

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 22103 of 2009 (G)

PETITIONER:

**KRISHNAKUMAR, S/O. SUBBAYYAN
AGED 40 YEARS, PANANGATTUTHODIYIL S.V.K. HOUSE, CHOLAKULAM
SHORANUR P.O., OTTAPPALAM, PALAKKAD.**

BY ADV. SRI.S.GIRISH

RESPONDENTS:

- 1. THE TAHSILDAR,OTTAPPALAM**
- 2. THE DIRECTOR KIRTADS, KOZHIKODE -673 017.**
- 3. THE HEADMISTRESS, ST. THERESE, H.S.S.,
SHORNUR.**
- 4. THE VILLAGE OFFICER, SHORANUR-II,**
- 5. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY, SCHEDULED CASTE AND SCHEDULED
TRIBE (SC/ST) DEVELOPMENT DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.SANKARANARAYANAN
BY SPECIAL GOVERNMENT PLEADER SMT. LALY VINCENT**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31.07.2015,
THE COURT ON 20-08-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 - COPY OF THE RELEVANT PAGES OF THE SERVICE BOOK.
- EXHIBIT P2 - COPY OF THE ELECTORAL I.D. CARD ISSUED BY THE ELECTION COMMISSION OF INDIA.
- EXHIBIT P3 - COPY OF THE FRONT PAGE OF THE S.S.L.C. BOOK OF THE PETITIONER.
- EXHIBIT P4 - COPY OF THE ELECTORAL I.D. OF THE PETITIONER.
- EXHIBIT P5 - COPY OF THE TRANSFER CERTIFICATE ISSUED BY THE KALMANDAPAM U.P. SCHOOL.
- EXHIBIT P6 - COPY OF THE FORM OF CASTE CERTIFICATE ISSUED DATED 03.08.1998 BY THE 1ST RESPONDENT.
- EXHIBIT P7 - COPY OF THE COMMUNICATION DATED 10.07.2009 MADE BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P8 - COPY OF THE FORM OF CASTE CERTIFICATE ISSUED DATED 03.05.2005 BY THE 1ST RESPONDENT.
- EXHIBIT P9 - COPY OF THE FORM OF CASTE CERTIFICATE ISSUED DATED 11.05.2007 BY THE 1ST RESPONDENT.
- EXHIBIT P10 - COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER'S ELDER DAUGHTER.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.22103 of 2009

Dated this the 20th day of August, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's daughter has not been issued with a Caste Certificate showing her as belonging to the Scheduled Caste, 'Hindu Chakkiliyan'. The admitted case is that the petitioner's father late Subban @ Subbayyan originally belonged to Pollachi in Tamilnadu, from where he migrated to Palakkad in Kerala in the year 1958, obviously after the Constitution (Scheduled Caste) Order, 1950. The petitioner claims that he being a Hindu Chakkiliyan, which is a caste scheduled as per the aforesaid Constitution Order for the State of Kerala, the petitioner and his children are entitled to reservation.

2. In ***Action Committee v. Union of India [(1994) 5 SCC 244]***. The issue raised was with respect to persons belonging to a Scheduled Caste/Scheduled Tribe in relation to

one State, who migrates to another State, where a caste or tribe of the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or Scheduled Tribe. Whether the person who migrated from one State to the other would be entitled to the SC/ST benefits in the other State, was the question raised. The inclusion of a particular Caste or Tribe in the Schedule by the President in consultation with the Governor of a particular State, for that State, was specifically noticed; to find that such inclusion is based on the conditions and circumstances in which the particular caste or tribe members live in that State. The concept of reservation was reiterated to be one to ensure equality to those persons who suffered such disadvantages in their life, due to the reason of their belonging in a particular caste or tribe, which disadvantage was sought to be effaced by the privilege of reservation; intended at providing them a benefit so as to make their conditions equal with that of the other communities in that area who do not suffer from such disadvantages. This aspect of disadvantageous start in life could not be imported into a State to which a member of such

Scheduled Caste or Scheduled Tribe migrates, since then the individual who migrated would be impairing the chances of those Scheduled Castes or Scheduled Tribes notified for that particular 'area/State'. It was held so in paragraph 16:

“We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given state would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States by the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in the State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled caste of the latter State “for the purposes of this constitution”. This is an aspect which has to be kept in mind and which was

very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr.Jaipal Singh, Dr.Ambedkar answered as under:

“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal area or scheduled areas, in areas other than those which are covered by them. ...”.

Relying on this statement the Constitution bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin”.

3. The question was answered against the petitioner/

Committee who sought for such benefit in the migrated State also. Hence, despite the fact that, on migration to a State wherein the very same caste was included in the Scheduled Caste list of that State, a person belonging to another State of the same caste was held to be disentitled to claim the status of such caste or tribe in the migrated State. This was on the premise that the inclusion in a particular State was on a consideration of the backwardness of that caste or tribe in that State and was intended at uplifting the members of the caste or tribe in that State so as to make them equal with the other communities.

In such circumstances, the petitioner's father, who was a native of Tamilnadu and who migrated to Kerala, cannot claim Scheduled Caste status within the State of Kerala.

The writ petition hence would stand dismissed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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