
(2004) 04 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (C) No's. 4095 of 1999 and 4458 of 2000

Surya Kr. Bhuyan and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Constitution of India, 1950 — Article 15(3), 15(4), 16(4), 39, 46

Citation : (2006) 1 GLT 704

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : J. Roy, J. Ahmed, M. Nath, S. Das and S. Ali, for the Appellant; J. Ahmed, S. Das, J. Sinha, A. Sarkar and R. Hussain, for the Respondent

Judgement

P.G. Agarwal, J.—Both the writ petitions were heard together and disposed of by this common order.

2. Heard the learned Counsel for both sides.

3. The Petitioner Mrs. Juri Deori in W.P. (C) No. 4095/1999 was born and brought up in a Ahom (Gogoi) family which was recognized as Other Backward Classes in Assam. After passing of her HSSLC examination, she was married to one Sri Tarun Deori in the year 1987 who belongs to Deori community, which is recognised as S.T. (P) in the State of Assam. The Petitioner also obtained caste certificate as Scheduled Tribe and after marriage, she was known as Juri Deori. The Petitioner was appointed as LDA in the Office of the District Elementary Education Officer, Sibsagar and subsequently she was promoted to the post of UDA which fell vacant. The Petitioner was promoted to the said post on the quota reserved for S.T. (P) candidates in the year 1997. Subsequently, apprehending that her promotion may be interfered with in view of the circular dated 15.5.91, the Petitioner has filed the present writ petition challenging the vires of the said circular issued by the Govt. of Assam (WPT-BC) Department wherein it is provided that the caste of a person does not change by marriage.

4. The Petitioner Surya Kumar Bhuyan has filed the another writ petition (WP (C) 4458/2000) and he is also another LDA working in the said office and he has filed the present writ petition challenging the promotion of the other Petitioner as UDA claiming that the said post was meant for ST(P) and the other Petitioner has not acquired the status of ST(P) or not eligible for promotion as ST(P), the impugned order should be quashed and the writ Petitioner may be allowed to officiate in the post of UDA in place of the Respondent Juri Deori.

5. The learned Counsel for the Petitioner Juri Deori has placed reliance on a decision of the Apex Court in the case of *The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao*, wherein the Apex Court held as follows:

This reasoning therefore applies to a situation where the parents of a person are converted from Hinduism to Christianity and he is born after their conversion and on his subsequently embracing Hinduism, the members of the caste to which the parents belonged prior to their conversion accept him as a member within the fold. It is for the members of the caste to decide whether or not to admit a person within the caste. Since the caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations so provide, admit a new member just as it may expel an existing member. The only requirement for admission of a person as a member of the caste is the acceptance of the person by the other members of the caste.

6. The facts in the *Principal, Guntur Medical College* (supra) were altogether different. We find that the matter was considered by the Apex Court in the case of *Mrs. Valsamma Paul Vs. Cochin University and others*, wherein the Apex Court held as follows:

It is well-settled law from *Bhoobum Moyee Debia v. Ram Kishore Acharj Chowdhury* that judiciary recognized a century and a half ago that a husband and wife are one under Hindu law, and so long as the wife survives, she is half of the husband. She is "Sapinda" of her husband as held in *Lulloobhoy Bappoobhoy Cassidass Moolchund v. Cassibai*. It would, therefore, be clear that be it either under the Canon law or the Hindu law, on marriage the wife becomes an integral part of husband's marital home entitled to equal status of husband as a member of the family. Therefore, the lady, on marriage, becomes a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted.

7. In this case, the factum whether the Petitioner Juri Deori has become a member of Deori community or not is not the subject matter for decision. The question that arises for consideration is whether in view of the said marriage, the Petitioner is entitled to accelerated promotion by treating her as member of the ST(P). The question whether the marriage would give the party the benefits of reservation etc. was answered by the Apex Court in *Valsamma Paul* (supra) as

below:

In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde and R. Chandevarappa v. State of Karnataka* 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 development are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, 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 have had undergone the same handicaps, and must have been subjected 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) or 16(4), as the case may be. Acquisition of the 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.

The recognition of the Appellant as a member of the Latin Catholics would not, therefore, be relevant for the purpose of her entitlement to the reservation under Article 16(4), for the reason that she, as a member of the Forward Caste, had an advantageous start in life and after her completing education and becoming major, married Yesudas; and so, she is not entitled to the facility of reservation given to the Latin Catholics, a Backward Class.

8. The decision in *Valsamma Paul (supra)* was reiterated by the Apex Court in the case of *State of Tripura and Others Vs. Namita Majumdar [Barman] (Smt)*, The said SLP was directed against an order of this Court and the Apex Court relying on *Valsamma Paul (supra)* held as follows:

Shri P.K. Goswami, learned Senior Counsel appearing for the Appellants, has submitted that the High Court was in error in holding that the Respondent, though born in a forward caste family, is entitled to claim the benefits of a Scheduled Caste on the basis of her marriage to a person belonging to a Scheduled Caste. The submission is that a person by reason of her/his marriage to a person belonging to a Scheduled cast is not entitled to claim the benefi of a Scheduled Caste. The learned Counsel has placed reliance on the decision of this Court in the case of *Valsamma Paul v. Cochin University*. The Appellant, that case, was, by birth, a Syrian Catholic, a forward class in the State of Kerala. She had married a person who was Latin Catholic, a Backward Class in the said State. It was held that the said Appellant could not claim the benefits under Articles 15(4) and 16(4) of the Constitution. Dr. N.M. Ghatate, learned Senior Counsel appearing for the Respondent, has submitted that the said decision in *Valsamma*

Paul case needs reconsideration and has pointed out that in the context of election law this Court has recognized that the benefit of reservation for Scheduled Castes can be availed of by a person on the basis of marriage.

The said decisions have been taken note of and distinguished in the decision in Valsamma Paul case. We do not find any reason to take a view different from that taken in Valsamma Paul case. It must, therefore, be held that the Respondent cannot be declared to be entitled to the benefits of a Scheduled Caste on the basis of her marriage to a person belonging to a Scheduled Caste.

9. In view of the above decisions of the Apex Court, we hold that the Petitioner Juri Deori by dint of her marriage to Tarun Deori may have become a member of the Deori community which is recognized as ST(P) community in the State of Assam, but so far her appointment or promotion on the ground of reserved community of ST(P), she is not entitled to the above benefits. Mr. Ahmed, the learned Counsel for the Petitioner has submitted that in Namita Mazumdar's case, the marriage was from forward community to scheduled caste whereas in the present case, the Petitioner Juri Deori belongs to OBC community and as such the said decision is distinguishable. The fact that the Petitioner belongs to forward community or backward community is immaterial as we do not deny the Petitioner Juri Deori the benefits of OBC community if the post is required to be filled up by OBC community. In the present case, we find that the Petitioner Juri Deori was given promotion treating her as ST(P) which was not permissible as per the Circular of the Government of Assam. The said Circular stands vindicated by the decision of the Apex Court as quoted above. The said notification does not suffer from any Constitutional malice. Accordingly the promotion of the Petitioner Juri Deori to the post of UDA is hereby set aside. The Respondent authority will be at liberty to fill up the said post strictly in accordance with the rules and regulations governing the matter.

10. With the above observations both the writ petitions stand disposed of.