
(2000) 08 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition No. 18767 (W) of 1998

Shivnath Singh	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 07-08-2000

Acts Referred:

Constitution of India, 1950 — Article 341

Citation : (2000) 2 ILR (Cal) 199

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : Himadri Barua and S. Bhattacharya, for the Appellant;

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J.—The Petitioner in the instant writ petition has assailed the order dated July 24, 1998, passed by the District inspector of Schools (SE).

2. By the impugned order, the Petitioner's case was considered and rejected on the ground that the Petitioner is not a scheduled tribe in the State of West Bengal and, therefore, not entitled to be considered for the post in question in the category of S.T. candidate.

3. The Petitioner was allowed to appear for the interview for the post of Bengali teacher in Gobindpur Ratneswar High School. The Petitioner appeared before the selection committee and was empanelled. As no action was taken for approval of the said panel by the D.I.S. (SE), a writ application was moved and in W.P. No. 24524 (W) of 1997, directions were issued to the D.I.S. to consider the panel in accordance with the law.

4. The Petitioner states that he belongs to scheduled tribe community (BHUMIJ) and the Zilla Kaiyanpada Adhikari issued the Certificate. The said community is recorded as scheduled tribe in Bihar but not in the State of West Bengal and that was the ground on which the Petitioner's claim has also been rejected by the impugned order.

5. The matter in controversy is concluded by a judgment of the Supreme Court in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others*, . The Supreme Court in that case noticed the provisions of Articles 341 and 342 of the Constitution of India and observed that treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution. The Supreme Court construed the expression "in relation to that state" in Article 341 and observed that the expression would become nugatory if in all state, the special privileges or the rights granted to scheduled castes or scheduled tribes are carried forward. It will also be inconsistent with the whole purpose of the schem of reservation. The same was illustrated in the following terms:

a..... In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this Inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be-borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution.

6. In that case, the denial of admission was based on a circular dated February 22, 1985, issued by the Government of India, Ministry of Home Affairs which Inter alia, states that a scheduled caste/tribe person but has migrated from the State of origin to some other State for the purpose of seeking education, employment etc. will be deemed to be a scheduled caste/tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated. The question, therefore, for consideration before the Supreme Court was whether one who is recognised as a scheduled tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the State of migration where he later goes.

7. The Supreme Court in that case held that the Petitioner in that case who belonged to the Gouda community which was recognised as scheduled tribe in the State of Andhra Pradesh was not entitled to be admitted to the Medical College on the basis of that certificate in the State of Maharashtra.

8. In the impugned order, the D.I.S.(SE) has referred to the G.O. No. B.C.

16014/82-Sc, which is to the effect that:

A.S.C. or S.T. person on migration from State of his origin to another State will not lose his status as S.C. or S.T. but he will be entitled to the concession/benefit admissible to the S.C./S.T. from the State of his origin and not from the State where he has migrated in rejecting the claim of the Petitioner and in that view, no legal infirmity can be found with the impugned order.

9. The writ petition is accordingly dismissed, however, without any order as to costs.

Application dismissed.