

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 20184 of 2014

Reserved on: 06.03.2017

Date of Decision: March 14, 2017

Sulakshana

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Devinder Singh, Advocate,
for the petitioner.

Mr. Sushil Gautam, DAG, Haryana.

P.B. Bajanthri, J.

1. In the present petition, petitioner has questioned the validity of order dated 26.08.2014 (Annexure P/5) passed by respondent No.2.

2. The petitioner was appointed as a Multi Purpose Health Worker (Female) [hereinafter referred to as “MPHW (F)”] on *ad hoc* basis on 28.04.1985 in the Department of Health, State of Haryana. Her services were regularized in the cadre of MPHW (F) w.e.f. 30.09.1988 in the year 2008. The petitioner belongs to General category and she has solemnized inter-caste marriage with Suresh Kumar in the year 1990 and he belongs to Scheduled Caste category. By virtue of inter-caste marriage, petitioner has obtained Scheduled Caste certificate in order to gain certain service benefits in the Department. Accordingly, she has produced Scheduled Caste certificate in order to gain promotion in the cadre of Multi Purpose Health Supervisor (Female) [hereinafter referred to as “MPHS (F)”] against roster

point earmarked for Scheduled Caste. Thus, her name was considered for promotion to MPHS (F) against roster point earmarked for Scheduled Caste on 05.08.2009 and she was promoted.

3. In the year 2014, the second respondent noticed that petitioner belongs to General Category and she has married as Scheduled Caste person, consequently, she is not entitled to promotion against Scheduled Caste vacancy in the cadre of MPHS (F) with reference to various government orders issued from time to time. Thus, a show cause notice was issued to the petitioner stating that why the petitioner should not be reverted to the post of MPHWF from MPHS (F). The petitioner submitted reply to the show cause notice through her counsel. Thereafter, on 26.08.2014, the second respondent proceeded to pass order of reversion. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that while reverting the petitioner, second respondent has not considered the reply to the show cause notice submitted by petitioner's counsel. Further it was contended that the Division Bench of this Court in the case of ***New India Assurance Company and another vs. Rita K. Singh and another***, reported in ***2012(3) S.C.T. 583***, has protected the service benefits obtained by the respondent therein with reference to Scheduled Caste certificate. Therefore, even in the petitioner's case, she has not misled or played any fraud so as to gain promotion against reserved vacancy. Thus, petitioner's promotion is required to be protected with reference to decision of this Court cited supra. Hence, petitioner's case is squarely covered by a decision of this Court in ***New India Assurance Company and another*** cited supra.

5. Per contra, learned State counsel submitted that admittedly

petitioner do not belongs to Scheduled Caste merely if she has married Scheduled Caste person that does not change her caste from General Category to that of Scheduled Caste. Therefore, petitioner is not entitled for any service benefit with reference to claiming that her status is Scheduled Caste. In this regard, the State of Haryana issued number of orders from time to time vide Annexures R/1 to R/4 during the period from 09.10.1975 to 06.09.2007 with reference to decisions of the Apex Court. It was further contended that in the order of promotion, the second respondent has made it clear that petitioner's promotion is made subject to seniority and her service record. If at any stage, it is found that the service record / seniority of any promoted official is not upto the standard of promotion, in that event, he/she will be reverted to the post of MPHWF without any notice. Therefore, order of promotion is a condition one. Hence, there is no infirmity in the order of reversion. It was further contended that second respondent had issued a show cause notice; reply was not timely submitted, therefore, second respondent proceeded to revert the petitioner based on the available record. Even assuming that reply to the show cause notice (petitioner's counsel reply) is taken note of, no legal issue has been raised so as to consider her reply. Issuance of show cause notice its only a formality having regard to the condition imposed in the order of promotion. Further, when the admitted facts are that petitioner born in a general category and she married Scheduled Caste person that does not change her status to that of Scheduled Caste. Further, petitioner cannot improve the things. Therefore, in not considering reply to the show cause notice may not be a hurdle. Learned State counsel relied on two decisions of the Supreme Court reported in **(2005) 2 SCC 244 – Sobha Hymavathi Devi vs. Setti**

Gangadhara Swamy and others (Para 10) and **(2006) 1 SCC 344 – Meera Kanwaria vs. Sunita and others (Para 24)**. It was also contended that State of Haryana issued O.M. on 06.09.2007 (Annexure R/4) relating to issuance of Caste Certificate of Backward Class with reference to decision cited supra. In the said O.M. para no.34 of the Supreme Court's decision in the case of **Valsamma Paul vs. Cochin University, (1993) 3 SCC 545** has been extracted. Having regard to the rulings of the Supreme Court, decision of this Court in the case of **New India Assurance Company (supra)** is distinguishable with reference to Supreme Court's decision read with OMs issued by the Government. Even on facts it is distinguishable for the reasons that in that case respondent – Rita K. Singh obtained caste certificate in the year 1987 and her services were dismissed on 18.12.2009. Whereas in the present case, denial of promotion to the petitioner and that to it is not permanent basis under the general category in usual course if she is otherwise eligible and depending upon the vacancy, she is entitled for promotion to MPHS (F). Thus, the petitioner has not made out a case so as to interfere with the order of reversion dated 26.08.2014 (Annexure P/5).

6. Heard learned counsel for the parties.

7. Crux of the matter in the present petition is whether petitioner belongs to Scheduled Caste category or not so as to claim reservation in promotion in the Department of Health.

8. It is undisputed that petitioner belongs to general category, after her marriage with Scheduled Caste person that does not change her caste to that of Scheduled Caste as held by Supreme Court in the cases cited supra read with Government orders/O.M./Circulars issued from 1975 to 2007 (Annexures R/1 to R/4). In this backdrop, petitioner is not entitled to

claim any reservation benefit with reference to caste certificate in the Department. Insofar as contention of the petitioner that while reverting the petitioner her reply to the show cause notice has not been taken note of is concerned, no doubt the second respondent has not considered the reply to the show cause notice of the petitioner. Second respondent need not consider the petitioner's reply due to admitted fact that petitioner belongs to general category and her husband is a Scheduled Caste. Based on the status of her husband as Scheduled Caste, she cannot claim reservation in view of Supreme Court's decisions read with Government orders/circulars cited supra. Even assuming that petitioner's reply is required to be taken into consideration, perusal of the petitioner's reply dated 08.07.2014 (Annexure P/4), petitioner's counsel has not raised any legal issue so as to contend that petitioner's reply has not been considered. One of the contention raised in the reply is that principle of estoppel would come in the way. Principle of estoppel is not applicable in the present case since petitioner's right for extending any service benefits with reference to reservation (Scheduled Caste) is impermissible. Petitioner's contention that the matter is covered by a decision of this Court vide Annexure P/6 in the case of ***New India Assurance Company*** (supra) is concerned, facts are distinguishable in which respondent – Rita K. Singh obtained appointment in the year 1987 and she was dismissed from service in the year 2009, thus, there is a protection. Whereas in the present case, petitioner's promotion has been taken away which does not amounts to taking away the employment. The State respondents' contention is supported by the decisions of Supreme Court cited supra. Supreme Court in the case of ***Sobha Hymavathi Devi's*** case (supra) in para no.10 held as under:-

“10. What then remains is the fact that the appellant though assigned the caste of her father Murahari Rao, namely, the Sistu Karnam community, had married a tribal belonging to the Bhagatha Community. On the basis of this marriage, it is argued that she must be taken to have acquired membership in the community of her husband and consequently treated as a member of that community. It is in that context that the decision in Horo (1972) 1 SCC 771 was relied on. It is also contended that the decision in Horo related to an election dispute and consequently, the ratio of that decision should govern the present case. We have already indicated that there is nothing to show that the marriage of the appellant with Appala Raju was sanctioned or approved by the elders of the Bhagatha Community or the Panchayat concerned or was in tribal form or that the formalities attending such a tribal marriage were observed and the marriage was performed after obtaining the approval of the elders of the tribe. Even otherwise, we have difficulty in accepting the position that a non-tribal who marries a tribal could claim to contest a seat reserved for tribals. Article 332 of the Constitution speaks of reservation of seats for Scheduled Tribes in Legislative Assemblies. The object is clearly to give representation in the legislature to Scheduled Tribe candidates, considered to be deserving of such special protection. To permit a non-tribal under cover of a marriage to contest such a seat would tend to defeat the very object of such a reservation. The decision of this Court in Valsamma Paul v Cochin University (1996) 3 SCC 545 supports this view. Neither the fact that a non-backward female married a backward male nor the fact that she was recognized by the community thereafter as a member of the backward community, was held to enable a non- backward to claim reservation in

terms of Articles 15(4) or 16(4) of the Constitution. Their Lordships after noticing Bhoobun Moyee Debia v. Ram Kishore Acharj Chowdhry (1865) 10 MIA 279 and Lulloobhoy Bappoobhoy Cassidass Moolchund v. Cassibai, (1879-80) 7 IA 212, held that a woman on marriage becomes a member of the family of her husband and thereby she becomes a member of the caste to which she has moved. The caste rigidity breaks down and would stand as no impediment to her becoming a member of the family to which the husband belongs and to which she gets herself transplanted. Thereafter, this Court noticed that recognition by the community was also important. Even then, this Court categorically laid down that the recognition of a lady as a member of a backward community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution 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 reservation given to a backward community. The High Court has applied this decision to a seat reserved in an election in terms of Article 332 of the Constitution. We see no reason why the principle relating to reservation under Articles 15(4) and 16(4) laid down by this Court should not be extended to the constitutional reservation of a seat for a Scheduled Tribe in the House of the People or under Article 332 in the Legislative Assembly. The said reservations are also constitutional reservations intending to benefit the really underprivileged and not those who come to the class by way of marriage. To the extent the decision in Horo can be said to run counter to the above view, it cannot be accepted as correct. Even otherwise, in the absence of evidence on the relevant

aspects regarding marriage in tribal form and acceptance by the community, the decision in Horo cannot come to the rescue of the appellant. On a consideration of the relevant aspects, we are of the view that whether it be a reservation under Articles 15(4) or 16(4) or 330 and 332, the said reservation would benefit only those who belong to a Scheduled Caste or Scheduled Tribe and not those who claim to acquire the status by marriage, like the appellant in this case. Thus, in our view, the High Court was fully justified in coming to the conclusion that the appellant could not claim the right to contest a seat reserved for a Scheduled Tribe in terms of Article 332 of the Constitution merely by virtue of her marriage to a person belonging to a Scheduled Tribe.”

In the case of **Meera Kanwaria** (*supra*), Supreme Court in para no. 24 held as follows:-

“24. It is, therefore, beyond any doubt or dispute that a person who is a high caste Hindu and not subjected to any social or educational backwardness in his life, by reason of marriage alone cannot ipso facto become a member of the Scheduled Caste or Scheduled Tribe. In the absence of any strict proof he cannot be allowed to defeat the very provisions made by the State for reserving certain seats for disadvantaged people.”

Pursuant to the aforesaid decisions, the State of Haryana issued order on 06.09.2007 and second respondent while promoting the petitioner has not taken note of, therefore, order of reversion is only a rectification and that too petitioner was made known at the time of promotion that her promotion is subject to verification of seniority and other service particulars.

9. In view of these facts and circumstances, petitioner has not made out a case so as to interfere with order of reversion dated 26.08.2014

(Annexure P/5).

10. In view of the facts and legal aspects, instant writ petition stands dismissed. The second respondent is directed to fill up the MPHS (F) vacancy earmarked for Scheduled Caste by filling up Scheduled Caste MPHWS (F) who is eligible from 05.08.2009 on notional basis in order to meet social justice.

March 14, 2017
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No