

(2021) 02 SHI CK 0250

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5915 Of 2020, COPC No. 12 Of 2021

Naveen Kumari And Others

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2021) 02 SHI CK 0250

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Harish K. Verma, Ashwani Sharma, Vikrant Chandel

Final Decision : Disposed Of

Judgement

Sureshwar Thakur, J

1. The writ petitioner, applied for the post of Language Teacher, on a batchwise basis. She applied for the apposite post, hence reserved for the scheduled caste category. However, even after completion, of, the counseling process, and, also, despite the petitioner, participating in the relevant counseling process, the respondent concerned failed to declare her result, non-declaration whereof, arose from the respondents concerned, rejecting her scheduled caste certificate, borne in Annexure P-3. The reasons, for the respondentsâ?? rejecting Annexure P-3, are, discernable from a perusal, of, the scribed instructions, placed on record, wherein(s), a recital becomes echoed qua the apposite declining reasons, becoming anvilled upon, letter No. EDN-C-B (15) 10/2012 Loose dated 03.10.2012, (i) wherein a mandate is cast, against the acceptance, of, scheduled caste certificate, of, a person, hence born after the date, of, notification, of the relevant Presidential Order, (ii) and, the test, appertaining, to, validity, of, a

scheduled caste certificate, hence produced by the afore person/candidate concerned, becoming grooved, in, the necessity, of, the aspirant concerned,

ensuring that in contemporaneity, vis-à-vis, his producing, the scheduled caste certificate, his provenly being permanently domiciled within Himachal

Pradesh, (iii) AND test thereof becoming rested, upon, provenly his/her parents, being permanently domiciled within the State of Himachal Pradesh.

Moreover, it also becomes spelt therein, that the ouster, of, undomiciled on the afore grounds, within Himachal Pradesh, rather candidates or persons,

for theirs being considered, for selection, and, appointment, to the advertised public post, hence reserved, for, scheduled caste, who though hold

scheduled caste certificate(s), from other federal states, within the territories, of, the Union of India, becoming spurred, from weightage, being given,

to scheduled caste category applicants, who are, holding permanent abodes, within the territory of Himachal Pradesh.

2. The writ petitioner, is, a native of District Gurdaspur, within the State of Punjab. She belongs to the â??Meghâ?? caste, caste whereof, is,

recognized as a schedule caste, both, in Punjab, and, in Himachal Pradesh. The factum, of, â??Meghâ?? caste, being recognized, to be a scheduled

caste, also within the State of Himachal Pradesh, is, not controverted, by the respondents, in their scribed instructions, placed on record, thereupon, the

afore factum acquires an aura, of, truth. The writ petitioner, after solemnizing marriage in Himachal Pradesh, has migrated into Himachal Pradesh,

from Punjab, and, hence she borrows the caste, of, her husband, inasmuch as â??Meghâ?? caste, caste whereof, is, both in Himachal Pradesh, and,

in Punjab, rather a recognized scheduled caste.

3. Even though, perse upon the afore reasons, non-declaration, of, the result, of, the writ petitioner, by the respondents concerned, acquires a deep

stain, of, illegality, yet this Court, deems it fit to pronounce, upon the constitutional validity, of the afore imperative necessities, carried in letter No.

EDN-C-B (15) 10/2012, letter whereof becomes alluded to, in the scribed instructions, placed before this Court, importantly when the non-declaration,

of, the petitionerâ??s result rather becomes anchored thereons, inasmuch, as the writ petitioner, obviously, not satiating the echoing(s), borne

therein(s).

4. The necessity(ies)/reasons cast therein, vis-à-vis, a person/candidate

concerned, for hence validly applying, against the apposite scheduled caste vacancy, occurring in Himachal Pradesh, becomes grooved, in, upon her, becoming born, after the date of notification, of, Presidential Order, thereupon(s) his/her parents, being proven to be permanently domiciled, within the State of Himachal Pradesh, and, whereas, for wants thereof, the candidate concerned, loosing his/her status, as a scheduled caste category, within the State of Himachal Pradesh, does, (a) erode the unitary fabric, besides, the territorial integrity, of, the Union of India, (b) and, also erodes the holistic purpose, behind the constitutional engraftment(s), of, reservations, to, scheduled caste category, rather made, in consonance, with Articles 14 and 16, of, the Constitution of India, (c) the omnibus denial, of, the constitutionally bestowed benefits, of, reservation to rather befitting aspirants, against theirs applying in the afore category, and, against vacancies, occurring in any federal unit(s), of, the Union of India, or and, concomitantly, the scheduled caste certificate, not migrating from the place, of, permanent domicile, of, the parents, of the scheduled caste aspirants concerned, to other federal units, within, the Union of India, may not be, completely valid, and, especially qua (i) those aspirants concerned, who after marriage, borrow the caste, of, their husbands, and caste whereof, is, alike their parental caste, yet the scheduled caste certificate, becoming rejected, upon, its emerging from federal states, other than Himachal Pradesh, merely for/upon, uncalled for insistences being made, vis-À - vis, the parents, of, the aspirants concerned, being, at the relevant stage, also provenly domiciled, within the State of Himachal Pradesh. (ii) Moreover, the afore necessity, may not also be constitutionally valid, rather the rejection, of, the afore status, upon the afore parameter, by any federal unit, within the Union of India, despite his/her becoming validly recognized and accepted, by other federal units, within Union of India, hence as a member, of, the apposite Scheduled caste community, (iii) may become waned, conspicuously, upon the parents, of, the candidate/aspirant concerned, hence acquiring property within the State of Himachal Pradesh, where through they become permanently, domiciled, within the territory, of, Himachal Pradesh, a part, of, the Union of India, (iv) whereupon, upon the above eventuality, making its occurrence, and, even if, within the territory, of, Himachal Pradesh, the parental caste, of, the aspirants/candidate concerned, is, not, akin to the

scheduled caste, which each hold, within the federal State(s), of the Union of India, wherefrom, they permanently migrate, into Himachal Pradesh, or

hence become permanently domiciled in Himachal Pradesh, or even if the afore caste, is, not recognized within Himachal Pradesh, as a Scheduled

Caste, (v) thereupon, too any completest invalidation, or, de-recognition, of/to any hereat similar thereto, hence apposite scheduled caste, rather

anvilled, upon, the afore alluded echoing(s), borne, in, the herebefore reflected scribed instructions, may not become completely vindicable, nor may

work as a deterrence against the afore hence applying against a scheduled caste vacancy, occurring in Himachal Pradesh, (vi) given, thereupon, the

unitary fabric, of, the Union of India, hence becoming an inapt casualty, and, also hence would bring an inapt casualty, to the holistic purpose, behind

creation, of, reservation(s), for, scheduled caste aspirants, through Articles 14 and 16, of, the Constitution of India, inasmuch as, the therethrough

strived inter-generational remediation, becoming nullified. Moreover, a candidate concerned, upon his migrating, from other federal units, within Union

of India, into Himachal Pradesh, and, whereafter(s), he/she and his/her parents, each become domiciled, within the State of Himachal Pradesh, and,

though, each of them, may not, hold a co-equal hence declared scheduled caste, within the State of Himachal Pradesh, or rather upon, the, Scheduled

caste, than the one, they earlier held, within other federal units, rather within the Union of India, being not recognized, as a Scheduled Caste, in,

Himachal Pradesh, also may not become completely amenable, for, becoming completely stripped off, the, cloak of, constitutional reservation, meted

to, the apposite scheduled caste aspirants, unless forthright material surges forth, and, makes displays, (vii) qua that the parental scheduled caste,

hence held within, federal states of the Union of India, other than Himachal Pradesh, and, caste whereof may not be recognized, within the State of

Himachal Pradesh, as a Scheduled caste, or even if other than, the domiciled state, of, the parents, or of, the aspirants concerned, it becomes not

recognized, hence as a scheduled caste, or and, becomes cogently established, to, over the years, or with efflux of time, to hence make social

marches, beyond the one, as, made by a co-equal thereto rather unrecognized scheduled caste, within the State of Himachal Pradesh, (viii) and, or

upon cogent evidence becoming adduced, and its unfolding that the apposite unrecognized, in, Himachal Pradesh, Scheduled Caste, has overcome the

bane of socially backwardness, or/and upon it extantly satiating the innate rubric behind reservation, inasmuch as, intergenerational remediation. (viii)

and/or, reiteratedly, upon material surging forth, and, making display(s), that the holistic purpose, behind caste reservation, inasmuch as therethrough

the apposite inter-generational remediation, becoming effectuated, or the afore becoming completely accomplished, vis-À-vis, the apposite caste, in

Himachal Pradesh, though not recognized hereat, as a scheduled caste, despite, its being recognized, as, a scheduled caste, in other federal units,

within the Union of India.

5. Be that as it may, the constitutional validity, of, the afore letter also becomes, completely un-hinged, specifically, vis-À-vis, the writ petitioner, as,

uncontrovertedly, â??Meghâ?? caste, is, recognized, as a â??scheduled casteâ??, both in Himachal Pradesh and in Punjab, (a) thereupon, the

necessity therein, of, the parents, of, the writ petitioner, becoming domiciled, within the State of Punjab, is, an un-necessarily created hurdle, against

the writ petitioner, as, she has been married in Himachal Pradesh and, her husband holds, a, scheduled caste, alike the one her domiciled within the

State of Punjab, hence parents, rather hold. In addition, the necessity, of, the parents, of, the aspirants concerned, holding, a, permanent domicile,

within the State of Himachal Pradesh, is, uncalled for, and, also a constitutionally invalid, necessity, against the operation, of, a valid scheduled caste

certificate, of, the writ petitioner, rather also within the State of Himachal Pradesh, (b) as within all federal units, within the Union of India, the status,

of the aspirants concerned, as scheduled caste, rather assumes, more relevance, and preponderant importance, than the domiciling(s), of, the parents,

of, the aspirants/candidates concerned, within the State of Himachal Pradesh, and, also when thereupon, the completest deference is bestowed, to the

constitutional reservation(s), bestowed, upon, the scheduled caste category(ies).

6. Furthermore, the constitutionality, of, the further reason, voiced in the letter (supra), for invalidating, the caste certificate, of, the writ petitioner,

inasmuch as it stemming, from weightage being given, to the schedule caste aspirants, domiciled within the State of Himachal Pradesh, is, perse

constitutionally impermissible, and, besides, is constitutionally flawed, as, therethrough, an un-necessary territorial fetter rather within the Union of

India, becomes created, vis-À-vis, the operation, of, scheduled caste certificate,

whereas, the scheduled caste identity, of, its holder, travels alongwith him/her, in, all federal units, within the Union of India, unless the dispelling efficacy thereto rather material hence alluded, in, para-3 evidently surges forth.

7. Consequently, there is merit in the petition, and, the same is allowed. The respondents are directed to, forthwith, declare the result, of, the writ petitioner, and, in case, she occurs in the merit list, they are also directed to, forthwith, upon, completion, of, all the codal formalities, issue an appointment letter to her, Also, the pending application(s), if any, are disposed of.

COPC No. 12 of 2021

8. Since the respondents concerned have tendered an un-conditional apology, for theirs purportedly breaching the order, of, 18.12.2020, pronounced upon CMP No. 13677 of 2020, in CWP No. 5951 of 2020, thereupon, the contempt notices issued against them are discharged and the contempt petition is disposed of.