

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 2471 of 2016 (O&M)
Date of decision: 21.12.2016

Bhavna Saini

.....Appellant

Vs.

Haryana Staff Selection Commission and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Alok Jain, Advocate, for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant under Clause X of the Letters Patent against the order dated 13.6.2016 passed by learned Single Judge in CWP No.15128 of 2014 quashing her appointment as Junior Coach, Table Tennis, Sports and Youth Department, Haryana and order dated 21.11.2016 dismissing the review application.
2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Case of the appellant is that she is a Table Tennis player since the year 1993 from Rohtak. She has been awarded National School Games Award. She has participated in various Table Tennis events at National levels and won several medals. She belonged to Brahmin caste before marriage. In the 12th examination and graduation level degree, her name was recorded as Bhavna Sharma and her father's name as Shri Radhey Krishan Sharma. The Diploma in Sports coaching obtained in May 2003 records Bhavna Saini and father's name as R.K.Sharma. Before marriage in all her sports achievements certificates, her

name was appearing as Bhavna Sharma. At the age of 18, she got married to Shri Vikas Saini who was also a Table Tennis player. All these certificates were produced while applying for the post of Junior Coach (Table Tennis) under Backward class category in pursuance to advertisement dated 8.8.2013. Since 'Saini' caste comes in backward class in Haryana, therefore, her husband Vikas Saini was entitled to benefits of backward class. After her marriage, the appellant started writing her name as Bhavna Saini and in all her certificates, her name was appearing as Bhavna Saini. Accordingly, the appellant was issued Backward class caste certificate by the Tehsildar, Rohtak dated 28.7.2004, Annexure A.9, which was got verified by the Directorate of Sports and Youth Affairs, Haryana and the same was found to be genuine. The appellant applied for the post of Junior Coach on the strength of the aforesaid caste certificate. According to the appellant, in the absence of impleadment of State of Haryana as party, the concerned relevant record could not be produced for perusal of this Court. The appellant was employed as Table Tennis Coach in Scholars Roasary High School since 2007. She was also pursuing private coaching career and had an established Friends Table Tennis Academy at Rohtak but had to close it down because of her selection as Junior Coach (Table Tennis) in Directorate of Sports and Youth Affairs Department, Haryana. According to the appellant, although five posts were advertised in the field of Table Tennis but candidates in backward class alone were available leading to selection of the appellant and rest of the posts in Scheduled caste category continue to be vacant. These posts are lying vacant for the last more than 15 years for want of tennis players belonging to this category. Respondent No.3 could be adjusted against one of these posts. The appellant avers that the Directorate of Sports and Youth Affairs Department Haryana has advertised 34 posts in

general category vide advertisement No.11/2015, Annexure A.12. The written examination for the said post is now scheduled for 25.12.2016. The appellant being a distinguished sports player and a coach can be adjusted against one of such posts. According to the appellant, the issue whether a person after marriage to a Scheduled Caste or backward class person will also be entitled to benefits, has been referred by the Apex court to a larger bench and therefore, quashing of her appointment has resulted in serious prejudice to her particularly when the State of Haryana or appointing authority i.e. Director, Sports and Youth Affairs, Haryana had not been impleaded. The review application filed by the appellant was also dismissed by the learned Single Judge vide order dated 21.11.2016. Hence the instant appeal by the appellant.

3. Learned counsel for the appellant submitted that the learned Single Judge erred in quashing the appointment of the appellant and appointing respondent No.3 under BC-B category being in the waiting list at Sr.No.1. Learned counsel further submitted that the State of Haryana being the necessary party was not impleaded in the writ petition. Reliance was placed on judgments in *Shri Ranjeet Mal vs. General Manager, Northern Railway Baroda House, New Delhi and another*, (1977) 1 SCC 484, *Chief Conservator of Forests, Govt. of AP vs. Collector and others*, (2003) 3 SCC 472, *New India Assurance Company and another vs. Rita K.Singh and another*, LPA No.941 of 2012, decided on 10.7.2012 (P&H), *Dattu vs. State of Maharashtra and others*, (2012) 1 SCC 549, *Ranjana Kumari vs. State of Uttaranchal and others*, (2013) 14 SCC 710, *Valsamma Paul (Mrs.) vs. Cochin University and others*, (1996) 3 SCC 545 and *Rameshbhai Dabhai Naika vs. State of Gujarat and others*, (2012) 3 SCC 400.

4. We have heard learned counsel for the appellant.

5. It is the admitted position that the appellant belonged to Brahmin caste before her marriage. She was married to a person belonging to Backward class caste. She even got the certificate issued from the Tehsildar, Rohtak which was got verified by the Director of Sports and Youth Affairs, Haryana. In pursuance to the advertisement No.1/2013, the appellant as well as respondent No.3 applied for the post of Junior Coach Table Tennis. Respondent No.3 belonged to BC-B category and was interviewed on 17.12.2013. The result was declared. Respondent No.3 was placed in the waiting list at Sr.No.1 while the appellant was shown selected for the said post. Aggrieved thereby, respondent no.3 approached this court through Civil Writ Petition for quashing the appointment of the appellant. Upon notice, the appellant did not file any reply inspite of opportunity. After examining the matter and relying upon the law laid down by the Supreme Court, it has been concluded by the learned Single Judge that the appellant who was Brahmin and was married to a backward class person and appointed in the BC-B category could not get the benefit of being appointed against the post meant for reserve category on the basis of her marriage. Accordingly, the writ petition was allowed and the appointment of the appellant was quashed and direction was issued to the respondents to appoint respondent No.3 under BC-B category being in the waiting list at Sr.No.1 by relying upon judgment of the Apex Court in *Valsamma Paul's* case (supra). The relevant findings recorded by the learned Single Judge read thus:-

“Reference at this stage can be made to a judgment of this Court in a case of *Rita K. Singh and another v. New India Insurance Company, 2012(3) PLR 265* wherein petitioner was issued a scheduled caste certificate on the basis of her marriage with a person belonging to Scheduled caste and was appointed as Assistant against a reserved post in the year 1987.

Subsequently, petitioner was dismissed from service as she could not produce a schedule caste certificate from parental side. This Court relied upon a judgment of Hon'ble the Supreme Court in cases of ***Mrs. Valsamma Paul vs. Cochin University and others, AIR 1996 Supreme Court 1011*** and allowed the writ petition only on the ground that she had not secured benefit by any false certificate at that time. In para 4, it has been observed as under:-

4. The Hon'ble Supreme Court was, therefore, allowing for continuation in employment of the person whose certificate had been withdrawn and had only denied such a candidate the benefit of taking any future advantage of reservation in future. In the present context, I would hold that the denial of the caste status could be attached only to any further career prospects for promotion which are reserved for Schedule Caste candidates or any other benefit that she could take on such a status.”

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Mrs. Valsamma Paul vs. Cochin University and others, AIR 1996 Supreme Court 1011*** wherein Hon'ble the Supreme Court was examining a case of a lady who had married in backward class. The question before Hon'ble the Supreme Court was whether a candidate by marriage, adoption or obtaining a false certificate of social status would be entitled to an identification as such member of the class for appointment to a post reserved under Article 16(4) or for an admission in an educational institute under Article 15(4). Hon'ble the Supreme Court dismissed the appeals and held that at the time when the petitioner was appointed the law permitted persons to be assimilated in scheduled caste category and consequently held that change in the statement of the law after so many years would not justify termination of her services. Similarly, in the case of ***Dattu (supra)*** the Hon'ble Supreme Court upheld the order declaring the petitioner to be non-scheduled tribe, but granted limited relief to the petitioner and his sister since they had also got

admission without making any concealment of fact and had appeared in the examination. It was in these circumstances the Hon'ble Supreme Court, even while dismissing their appeal, permitted the petitioner to get the benefit of admission under the scheduled caste category for the purposes of the exam which they had already given. In para 33, it has been observed as under:

“In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu,IT (1995) 3 SC 563 and R. Chandevaram v. State of Karnataka,IT (1995) 7 SC 93, this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education,employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs. he/she must of necessity also undergo have had same the handicaps, and must have been subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15 (4) or 16(4), as the case may be. Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.”

In the present case, respondent No. 3 who was brahmin and was married to a backward class person was appointed in the

B.Cb category, pursuant to advertisement No. 1/2013, category No. 15. The certificate has been issued to her, which as per judgment of Hon'ble the Supreme Court, could not have been issued to her and she could not get the benefit of being appointed against the post meant for reserve category.”

Learned counsel for the appellant has not been able to produce any material on record to show that the findings recorded by the learned Singh Judge are illegal or erroneous. He has also not been able to show any decision contrary to the law laid down by the Apex Court. Equally, non-impleadment of State of Haryana as a party-respondent could not be held to be fatal to the decision of the writ petition.

6. Adverting to the judgments relied upon by the learned counsel for the appellant, it may be noticed that in *Shri Ranjeet Mal's* case, the Union of India was held to be a necessary party to be impleaded in a writ petition by the employee challenging removal from service by the railway administration. In *Chief Conservator of Forests's* case (supra), it was held that the State concerned was necessary party in a dispute relating to property of the State and must be impleaded in the suit or proceeding. In *New India Assurance Company's* case (supra), in the absence of any fraud and misrepresentation on behalf of the writ petitioner, the order of dismissal on the basis of the caste certificate was held to be unsustainable. In *Dattu's* case (supra), it was held that the advantages derived by the petitioners on the basis of their caste certificate shall remain undisturbed. However, they will not be entitled to take any further advantage of reservation in future either for studies or for employment. In *Ranjana Kumari's* case (supra), the issue whether the appellant who belonged to a Scheduled Caste person in the State was entitled to the benefit of reservation after marriage to a person belonging to scheduled caste and that particular caste fell in the same

reserved category in the State of migration whereof she was a permanent resident. The issue was referred to larger Bench. In *Valsamma Paul*'s case (supra), claim was made on the basis of voluntary mobility to reserved class through inter caste/inter religion marriage or adoption. It was held that it would not ipso facto entitle the lady/adoptee to claim reservation under Article 15(4) or 16(4) as the case may be in view of the advantageous start in life availed by her/him. In *Rameshbhai Dahai Naika*'s case (supra), the question before the Apex Court was of status of offspring of inter caste or tribal-non-tribal marriage. The caste of father was held to be not determinative factor in all cases. It was further held that caste of offspring was essentially a question of fact which could not be determined in complete disregard to attending facts of the case. All these decisions are based on individual fact situation involved therein. However, each case has to be decided on its own facts. Consequently, the appellant cannot derive any benefit from the said decisions.

7. In view of the above, we do not find any error in the view taken by the learned Single Judge. Consequently, finding no merit in the appeal, the same is hereby dismissed. In view of the dismissal of the appeal, civil miscellaneous application for condonation of delay of 155 days in filing the appeal is left open.

(Ajay Kumar Mittal)
Judge

December 21, 2016
'gs'

(Ramendra Jain)
Judge

Whether reasoned/speaking order

Yes/No

Whether reportable

Yes