
(2020) 02 RAJ CK 0369
In the Rajasthan High Court
Case No : Civil Writ Petition No. 824 Of 2020

Sushila Kumari

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Indian Succession Act, 1925 — Section 15

Citation : (2020) 02 RAJ CK 0369

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Sushil Bishnoi

Final Decision : Dismissed

Judgement

1. The petitioner â?" Yadav by Caste, born in Haryana, married Sandeep Kumar Yadav, a community included in the list of other Backward Classes

notified by the State of Rajasthan, has approached this Court claiming reservation as an OBC candidate in the State of Rajasthan.

2. Mr. Sushil Bishnoi, learned counsel for the petitioner submitted that the petitioner is by caste Yadav, which caste is treated as OBC not only in the

State of Haryana but also in the State of Rajasthan and, thus, she should be provided benefits of reservation in the State of Rajasthan as an OBC

candidate, regardless of her migration from Haryana to Rajasthan.

3. Mr. Bishnoi submitted that notwithstanding the judgment dated 01.11.2018 of Honâ??ble the Supreme Court in the case of Ranjana Kumari Vs.

State of Uttarakhand; 2018 (14) SCALE 755) and Division Bench judgment of this Court dated 13.08.2019 in State of Rajasthan Vs. Chitra Devi

[D.B. Special Appeal (Writs) No.1960/2018], petitioner is still entitled for the benefits of reservation, as many vital points were neither argued nor

considered by the Division Bench as well as by Honâ??ble the Supreme Court.

4. In this regard, Mr. Bishnoi pointed out that Section 15 of the Indian Succession Act, 1925 decides the domicile of a woman on the basis of her marriage to a person and, as such, since the petitioner has married to Sandeep Kumar â?? a resident of Rajasthan, she is a domicile of Rajasthan for all practical purposes.

5. He argued that petitionerâ??s name is enlisted in the Electoral of State of Rajasthan, treating her to be a resident of Rajasthan; she is otherwise

entitled to all the advantages, which are available to a resident of the State, then why the benefits of the reservation as an OBC should be denied?

6. Learned counsel invited Courtâ??s attention towards notifications dated 21.10.2019 and circular dated 10.02.2020 to contend that if the State can

confer benefits of TSP area to a woman marrying a resident of TSP area of Rajasthan, how can State justifiably deny such benefit to the petitioner

and other similarly situated persons and refuse to consider them a resident of the State.

7. Learned counsel for the petitioner also relied upon a rather recent pronouncement of Honâ??ble the Supreme Court rendered in the case of

Director Transport Department Vs. Abhinav Dipak Bhai Patel (Civil Appeal No.4665/2019 decided on 07.05.2019.)

8. Heard.

9. So far as reliance upon notifications dated 21.10.2019 and 10.02.2020 are concerned, in the opinion of this Court, the petitioner cannot claim parity

on such basis. The reason is that, by virtue of notification dated 21.10.2019, residents of other State, marrying a resident of TSP area, have been

treated as resident of TSP area, but in that event, candidature of such woman is required to be considered as a candidate of unreserved (Open)

category of TSP area and not as an SC/ST on the basis of her caste.

10. On appraisal of the facts and law involved in the case of Abhinav Dipak Bhai Patel (supra), this Court finds that it was a case of grant of

weightage to a resident of Dadra and Nagar Haveli, whose claim for bonus marks was rejected by the employer as the applicant in such case was not

an original resident of Dadra and Nagar Haveli and was a candidate, who migrated to such Union Territory. Dealing with the presidential notification

issued by the Union Territory of Dadra & Nagar Haveli, Honâ??ble the Apex Court

held that such notification extends benefits of reservation on the basis of residence and not on the basis of origin.

11. So far as the arguments advanced by learned counsel for the petitioner is concerned, this Court accepts the position that after marriage the petitioner, for all practical purposes, is a resident/domicile of the State of Rajasthan.

12. The reservation to SC/ST or even to OBC candidate is not solely dependent upon the residence of a person but the same is governed by the constitutional provisions; relevant provisions of reservation and law laid down in this regard.

13. According to the advertisement in question, reservation in SC/ST and OBC category is available to a candidate on the basis of his/her paternity i.e. on the basis of caste and residence of his/her father.

14. Considering all the arguments and even the recent judgment cited by Mr. Bishnoi in the case of Abhinav Deepk Bhai Patel (supra), a Division

Bench of this Court allowed the appeal filed by the State vide its judgment dated 13.08.2019 [D.B. Special Appeal (Writs) No.1960/2018 : State of

Rajasthan Vs. Chitra Devi], holding thus:-

“The observations of the Supreme Court, in the cases relied on by the respondents, in the opinion of this Court, are not determinative. Significantly,

the Supreme Court noted that it is left to the Parliament to consider the appropriate legislation with regard to the treatment to be given to members of

Scheduled Caste or other reserved category who migrate from one State to another. The rationale for this is simple; it is only Parliament which has

the authority to amend SC/ST Orders in relation to any State or States or Union Territory, as the case may be. The structure of the SC/ST orders and

the scheme, as existing, entitle only members of a community who belong to the State or the concerned Union Territory to claim the benefit of

reservation. This means that if an individual who belongs to State 'A' and is therefore entitled to claim the benefit of reservation of that State,

by choice leaves that State and goes to State 'B', then she/he is divested of the right to claim the reservation as member of that caste or community

even if it is listed in State 'B'.

The conditions contained in the recruitment advertisement i.e. clause 4(viii) of the advertisement clearly states that the candidates claiming the benefit

of reservation should be able to produce a certificate evidencing that it was issued in the name of his /her father. Thus, the domiciliary requirement â?

in consonance with the Presidential Order, are State policies. In this context, the reliance placed by the respondent â?" writ petitioner on the decision

in Abhinav Deepak Bhai Patel (supra), needs to be examined. The Supreme Court in this judgment did not examine the specific stipulation with

respect to the residential/domiciliary requirements but merely went by the fact that the concerned candidate was a resident of the place in question. In

other words, whether the conditions which governed the recruitment spelt out a domiciliary or a residential requirement became the issue. The Court

clearly held that what the Union Territory had emphasised upon was residential status, and not domicile. In the present case, however, the notification

â?" particularly clause 4(iv) and 4(viii) highlights the necessity of the candidates possessing proof of domicile i.e. that his/her father should have

certificate evidencing status as ST/SC.

The decision in Ranjana Kumari(supra) has dealt with much the same aspect; the Court specifically noticed the reference to Ranjana Kumariâ?

which is the judgment cited on behalf of the State, merely referred the issue to a Larger Bench. The reference order clearly stated that the candidate

had claimed SC/ST benefit on the basis of marriage. The larger bench by its order dated 1.11.2018 [Ranjana Kumari vs. State of Uttarakhand & Ors.

(CA No.8425 of 2013)] stated as follows:

â??2. The appellant who belongs to Valmiki caste (Scheduled Caste) of the State of Punjab married a person belonging to the Valmiki caste of

Uttarakhand and migrated to that State. In the State of Uttarakhand under the Presidential Order 'Valmiki' is also recognized as a notified Scheduled

Caste. The State of Uttarakhand issued a certificate to the appellant.

3. The appellant contended before the High Court that she was a Scheduled Caste of the State of Uttarakhand. The High Court having rejected the

claim, the appellant is in appeal before us.

4. Two Constitution Bench judgments of this Court in Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Ors. And Action

Committee on Issue of Caste Certificate to Scheduled Castes & Tribes in the State of Maharashtra & Anr. vs. Union of India & Anr. have taken the

views that merely because in the migrant State the same caste is recognized as

Scheduled Caste, the migrant cannot be recognized as Scheduled Caste of the migrant State. The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench Judgments in Marri Chandra Shekhar Rao (supra) and Action Committee (supra).

5. We, therefore, find no error in the order of the High Court to justify any interference. The appeal is accordingly dismissed.â??

In the light of the above discussion, this Court is of the opinion that the respondents could not have claimed the benefit of SC/ST status merely on the basis that they were issued Rajasthan certificates, and that they were residing in Rajasthan. Their claim to that status did not satisfy clause 4(iv) and 4(viii). Accordingly, the Single Judge fell into an error in granting the direction having regard to the circumstances of the case.â??

15. Keeping the judgment aside, if we go to the roots of the reservation to the Other Backward Classes, it is to be noted that the 21% reservation was provided for the first time to Backward Classes by the State Government vide notification dated 28.09.1993. It was indicated in such notification that 21% posts to be filled through direct recruitment, shall be kept reserved for the castes and classes included in the list of backward classes as notified vide Social Welfare Department notification No.F11(125)R&P/SWD/46631 dated 27.08.1993.

16. Above referred notification No. G.S.R. 35 dated 27.08.1993 issued by the Social Welfare Department was published in Rajasthan Gazette on 01.09.1993. Said notification provides a list of Backward Classes of the State of Rajasthan, based upon report of the Mandal Commission, which contained list of Backward Classes of the State of Rajasthan. It will not be out of place to reproduce the relevant part of the notifications dated 28.09.1993 and 27.08.1993, which reads thus:-

â??DEPARTMENT OF PERSONAL (A-V) NOTIFICATION

Jaipur, September 28, 1993. Sub:- Reservation for Backward Classes in posts and service under the Government of Rajasthan Regarding.

G.S.R. 35:- The Governor of Rajasthan is hereby pleased to order that 21% (Twenty one percent) of the Vacancies in posts and services under the

State Government to be filled through direct recruitment, shall be reserved for the castes and classes included in the list of Backward Classes as

notified vide Social Welfare Department Notification No. F.11 (125) R&P/SWD/46631, dated 27 th August, 1993, published in Rajasthan Gazette,

Extra-ordinary dated 1st September, 1993.â??

SOCIAL WELFARE DEPARTMENT NOTIFICATION

Jaipur, August 27, 1993

No.F.11 (125) R&P/SWD/92-93/46631:-

The list of other Backward Classes, as included in the Mandal Commission Report and annexed herewith, is hereby recognised and notified as the list

of Backward Classes for the State of Rajasthan for all purposes.

This order will come in force with immediate effect.â??

17. A close and conjoint reading of the above notification leaves no room for ambiguity that notification dated 28.09.1993 provides 21% reservation of

the vacancies in the posts to be filled through direct recruitment for the castes and classes enlisted in notification dated 27.08.1993. Whereas the

notification dated 27.08.1993 contains a list of Backward Classes and Castes of the State of Rajasthan.

18. It is settled position of law that a person derives his caste from his father or a caste of person is to be reckoned according to his/her paternity. The

petitioner, was born to a Yadav father, resident of village Dhamna, District Hisar, thus, she is a Yadav of Haryana or an OBC of Haryana.

19. According to the provision of reservation made vide notification dated 28.09.1993, the castes and classes enumerated in the notification dated

27.08.1993 issued by the State of Rajasthan alone are entitled to be appointed against the posts earmarked for Backward Classes.

20. The petitioner â?" Yadav by caste borne in Haryana is therefore not entitled to be considered as an OBC, as she is a Yadav of Haryana and not

from Rajasthan.

21. The writ petition and the stay petition are, thus, dismissed.