

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 08..08..2017

Order Pronounced on : 18..08..2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

Writ Petition No.36445 of 2007

and
M.P.No.1 of 2007

Mrs.Sumathy Rajan

..... Petitioner

-Versus-

1.The District-Level Vigilance Committee,
Chennai 600 001,
Rep. By its Chairperson

2.The General Manager,
Southern Railway,
Chennai 600 003.

..... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to proceedings of the 1st respondent in N.K.U.5/66990/2004 and to quash the order dated 02.11.2007 passed by the 1st respondent.

For Petitioner : Mr.P.V.S.Giridhar
For M/s.P.V.S.Giridhar
Associates

For Respondents : Mr.M.Elumalai, Government
Advocate for R1

Mr.R.Thiagarajan,
Senior Counsel for
Mr.P.T.Ramkumar, Standing
Counsel for Railways for
R2

ORDER

P.D.AUDIKESAVALU, J.

The petitioner in this Writ Petition challenges the order No.N.K.U.5/66990/2004 dated 02.11.2007 passed by the District Level Vigilance Committee, Chennai cancelling her Community Certificate bearing No.NM11270/04 dated 04.06.2004 issued by the Tahsildar, Egmore-Nungambakkam, Chennai, as belonging to Hindu Pulayan Community which has been notified to be a Scheduled Caste.

2. The petitioner had been earlier issued a Community Certificate dated 28.10.1987 by the Tahsildar, Coimbatore as belonging to the Hindu Pulayan Community, which is recognized as Scheduled Caste. In that Community Certificate, there is also an endorsement to the following effect:-

"The applicant belongs to Hindu-Nair Community. Her husband belongs to Hindu-Pulaya Community. They married on 28.05.1986 at Guruvayoor and they were considered as Inter Caste Marriage Couple. Necessary Certificate obtained from the District Adi Dravidar Welfare Officer."

On the strength of that Scheduled Caste Community Certificate, she had secured employment as Office Clerk Gr.I on 28.01.1991 with the 2nd respondent viz., Southern Railways, as against a vacancy exclusively reserved for persons belonging to Scheduled Castes. While she had been in service, as a doubt arose on the genuineness of her Community Certificate, produced at the time of the appointment, the 2nd respondent directed the petitioner to produce a fresh Community Certificate. Accordingly, she had obtained another Community Certificate dated 04.06.2004 as belonging to Hindu Pulayan Community, which is notified as a Scheduled Caste, from the Tahsildar, Egmore-Nungambakkam Taluk, Chennai. Not being satisfied with the same, the 2nd respondent referred the matter for verification. The District Level Vigilance Committee by order dated 02.11.2007 cancelled the Community Certificate of the petitioner dated 04.06.2004, which is impugned in this writ petition.

3. The 2nd respondent has filed a counter affidavit contending, inter alia, that the petitioner who by birth belonged to a Forward Community cannot get the status of the scheduled caste simply because of her marriage with a person belonging to Scheduled Caste Community.

4. Heard the learned counsel appearing for the Petitioner, the learned Government Advocate appearing on behalf of the 1st respondent and the learned senior counsel appearing for the 2nd respondent and perused the records.

5. The learned counsel for the petitioner strenuously contended that inasmuch as there has not been any misrepresentation on the part of the petitioner in obtaining the Scheduled Caste Community Certificate dated 28.10.1987 from the Tahsildar, Coimbatore, after disclosing the specific fact that she claimed Scheduled Caste status only on the basis of her marriage with Sri.Rajan, who belongs to Hindu Pulayan Community, which has been notified as Scheduled Caste, the District Level Vigilance Committee was not justified in cancelling her Scheduled Caste Community Certificate. In order to buttress the claim that though the petitioner did not belong to Scheduled Caste by birth, she was entitled to be treated as a Scheduled Caste on her marriage with a Scheduled Caste person, the learned counsel for the petitioner cited the decision of the Hon'ble Supreme Court in N.E.Horo v. Smt.Jahan Ara Jaipal Singh [AIR 1972 SC 1840], in which it has been held as follows:-

"23. We may also refer to Article 330 of the Constitution according to which the seats reserved for the Scheduled Tribes are to be reserved in the House of the People, inter alia, for members of these Tribes. Under S.33(2) of the Act a candidate for a reserved seat has to file a declaration specifying a particular caste or tribe of which he is a member. Article 342(1) empowers the President to specify 'the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall, for the purposes of the Constitution, be deemed to be Scheduled Tribes in relation to the State or Union territory as the case may be. In Parts 1 to 12 of the Schedule to the Constitution (Scheduled Tribes) Order 1952 are specified the tribes or tribal communities or parts of or groups within the tribes or tribal communities who are to be deemed to be Scheduled tribes. Munda is one of such specified tribes or tribal communities. It can well be said that the term "tribal community" has a wider connotation than the expression "tribe". A person who,

according to the strict custom of a tribe cannot be regarded as a member of that tribe may well be regarded as a member of that tribal community. Where a non- Munda woman is married to a Munda male and the marriage is approved and sanctioned by the Parha Panchayat of that tribe and the marriage is valid she may not, on the assumption that the rule of endogamy prevails, become a member of the Munda tribe in the strict sense as not having been born in the tribe. She cannot, however, be excluded from the larger group, namely, the tribal community. The High Court has taken the view that the use of the term "tribal communities" in addition to the term "tribes" in Article 342 shows that a wide import and meaning should be given to these words and even if the respondent is not a member of the Munda tribe by virtue of birth she having been married to a Munda after due observance of all formalities and after obtaining the approval of the elders of the tribes would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile. Even without invoking the doctrine of domicile the respondent's marriage with late Shri Jaipal Singh who was a Munda having been approved and sanctioned by the Parha Panchayat of the Munda tribe it can be said that she became a member of the Munda tribal community. We have not been shown any infirmity in the reasoning of the High Court on this point. When a person, in the course of time, has been assimilated in the community it is somewhat difficult to comprehend how that person can be denied the rights and privileges which may be conferred on that community even though tribal by constitutional provisions."

It is pointed out by the learned counsel for the petitioner that the Hon'ble Supreme Court of India by a subsequent judgment in Valasamma Paul v. Cochin University and others, [(1996) 3 SCC

545], after considering the aforesaid decision in N.E.Hora's case and other subsequent judgments had held as follows:-

"34. 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."

It is submitted by the learned counsel for the petitioner that inasmuch as the Scheduled Caste Community Certificate of the petitioner had been issued in the year 1987 on the basis of a ruling of the Apex Court which was then holding the field, and had enabled the petitioner to secure an employment in the year 1991, it would not be equitable to deprive her of that Scheduled Caste Community status on the basis of the subsequent ruling of the Apex Court of the year 1996 that has the effect of forfeiting her employment.

6. Per contra, it is pointed out by the learned Senior Counsel appearing for the second respondent that the declaration of law by the Hon'ble Supreme Court of India under Article 141 of the Constitution of India is always retrospective unless made specifically prospective and that as there is nothing indicated to that effect in the subsequent ruling, it would necessarily follow that the petitioner cannot claim any benefit to continue in employment on the basis of the overruled decision.

7. We have duly considered the submissions made on either side.

8. A Bench of Three-Judges of the Hon'ble Supreme Court of India in Sobha Hymavathi Devi v. Setti Gangadhara Swamy

and others [(2005) 2 SCC 244], on noticing the contradictions in the decisions of the two Division Benches of the Hon'ble Supreme Court of India in N.E.Hora v. Smt.Jahan Ara Jaipal Singh, [AIR 1972 SC 1840] and Valasamma Paul v. Cochin University and others, [(1996) 3 SCC 545], held that the constitutional reservations intend to benefit the really underprivileged and not those who come to the caste by way of a marriage, and to that extent, the decision in N.E.Horo's case, which runs counter to that view, cannot be accepted as correct, and categorically laid out that the recognition of a lady as a member of a Backward Class Community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution of India for the reason that she as a member of the forward caste, had an advantageous start in life and a marriage with a male belonging to a backward class, would not entitle her to the facility of the reservation given to a Backward Class Community. There is nothing indicated in that binding ruling that it would be only prospective in operation.

9. In this context, it would be necessary to recapitulate the unassailable legal position regarding retrospectivity of declaration of law by a binding ruling of the Hon'ble Apex Court under Article 141 of the Constitution of India as held in M.A.Murthy v. State of Karnataka [(2003) 7 SCC 517], which reads as follows:-

"8. ... the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath v. State of Punjab [AIR 1967 SC 1643]. In Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases.

(See Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433] .) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. ..."

(emphasis

supplied)

Hence, it would not be possible to adopt equitable considerations to sustain the Scheduled Caste Community Certificate that had been obtained by the petitioner, who admittedly does not belong to Scheduled Caste by birth and had claimed such status only on account of her marriage with a person belonging to Scheduled Caste.

10. That apart, a Three Judge Bench of the Hon'ble Supreme Court of India in R.Viswanatha Pillai Vs. State of Kerala [(2004) 2 SCC 105] has ruled that the invalidation of the caste or tribe claimed, upon verification, would result in the appointment or admission, as the case may be, being rendered non est or void ab initio. Reiterating the same legal position in Chairman and Managing Director, FCI v. Jagdish Balaram Bahira [Civil Appeal No.8928 of 2015 etc, judgement dated 06.07.2017], another Bench of Three-Judges of the Hon'ble Supreme Court has held that the exception to the above doctrine was in those cases where that Court exercised its power under Article 142 of the Constitution to render complete justice. In State of Punjab Vs. Rafiq Masih (Whitewasher) [(2014) 8 SCC 883], another Three Judge Bench of the Hon'ble Supreme Court of India has held that the directions of that Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. In such circumstances, the reliance placed by the learned counsel for the petitioner on certain other decisions where benefits arising out of employment had been protected to persons whose Caste Certificate had been cancelled, cannot be of any avail.

11. In the light of the aforesaid incontrovertible legal position coupled with the facts of the present case, we do not find any infirmity in the order bearing No.NM11270/04 dated 04.06.2004 passed by the District Level Vigilance Committee, Chennai / first respondent cancelling the Scheduled Caste Community Certificate of the Petitioner and resultantly, the Writ Petition stands dismissed without any order as to costs. The interim order granted by this Court in M.P.No.1 of 2007 on 04.12.2007 stand vacated and consequently that miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmk / rns

To

- 1.The Chairperson, District-Level Vigilance Committee,
Fort.ST.George, Secretariate, Chennai.
- 2.The General Manager, Southern Railway,
Chennai 600 003.

+lcc to PVS Gridhar Associates, S.R.No.59643

+lcc to Mr.P.T.Ravi Kumar, Advocate, S.R.No.59563

सत्यमेव जयते

W.P.No.36445 of 2007

GN(04/09/2017)

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