



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13982 of 2017

P.Afsaana

... Petitioner

Vs.

1.The Managing Director,
State Bank of India,
Central Recruitment and Promotion
Department,
Corporation Centre, Tulsiani Chambers,
1st Floor (West Wing) 212, Free
Press Journal Marg, Nariman Point, Mumbai 400 021.

2.The General Manager,
State Bank of India,
No.16, College Line, Local Head Office,
Nungambakkam, Chennai-600 006.

3.The Assistant General Manager (HR),
Trichy Zone, State Bank of India,
No.7C, McDonalds Road,
Cantonment, Trichirappalli-1.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to consider appointing the petitioner as the Assistant under the respondents Banks at the earliest as per the order of offer of appointment issued by the third respondent vide order No.HR:RC:491 dated 16.05.2017 without insisting the petitioner to produce SC Community Certificate in the present name of Afsaana.

For Petitioner : Mr.R.Narayanan

O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The petitioner belonged to Schedule Caste community. She applied for the post of Clerical Staff (Assistants) in State Bank of India for the vacancies that arose in the year 2008. She attended the written examination held on 06 July 2008. She was called for interview on 14 October 2008. She was selected for the post of Clerical Cadre (Assistants) subject to completion of the formalities. She was medically examined and it was reported that she was not having vision in one eye. On this ground, she was denied employment. This was challenged by the writ petitioner



herein by filing WP(MD) No.7468 of 2010. The said writ petition was taken up for disposal on 04.01.2017.

2.The learned Single Judge after hearing both parties sustained the stand of the respondent bank which bars candidates having vision in only one eye from being appointed either in the clerical cadre or in the officers cadre. The revised guidelines of the respondent bank issued in this regard were considered by the learned Single Judge who took the view that the bank cannot be compelled to appoint the writ petitioner in the clerical post. However, taking note of the fact that the writ petitioner is a well qualified person who had proved her eligibility by successfully clearing the selection test held earlier, the Court felt that a beneficial approach should be adopted by the bank. This was all the more so, in view of the passing of the welfare legislation, namely, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The writ petition was disposed of with the following directions.

"12.In the result, this writ petition is disposed of with the following directions :

(i) That the impugned order is sustainable and it needs no interference.

(ii) The petitioner shall be at liberty to make any application to the respondent Bank to seek any suitable post, even an inferior Class IV post, if she is advised to do so and once such an application is made by the petitioner, the respondent Bank is directed to consider the same sympathetically, taking in mind that the petitioner is a qualified person, as she has cleared the written as well as oral test conducted by the respondent bank for the said recruitment and pass a reasoned order thereon. No costs."

3.Following the disposal of the said writ petition, the writ petitioner herein submitted a letter dated 11.04.2017 to the Deputy General Manager, State Bank of India, Local Head Office, Chennai. The manner in which the writ petitioner described herself in the letter is significant. She described herself as "P.Archana D/o. V.Perumal), A.505, Trichy Towers, Chandrasekarpuram, Salai Road, Trichy - 18".

4.The Chief Manager, (H.R), Trichy Zone, State Bank of India, informed the writ petitioner vide communication dated 16.05.2017 that she has been short listed for appointment in the Bank in the Clerical Cadre as "Junior Associates (Customer Support & Sales)" subject to successful completion of required formalities by the writ petitioner. The writ petitioner was directed to call upon the said official on 22.05.2017 at 10.00 a.m for completion of joining formalities. Thereafter, the writ petitioner sent a letter dated 22.05.2017 informing the bank that she got married to one S.Javith Arned on 07.08.2014 and that she had changed her name as Afsaana. She however claimed that though she had changed her name as Afsaana,



she was still following her parental pattern of life.

5. According to the writ petitioner, the offer of appointment was based on her educational qualification and the status that prevailed in 2008. She expressed the hope that her status at the said period alone would be taken into account. However, the respondent bank made it clear that the writ petitioner's candidature under SC category would be considered for acceptance subject to submission of a fresh community certificate in her present name from the competent authority. It is this communication dated 10.07.2017 which is under challenge in this writ petition.

6. Heard the learned counsel for the writ petitioner.

7. The writ petitioner's principal contention is that the cause of action is of the year 2008 and that therefore her claim for appointment in the respondent Bank should be considered only with respect to the position that then prevailed.

8. We have carefully gone through the entire materials on record. The petitioner applied for appointment in the respondent Bank for the post of Assistant in the clerical cadre only under the reserved category. In view of her lack of vision in one eye, she could not be given appointment. This denial of appointment on the strength of the revised guidelines of the Bank was affirmed by this Court in its order dated 04.01.2017 in W.P.(MD).No.7468 of 2010. The said order has become final. All that this Court directed was that since the petitioner shall be at liberty to make an application to the respondent Bank to seek any suitable post, even an inferior Class IV post, if she is advised to do so and once such an application is made by the petitioner, the respondent Bank was to consider the same sympathetically. Therefore, there is no merit in the contention that the status of the petitioner in 2008 should alone be taking into consideration. Since the order impugned in this writ petition is pursuant to order made in W.P.(MD).No.7468 of 2010 dated 04.01.2017, the position that is currently prevailing alone has to be considered.

9. The petitioner has fairly admitted that even though she was born to Scheduled Caste parents, she married one Mr. Javid Ahamad on 07.08.2014. Prior to her marriage, she had converted to Islam with the name of Afsaana on 06.05.2014. Thus, P. Archana became P. Afsanna. This was duly published in the Tamil Nadu Government Gazette No.24 dated 25.06.2014. In other words, the writ petitioner had openly renounced Hinduism and embraced the religion of Islam.

10. It is well settled that when there is conversion from Hinduism to a religion like Christianity or Islam, the original caste remains under eclipse. The eclipse would disappear and the original caste would automatically revive only when the person reconverts to the Hinduism. This proposition laid down in categorical terms in **Kailash Sonkar vs Smt. Maya Devi (1984) 2 SCC 91** has been consistently followed and affirmed even recently in **R.P. Manu vs. Chairman, Scrutiny Committee for Verification of Community Certificate (2015) 4 SCC.**



11. The learned counsel appearing for the petitioner faintly contented that there are observations of the Hon'ble Supreme Court in ***E.V.Chinnaiah vs State of Andhra Pradesh and Others*** reported in **(2005) 1 SCC 394** to the effect that a person does not cease to be a Scheduled Caste automatically even on his conversion to another religion. The said contention is not sustainable. Article 366(24) of the Constitution of India reads as under : -

"24. "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution;"

Article 341 of the Constitution of India reads as under : -

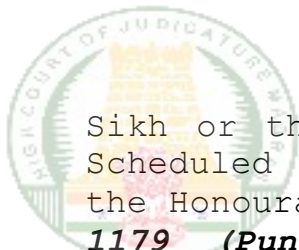
341. Scheduled Castes :

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

12. These articles have been considered in several decisions of the Hon'ble Supreme Court. We shall refer to the decision in ***Srish Kumar Choudhury vs. State Of Tripura And Ors (1990) SUPPLEMENT SCC 220***. The Hon'ble Supreme Court after referring to the earlier authorities held that the entries in the Presidential Order have to be taken as final. It is not open to the Court to make any addition or subtraction from the Presidential Order. Earlier Constitution Bench decisions reported in ***AIR (1965) SC 1269 (B.Basavalingappa vs D. Munichinnappa)*** and ***AIR (1965) SC 1557 (Bhaiyalal vs Harikishan Singh And Others)*** have held that while enquiry is contemplated before making the Presidential Order but any amendment to the Presidential Order can only be made by the legislation. Similarly, the three Judges Bench of the Honourable Supreme Court in the decision reported in **(2014) 9 SCC 236 (Puducherry SC People Welfare Assn. v. UT of Pondicherry)** held that once Presidential Order has been issued under Article 341 or Article 342(1), any amendment in the Presidential Order can only be made by Parliament by law as provided under Article 341(2) or Article 342(2) as the case may be and in no other manner.

13. It is well known that the Presidential Order states that no person who professes the religion different from the Hindu or the



Sikh or the Buddhist religion shall be deemed to be a member of Scheduled Caste. The expression "profess" has been interpreted by the Honourable Supreme court in the decision reported in **AIR 1965 SC 1179 (Punjab Rao vs D. P. Meshram & Others)**. "Profess" is what a person avows publicly. In the present case, the writ petitioner by a gazette notification declared that she had embraced the religion of Islam. Therefore, she is admittedly professing only the religion of Islam and she is not professing Hinduism any more. Therefore, the petitioner cannot be deemed to be a member of Scheduled Caste. The conduct of the petitioner also deserves to be noticed. In the affidavit filed in support of the writ petition, the petitioner would describe herself as follows :

I.Afsaana, D/o.V.Perumal W/o. JavidAgamed, aged 29 years, residing at No.20/40, Anna Street, Jeeva Nagar, Trichy-620 008, temporarily come down to Madurai, do hereby solemnly affirm and sincerely state on oath as follows :

14.In any affidavit filed in support of a writ petition, the religion of a person is usually mentioned. In this case, it appears to have been deliberately omitted. Even in her representation dated 11.04.2017, the petitioner gave only her earlier name and not her present name. She described herself as th daughter of V.Perumal. Though her current residence appears to be No.20/40, Anna Street, Jeeva Nagar, Trichy-8, she gave her earlier address only in her application to the respondent bank. It is obvious that the petitioner wanted to suppress her conversion to Islam and the eclipse of her Scheduled Caste status. Since the respondent Bank insisted on production of a fresh community certificate, the cat came out of the bag.

15.Having considered the entire factual circumstances and the legal position, we are of the view that the petitioner is not entitled to be appointed to any post in the respondent Bank under the reserved category. In the communication that has been impugned in the writ petition, the respondent had only called upon the writ petitioner to submit a fresh community certificate in her present name. It is obvious that she cannot be granted such certificate so long as she does not profess Hindu religion. That is why the petitioner has moved this Court for directing the respondent Bank to appoint her without insisting on production of a Scheduled Caste community certificate in the present name of Afsaana. The request of the petitioner is patently without any merit. The writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(AE)

/ True Copy /

Sub Assistant Registrar(C.S.)

TO



Central Recruitment and Promotion
Department,
Corporation Centre, Tulsiani Chambers,
1st Floor (West Wing) 212, Free
Press Journal Marg, Nariman Point, Mumbai 400 021.

WEB COPY

2.The General Manager,
State Bank of India,
No.16, College Line, Local Head Office,
Nungambakkam, Chennai-600 006.

3.The Assistant General Manager (HR),
Trichy Zone, State Bank of India,
No.7C, McDonalds Road,
Cantonment, Trichirappalli-1.

+1cc to M/S.R.NARAYANAN, Advocate SR.No.69228

+1cc to Special Government Pleader, SR.No. 69314

skm/tsg

MAS/KK/SAR2:10.08.2017:6P-6C

W.P (MD) No.13982 of 2017
28.07.2017