

(2006) 06 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 324 of 2005

Madhubala Sorojny Dohare

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 341, 342

Citation : (2007) 2 JLJ 333 : (2007) 1 MPJR 365

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Advocate : M.P.S. Raghubanshi, for the Appellant; R.D. Jain and S.N. Seth for Respondent No. 2 and Brijesh Sharma, Government Advocate for State, for the Respondent

Judgement

P.K. Jaiswal, J.

The Petitioner in this Petition under Article 226/227 of the Constitution of India is claiming the following reliefs :

(i) That, the order Annexure P-1 be set aside.

(ii) That, Respondents be directed to permit Petitioner to participate in the selection process ignoring the order Annexure P-1 as scheduled caste category candidate and all the benefits of such reserved caste be directed to be extended to the Petitioner.

(iii) That, the other relief doing justice including heavy cost be awarded.

The Petitioner was born in the State of Rajasthan where her caste "chamar" is recognized as SC and certificate to that effect was issued to the Petitioner by the State of Rajasthan on 17.4.1995 (Annexure P-1). The Petitioner has completed her studies in the State of Rajasthan. On 26.2.2003 she has been married with Shri Angad Singh Dohare r/o Lahar, District Bhind and after marriage she is now residing in the State of M.P. The husband of the Petitioner belongs to chamar

caste which is recognized as SC in the State of M.P. which is evident from the caste certificate dated 20.12.2001, vide Annexure P-5. After marriage Petitioner also applied for caste certificate which was granted by the competent authority, i.e., Sub-Divisional Officer, Lahar vide certificate dated 27.7.2003. By the said certificate the Petitioner is recognized as SC in the State of M.P. After marriage the Petitioner started living with her husband in the State of M.P. On 10.7.2003 an advertisement was issued by the Respondent No. 2 vide Annexure P-7 for filling up the back log of Assistant Professors of SC and ST. through special recruitment. The Petitioner applied for grant of appointment against the post of Assistant Professor (Chemistry). Her application was rejected by the Respondent No. 2 vide Annexure P-1 dated 1.2.2005 on the ground that she was born in the State of Rajasthan and her caste is recognized as SC in the said State and in the State of M.P. she is not recognized as SC. It is this action which is impugned in this writ Petition.

Learned Counsel for the Petitioner submits that the caste of the Petitioner is recognized in the State of Rajasthan as well as in the State of M.P., and therefore, Petitioner is entitled to receive the benefit of reservation in the State of M.P. It is also contended by the learned Counsel for the Petitioner that Respondent No. 1 issued a circular dated 1.8.1996 (Annexure P-8), according to which in case the caste of person who has been migrated from one State to another State is recognized as SC in both the State, the benefit of reservation cannot be denied. The relevant clauses of circular dated 1.8.1996 are clauses 13(a), (b), 15 and 16 which read as under:

13& ?v? tgka dksbZ O;fDr ,d jkT; ls nwljs jkT; esa izoztu djrk gS rks og dsoy ml jkT; ds ckjs esa gh vuqlwfpr tkfr vuqlwfpr tutkfr dk lnL; ekuk tk,xk ftlls mldk ewy :i ls laca/k gks vFkok jk"V?ifr }kjk vuqlwfpr tkfr ;k vuqlwfpr tutkfr vf/klwpuk tkjh djus dh o?Z ?1950? esa izozftr dj pqdk gksA

?c? ;fn dksbZ vuqlwfpr tkfr@tutkfr dk lnL; dgha vU;= izpztu djrk gS vkSj og tkfr @ tkutkfr ml izns? dh vf/klwfpr lwph eas ugha gS rks mls tkfr izek.k&i= izkIr djus dh ik=rk ugha gksxh A

vuSfPNd izoztu % 15 & vuSfPNd vFkkZr~ fdlh O;oLFkk ;k ck/;rk ds dkj.k ?bu ckysaVjh ekbxzs?u? tks O;fDr e/; izns? ds ewy fuoklh cu x, gSa mldh tkfr dks e/; izns? eas vuqlwfpr tkfr vFkok vuqlwfpr tutkfr dh lwph esa lfEefyr gS rks ,ls O;fDr;ksa dks tkfr izek.k & i= tkjh fd; tk ldrk gS] tkfr izek.k & i= tkjh djus ds iwoZ lk{; fyf[kr vfHkys[kksa ds vk/kkj ij ,oa vU; izklafxr lk{; dks en~nsutj j[kdj tkfr izek.k & i= tkjh djuk pkfg, A

,sfPNd izoztu % 16 & ,d jkT; ls nwljs jkT; esa LoSfPNd izoztu dh fLFkfr esa tkfr izek.k & i= mlh jkT; ls izkIr fd;k tk ldsxk] tgka fd os ewy fuoklh gSa ,oa vuqlwfpr tkfr ;k vuqlwfpr tutkfr dh lwph esa iwokZUg ;k fofufnZ"V fd;k x;k gS A

On the other hand learned senior advocate contended that Petitioner is migrated from the State of Rajasthan, and therefore, she can claim privilege benefit as SC in State of Rajasthan only and she cannot claim the said benefit in the State of

M.P. as per Clause 16 of the circular dated 1.8.1996 and Respondents has not committed any error in rejecting the application of the Petitioner as she is not entitled for getting the benefit of being SC candidate. As per circular dated 1.8.1996 it is clear that SC/ST person on migration from the State of his origin to another State will not lose status of SC/ST but, he or she entitled concession/benefits admissible to the SC/ST from the State of his original and not from the State where he has migrated.

It is not in dispute that the Petitioner was issued a caste certificate as a SC by the Sub-Divisional Officer, Lahar on 27.7.2003 and she on the basis of the said certificate applied for appointment on the post of Assistant Professor (Chemistry) as SC candidates. In this context the apex Court in the Constitutional Bench judgment in the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, held that on a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. The castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. Considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages, and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purpose of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution.

The apex Court in the case of Action Committee (supra), held that a person who migrates from the State of his origin to another State in search of employment or

for educational purpose or the like, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State. In the case in hand the Petitioner belongs to chamar community in the State of Rajasthan. Her claim is that she, after her marriage, migrated to the State of M.P. and her community falls in the category of SC and her husband belongs to the same category, and therefore, she should be given the benefit given for SC. In view of the decision of the apex Court and the circular, the Petitioner even being SC in the State of Rajasthan, cannot be deemed to be so in any relation to any other State as her migration does not change her status. Learned Counsel for Petitioner failed to point out that the caste of which the Petitioner originally belongs has been notified as SC in the State of M.P. and therefore, as per circular dated 1.8.1996 she is not entitled for any benefit and the Respondent No. 2 rightly rejected the application for appointment on the post of Assistant Professor as SC candidates. In view of the law laid down by the apex Court the decision cited by the Petitioner in the case of Dr. Rajesh Kumar Paswan Vs. State of Bihar and Others, , will not be applicable in the present facts and circumstances of the case. The Petition filed by the Petitioner has no merit and is liable to be dismissed. The matter pertains to the social status of the Petitioner to SC person or not. The Petitioner is at liberty to refer the matter to the High Power Committee constituted by the State Government in terms of the directions issued by the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , and the case of the Petitioner shall be considered and thereafter pass appropriate order with regard to caste status of the Petitioner. The High Power Committee shall consider the case of the Petitioner within a period of three months from the date of filing of certified copy of this order and decide the social status as to whether the Petitioner belongs to SC or not and the authenticity of the certificate dated 27.7.2003 (Annexure P-6) issued by the SDO Lahar. The Petitioner shall file the certified copy of this order before the Secretary, High Power Committee for its compliance. In case, the High Power Committee uphold the contention of the Petitioner regarding her caste and consequent entitlement, the Respondent No. 2-PSC shall reconsider the matter and decide it in accordance with law.

The Petition is disposed of with the aforesaid observation.