

(2015) 07 JH CK 0006
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3905 of 2009

Sushama Sara

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Citation : (2015) 07 JH CK 0006

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Shashank Shekhar Prasad, for the Appellant; Dhananjay Kumar Dubey, Sr. S.C., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rongon Mukhopadhyay, J.

I.A. No. 598 of 2010

1. The present interlocutory application has been filed for amending the writ application in view of the fact that the representation submitted by the petitioner pursuant to the order dated 12.03.2008, passed in WPS No. 698 of 2007 has been rejected by the respondent No. 2.

2. It has been submitted by the learned counsel for the petitioner that due to inadvertence although the order dated 2.7.2009 has been annexed in the writ application but the same could not be challenged. Hence amendment application.

3. Considering the aforesaid facts, this application is allowed.

4. I.A. No. 598 of 2010 will form part of the main writ application.

W.P.(S) No. 3905 of 2009

5. In this writ application, the petitioner has challenged the order as contained in Memo No. 1253 dated 2.7.2009, whereby and whereunder the representation

submitted by the petitioner pursuant to the order dated 12.03.2008, passed in WPS No. 698 of 2007 has been rejected by the respondent No. 2. The petitioner has further prayed to direct the respondents to issue appointment letter to the petitioner either on the basis of scheduled caste or scheduled tribe candidate.

6. The facts emanating from the writ application is that the petitioner was born in scheduled tribe family of Munda caste and caste certificate was also granted to her. Marriage of the petitioner was solemnized with one Dr. Ashok Kumar Das, who belongs to scheduled caste community and on an application being made, the petitioner was granted caste certificate showing her caste as falling within the scheduled caste category.

7. In terms of Advertisement No. 2/04-05 issued by the Jharkhand Public Service Commission, the petitioner having necessary qualification applied on the basis of she being a scheduled caste. The petitioner was declared successful and she was directed to appear in an interview along with all original certificates/documents. After the interview was held, Jharkhand Public Service Commission published provisional result for appointment to the post of Veterinary Doctors and the name of the petitioner also figured in the said list. However, even though the petitioner had supplied the original copy of the certificate and the documents but she did not receive any appointment letter, as a result of which the petitioner moved this Hon'ble Court in WPS No. 698 of 2007. This Court had disposed of the said writ application on 12.03.2008 with a liberty to the petitioner to make a representation before the Secretary/Animal Husbandry and Fishery Department, Jharkhand, Ranchi, if she has not crossed the age limit and if there is any vacancy in scheduled caste category, which is required to be filled up, the petitioner's case will be considered in that category and order will be passed in accordance with law. Pursuant to the order passed by this Court, a reasoned order was passed by respondent No. 2 as contained in Memo No. 1253 dated 2.7.2009, whereby the claim of the petitioner for being treated as scheduled caste candidate was rejected.

8. Heard Mr. Shashank Shekhar Prasad, learned counsel for the petitioner and Mr. Dhananjay Kumar Dubey, learned Sr. S.C. 1, for the respondents.

9. Mr. Shashank Shekhar Prasad, learned counsel for the petitioner has submitted that since the petitioner has solemnized marriage with one Dr. Ashok Kumar Das, who belongs to scheduled caste community and therefore her caste got transferred and merged to that of her husband and this fact has not been considered by the respondent No. 2 while issuing the impugned order dated 2.7.2009. Learned counsel for the petitioner has referred to the judgement rendered in the case of Mrs. Valsamma Paul Vs. Cochin University and others, AIR 1996 SC 1011 : (1996) 1 CTC 301 : (1996) 1 JT 57 : (1996) LabIC 919 : (1996) 1 SCALE 85 : (1996) 3 SCC 545 : (1996) 1 SCR 128 : (1996) 1 UJ 626 and has submitted that the petitioner by dint of his marriage to a member of scheduled caste community is claiming appointment and therefore her claim for appointment should not have been rejected by the authority on her being a

scheduled caste candidate.

10. Mr. Dhananjay Kumar Dubey, learned Sr. S.C. 1, for the respondents, on the other hand, has submitted that the impugned order dated 2.7.2009 has considered the case of Mrs. Val Samma Paul (supra) and thereafter has rejected the claim of the petitioner for being appointed as a Veterinary Doctor as a scheduled caste candidate. He has further submitted that merely because the petitioner has married with a scheduled caste, her caste does not automatically transfer to that of her husband. More so because of the fact that she originally belongs to the scheduled tribe community.

11. It is an admitted fact that the petitioner had applied for the post of Veterinary Doctor showing herself to be belonging to scheduled caste community. The respondent No. 2 while rejecting her claim has referred to the case of Mrs. Val Samma Paul (supra). The judgement referred in the case of Mrs. Val Samma Paul (supra) was considered by the Hon"ble Supreme Court in the case of Rameshbhai Dabhai Naika Vs. State of Gujarat and Others, (2012) 113 CLT 983 : (2012) 1 SCALE 434 : (2012) 3 SCC 400 : (2012) AIRSCW 4204 : (2012) AIRSCW 913 : (2012) 4 Supreme 548 . The Hon"ble Supreme Court had held "the view expressed in the case of Valsamma that in an inter-caste marriage or in a marriage between a tribal and a non-tribal the woman gets transplanted into the family of her husband and takes her husband" caste is clearly not in accord with the view expressed by the Constitution Bench of the Court in V.V Giri Vs. D. Suri Dora that it is a well-nigh impossible to break or even to relax the inflexible and exclusive character of the caste system".

12. The question as to what would be the status of a woman belonging to a scheduled caste or a scheduled tribe marrying a person belonging to a forward caste was under consideration by the Full Bench of the Bombay High Court, which has been quoted in the case of Rameshbhai Dabhai Naika (supra) and which reads as follows:-

"45. The Full Bench in Rajendra Shrivastava case before which the matter came up for consideration on reference framed the following issue as arising for consideration:

"If a woman who by birth belongs to a Scheduled Caste or a Scheduled Tribe marries to a man belonging to a forward caste, whether on marriage she ceases to belong to the Scheduled Caste or the Scheduled Tribe?"

46. The Full Bench of the Bombay High Court in Rajendra Shrivastava case examined Valsamma in light of the two Constitutional Bench decisions of this Court, namely, Indra Sawhney v. Union of India and V.V. Giri v. D. Suri Dora. The Full Bench also considered the law of precedent and referred to the decision of this Court in State of A.P. v. M. Radha Krishna Murthy. It finally came to hold that the observations made in para 31 of the decision in Valsamma cannot be read as the ratio laying down that on marriage, a wife is automatically transplanted into the caste of her husband. In para 12 of the judgment in Rajendra Shrivastava

the Full Bench of the Bombay High Court it held as follows:

"When a woman born in a Scheduled Caste or a Scheduled Tribe marries to a person belonging to a forward caste, her caste by birth does not change by virtue of the marriage. A person born as a member of a Scheduled Caste or a Scheduled Tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to the particular caste which he or she acquires involuntarily on birth. The suffering of such a person by virtue of caste is not wiped out by a marriage with the person belonging to a forward caste. The label attached to a person born into a Scheduled Caste or a Scheduled Tribe continues notwithstanding the marriage. No material has been placed before us by the applicant so as to point out that the caste of a person can be changed either by custom, usage, religious sanction or provision of law."

The Hon^{ble} Supreme Court while taking note of the aforesaid went on to hold "we fully endorse the view taken by the Bombay High Court and we feel that in the facts of the case that was the only correct view."

13. In such circumstances, the petitioner continues to belonging to scheduled tribe community and in such circumstances her claim for being appointed as a scheduled caste candidate has rightly been rejected by respondent No. 2 by the impugned order dated 2.7.2009.

14. The petitioner has also made an alternative claim that she be issued appointment letter on the basis of a scheduled tribe candidate. The same cannot be looked into at this stage when admittedly at the time of appointment to the post of Veterinary Doctor, the petitioner had mentioned that she belongs to a scheduled caste community and the entire process was done on the basis of she being a member of scheduled caste community. Now when her claim has rightly been rejected by the respondent No. 2 by virtue of the impugned order dated 2.7.2009, she cannot now turn back and claim appointment on the basis of her belonging to scheduled tribe community.

15. Since by virtue of her filling up the application form showing her to be a member of scheduled caste community, she had forgone her status of a scheduled tribe and at this stage, she cannot raise the plea of being granted appointment as a scheduled tribe candidate when the original application form filled up by her is otherwise.

16. As a cumulative result of the discussions made hereinabove, I do not find any merit in this writ application, which is, accordingly, dismissed.

17. Pending I.A.s, if any, stand automatically disposed of.