

(2019) 04 UK CK 0171

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 84, 46 Of 2009, Review Application No. 294, 290 Of 2019, Delay Condonation Application In Review Application No. 4916, 4841 Of 2019

Jyotsana & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Citation : (2019) 04 UK CK 0171

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Bhagwat Mehra, Rakesh Thapliyal, C.S. Rawat, B.D. Kandpal

Judgement

Ramesh Ranganathan, CJ

1. These two applications are filed seeking review of the common order passed by a Division Bench of this Court, in Writ Petition (S/B) No. 84 of 2009 and Writ Petition (S/B) No. 46 of 2009 dated 29.10.2010.

2. The review applicant herein is the petitioner in Writ Petition (S/B) No. 46 of 2009, and the petitioner in Writ Petition (S/B) No. 84 of 2009 is the third respondent in Writ Petition (S/B) No. 46 of 2009. Parties shall, hereinafter, be referred to as they are arrayed in Writ Petition (S/B) No. 46 of 2009. Both these persons, belonging to the Scheduled Caste category, applied for the post of Civil Judge (Junior Division) and, pursuant to a process of selection, both of them were found to have secured equal marks. Since the third respondent was older in age, than the petitioner, she was appointed as a Civil Judge (Junior Division) pursuant to an interim order passed by this Court in Writ Petition (S/B) No. 84 of 2009, wherein a direction was also given to the officials concerned to issue a caste certificate in favour of the third respondent.

3. The review applicant herein questioned the caste status of the third respondent, in Writ Petition (S/B) No. 46 of 2009, contending that, since she was

a domicile of the State of Uttar Pradesh, her Scheduled Caste status, in the State of Uttar Pradesh, would not automatically result in her claiming Scheduled Caste status in the State of Uttarakhand, since a separate list of Scheduled Castes for the State of Uttarakhand was stipulated in terms of the Uttar Pradesh Reorganization Act, 2000. The third respondent, in Writ Petition (S/B) No. 46 of 2009, belongs to the "Jatav" caste, which is reflected in the list of Scheduled Castes both in the State of Uttar Pradesh and in the State of Uttarakhand.

4. In the order, review of which is sought, the Division Bench observed that the third respondent belonged to "Jatav" caste, which was a recognised Scheduled Caste in the State of Uttarakhand; she became a permanent resident, and a permanent domicile of the State of Uttarakhand, by virtue of her getting married to a permanent resident of the State of Uttarakhand; and the cumulative effect of being a domicile in the State of Uttarakhand, by virtue of her having married a permanent resident of Uttarakhand, could not result in her being denied the benefit available to a person belonging to Scheduled Castes of the State of Uttarakhand, on the ground that she is a Scheduled Caste belonging to the "Jatav" caste. The Division Bench allowed Writ Petition (S/B) No. 84 of 2009, filed by the third respondent and observed that, since she had already been appointed as a Civil Judge (Junior Division) in June, 2009, no further direction was required to be given. Consequently Writ Petition (S/B) No. 46 of 2009, filed by the review applicant, was dismissed.

5. Against the order passed by the Division Bench dated 29.10.2010, the review applicant filed Special Leave Petition No. 36014-36015/2010 before the Supreme Court and, by order dated 26.11.2014, a three Judge Bench of the Supreme Court dismissed the Special Leave Petition holding that they had no reason to interfere with the order of the High Court.

6. These applications were filed on 10.04.2019 and 09.04.2019 respectively seeking review of the common order of the Division Bench dated 29.10.2010, along with applications to condone the delay of 3052 days and 3051 days respectively in preferring the review applications. Even from the date on which the Special Leave Petition was dismissed by the Supreme Court on 26.11.2014, the present review applications were filed nearly four and a half years thereafter. From the date, on which the Division Bench of this Court passed an order on 29.10.2010, the delay in seeking review of the said order is nearly eight and a half years.

7. The only justification for the inordinate delay of 3052 days and 3051 days respectively, in filing the present review applications on 10.04.2019 and 09.04.2019 respectively, is that a three Judge Bench of the Supreme Court, in *Ranjana Kumari Vs. State of Uttarakhand and others* Order in Civil Appeal No. 8425 of 2013 dated 01.11.2018, had held that if a person, who belongs to Scheduled Caste of the State of Punjab, marries a person belonging to the said caste in the State of Uttarakhand and migrates to that State, wherein also the said caste is recognized as a notified Scheduled Caste, the said individual would

not be entitled for issuance of a caste certificate by the State of Uttarakhand in the light of the law declared by the Supreme Court in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College & Ors.* (1990) 3 SCC 130 and *Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr.* (1994) 5 SCC 244.

8. Mr. Bhagwat Mehra, learned counsel for the review applicant, would submit that Civil Appeal No. 8425 of 2013 was pending before the Supreme Court, even by the date the review applicant's Special Leave Petition was dismissed by the Supreme Court on 26.11.2014; and consequent upon the law being clarified by the Supreme Court, in its judgment in Civil Appeal No. 8425 of 2013 dated 01.11.2018 (just five months ago), the review applicant has now approached this Court and the review applications cannot be said to be belated.

9. The Supreme Court, in *Ranjana Kumari Vs. State of Uttarakhand and others* Order in Civil Appeal No. 8425 of 2013 dated 01.11.2018, had only followed the law laid down by the Supreme Court earlier in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College & Ors* (1990) 3 SCC 130 and *Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr.* (1994) 5 SCC 244. Both these judgments were passed long before the order of the Division Bench of this Court dated 29.10.2010.

10. Nothing prevented the review applicant from seeking review of the order passed by the Division Bench of this Court, based on the judgments of the Supreme Court in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College & Ors* (1990) 3 SCC 130 and *Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr.* (1994) 5 SCC 244, soon after the order was passed by the Division Bench of this Court on 29.10.2010, or at least when the Special Leave Petition was dismissed by the Supreme Court on 26.11.2014. The delay of 3052 days and 3051 days respectively, in preferring the present review applications, based on the subsequent judgment of the Supreme Court in *Ranjana Kumari Vs. State of Uttarakhand and others* Order in Civil Appeal No. 8425 of 2013 dated 01.11.2018, would not justify condoning the inordinate delay of more than four and a half years in invoking the review jurisdiction of this Court, after the Special Leave Petition was dismissed by the Supreme Court on 26.11.2014.

11. Since we are not condoning the inordinate delay of 3052 days and 3051 days respectively, in preferring the applications seeking review of the earlier order passed by the Division Bench of this Court dated 29.10.2010, and are not entertaining these review applications, the review applicant's request that, since she was also appointed as a Civil Judge (Junior Division) on 16.10.2017, she be given seniority from the date on which the third respondent was appointed as a Civil Judge (Junior Division) in the month of June, 2009, cannot be acceded to.

12. Both the review applications fail and are, accordingly, dismissed.