

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No. 14275 of 2014 (O&M)

Date of decision: February 8th, 2017

Ratej Bharti

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aman Pal, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

JAISHREE THAKUR, J.

1. The present writ petition has been filed seeking to challenge the impugned order dated 03.01.2014 by which the services of the petitioner have been terminated and order dated 30.06.2014, by which the appeal of the petitioner has been dismissed, with the prayer to reinstate the petitioner in service with continuity along with back wages.

2. In brief, the facts are that the petitioner was born to wedlock of Sh. Tej Ram Dutt, Caste Brahmin and to his wife Smt. Raj Kaur. A few days after the birth of the petitioner, his mother expired and one Smt. Bhano wife of Chand Singh, Caste Ramdasia started to take care of the young child since they too had lost their young daughter. In the year 1977 when the petitioner was about 10 years old, he was taken in adoption by Sh. Tej Ram @ Chand Singh and his wife Smt. Bhano. The adoption took place on

23.11.1977 in the presence of the Panchayat and all other respectable and

adoption deed dated 23.11.1977 was also executed. The Sub Divisional Officer, after due verification, issued a Scheduled Caste Certificate on 24.08.1992 to the petitioner, In the year 1994, the petitioner applied for government job in the Department of Punjab School Education Board as teacher and the petitioner was appointed as Hindi Teacher. A complaint was made against the petitioner alleging that he did not belong to scheduled caste and had wrongly been appointed against the reserved category. Respondent No. 2 Director Public Instructions conducted an inquiry through the Deputy Director. The Inquiry Officer got statements recorded from the Gram Panchayat and respectables of the village. A report was submitted in which it was stated that the allegations against the employee were false. A 2nd complaint was also received and a 2nd inquiry was held in which a report was submitted that the certificate issued to the petitioner was genuine. The District Education Officers, vide its letter dated 28.08.2012 recommended that the complaint be dismissed. However, despite two inquiries held respondent No. 2, charge sheeted the petitioner on 25.05.2012 alleging that petitioner had got the job by procuring Scheduled Castes as the name of the father on the Certificate has been mentioned as Tej Ram, who belongs to the Brahmin caste. To this, the petitioner submitted a detailed reply. Respondent No. 2 appointed Smt. Sunita Rani, Assistant Director (SE) as Inquiry Officer, who held that the adoption was not complete as per the Adoption of Child Bill 1972. On the basis of the report submitted by the Inquiry officer, the petitioner was dismissed from service under Rule 5 (viii) of the Punjab Civil Service (Punishment and Appeal) Rules 1970. The appeal against the said order of dismissal was also rejected by the impugned order dated

30.06.2014 . Aggrieved against the order of dismissal from service and order dismissing the appeal the instant writ petition has been preferred.

3. Learned counsel appearing on behalf of the petitioner contends that the impugned orders deserve to be set-aside on the ground that after adoption by Tej Ram and Smt. Bhano, petitioner was brought up in their household and thus would have no occasion of benefiting from having a privileged upbringing. He was brought up in the family of Tej alias Chand Singh and got an education while residing with them. It is further argued that a Scheduled Caste Certificate was issued by the Tehsildar soon after due verification and till date the certificate has not been cancelled by the Department. Furthermore two inquiries were held on earlier occasions and both Inquiry Officers, after verifying the authenticity of the Scheduled Caste Certificate, issued after talking to the respectable of the village had furnished a report that the petitioner was belonging to the Scheduled Caste Category. It is also submitted that the 3rd inquiry report is against the petitioner on account of the fact that the name of the petitioner's father reflected in the certificate is that of Tej Ram his natural birth father, while totally ignoring the fact that his adopted father was also called Tej alias Chand Singh. Learned counsel also submits that the adoption deed was duly executed on 23.11.1977.

4. Per contra, landed counsel appearing on behalf of the respondent State would submit that the petitioner was born to Brahmin parents and even if he had been taken in adoption, he would not have become or belong to a Scheduled Caste category. It is argued that a person born to an upper caste would not get any benefit of reservation merely on

account of being adopted or getting married to Backward Class category. It is also argued that the name of the petitioner's father on his certificate is shown as Tej Ram which is the name of his natural father, therefore, the order of dismissal on account of having availed benefit of reservation was rightly passed. Reliance has been placed upon judgments rendered in **Mrs Valasamma Paul vs. Cochin University and others AIR 1996 Supreme Court 1011 (1)** and **R Vishwanatha Pillai vs. State of Kerela Appeal (Civil) No. 89 of 2004 decided on 7.1.2004** to buttress the arguments so raised.

5. I have heard the counsel for the parties and with their assistance have gone through the record of the case.

6. The short question that needs to be determined is, whether the petitioner would be allowed to take the benefit of a Scheduled Caste Certificate issued to him by a competent authority on the basis being adopted by a person belonging to a reserved category.

7. Learned counsel for the respondent argues that the law as settled by the judgment rendered in **Valsamma Paul's case (Supra)** has held that caste is determined by birth and in case a person belonging to a forward caste had an advantages start in life, on marrying a person from a reserved category would not be entitled to the benefits of reservation of Backward Class on account of such marriage.

“The recognition of the appellant as a member of the Latin Catholic would not therefore, be relevant for the purpose of her entitlement to the reservation under [Article 16\(4\)](#), for the reason that she, as a member of the forward caste, had an

advantageous start in life and after her completing education and becoming major married Yesudas; and so. she is not entitled to the facility of reservation given to the Latin Catholic, a backward class.”

8. In the instant case, the petitioner was born into a upper caste family. Having lost his mother at a young age he was brought up and nurtured by Smt. Bhano and her husband Sh. Tej Ram @ Chand Singh. His natural father having the name of Tej Ram remarried, out of which wedlock one son was born to him. In the year 1977, the petitioner was given in adoption to Sh. Chand Singh and his wife Smt. Bhano in the presence of the panchayat and relatives of the family. The petitioner started to reside with his adopted parents. In the year 1992, a Scheduled Caste Certificate was issued in his favour after due verification by the Sub Divisional Officer and on that basis he was given the post of a Hindi Teacher in the reserved class category. Two complaints were filed against the petitioner that he had availed of benefit of belonging to a reserved category, whereas by birth he was a Brahmin belonging to an upper caste. Both these inquiries were shelved after due verification by the Inquiry Officers. There is nothing on the record to suggest that this certificate issued by the Tehsildar after due verification was obtained by fraud or misrepresentation. The petitioner was brought up by a person of a Backward Class and even though the adoption might not be in the regular format it was done by customary law. Other than the Inquiry Officer finding that the adoption was not in the correct format, there was no other finding as to whether the said certificate was obtained fraudulently or not. The Inquiry Officer while noting that the certificate had

been issued and the petitioner was adopted held that benefit could not be given. The judgment relied upon by the counsel for the respondent is distinguishable and not applicable to the facts of the present case. In the case relied upon that is **Valsamma Paul** (Supra), the appellant therein had all the advantages of belonging to a forward class before her marriage, wherein in the instant case the petitioner was brought up by his adopted parents belonging to a reserved category. His natural father had remarried and had a family of his own.

9. Learned counsel appearing on behalf of the petitioner contends that in case the certificate is not secured on account of any fraud or misrepresentation, the petitioner should not have been dismissed from service. In this regard, reliance has been placed on a judgment rendered by the Hon'ble Supreme Court in **Dattu son of Namdev Thakur vs. State of Maharashtra & Others 2012 (1) SCC 549**, where, in a similar circumstance, the petitioners sought to challenge the cancellation of the caste certificate issued to them in the year 2001. The certificate was cancelled by the Caste Scrutiny Committee in the year 2009. The writ petition was dismissed by the High Court at Mumbai which led to the filing of SLP before the Hon'ble Apex Court. The Apex Court, while declining to go into the issue, whether the certificate had been correctly cancelled, held that the circumstances of the intervening period could not be ignored. It was further held that the delay of 9 years in the cancellation of the said certificate was not explained. Special Leave Petition was allowed with a direction that any benefit that the petitioners had availed of during the intervening period of 9 years would not be withdrawn, however, the

petitioners would not be allowed any further benefit on the said certificate. Admittedly, in the present case, the petitioner herein had been issued a certificate by competent authority as far back as 1992. He got a government job on the basis of the caste certificate as far back as 1994. Having taught for a period of 20 years, he has been dismissed from service on account of the adoption not being valid and on account that an adopted son would not get the benefit of his adopted father's caste. There is no justification in dismissing the petitioner from service, especially when the caste certificate till date has not been revoked. Two inquiries were already held regarding the certificate issued and the same were found to be genuine and the complaints were shelved. The name of the father of the petitioner on the school certificate is reflected as 'Tej Ram' (name of the natural father), but that per se is not enough to disbelieve the adoption or hold the caste certificate issued is invalid or obtained fraudulently. Therefore, by relying upon the judgment rendered in the **Dattu son of Namdev's case**, this court has no hesitation in holding that the petitioner should be allowed to continue in service with a rider that the caste certificate issued would not be utilized for claiming any other benefit

10. Similar controversy arose in the matter of **New India Assurance Company and another Versus Rita K. Singh and another LPA No. 941 of 2012 decided on 10.7.2012**, wherein services of the petitioner were terminated on account of the cancellation of her caste certificate. The learned Single Judge, while relying upon the judgment rendered in the **Dattu son of Namdev Thakur's case** (supra) allowed the writ petition and directed that the petitioner be reinstated with all

consequential benefits. The said judgment was challenged before the Letters Patent Bench and the same was affirmed.

11. Therefore, in view of the above, this writ petition is allowed the petitioner is directed to be taken back in service with all consequential benefits, but would not be entitled to any salary for the period she has not worked.

11. This writ petition stands allowed accordingly.

February 8th, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No