

(1999) 07 CAL CK 0061

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 6732 (W) of 1998

Smt. Vidya G. Naik

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 226, 330

Citation : (1999) 3 CALLT 460 : 2 CWN 314 : (2000) 84 FLR 780

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Mr. Hirak Mitra and Soumen Sen, for the Appellant; Mr. M.R. Sarbadhikari, for the Respondent

Final Decision : Allowed

Judgement

A. Kabir, J.—Pursuant to an advertisement published by the Banking Service Recruitment Board in May, 1983, for recruitment to various posts, including the post of clerks, which were reserved for Scheduled Castes and Scheduled Tribes candidates, the petitioner applied for being considered for filling up one of the reserved posts. The petitioner claimed to be a member of the Marati Tribe, which is a recognised Scheduled Tribe, by virtue of her marriage to one K. Gobardhan Naik, and filed a caste certificate issued by the Tahasildar, Puttar, Dakshina Kannada, Karnataka, to that effect on 10th November, 1983.

The petitioner was called for an interview and was duly selected for appointment and on 27th January, 1984, she joined her duties as clerk in the Branch office of the bank at Jalsoor, Karnataka.

2. While the petitioner was working at the Jayanagar Branch of the bank at Bangalore, she was served with a notice dated 7th August, 1996, issued by the Divisional Manager (Vigilance), informing her that although she had filed a certificate that she belonged to the Marati Tribe, in reality she was a Gowda Saraswath Brahmin by birth and that she could not claim to be a member of a

Scheduled Caste or Scheduled Tribe merely because she had married a person belonging to a Scheduled Caste or Scheduled Tribe. On the basis of the above, it was alleged that the petitioner had made a false declaration to the Bank for securing an entry into the service of the Bank in respect of a vacancy reserved for candidates belonging to the Scheduled Castes or Scheduled Tribes. The petitioner was asked to submit her explanation in respect of the above within seven days of receipt of the letter.

3. The petitioner replied to the aforesaid letter on 2nd October, 1986, stating that by reason of her marriage to a member of a Scheduled Tribe according to the rites of her husband's community, she genuinely was of the view that she belonged to her husband's community. The petitioner referred to the decision of the Hon'ble Supreme Court in the case of N.E. Horo Vs. Smt. Jahanara Jaipal Singh, , in support of the explanation offered by her.

4. The bank did not accept the petitioner's explanation and issued a charge-sheet to her on 8th April. 1987. On completion of the enquiry, the Enquiry Officer came to a finding that the petitioner's claim to be a member of a Scheduled Tribe was incorrect but she had not made such a declaration knowing the same to be false.

5. The Disciplinary Authority, however, differed from the conclusion of the Enquiry Officer and held that not only was the petitioner's stand that she was a member of a Scheduled Tribe incorrect, but that she had knowingly made a false declaration to secure an employment with the Bank. The review petition filed by the petitioner was also rejected on the aforesaid findings by the Disciplinary Authority who recommended that the petitioner be dismissed from service. The petitioner was informed that she would be given a personal hearing on the proposed punishment before final proceedings were drawn.

6. The instant writ petition is directed against the said findings and recommendation of the Disciplinary Authority. An interim order was passed in the said proceedings giving leave to the Disciplinary Authority to pass a reasoned order, and if any adverse order was passed, the petitioner would be entitled to prefer a departmental appeal before the Appellate Authority which would also be entitled to dispose of the appeal by passing a reasoned order, and, in the event, any adverse order was passed by the Appellate Authority also, no effect was to be given to the same without the leave of the court.

7. In terms of the aforesaid order, the petitioner made a representation which was rejected by the Disciplinary Authority which upheld its earlier decision to dismiss the petitioner from service. On appeal, the Appellate Authority concurred with the findings of the Disciplinary Authority and confirmed the punishment of dismissal from service with immediate effect.

8. The petitioner filed a Supplementary Affidavit challenging the findings of both the Disciplinary as also the Appellate Authority and reiterated her earlier stand that on her marriage to a member of the Marathi tribe under the tribal rites, she

became a member of the said tribe.

9. Since the interim order as passed was to continue till 8th July. 1998, and had not been extended, a further order was passed on 26th November, 1998, to the effect that the final order of dismissal from service would abide by the result of the writ application.

10. Appearing for the writ petitioner, Mr. Hirak Mitra, learned advocate, submitted that the facts as revealed clearly show that by reason of her marriage to Shri K. Gobardhan Naik, who was a member of the the Marati Tribe, the petitioner honestly believed and still believes that she became a part of the Marati community. Mr. Mitra submitted that the decision of the Hon''ble Supreme Court in N.E. Horo''s case (supra) clearly supported the petitioner''s case when she applied for appointment in a reserved category.

11. Apart from the above. Mr. Mitra submitted that there were uncertainties as to the petitioner''s own caste since she was an illegitimate child and both her parents were also born out of extra martial relations. By reason of the above, the petitioner''s father could not also claim to belong to the Gowda Saraswath Brahmin community. Mr. Mitra urged that, in fact, on her marriage to Shri K. Gobardhan Naik, she came to be accepted as a member of the Scheduled Tribe to which he belonged.

12. Mr. Mitra submitted that the Bank had erroneously proceeded on the complaint of the petitioner''s father that the petitioner had falsely declared herself to be a member of the Marati tribe despite knowing that she belonged to the Gowda Saraswath Brahmin community. Mr. Mitra urged that having regard to the aforesaid decision of the Hon''ble Supreme Court in N.E. Horo''s case (supra) the Enquiry officer arrived at the finding that the petitioner did not knowingly make any false statement for obtaining employment and there was, therefore, no violation of clause 19.5(m) of the Bipartite Settlement which categorises gross misconduct "knowingly making false statements in any document pertaining to or in connection with his employment in the Bank,"

13. Mr. Mitra submitted that both the Disciplinary as also the Appellate Authority proceeded on the erroneous basis that the petitioner having full acknowledge that she belonged to the Gowda Saraswath Brahmin community made a false declaration that she was a member of the Marati tribe with the intention of procuring employment under the Bank.

14. Mr. Mitra urged that the decisions of the Disciplinary Authority and the Appellate Authority being based on an erroneous appreciation of the facts and the law, the same were liable to be quashed and the petitioner was entitled to be reinstated in service.

15. Appearing for the Bank, Mr. M. R. Sarbadhikari submitted that the writ petitioner was quite aware of the fact that she could not be considered for appointment to a post reserved for a Scheduled Caste or Scheduled Tribe

candidate and she, therefore, obtained legal opinion in that regard while applying for such post. Mr. Sarbadhikari urged that if the petitioner was genuinely convinced that on her marriage she became a member of her husband's tribe, there would have been no occasion for her to obtain such opinion.

16. Mr. Sarbadhikari submitted that it was quite obvious that knowingly the writ petitioner made a false declaration with the intention of obtaining employment under the Bank in the reserved category.

17. It was also submitted that the petitioner could not take advantage of the decision of the Hon'ble Supreme Court in N.E. Horo's case (supra) in view of the subsequent decision of the Hon'ble Supreme Court in the case of Mrs. Valsamma Paul Vs. Cochin University and others, , wherein upon consideration of the relevant provisions of the Constitution and the various decisions on the subject, including the decision in N.E. Horo's case, the Hon'ble Supreme Court, inter alia, held that a candidate born into a high caste does not upon being transplanted to a backward caste by adoption or marriage or conversion become eligible for the benefit of reservation either under Articles 15(4) or 16(4) of the Constitution, as the case may be. It was observed that acquisition of the status of Scheduled Caste etc by voluntary mobility into these categories would play fraud on the Constitution and would frustrate the object of Articles 15(4) or 16(4) of the Constitution.

18. Mr. Sarbadhikari submitted that it was immaterial as to whether the writ petitioner had knowingly made a false declaration about her status, since even upon her marriage to a member of a Scheduled Tribe, the petitioner was not entitled to the benefits of reservation in view of the aforesaid decision of the Hon'ble Supreme Court in Mrs. Valsamma Paul's case.

19. Mr. Sarbadhikari urged that the petitioner had been afforded all opportunities to explain her case, but on consideration of the materials available and the legal position, as explained in Mrs. Valsamma Paul's case (supra), the respondents were firmly of the view that the petitioner's entry into service had been vitiated by misdeclaration of her status and she could not be allowed to continue in the service of the Bank.

20. The points which emerge for decision in this case is whether on her marriage to a member of a recognised Schedules Tribe the petitioner became a member of such tribe and if the same is held in the affirmative, whether she became entitled to the benefits reserved for Scheduled Castes and Scheduled Tribes.

21. The above points have been specifically considered by the Hon'ble Supreme Court in N.E. Horo's case in 1972 and in Mrs. Valsamma Paul's case in 1996 and two different views have been taken in that regard. While the decision in N.E. Horo's case supports the petitioner's case, the decision in Mrs. Valsamma Paul's case goes against her. However, the decision in the latter case was not available at the time of the petitioner's entry into service on 27th January. 1984.

22. The law in this regard as subsisting when the petitioner was given appointment, was the interpretation given by the Hon''ble Supreme Court in N.E. Horo's case (supra) and the petitioner was entitled to the benefit thereof at the time of her entry into service. If a different interpretation is subsequently available after twelve years, such interpretation, in my view, cannot retrospectively affect the petitioner's initial appointment and entry into service after a period of twelve years.

23. In N.E. Horo's case the Hon''ble Supreme Court was called upon to decide an Election Petition under the Representation of the People Act, 1951, filed by one Smt. Jahan Ara Jaipal Singh challenging the rejection of her nomination papers by the Returning officer in respect of the 51 Khunti Parliamentary (Scheduled Tribe) constituency in the State of Bihar. The High Court at Patna having upheld the petitioner's contention that her nomination papers had been illegally rejected by the Returning Officer and having set aside the election of the elected candidate, Shri N.E. Horo. an appeal was preferred by Shri Horo before the Hon''ble Supreme Court. In the election petition it was claimed by the petitioner that she was a member of the Munda Scheduled Tribe, although, she belonged to the Christian faith. It was averred by her that on her marriage to a Munda male, she also acquired membership of the tribe. After examining various aspects of the matter, including Article 330 of the Constitution relating to reservation of seats, for Scheduled Tribes in the House of the People, the Hon''ble Supreme Court chose not to interfere with the finding of the High Court that though not a member of the Munda tribe by birth, the petitioner by virtue of her marriage to a male member of the said tribe and by reason of her acceptance by the members thereof, would belong to such tribe. The Hon''ble Supreme Court went on to observe that when a person, in course of time, has been assimilated in the community, it would be somewhat difficult to comprehend how that person can be denied the rights and privileges which may be conferred on that community even though tribal by constitutional provisions.

24. As stated hereinabove, the decision in Mrs. Valsamma Paul's case came in 1996, twelve years after the petitioner's appointment. The ratio of the said decision cannot, in my view, be applied retrospectively to the petitioner's appointment so as to nullify the same.

25. The question of the petitioner making a false declaration of her status, at the time of her entry into service, as held by the Disciplinary Authority and confirmed by the Appellate Authority, cannot be sustained. The petitioner's case has to be considered in the light of the law as subsisting on the date of her appointment, which, as indicated above was the law as explained by the Hon''ble Supreme Court in N.E. Horo's case. The law differently explained after an interlude of twelve years cannot, in my view, be used against the petitioner with retrospective effect to her disadvantage. The statement made by the petitioner that she was a member of the Marathi Tribe by reason of her marriage to a member of the said tribe finds support in the judgment in N.E. Horo's case

(supra), and cannot be held to be a false statement knowingly made applying the ratio of the decision in Mrs. Valsamma Paul's case (supra). The findings of the Disciplinary Authority and the appellate Authority to the contrary cannot be supported.

26. The impugned notices dated 12th February, 1998 and 17th March, 1998, being annexure "K" collectively to the writ petition, the disciplinary proceedings initiated on the basis thereof and the subsequent findings and order of the Disciplinary Authority as also that of the Appellate Authority confirming the punishment of dismissal from service with immediate effect, are all hereby quashed. The respondents are directed to reinstate the petitioner in service forthwith and to give effect to such reinstatement from the date of her dismissal as if she had never been dismissed, and to pay the petitioner all her arrear salaries accordingly.

There will be no order as to costs.

Let a plain copy of the operative portion of this order, duly countersigned by the Assistant Registrar (court) be made available to the learned advocates of the respective parties for communication and implementation.

If an urgent xerox certified copy of this order is applied for, the same is to be supplied to the applicant within one week from the date of such application subject to compliance with all the required formalities. The prayer for stay of operation of this judgment made on behalf of the Bank is considered and refused having regard to the observations made hereinabove.

27. Petition allowed