

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

CWP No.4576 of 2016
Date of decision : 02.02.2017

Tarsem Singh

...Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Dr. Surya Parkash, Advocate and
Ms. Bhupinder Kaur, Advocate for the petitioner.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL, J. (Oral)

This Court while taking into consideration the contention of private respondent had passed the following order:-

“Learned counsel for the State seeks time to get instructions on order dated 12.10.2015 (Annexure P-9) passed by Deputy Commissioner, Panchkula, as to how the migrant labourers were treated belonging to the Scheduled Caste Category even without making any effort to know their castes from their respective native places.

On his request, adjourned to 08.11.2016.

In the meantime, respondent No.5 may file its reply, if any.”

Mr. Sandeep Singh Mann, Sr. DAG, Haryana, submits that while keeping in view the post reserved for scheduled castes women in the

forthcoming election of Sarpanch, the migrant labour belonging to particular caste have also been taken into consideration, whereas the contention of Dr. Surya Parkash, learned counsel appearing on behalf of petitioner is that it is totally against the provision of Article 341 of the Constitution of India as actual remedies of particular cause have to be taken into consideration. While undergoing exercise of census, Migrant labour should not have been taken into consideration as they are not permanent residents. The nomenclature of migrant would not clothe the status of electoral as they would having a vote in their native village. As per the stand of the respondent-State, Migrant Labour do not belongs to the Scheduled Castes category, therefore, need of reserving post for women was totally erroneous and not in accordance with law. Dr. Surya Parkash, learned counsel for the petitioner has made reference to the report of the Tehsildar (Annexure P-5) to reinforce the arguments to contend that in fact actual population of the reserved category are of 13 number and rest are migrant labourer.

Contention of Mr. Sandeep Singh Mann, Sr. DAG, Haryana is that keeping the post reserved for scheduled castes women on the census is totally arbitrary and misconceived. While undertaking exercise, they have not taken adhered to the provision of Article 341 of the Constitution of India, thus, contention is hereby repelled.

Keeping in view the fact that this Court vide order dated 09.09.2016 extracted herein below had already taken into consideration all the factors and directed the State to keep the post in general category:-

“CM-11183-CWP-2016

Applicant seeks preponement of date of hearing.

Notice of the application was issued on 8.9.2016 for today, i.e. 9.9.2016.

After hearing the learned counsel for the parties, the instant application is allowed for the reasons stated therein. Date of hearing is preponed from 8.11.2016 to today.

CM stands disposed of.

Main case

It has gone undisputed before this Court that the post of Sarpanch in the village of the petitioner was sought to be reserved for Scheduled Caste (women), on the basis of impugned order (Annexure P-9) without verifying the caste of migrant labourers, from their respective native places of different States, as to whether they were, as a matter of fact, belonging to Scheduled Caste or not. In the absence of any such positive exercise having been carried out by the competent authority of the respondent-State, any such reservation would clearly violate the constitutional mandate, contained in Article 341 of the Constitution of India.

In view of the above-said provisions of law contained in Article 341 of the Constitution of India, reserving the post of Sarpanch for Scheduled Caste (women) in village Kiratpur, District Panchkula, would be patently illegal. When the matter was pending consideration of this Court, notification dated 31.8.2016 (Annexure P-14) has been issued, reserving the post of Sarpanch for Scheduled Caste (women).

In view of above-said undisputed fact situation obtaining on the record of this Court, direction is issued to the respondent authorities that if they want to proceed further with the election of Sarpanch of Gram Panchayat,

Kiratpur, Block Pinjore, District Panchkula, it shall not be kept reserved for Scheduled Caste (women) but shall be for general category, because there is no material available on record to reserve this post of Sarpanch for Scheduled Caste (women).

List for further consideration on 15.12.2016.”

Let there another exercise be undertaken for his particular area strictly in accordance with the provision of Article 341 of the Constitution of India as expeditiously as possible preferably within a period of four months from the date of receipt of certified copy of the order, so that concerned village does not go unrepresented. Till this exercise is done, State would not initiate in the election process.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana assured the Court that such exercise shall be adhered to in letter and spirit i.e. in accordance with law.

With the aforementioned observation, present writ petition is disposed of.

02.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No