

(2009) 01 KL CK 0034

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15716 of 2008 (U)

Reena John and Another

APPELLANT

Vs

Director General of Police and Others

RESPONDENT

Date of Decision : 02-01-2009

Acts Referred:

Citation : (2009) 1 KLJ 344 : (2009) 3 SLJ 118

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : V.M. Krishnakumar and P.A. Anitha, for the Appellant; Devan Ramachandran, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

V. Giri, J.—The petitioners, wife and husband challenge Ext.P6 order passed by the Director General of Police, rejecting a claim made by them for the benefit of Ext. P1 Government Order, G.O. (MS)No. 06/76/PD dated 1-44976 inter alia, affording a concession to intercaste married couple who are State Government employees, in the matter of posting in the same station.

2. The 1st petitioner belongs to Syrian Catholic Community and the 2nd petitioner is an Anglo Indian Christian. The first petitioner is an upper Division Clerk in the District Police Office, Thrissur under orders of promotion as a cashier and the 2nd petitioner is working as an Upper Division Clerk in the District Police Office, Thrissur. Apparently from 1987, when the petitioners were married, till now, they have been posted in the same station and according to the petitioners, this is in recognition of the fact that they are an intercaste married couple and are entitled to the benefit of Ext. P1 Government Order.

3. While so, by Ext.P4 dated 18-10-2007 the Ist petitioner was promoted as cashier and posted at Wayanad. The petitioners are residing at Muriyad in Irinjalakuda with their two children. Against Ext.P4, the Ist petitioner filed a representation before the Ist respondent Director General of Police for a posting

in Thrissur District. This ultimately led to Ext. P6 order, which itself has been passed pursuant to a direction issued by this Court in W.P.(C) No. 6754/08 requiring the Ist respondent to consider the petitioners' claim that they are an intercaste married couple and are entitled to the benefit of Ext. P1 Government Order.

4. Ist respondent Director General of Police considered the petitioners' application and dealt with the same in the following manner:

Meanwhile the Supt. of Police, Thrissur has reported vide paper read 8th above that the matter was enquired and it is revealed that Smt. Reena John, D/o. John Kundaseril, Vandamattam, who belongs to Syrian Catholic Community was married to Christy Pareira, S/o. Joseph Pareia, Kalavaraparampil House, Pullur P.O., Thrissur (Now working as UDC, DYSP Office, Irinjalakuda) who belongs to Roman Catholic Anglo Indian Community. Their marriage was blessed at St. George's Church Vadamattam (Kothamangalam Roopatha) by Father Mathew Manjanatt (Vicar Mundamattam Church) on 9-2-1987. The marriage was solemnized and as per Christian belief this marriage was permitted by custom common to the communities. Both communities are serving under the Pope of Rome and the inter community marriage in between these communities is permitted by religious custom. It is again pointed out by the PS TSR that as per GO(MS) 106/76/PD dt. 1-4-1976, the word Inter Caste Marriage was interpreted "where persons belonging to different caste marry each other and where such marriage is not permitted by custom common to the communities, the marriage will be treated as an inter caste marriage". Here this marriage is permitted by custom common to the communities. Hence it is not necessary to treat this marriage as inter caste marriage.

5. It is also appropriate in this context to refer to the relevant clause in Ext.P1 Government Order which provides for a concession to spouses both of whom are Government employees, and are also an intercaste married couple. Clauses 2 to 4 of the Government Order are extracted hereunder.

2. (ii) The concession of posting to the same station will be available to all inter-caste marriages, This concession will be applicable where the husband and wife are both State Government employees. If one of the couple is a State Government employee and the other a Central Government employee or an employee of an autonomous/quasi Government body or even a private sector undertaking the State Government employee will be so accommodated in posts that the couple may beat the same station or, in case this is not possible for want of an office or post at the station, at nearby stations. The employees will invariably be accommodated at the same station or nearby station, if necessary, by transferring out other personnel, and only where for recorded reasons such arrangement is impracticable the concessions will not be applicable. While disturbing a person for accommodating an inter-caste married employee at a particular station a person whole husband/wife is also a Government servant in the same station should, as far as possible, not be disturbed.

3. The concessions mentioned in para 2 above of marriage which took place before the concessions were announced.

4. The interpretation of the word inter-caste marriage also is involved. A Namboodiri's marriage in a Nair family is allowed by custom. In such cases it will not be necessary to treat the marriage as an inter-caste marriage. But where persons belonging to different castes marry each other and where such marriage is not permitted by custom common to the communities, the marriage will be treated as an inter-caste marriage.

6. When the matter was moved before this Court, I entertained a doubt as to whether the claim of an intercaste married couple can be raised by spouses, who profess the Christian religion, wherein caste is generally considered a anathema. This Court felt a double as to whether the concept of intercaste marriage is applicable to non-Hindus and whether intercaste marriage as a fact, is even theoretically possible between two persons who do not profess the Hindu Religion. The caste system, pernicious, no doubt, is accepted to be nevertheless prevalent among Hindus. The caste system is neither recognised nor prevalent in other religions and therefore whether two persons, who are admittedly Christians, can be permitted to raise a claim that they belong to different castes, merely for the purpose of claiming the benefit of a Government order that affords some privilege in the matter of posting of State Government employees, who are intercaste married couple. I requested Mr. Devan Ramachandran to act as amicus curiae to assist this Court.

7. I heard learned Counsel for the petitioner, learned Government Pleader and Mr. Devan Ramachandran, who was assisting the court.

8. Caste system has been acknowledged as a pernicious practice. But it nevertheless exists as a blot on the social milieu. It is a baggage that we have carried with us over centuries. Attempts made by social reformers over the past two centuries have not been completely successful. But that obviously should not deter us from imbibing the directive principles of State policy as adumbrated in the constitution and progressively work towards a caste-less society. The Government Order in question providing an incentive to intercaste marriage couple is a step in the right direction. We could take pride in the fact that whereas intercaste marriage was considered to be extremely radical some decades ago, more and more people have stopped frowning on it. Progressive and liberal minded youngsters who do not consider caste as a relevant factor in choosing their life partners are not looked askance at any more.

9. But this co-exists with the irrefutable fact that one should continue to be aware of one's caste and affirm by the same at several stages in one's life. It becomes a relevant factor in the matter of admissions to professional institutions. It is either an incentive or disincentive at the stage of entry into Government Service or service in public sector undertakings. The wisdom behind laws which provide for protective discrimination, in favour of those communities

which are classified as backward or Scheduled Caste have been analysed and upheld by the Supreme Court and several High Courts. But, it is noteworthy that even while upholding the validity of such legislations, it has been a constant refrain of the Supreme Court in exhorting all of us to realise that caste system is pernicious and all of us should for a casteless society.

10. Every action of the State should, therefor, be informed by an attempt not to perpetuate the caste system, but to remove the inequities in such a manner that the caste system crumbles down on its own. If this be so, can the State, on its own, under the guise of providing an incentive for intercaste marriage, bring about an element of caste amongst those who profess a religion that fortunately does not recognise a caste system.

11. Mr. Devan Ramachandran rightly submits that the catholicity of all who profess the Christian religion is the hall mark of Christianity and it would be completely inconsistent with the Christian religious beliefs to introduce a caste motif amongst Christians.

12. Is it advisable to encourage persons who profess a religion that completely abhors caste system in principle and in practice to claim a concession shown to State Government employees, who have entered into intercaste marriage? I am of the view that an order in the nature of Ext. P2, which encourages intercaste marriages should not be implemented in such a manner as to obliquely give rise to a situation where persons, who profess a religion which considers the caste system as completely anathema, to nevertheless claim that they are intercaste married people and therefore, claim to belong to different castes though professing Christianity and in an unforeseen manner pave way for the introduction of the pernicious caste motif in a religion which can take pride in it having insulated itself from such tendencies. Temporary, transient benefits like a posting in the same station should not impel the petitioners who profess the Christian religion to claim that they also belong to different castes. They have no caste. They are Christians. They, therefore, cannot claim that they are intercaste married people.

13. The order passed by the Director General of Police rejects the claims of the petitioners that they are intercaste married people. Apart from the fact that the reasoning given in this regard by the Ist respondent does not suffer from any infirmity I am also of the view that the petitioners, who profess the Christian religion cannot claim the benefit of Ext.P2 Government Order.

14. For all these reasons, I am of the view that the writ petition is bereft of merit and hence dismissed.

I place on record my appreciation for the effort taken by Mr. Devan Ramachandran, who assisted this Court in a commendable fashion.