

(2005) 02 PAT CK 0046
In the Patna High Court
Case No : CWJC No. 6816 of 2000

Shashi Prabha Agrawal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 163

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh, Pramod Mishra, Vivek Kumar and Vijay Kumar
"Mukul", for the Appellant;

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties. This writ application is directed against the orders dated 23.1.1999 and 17.7.2000, as contained in annexures 7 and 10, respectively, whereby and whereunder her caste certificate has been cancelled.

2. It is submitted by Learned Counsel for the petitioner that the petitioner was appointed as Mukhya Sevika in the Welfare Department in the year 1984 against reserved category vacancy, as she was married to a Scheduled Caste person and she continued in services and thereafter, by virtue of letter, as contained in annexure 7, directions were issued to cancel her caste certificate, as she would be governed by caste of her parents, and consequently thereof, vide order, as contained in annexure 10, the caste certificate produced by the petitioner showing her as member of the Scheduled Caste category was cancelled. It is further submitted that the petitioner got married much prior to her appointment with one Bharat Mahto, who was a member of the Scheduled Caste and she, accordingly, applied for her appointment against reserved category vacancy and in token of that she furnished caste certificate and consequently thereof, she continued in service, but after lapse of 16 years her caste certificate has been cancelled. It is also submitted that it would be manifest from annexure 10 that

her caste certificate has been cancelled on the basis of letter of the Welfare Department bearing No. 128 dated 23.1.1999, as contained in annexure 7, whereby and whereunder it was emphasised that the candidate would be guided by his/her parents and not by the caste of her husband and since the petitioner is an appointee of the year 1984, the aforesaid letter of the Welfare Department will not operate retrospectively in the case of the petitioner. It is also submitted that the petitioner continued in services for 16 years and thereafter her caste certificate could not have been cancelled only on the basis of the letter of the Welfare Department, as referred to above.

3. Learned Counsel for the State with reference to the counter affidavit, however, submitted that admittedly, the petitioner belongs to Agrawal Community, which does not come in Scheduled Caste category and merely because she was married to a Scheduled Caste person her caste will remain the same as before her marriage.

4. It is not the case of the respondents that the petitioner played fraud at any point of time and thus, obtained the appointment showing her as member of the Scheduled Caste. It is also not in dispute that the petitioner continued in services from 1984 and her caste certificate has been cancelled by virtue of the order dated 17.7.2000 on the basis of the letter of the Welfare Department dated 23.1.1999.

5. In case, the respondents wanted to rely upon any circular/letter of the State Government, that should be applicable prospectively, but it cannot be applied in a case where appointment was made much prior to it.

6. Besides all these aspects of the matter, it appears that the petitioner continued in service for more than a decade and it would be too late for the authorities to cancel her caste certificate. If any action was to be taken, that could have been taken by the earliest possible immediately after her appointment.

7. Regard being had to the facts and circumstances of the case, this application is allowed and orders, as contained in annexures 7 and 10, are set aside. I am informed that by virtue of order of this Court dated 1.8.2000 the petitioner has not been terminated from services. No order as to costs.