
(2011) 10 SHI CK 0091
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 12237 of 2008

Sunita Devi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15(3), 15(4), 16, 16(4)

Citation : (2011) 3 ShimLC 176

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—An advertisement was issued vide Annexure A-1 for filling up the posts of Primary Assistant Teachers, including Government Primary School, Lakhanpur-Jheran-II, Tehsil Nalagarh, District Solan, H.P. The posts were reserved for O.B.C. category. Petitioner alongwith respondent No. 6 applied for the post in question under O.B.C. category. The interview was held on 19th September, 2005. The result was declared on 19th September, 2005 itself. Respondent No. 6 was selected and thereafter she has joined as Primary Assistant Teacher in Government Primary School, Lakhanpur, Jheran-II, Panchayat Majhauri, Tehsil Nalagarh, District Solan on 21.09.2005. Mr. Romesh Verma, learned Counsel for the petitioner has strenuously argued that the selection of respondent No. 6 to the post of Primary Assistant Teacher in Government Primary School, Lakhanpur, Jheran-II, Panchayat Majhauri, Tehsil Nalagarh, District Solan is illegal, arbitrary, unconstitutional and, thus, violative of Articles 14 and 16 of the Constitution of India. According to him, respondent No. 6 does not belong to O.B.C. category, since she belonged to the State of Punjab before her marriage to Shri Ravinder Singh.

2. Respondent No. 5 was proceeded ex parte.

3. Mr. R.P. Singh, learned Assistant Advocate General has vehemently argued that the appointment of respondent No. 6 has been made on the basis of certificate, i.e., Annexure R-5

4. Mr. K.S. Banyal, learned Counsel for respondent No. 6 has vehemently argued that his client belongs to O.B.C category. He has relied upon Annexures R-5 and R-7, collectively as well as resolution/notification dated 06.12.1999 issued by the Central Government. He also argued that his client also belongs to Saini caste in the State of Punjab and there is no illegality in the appointment letter issued in favour of his client.

5. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

6. Petitioner has placed on record the copy of O.B.C. certificate Annexure A-7, issued on 15.09.2005. It is evident from Annexure P-8 that Sainis are not included as Backward Classes in the State of Punjab. Mr. Romesh Verma, learned Counsel for the petitioner has also drawn the attention of the Court to Annexure P-9, issued on 31.12.2004. According to this notification also, Sani's community is not included in O.B.C. Category in the State of Punjab.

7. Mr. K.S. Banyal, learned Counsel for respondent No. 6 has also drawn the attention of the Court to Annexure R-7. This Certificate has been issued in favour of Shri Dilawar Singh, father of respondent No. 6 by the Tehsildar, Roopnagar on 28th July, 2011. He has certified that the certificate has been issued by the Government of India for employment and welfare. Mr. K.S. Banyal has also relied upon certificate of O.B.C. issued in favour of Shri Sukhwinder Singh, brother of respondent No. 6. It is also certified therein by the Tehsildar, Rupnagar (Punjab) that the certificate has been issued only for Central Government employment. The father of respondent No. 6 has also filed an affidavit deposing therein that his daughter, i.e., respondent No. 6 belongs to Saini caste.

8. Mr. K.S. Banyal, learned Counsel for respondent No. 6 has also relied upon resolution dated 6th December, 1999, whereby Saini community in the State of Punjab, as per Appendix- II, has been included in Central List of Other Backward Classes. The notification dated 6th December, 1999 has been issued on the basis of the recommendations made by the National Commission for Backward Classes for inclusion in the Central List of Other Backward Classes. However, fact of the matter is that as far as State of Punjab is concerned, the Saini community has not been included in the category of O.B.Cs.. The certificate relied upon by respondent No. 6 is only to seek employment in Central Government.

9. Mr. Romesh Verma, learned Counsel for respondent No. 6 has strenuously argued that since the respondent No. 6 does not belong to O.B.C. category in the State of Punjab, she will not get the status of O.B.C. on the basis of marriage with Shri Ravinder Singh, who has been granted O.B.C. status in the State of Himachal Pradesh. It is settled law by now that a person cannot acquire the status of Scheduled Caste/Scheduled Tribe and O.B.C. on the basis of marriage. In the State of Himachal Pradesh, Saini community has been included in O.B.C. category unlike the State of Punjab. In view of this, the certificate of O.B.C. could not be issued in favour of respondent No. 6 as per Annexure R-5 by the

competent authority.

10. Their Lordships of the Hon"ble Supreme Court in Mrs. Valsamma Paul Vs. Cochin University and others, have held that a candidate who had the advantageous life but is transplanted in Backward Caste by adoption or marriage is not entitled for the benefits flowing under Article 15 (4) or 16(4) as the case may be. Their Lordships have held as under:

34. In Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and Another, and R. Chandevappa and Others Vs. State of Karnataka and Others, this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission into educational institution, or in case of other economic benefits under Articles 15(4) and 46 or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs he/she must of necessity also undergo same handicaps, be subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

11. Their Lordships of the Hon"ble Supreme Court in Arshad Jamil Vs. State of Uttarakhand and Others, have held that a caste certificate is a very important and substantial document and, therefore, while granting the same, a proper inquiry is required to be made by the Tehsildar. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is disposed of with a direction to the S.D.M., Nalagarh, District Solan, H.P. to hold a proper inquiry, the manner in which respondent No. 6 has been issued O.B.C. certificate, dated 07.07.2005 (Annexure R-5), after affording a reasonable opportunity of hearing to the petitioner as well as respondent No. 6. The inquiry shall be completed within a period of two months from today. The S.D.M., Nalagarh, District Solan shall pass a speaking order. Thereafter, he shall supply the report to respondent No. 2, i.e., Director of Primary Education, Himachal Pradesh. The respondent No. 2 shall take a decision on the same within a further period of three weeks in accordance with law. The pending application(s), if any, also stands disposed of. No costs.