
(1974) 08 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 682 of 1973

Urmila Ginda

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-08-1974

Acts Referred:

Citation : AIR 1975 Delhi 115 : (1975) 11 DLT 57 : (1975) LabIC 1044

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : D.K. Kapur, D.P. Sharma, A.B. Saharia and K.B. Soni, for the Appellant;

Judgement

S. Rangarajan. J.

(1) The short but interesting question in this Writ Petition is whether the petitioner, who belongs to a high caste family (Malhotras of Punjab) and who married Fit. Ltd. C D. Ginda, who belongs to the Scheduled Caste (Adharmi community i.e.chamar). is also entitled to be treated as a Scheduled Caste candidate in respect of a public office reserved for backward communities, Scheduled Castes and Tribes.

(2) The marriage is said to have taken place on 15th January, 1969 (this fact has not been stated in the petition, but Shri D.K.,Kapur, learned counsel for the petitioner, states this from the bar and this fact has not been disputed. The petitioner graduated from the Delhi University and also passed the one year intensive .course in Russian from the Institute of Russian Studies, Jawaharlal Mehru University , New Delhi in the year 1966. When a post of Senior Russina-to-English Translator in the Ministry of defense in the scale of Rs. 325-575 was advertised she applied for that post. She took a written test on the basis of which she was called for interview on 13th June.1972. She was, however, selected for the post of Junior Russian/Baglish Translator in the scale of Rs. 125-350. She was placed as Serial number two on the panel of selected candidates which

consisted of two persons. The person who was Sr. No. 1 was appointed. When the petitioner made inquiries why she did not get the order of appointment she was told that the post was reserved for a Scheduled Caste Giandidate and that being a member of the higher caste herself she could not be given that post merely of the ground of her marriage with a Schedule Caste.

(3) There can be no doubt that the petitioner had become a Sapinda of her husband who belongs to the Scheduled Caste by virtue of her marriage. The distinction between Anuloma and Pratiloma marriages according to the traditional Hindu Law and the-difference of opinion that existed concerning whether the Pratiloma marriage was valid or not have lost their importance by reason of the Hindu Marriage Act; Section 4 prescribes that the provisions of this Act would apply notwithstanding any rule of Hindu Law or custom to the contrary; Section 5 permits any Hindu to marry another Hindu provided there is no disqualifying feature mentioned in that section, none of which is present in this case.

(4) On the question whether by reason of the petitioner becoming a Sapinda of her husband, by marriage, she can claim the benefit of being appointed to a post reserved for backward communities, Scheduled Castes and. Tribes there is no specific authority. By way of analogy a decision of the Supreme Court relating to an election to a seat reserved for Scheduled Tribes under the Representation of Peoples Act was referred to. A non-tribal lady had married a person belonging to the Munda tribe-a scheduled tribe-according to the tribes custom and she had also been, accepted by the tride as a member of that tribe by the elders of that tribe. The mere fact that the person who was so accepted as a member of the tribe was held sufficient to contest for a seat reserved for Scheduled Tribes. Grover, J., speaking for the Supreme Court in N.E. Horo v. Smt. Jahan Ara Jaipal Singh, found that once the marriage of a Munda male with a aon-Munda female is approved or sanctioned by the Parha Panchayat she became a member of the community and could contest for a reserved seat ; the lady had been assimilated in that community. The contention that a person could be a Munda by birth alone was rejected on the ground that no rigid custom of endogamy was established. Article 340 of the Constitution, employing the words "tribal communities", in addition to "tribes" was given a libaral interpretation ; it was held to include even members of the Munda tribe by marriage and not by birth alone. This decision was given in the context of allowing representation to a Scheduled Tribe on the basis of the tribe having accepted one in its fold. The situation here is total, different. The petitioner is a high caste Hindu who was not subject to any backwardness, either social or educational. Article 14 of the Constitution enjoins that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15(1) prohibits the State from discriminating against any citizen on ground of caste etc., but Article 15(4) says that the State shall not for this reason be prevented from making special provisions for the advancement of socially and educationally backward classes of citizens or belonging to the backward communities. Scheduled Castes and Tribes. Article 13 which ensures equality of opportunity for all citizens in

matters relating to public employment, states (vide sub-Article (4) that the State shall not be prevented in this respect from making any provision for the reservation of appointments or posts in favor of citizens who are backward and in its opinion are not adequately represented in- the services under the State.

(5) It is well understood that the Hindu theory of the husband and wife being one cannot be extended for secular purposes also ; her becoming, on her husband's death, the surviving half of her husband and her becoming the Sapinda of her husband are based on spiritual, not secular, considerations.

(6) Article 15 having placed a total ban on the State discriminating against any citizen on the ground only of caste etc., the State would not be able to make any reservation at all in respect of backward classes or of Scheduled Castes or Scheduled Tribes except to the extent permitted i.e. for helping social and educational advancement of members of such classes, castes or tribes. In other words, the Constitution does not enable the State to make any special provision de hors. Article 15 ; it can not make any except to the extent necessary for making special provision for the advancement of socially and educationally backward classes. The petitioner cannot obviously seek to take advantage of any special provision made by the State for the advancement of such classes of persons because she is not one of them--she is a high caste Hindu who was not subject to any such backwardness either socially or educationally.

(7) It seems to me that to permit a lady like the petitioner belonging to a higher caste to compete for a seat reserved for such socially and educationally backward class of people, merely by reason of her marrying a person belonging to such a caste, might even defeat the provision made by the State in favor of such socially and educationally backward classes by reserving certain posts for them. The special provision reserving a seat for Scheduled Castes would be nullified if a person not subject to educational or other backwardness is allowed to compete with those who are so handicapped. Even if it is not possible at the moment for the post reserved for backward communities and Scheduled Castes and Tribes to be filled up owing to non-availability of the candidates, the same has to be carried forward for at least two years according to the Home Ministry's Official Memorandum (No. 27/15/68- Estt Sct, dated 25th March, 1970). Shri D. K. Kapur, however, drew my attention to yet another Memorandum of the Ministry of Home Affairs dated 2nd September, 1964 (No.1/4/64-SCT(1)) stating that if there is only one vacancy it shall be treated as unreserved vacancy I do not see how it helps the petitioner in any way because this particular post, according to the case of both sides, has been treated as a reserved vacancy and the petitioner also is claiming that it is a reserved one.

(8) It must be conceded in fairness to the petitioner that she has not been shown to have married a person belonging to the Scheduled Castes merely for the purpose of seeking a reserved Government post. But for considering the question whether a person belonging to a higher caste can claim to be appointed to such a reserved post only by reason of marriage it seems necessary to even think of the

possibility of the same being abused .If it is to be held that a high caste wife marrying a Scheduled Caste husband would become a Scheduled Caste candidate entitled to such a reserved post it would be to let that person, who is not subjected to the same social or educational backwardness, to compete with those who are socially and educationally backward, to advance whom the Government makes such a special provision, as permitted by Article 15(4) of the Constitution.

(9) It was faintly argued by Shri D. K. Kapur, learned counsel for the petitioner, that the District Magistrate has given to the petitioner a certificate that by reason of her marriage with one belonging to the Scheduled Caste she belongs to that caste and that it is conclusive. I am afraid this is not so. Even some of the concerned officials seem to have been under the impression that the petitioner was entitled to apply for and be appointed to the reserved post in question, which probably led the petitioner to compete for it. But on a proper view of the legal position it is seen that by reason of such a marriage the petitioner cannot claim the reserved post in question. The petition is accordingly dismissed but in the circumstances without costs.