a scheduled caste. The said certificate is in force even today. As such, the issue whether he can claim any benefit of scheduled caste cannot be agitated and on that ground, the petitioner's result cannot be withheld. That apart, according to learned senior counsel appearing for the petitioner, the order of the second respondent is unreasonable and arbitrary.

6. Apart from this, the issue in question in this writ petition is in fact covered by the judgment of the Hon"ble Apex Court reported in AIR 1976 S.C.C 939 (C.M. Arumugam v. S. Rajgopal) wherein in paragraphs 8, 10, 12 and 14 it is stated as follows;

8. ...

It is therefore, competent to us to consider whether, on the evidence on record in the present case, it can be said to have been established that on conversion to Christianity In 1949, the first respondent ceased to belong to Adi Dravida caste....

10...

But ultimately it must depend on the structure of the caste and its rules and regulations whether a person would cease to belong to the caste on his abjuring Hinduism. If the structure of the caste is such that its members must necessarily belong to Hindu religion, a member, who ceases to be a Hindu, would go out of the castes, because no non-Hindu can be in the caste according to its rules and regulations. Where, on the other hand, having regard to its structure, as it has evolved over the years, a caste may consist not only of persons professing Hindu religion but also persons professing some other religion as well, conversion from Hinduism to that other religion may not involve loss of caste, because even persons professing such other religion can be members of the caste. This might happen where caste is based on economic or occupational characteristics and not on religious identity or the cohesion of the caste as a social group is so strong that conversion into another religion does not operate to snap the bond between the convert and the social group. This is indeed not an infrequent phenomenon in South India where, in some of the castes, even after conversion to Christianity, a person is regarded as continuing to belong to the caste. When an argument was advanced before the Madras High Court in G. Mechael's case (Supra)"that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being

a member of the caste, but has also been considered so by other members of the caste who had not been converted." Rajamannar, C.J. who, it can safely be presumed, was familiar with the customs and practices prevalent in South India, accepted the position "that instances can be found in which in spite of conversion the caste distinctions might continue", though he treated them as exceptions to the general rule.

...

12. It seems that the correct test for determining this question is the one pointed out by this Court in *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, . Bose, J., speaking on behalf of the Court in this case pointed out that when a question arises whether conversion operates as a breakaway from the caste. What we have to determine are the social and political consequences of such conversion and that, we feel, must be decided in a common sense practical way rather than on theoretical and theocratic grounds.

Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body, (2) the intentions of the individual himself, and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate the convert and the individual himself desires and intends to retain his old social political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body, the views of the new faith hardly matter. What is, therefore, material to consider is how the caste looks at the question of conversion. Does it outcaste or excommunicate the convert or does it still treat him as continuing within its fold despite his conversion? If the convert desires and intends to continue as a member of the caste and, as pointed out by this Court "the views of the new faith hardly matter." This was the principle on which it was decided by the Court in *Chatturbhuj Vithaldas Jasani's* case(Supra) that Gangaram Taware, whose nomination as a scheduled caste candidate was rejected by the Returning Officer, continued to be a Mahar which was specified as a scheduled caste, despite his conversion to the Mahanubhav faith.

14. It would, therefore, prima facie seem that, on conversion to Christianity, the first respondent did not cease to belong to Adi Dravida Caste. But in the view we are taking as regards the last contention, we do not think it necessary to express any final opinion on this point.

7. The learned Senior Counsel relied on the judgment reported in 1976 SCC 1904 *Guntur Medical College v. Mohan Rao* wherein in paragraphs 2, 4 and 7 it reads as follows:

2. ...

They were both converted to Christianity at some point of time which does not appear clearly from the record, but it was the case of the respondent in his writ

petition that he was born after their conversion.

...

since the only requirement of that clause was that in order to be a member of a Scheduled Caste, a person should be professing Hindu or Sikh religion and it did not prescribe that he should be a Hindu by birth. The State did not succeed in obtaining leave to appeal from the High Court and hence it preferred a SLP to this Court.

4. The principal argument advanced on behalf of the State was that when the respondent was converted to Hinduism, he did not automatically become a member of the Madiga caste, but it was open to the members of the Madiga caste to accept him within their fold and it was only if he was so accepted, that he could claim to have become a member of the Madiga caste. There was no evidence in the present case, contended the State, showing that the respondent, on his conversion to Hinduism, was accepted as a member of the Madiga caste by the other members of that caste and therefore, he was not at the time of his application for admission a member of a Scheduled Caste.

7. The reasoning on which this decision proceeded is equally applicable in a case where the parents of a person are converted from Hinduism to Christianity and he is born after their conversion and on his subsequently embracing Hinduism, the members of the caste to which the parents belonged prior to their conversion accept him as a member within the fold. It is for the members of the caste to decide whether or not to admit a person within the caste.

...

It will, therefore, be seen that on conversion to Hinduism, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically or as a matter of course, but he would become such member, if the other members of the caste accept him as a member and admit him within the fold.

8. The learned Senior Counsel relied on the judgment reported in Kailash Sonkar Vs. Smt. Maya Devi, wherein in paragraphs 5, 18, 27, 28, 29 and 43 were reads as follows;

5. ...

What happens if a member of a scheduled caste or tribe leaves his present fold (Hinduism) and embraces Christianity or Islam or any other religion" - does this amount to a complete loss of the original caste to which he belonged for ever and, if so, if he or his children choose to abjure the new religion and get reconverted to the old religion after performing the necessary rites and ceremonies, could the original caste revive?

18. In our opinion, there is one aspect which does not appear to have been dealt with by any or the cases discussed by us. Suppose, A, a member of the

scheduled caste, is converted to Christianity and marries a Christian girl and a daughter is born to him who, according to the tenets of Christian religion, is baptised and educated. After she has attained the age of discretion she decides of her own volition to re-embrace Hinduism, should in such a case revival of the caste depend on the views of the members of the community of the caste concerned or would it automatically revive on her reconversion if the same is genuine and followed by the necessary rites and ceremonies? In other words, is it not open for B(the daughter) to say that because she was born of Christian parents their religion cannot be thrust on her when after attaining the age of discretion and gaining some knowledge of the world affairs, she decides to revert to her old religion. It was not her fault that she was born of Christian parents and baptised at a time when she was still a minor and knew nothing about the religion. Therefore, should the revival of the caste depend on the whim or will of the members of the community of her original caste or she would lose her caste for ever merely because fortunately or unfortunately she was born in a Christian family? With due respect, our confirmed opinion is that although the views of the members of the community would be an important factor, their views should not be allowed to (sic) a complete toss of the caste to which B belonged. Indeed, it too much stress is laid on the views of the members of the community the same may lead on the views of the members of the community the same may lead to dangerous exploitation.

27. It is true that a caste to which a Hindu belongs is essentially determined by birth and if a Hindu is converted to Christianity or any other religion which does not recognise caste, the conversion amounts to a loss of the said caste.

28. The question that arises for consideration is - whether the loss of the caste is absolute, irrevocable so as not to revive under any circumstance? In considering this question the courts have gone into the history of the caste system and have formulated the following guiding principles to determine this question;

(a) Where a person belonging to a scheduled caste is converted to Christianity or Islam, the same involves loss of the caste unless the religion to which he is converted is liberal enough to permit the converttee to retain his caste or the family laws by which he was originally governed. There are a number of cases where members belonging to a particular caste having been converted to Christianity or even to Islam retain their caste or family laws and despite the new order they were permitted to be governed by their old laws. But this can happen only if the new religion is liberal and tolerant enough to permit such a course of action. Where the new religion, however, does not at all accept or believe in the caste system, the loss of the caste would be final and complete. In a large area of South and some of the North-Eastern States it is not unusual to find persons converted to Christianity retaining their original caste without violating the tenets of the new order which is done as a matter of common practice existing from times immemorial. In such a category of cases, it is obvious that even if a person abjures his old religion and is converted to a new one, there is no loss of caste.

29. ...

As indicated above, starting from the Privy Council to the present day, authorities of the High Courts and this Court have laid down certain norms and conditions under which a caste could revive. These conditions are as follows;

(1) Where the converttee exhibits by his actions and behaviour his clear intention of abjuring the new religion on his own volition without any persuasion and is not motivated by any benefit or gain,

(2) Where the community of the old order to which the converttee originally belonged is gracious enough to admit him to the original caste either expressly or by necessary intendment, and

(3) rules of the new order in permitting the converttee to join the new caste.

43. ...

We would, therefore, take it as established that the respondent was undoubtedly born of Christian parents. That by itself does not advance the case of the petitioner any further because if it is proved that she was voluntarily reconverted to Hinduism then according to the law referred to us and applied to the facts of the present case on reconversion her original caste would automatically revive.

9. The learned Senior Counsel appearing for the petitioner relying on the above said judgments contended that on conversion if the members of Paraiyan caste accepts the petitioner as member of that caste, the petitioner has to be treated as a member of Schedule Caste and thereby he is entitled for the benefit also which are given to the Schedule Caste. According to the learned Senior Counsel appearing for the petitioner, as far as the Paraiyan community is concerned whether one is a Hindu or a Christian, he belongs in that community, that is to say, according to the learned Senior Counsel, the members of the Paraiyan community are embracing either Hinduism or Christianity. Consequently according to the learned Senior Counsel, by the conversion of the grandfather of the petitioner as a Christian, the family members did not loose the caste i.e. the Paraiyan Community. But after their conversion they lost only their social status as Schedule Caste. As far as the petitioner is concerned, before the conversion and after conversion, he remains as a member of the Paraiyan Community and after conversion to Hinduism also he continuous to be a member of the Paraiyan community and it was accepted by the members of that community. This argument of the learned Senior Counsel has been made relying on the affidavit of one Mr. Solaiappan who is aged about 70 years and also on the affidavit of one Pandiammal aged about 42 years. As such, according to the learned Senior Counsel since on re-conversion to Hinduism, the petitioner is liable to be treated as the member of the Schedule Caste. Consequently, he is eligible for all the benefits extended to the members of the Schedule Caste. Basing on this the learned Senior Counsel appearing for the petitioner has prayed for allowing the writ petition.

10. The Tamil Nadu Public Service Commission has filed its counter affidavit. As per the averment in the counter affidavit, the Tamil Nadu Public Service Commission has sought for a clarification whether a born Christian on conversion to Hinduism can be treated as a member of a Schedule Caste and the Government after getting certain clarifications from the then Advocate General has referred the matter to the District Vigilance Committee, Madurai and reply is awaited and apart from this as per the averment in the counter affidavit, the petitioner's claim is considered under the Schedule Caste quota and unless and until his social status is decided, results can be published.

11. We have considered the above submissions of the learned Senior Counsel appearing for the petitioner as well as the respondents. As far as the petitioner is concerned he was born when his parents were Christian, as such, in the case of the petitioner question of re-conversion to Hinduism does not arise only conversion to Hinduism is there. Admittedly, as per the contention of the petitioner in the affidavit which was not disputed that after undergoing "Suddhi" ceremony through Arya Samaj, in the year 1991 the petitioner converted to Hinduism and as per the counter affidavit filed by the second respondent, a Gazette publication was given by the petitioner in this regard in Tamil Nadu Government Gazette No. 38 dated 02.10.1991 and apart from this as rightly contended by the learned Senior Counsel for the petitioner, after verification certificate was issued by the competent authority that he belongs to the Hindu Paraiyan which comes under the Schedule Caste. As on date the said certificate is in force. The genuineness of the certificate is not questioned. Besides to substantiate his contention, the learned Senior Counsel relied on the following judgments reported in Kailash Sonkar Vs. Smt. Maya Devi, , C.M. Arumugam Vs. S. Rajgopal and Others, and 1976 SCC 1904 Guntur Medical College v. Mohan Rao.

12. From the above said judgment, the burden lies on the petitioner to prove after conversion to Hinduism he is accepted as the member of the Hindu Paraiyan Community. Now the question arises whether after conversion, the petitioner is accepted as a member of the Hindu Paraiyan Community by the members of that Hindu Paraiyan community. Admittedly as per the affidavit of one Mr. Solaiappan, the members of the petitioner's family are participating in the festivals and in the functions of that community and they also following the customs and conventions of the said community and all the members of the petitioner's family is also accepted as the members of the Hindu Paraiyan Community and also as per the said affidavit the members of the petitioners family is also participating in the Aadi Friday festival of the Hindu Marriamman Temple in the Keeraithurai Village. In the similar line the other affidavit is also filed by one Mrs. Pandiammal. As such, basing on the ratio laid down by the above said judgment, the contention of the learned Senior Counsel appearing for the petitioner that the petitioner is the member of the Hindu Paraiyan community and as such he belongs to the Schedule Caste has to be accepted. Yet another factor to be noted in this case is even as per the counter affidavit filed by the Tamil Nadu Public

Service Commission, the petitioner's claim is considered under the Schedule Caste quota and one post is kept vacant in the cadre of the Civil Judge (Junior Division/Judicial Magistrate I-Class), basing on the orders of this Court and from the statement of marks filed by the Tamil Nadu Public Service Commission, the petitioner had secured 253 marks under the Schedule Caste (General) quota. More than nearly 8 candidates who have scored, lower marks than the petitioner were selected and appointed as Civil Judge (Junior Division/Judicial Magistrate I-Class) and in the Schedule Caste (Women) Quota nearly six candidates who have scored lower marks than the petitioner were selected and appointed as Civil Judge (Junior Division/Judicial Magistrate I-Class). Under such circumstances we are of the considered view that the petitioner is entitled for the relief sought for. Hence, the impugned order of the third respondent dated 16.09.2005 issued in the memorandum is quashed and the respondents are directed to publish the result of the petitioner since as discussed above, the petitioner had scored more marks than the candidate who were appointed under the Schedule Caste Quota and to give the consequential benefit of appointment to the post of Civil Judge (Junior Division/Judicial Magistrate I-Class) to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. The Writ petition is allowed.