

(2016) 02 GUJ CK 0054

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1136 of 2012 in Special Civil Application No. 3847 of 1999 and Letters Patent Appeal No. 706 of 2013 in Special Civil Application No. 3847 of 1999

Maliniben Rameshchandra Thakor

APPELLANT

Vs

Narayan Modi and Others

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Citation : (2016) 02 GUJ CK 0054

Hon'ble Judges : S.R. Brahmbhatt and K.J. Thaker, JJ.

Bench : Division Bench

Advocate : Ketan D. Shah, Advocate, for the Appellant; Vishrut Jani, A.G.P., for the Respondent

Final Decision : Partly Allowed

Judgement

K.J. Thaker, J.—1. The petitioners and the respondents both have felt aggrieved by the order dated 18th July 2012 of the learned Single Judge whereby the original petitioner i.e. Maliniben Rameshchandra Thakor has felt aggrieved because of the following operative portion, which is at para - 13, which is reproduced hereunder.

"13. At this stage, it is submitted by Mr. Shah that the probation period which was not extended may be restored. Mr. Soni, learned AGP submitted that the petitioner has no right to continue on the reserved post. Hence, the prayer for restoring in service is rejected."

2. The State has aggrieved by the finding of the learned Single Judge, though it is following the decision of the Apex Court in the case of State of Kerala and another Vs. Chandramohan, reported in , 2004 AIR SCW 1064. The paragraph No. 10, of the order impugned, reads as under.

"10. The authority while passing the order dated 24.07.1997 has proceeded mainly on the ground that the petitioner has converted her religion from

Scheduled Tribe to Christian. In view of the decision in the case of State of Kerala and another V/s. Chandramohan (Supra), the premises on which the order was passed can never be upheld and the impugned order dated 24.07.1997 is required to be quashed and set aside and in that view of the matter, the caste certificate issued on 05.02.1990 as Scheduled Tribe (Hindu Bhil), is required to be restored within a period of three months."

3. This has raised the following dispute before us by way of these Letters Patent Appeals. Both these appeals arising out of the same order and therefore, they are taken-up for hearing together and decided by this common judgment.

4. That the original petitioner has joined the office of the original respondent No. 1 on 1st August 1997 as a Research Assistant on probation for a period of one year. In the appointment order, the original respondent No. 2 has put a condition of verification of Scheduled Tribe Certificate of the original petitioner. The original petitioner has produced reliable and convicting documentary evidence before the original respondent No. 1.

5. The original petitioner has filed Special Civil Application No. 4279 of 1997 as the original respondents were not deciding the issue of verification of Scheduled Tribe Certificate from 22nd January 1997. Two orders regarding cancellation of Caste Certificate of the original petitioner by the Competent Authority dated 24th July 1997 at Annexure - K, and order of termination of the services of the original petitioner dated 25th July 1997 at Annexure-1, came to be passed and therefore, on 25th July 1997 this Court has passed an order specifically reserving the liberty to the original petitioner to challenge the validity of the order dated 24th July 1997 and hence, the original petitioner withdrew the petition. The petitioner while withdrawing the petition, has not aware of the said order of termination. Thereafter, the original petitioner on 5th August 1997 made an application to the respondent No. 1 to consider the earlier decision dated 24th July 1997 and produced convincing evidence to satisfy the respondent No. 1 that she belongs to Schedule Tribe category. As there was no response from the respondent No. 1, the petitioner preferred S.C.A. No. 6521 of 1997 before this Court for certain relief including to quash and set aside the orders dated 24th July 1997 and 25th July 1997 and further prayed to direct the respondent No. 1 to decide the application of the petitioner dated 5th August 1997. The said S.C.A. was disposed of by this Court by directing the respondent No. 1 to decide the review application of the petitioner within a period of two weeks from the date of receipt of the writ, if the same is not decided and further directed the respondent No. 1 not to fill-up the post of Research Assistant till the review application is decided. A Committee comprising of (i) Resident Dy. Collector, Bharuch, (ii) Research Officer, Adivasi Research Centre, Ahmedabad and (iii) Dy. Mamlatdar (Revenue), Jhagadia was formed by respondent No. 1 to reconsider the decision dated 24th July 1997. The petitioner has produced all the documents demanded by the Committee as and when called for.

6. On 15th April 1999 the petitioner received an order contending therein that

application of the petitioner dated 5th August 1997 is rejected. The said order is passed after almost 18 months, though there was a direction of this Court to decide the review application of the petitioner within a period of two weeks. The present petition is filed challenging the orders dated 24th July 1997, 25th July 1997 and 15th April 1999.

7. Mr. Ketan Shah, learned advocate for the appellant - original petitioner, has submitted that the respondent No. 1 passed an impugned order without taking into consideration the report dated 12th November 1997 prepared by the Committee even though there is a clear cut finding of the Committee that Caste Certificate issued by the Mamlatdar seems to be correct and petitioner is entitled to get all the benefits on the basis of the Certificate. The Respondent No. 1 has passed the impugned order with ulterior motive which is illegal and requires to be quashed and set aside by this Court. The Committee has given its finding after considering all the evidence produced by the petitioner. The petitioner also produced a Leaving Certificate of her Aunt, who is a sister of her father, which clearly shows that they were having a Thakore Surname.

8. Mr. Ketan Shah, learned advocate for the appellant - original petitioner, further contended that as per the Resolution dated 14th May 1958 passed by the Labour and Social Welfare Department, Government of Bombay, persons belonging to Schedule Tribes after their conversion to Christianity, Islam or other faiths, should be held eligible for the concessions and privileges. Respondent No. 1 has not at all taken into consideration this aspect. He further contended that Government of Gujarat has issued a Circular dated 23rd August, 1989 in respect of issuance of Schedule Caste/Tribe Certificate. In the said circular, it is stated that Competent Officer should give such Certificate after verifying residence, Leaving Certificate and Revenue Record etc. In the present case, Committee has verified all the above referred things and found that the Mamlatdar has issued a correct Certificate. Therefore, order passed by respondent No. 1 canceling the Certificate issued by the Mamlatdar, is bad, illegal and require to be quashed and set aside by this Court.

9. Mr. Vishrut R. Jani, learned AGP for the State, appearing in L.P.A. No. 706 of 2013, contended that 1997 order, which came to be passed and none of the Report was relied upon and the appellant-original petitioner is taken the advantage of Christianity, therefore, the respondent authorities have cancelled the Certificate only on the basis of conversion and the law prevailing then. Mr. Jani, learned AGP, further contended that in Committee Report also, land of grandfather of the appellant - original petitioner, in revenue shows regarding applicability of Section 73-A but so far as area is concerned, it can not be believed that entire village belongs to Vasava Community and on the basis of that, Bhil Caste as shown by the original petitioner, cannot be believed. Thus, the evidence of revenue record is not required to be believed. Thus, in Committee Report, decision has been taken only on the basis of presumption and surmises, but it has not been clarified and presumptions and surmises are not an evidence

and therefore, Committee Report does not require to be accepted and therefore, considering Report by this Office order bearing No. AV/TS/2/42/571-74 dated 15th April 1999 earlier order has been kept as it is.

10. Mr. Ketan Shah, learned advocate for the appellant-original petitioner, in support of his case has relied upon the judgment in case of State of Kerala and another V/s. Chandramohan, reported in, , 2004 AIR SCW 1064. The paragraph Nos. 16, 17 and 20 of the said judgment are required to be reproduced as under:--

"16. Before a person can be brought within the purview of the Constitution (Scheduled Tribes) Order 1950, he must belong to a Tribe. A person for the purpose of obtaining the benefits of the Presidential Order must fulfill the condition of being member of a Tribe and continue to be a member of the Tribe. If by reason of conversion to a different religion a long time back, he/his ancestors have not been following the customs, rituals and other traits, which are required to be followed by the members of the Tribe and even had not been following the Customary Laws of Succession, Inheritance, Marriage etc. he may not be accepted to be a member of a Tribe. In this case, it has been contended that the family of the victim had been converted about 200 years" back and in fact the father of the victim married a woman belonging to a Roman Catholic, wherefrom he again became a Roman Catholic. The question, therefore, which may have to be gone into is as to whether the family continued to be a member of a Scheduled Tribe or not. Such a question can be gone into only during trial.

17. C.M. Arumugam (Supra) this Court held as under:

....10. A caste is more a social combination than a religious group. But since, as pointed out by Rajamannar, C.J. In G. Michael V/s. Venkateswaran, ethics provided the standard for social life and it is founded ultimately on religious beliefs and doctrines, religion is inevitably mixed up with social conduct and that is why caste has become an integral feature of Hindu society. But from that it does not necessarily follow as an invariable rule that whenever a person renounces Hinduism and embraces another religious faith, he automatically ceases to be a member of the caste in which he was born and to which he belonged prior to his conversion. It is no doubt true, and there we agree with the Madras High Court in G. Michael's case (supra) that the general rule is that conversion operates as an expulsion from the caste, or, in other words, the convert ceases to have any caste, because caste is predominantly a feature of Hindu society and ordinarily a person who ceases to be a Hindu would not be regarded by the other members of the caste as belonging to their fold. 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 the caste, 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. Michael's case 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.

20. We, therefore, are of the opinion that although as a broad proposition of law it cannot be accepted that merely by change of religion person ceases to be a member of scheduled tribe, but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate Court as such a question would depend upon that fact of each case. In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and tradition of the community, which he earlier belonged to. Under such circumstances, we set aside the order under appeal and remit the same to the Sessions Court, Palakkad, to proceed in accordance with law."

11. Mr. Vishrut R. Jani, learned counsel for the State, urged that the main plank of submission of the State is that the verification of the Schedule Tribe Certificate was undertaken by the State and it was found that it was her forefathers, who belonged to Schedule Tribe and the Caste Certificate was therefore, said to be not belonging to the said community, whereby she would be entitled to the appointment under the said quota and therefore, her services came to be terminated during the period of her probation.

12. The said submission has been threadbare gone through by us. The documentary evidence produced by the petitioner would not permit us to take a different view to that had taken by the learned Single Judge, as the decision cited at the bar by Mr. Ketan Shah, learned advocate for the respondent would also clinch the issue that three Authorities had opined that she did not lose the status of belonging to the said community. The Committee had opined thrice in her favour and therefore, the order, not believing her to be belonging to Schedule Tribe and thereby terminating her services, was illegal. We uphold the said finding of the learned Single Judge.

13. This takes us to the next plank of submission made by learned advocate Mr. Shah for the original petitioner, and opposed by Mr. Jani learned AGP, for the

State. Mr. Shah, learned advocate for the appellant - original petitioner, has submitted that once the Court had quashed the order of termination, the orders dated 24th July 1997, 25th July 1997 and 15th April 1999, which were quashed, the petitioner was entitled to the relief that she should be restored back in services. Against this, learned AGP Mr. Jani, for the State, stated that she was a probationer and she could not claim any right over the post. We afraid that we are unable to accept the submission of Mr. Jani, learned AGP for the State that once the Court holds that the order of termination based on the report of a higher officer, holding that the Mamalatdar had not issued the correct Certificate is quashed, the corollary would follow and the petitioner could not be non-suited and the consequence will have to follow namely, she has to be posted back to the said post and considered as if there was no order of termination and access her claim for being long term appointment or confirmation without being influenced by the fact that there existed an order under which the termination was brought about and in case if otherwise her case is found fit for confirmation based upon the service performance rendered till the Certificate in question came to be cancelled, then in that eventuality appropriate orders be passed and as very gracefully submitted by the counsel for the petitioner under the instructions, the emoluments and back-wages to the tune of 60% be awarded on that basis.

14. We hastened to add here that the authorities after reinstating will have to consider the case of the petitioner for confirmation or long term appointment or otherwise solely based upon the performance record available with them and the interregnum period thereafter will be treated as "on duty" in case she is found entitled and eligible to be absorbed on long term basis. But, so far as the wages are concerned, we confine it to 60%.

15. The Letter Patent Appeal No. 706 of 2013 preferred by the State is dismissed and Letter Patent Appeal No. 1136 of 2012 is partly allowed.