

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9112 OF 2014

Union of India

.. Petitioner

Vs.

Mrs. Sharda Sunil Lokhande

.. Respondent

....
Mr. T.J. Pandian Advocate for Petitioner
Mrs. Kranti J. Kamble Advocate for Respondent
....

**CORAM : D.H.WAGHELA CHIEF JUSTICE &
SMT.V.K.TAHILRAMANI, J.**

DATE : FEBRUARY 15, 2016

ORAL ORDER [PER SMT. V.K. TAHILRAMANI, J.]:

1 Heard learned counsel for both sides. Rule. By consent, Rule is made returnable forthwith and petition is taken up for final hearing.

2 The facts in nutshell, are as under:

(i) Railway Recruitment Cell of Central Railway published advertisement on 24.5.2007 to fill up group "D" posts in

Central Railway. Pursuant to the said advertisement, the respondent submitted her application in the prescribed format. It is an admitted fact that the respondent qualified in the primary eligibility test followed by the main written examination and the personal interview. Respondent had claimed reservation under Scheduled Caste Category and also age relaxation on the ground that though she belonged to Other Backward Classes category (OBC) by birth, she had married a person belonging to Scheduled Caste.

(ii) The respondent herein received order dated 25.6.2012 issued by original Respondent no.4 The Assistant Personnel Officer informing her that she has been selected by the Railway Recruitment Cell and the respondent herein was asked to attend the office along with the original documents showing her Caste Certificate and educational qualification etc. for appointment to group "D" post. However, the respondent was not given the appointment order on the ground that she did not qualify for the category of Scheduled Caste by virtue of her marriage with a person belonging to Scheduled Caste.

(iii) The respondent then preferred Original Application No. 488 of 2013 before the Central Administrative Tribunal, Mumbai seeking direction to be issued to the Respondents therein i.e. Union of India to give her posting in group "D" category in Central Railway as early as possible. The said Original Application came to be allowed and the Respondent therein i.e. present petitioner was directed to issue appointment and posting order in favour of Smt. Sharda Sunil Lokhande i.e. respondent herein as group "D" employee treating her as belonging to the category of O.B.C. and under the reserved quota for the said category, within a period of four weeks from the date of receipt of the order. It was further directed that in case, there was no vacancy in the said category of O.B.C., the appointment order be issued immediately after the vacancy is created in the said category by virtue of any reason. Being aggrieved by the order passed by the Tribunal, this petition has been preferred.

3 The learned counsel for the petitioner submitted that the respondent had applied in the S.C. category and it was revealed that the petitioner did not belong to S.C. category and

in such case, the Tribunal ought not have passed direction to give posting to the respondent in O.B.C. category. The learned counsel for the petitioner submitted that the respondent by birth belonged to O.B.C. and on account of marriage to a person belonging to S.C., she could not claim that she belonged to S.C. category. He submitted that person belonging to S.C. or S.T. will continue to be so even after his / her marriage with a person who is not from S.C. or S.T. category and conversely a person belonging to non-Scheduled Caste or non-Scheduled Tribe will not acquire the S.C. / S. T. status by virtue of his / her marriage to a person belonging to S.C. / S.T. It was contended by the learned counsel for the respondent that the respondent was unaware of the fact that she could not acquire S.C. category status only by virtue of her marriage with a person belonging to that category and she had bonafide mentioned her caste as that of her husband. This was done on account of lack of knowledge of legal position and there was no suppression of facts nor any misrepresentation.

4 It is not disputed that the respondent belonged to O.B.C. by birth, but, she is married to a person belonging to

S.C. category. There was no misrepresentation nor any suppression of facts by the respondent, particularly of her parental caste and caste of her spouse, nor was any wrong or false information given by the respondent. Reliance was placed by the learned counsel for the respondent on the Caste Certificate of the respondent. Annexure RJ-1 to the Caste Certificate states that since the respondent belongs to O.B.C. by birth and got married to the person belonging to S.C. category, the couple, as well as progeny, is eligible for getting concession admissible to S.C. category. It was under this mistaken belief that the respondent applied under the S.C. category. It is pertinent to note that the respondent did not submit any caste certificate to show that she belonged to Scheduled Caste.

5 The respondent admittedly belonged to O.B.C. category. The age limit for general category was between 18 to 33 years and the relaxation in age limit by three years was given to O.B.C. candidate. The date of birth of the respondent was 18.5.1971 and the cut-off date was 1.5.2007 for relaxation in age. Thus, her age was about 33 years 11 months and 12

days on the cut-off date. Looking to the fact that the respondent admittedly belonged to O.B.C. category and the fact that there was no misrepresentation or suppression of facts by her and considering that she was eligible in all other respects for being appointed to group "D" post, we see no reason to interfere with the order of the Tribunal, hence, Rule is discharged.

[SMT. V.K.TAHILRAMANI,J.]

[CHIEF JUSTICE]