

217+228+230 (13 cases)

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

Date of Pronouncement: 31.03.2017

1. CWP No. 6835 of 2016

Gurminder Kaur

...Petitioner

Versus

Director, Education Recruitment Directorate-cum-
Director General of School Education, Punjab & others

...Respondents

2. CWP No. 7361 of 2016

Sunita Rani

...Petitioner

Versus

Director, Education Recruitment Directorate-cum-
Director General of School Education, Punjab & others

...Respondents

3. CWP No. 17570 of 2016

Anamika

...Petitioner

Versus

State of Punjab & others

...Respondents

4. CWP No. 19029 of 2016

Reena Rani

...Petitioner

Versus

State of Punjab & others

...Respondents

5. CWP No. 18283 of 2016

Bhanu Bala

...Petitioner

Versus

State of Punjab & others

...Respondents

6. CWP No. 18337 of 2016

Sunita Rani & others		...Petitioners
	Versus	
State of Punjab & others		...Respondents

7. CWP No. 20385 of 2016

Kamaljeet Kaur		...Petitioner
	Versus	
State of Punjab & Another		...Respondents

8. CWP No. 21047 of 2016

Ms. Gagandeep		...Petitioner
	Versus	
State of Punjab & Others		...Respondents

9. CWP No. 21068 of 2016

Renu Bala		...Petitioner
	Versus	
State of Punjab & Others		...Respondents

10. CWP No. 21164 of 2016

Pramjeet Kaur		...Petitioner
	Versus	
State of Punjab & Others		...Respondents

11. CWP No. 21577 of 2016

Shashi Bala		...Petitioner
	Versus	
State of Punjab & Others		...Respondents

12. CWP No. 24274 of 2016

Jyoti Rani

...Petitioner

Versus

State of Punjab & Others

...Respondents

13. CWP No. 27054 of 2016

Veerpal Kaur

...Petitioner

Versus

State of Punjab & Others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Deepak Aggarwal, Advocate
for the petitioners in CWPs No.6835, 7361 & 21068 of 2016.

Mr. Amit Dhawan, Advocate
for the petitioner in CWP No.21577 of 2016.

Mr. Yogesh Kumar Aneja, Advocate for the petitioners in
CWP No. 18337 of 2016.

Mr. Vishal Mittal, Advocate
for the petitioner in CWP No. 21164 of 2016.

Mr. K.G. Chaudhary, Advocate
for the petitioners in CWPs No. 17570, 18283 of 2016.

Mr. Naveen Batra, Advocate
for the petitioner in CWP No. 20385 of 2016.

Mr. Jaswinder Singh, Advocate
for the petitioner in CWP No. 21047 of 2016.

Mr. Amandeep Sharma, Advocate for
Mr. P.S. Khurana, Advocate
for the petitioner in CWP No. 19029 of 2016.

Ms. Anita Sharma, Advocate
for the petitioner in CWP No. 24274 of 2016.

Mr. Keshav Kataria, Advocate
for the petitioner in CWP No. 27054 of 2016.

Mr. Rupam Aggarwal, DAG Punjab.

JAISHREE THAKUR, J. (Oral)

Aggrieved by the non-consideration of the caste certificate of the petitioners by the respondents and the denial of benefits of reservation on the basis of the said caste certificate, the instant writ petitions have been filed. Since a common question of law is involved in all these writ petitions, the same are being disposed of by a common judgment. However, the facts are being extracted from CWP No. 6835 of 2016.

2. In brief, the facts are that the petitioner belongs to caste *Naai* that comes under Backward Class category (BC) and on the basis of that applied for the post of Lecturer (Chemistry) under the reserved category of BC. Being successful in the examination, she was called for scrutiny of the documents on 31.03.2016 by way of public notice issued on the website of the Department. The petitioner thereafter produced all her required documents along with her caste certificate and domicile certificate given by the State of Punjab. The Committee, after scrutiny of the documents, declared her ineligible. However, no written communication was made to this effect. On enquiry, the petitioner came to know that the petitioner has obtained a domicile certificate in Punjab and a caste certificate after her marriage and because she originally belongs to the State of Rajasthan, she cannot be given any benefit available as given to the candidates belonging to BC category of the State of Punjab.

3. Therefore, the sole consideration in these writ petitions is whether a married woman, who belongs to a State other than the State of Punjab prior to her marriage and who was getting the benefit of reservation in that State, would also be entitled to benefit of reservation in the State of

Punjab for the purpose of getting employment after she has obtained a domicile here.

4. Counsel for the petitioners contend that the petitioners are entitled to get the benefit of reservation and such benefit cannot be denied to them on the ground that they were born in a different State before their marriage. It is argued that the action of the respondents in not considering the candidature of the petitioners in the reserved category is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. It is submitted that a person is born to a particular caste and the caste is by birth. Merely on account of the fact that they have got married and settled in Punjab, though born in a different State, they cannot be denied the benefits of reservation if their caste is recognized under the BC category in the State in which they are currently residing. It is argued that even after their marriage to a person of BC category, they would be entitled to benefits of reservation by virtue of the fact that their husbands too are of the reserved category of BC etc. It is submitted that as per custom, an Indian woman normally would reside with her husband in the State of which he is domiciled in and, therefore, once having shifted from her birth place and becoming a resident of the area where her husband resides, a married woman would also be entitled to seek the benefit of reservation and the denial of the same would not be sustainable.

5. Per contra, learned counsel appearing on behalf of the respondents-State placed reliance on the instructions that have been issued by the Government of Punjab on 17.01.1996 which is to the effect that candidates, who had migrated from other States to the State of Punjab, shall get the benefits of reservation only from the State of origin and not from the

State to which they have migrated and, therefore, all those candidates, whose ***native place*** is other than the State of Punjab, would not be entitled to get reservation. (emphasis supplied).

6. I have heard learned counsel for the parties and with their assistance have perused the record of the case.

7. An advertisement was issued, which is Annexure P-1 on the record, inviting applications for appointment on the post of Lecturers in the subjects of Physics, Chemistry and Hindi. Out of the total 10 posts of Lecturer (Chemistry), One post has been reserved for Schedule Caste (M and B), one post for SC(R&O) and one post for BC category. A portion of the said advertisement is reproduced herein below:

“7. General conditions:

i) The candidates who intend to have benefit of reservation for scheduled caste or backward class their caste certificates should be issued by competent officer and their caste should be specifically mentioned on it. The female candidates of scheduled castes and backward class, whose certificates have been issued after their marriage on the name of the husbands, are required to produce the certificate of scheduled caste or backward class in which their father name is mentioned. In case, they do not produce this certificate then their candidature shall not be considered under the category of scheduled caste or backward class as the case may be. The reservation for scheduled caste shall be in accordance with Punjab Scheduled Caste and Backward Class (Reservation in Appointment) Act, 2006 but their selection in this regard shall be subject to the decision of Hon’ble Supreme Court in pending SLP (Civil) No. 23507 of 2010 in CWP No. 18290 of 2009, State of Punjab and others versus Davinder Singh and others.”

ii) xxxx xxxx xxxx

iii) xxxx xxxx xxxx

.....

vii) The candidate should have passed the matriculate examination with Punjabi.

viii) The reservation policy shall be implemented as per the Punjab Government’s instructions.

ix) The benefit of reservation shall be available only to the residence/domicile of Punjab State.”

8. The petitioner herein belongs to BC category and at the time of applying filled in the category of BC. As per the advertisement, it was specified that the female candidates of SC and BC category, who have been issued caste certificate after their marriage on the name of their husbands, are also required to produce the caste certificate of SC or BC in which their fathers' name is mentioned and in case they failed to produce this certificate, they shall not be considered under the category of SC or BC as the case may be. Furthermore, it was mentioned that the reservation for SC shall be in accordance with Punjab Scheduled Caste and Backward Class (Reservation in Appointment) Act, 2006. Clause 7(viii) of the said advertisement specified that reservation also shall be implemented as per the Punjab Government's instructions and 7(ix) further stipulated that the reservation shall be available only to residents/domicile of Punjab State.

9. The petitioner admittedly is a married woman belonging to a category of SC/BC, who settled in the State of Punjab by virtue of her marriage to a person who was a resident of Punjab and of the same/similar caste. After marriage, it would be expected of a married woman to reside with her husband and, therefore, she would become a resident/domicile of the State of Punjab.

10. As per the Punjab Scheduled Castes And Backward Classes (Reservation In Services) Act, 2006 section 5 stipulates:

“5 (1) A candidate, who claims to be a member of Scheduled Castes, shall support his candidature as such by a certificate of caste identification, issued under the Constitution (Scheduled Castes) Order, 1950, notified by the President of India for the State of Punjab.

(2) A candidate, who claims to be a member of Backward

Classes, shall support his candidature as such by a certificate of class identification as per the notification, issued by the State Government in this regard from time to time.”

11. The only reason for denying her the benefits of reservation is under the policy dated 17.01.1996 wherein it is stated that a person “***whose native place is other than the State of Punjab***” would not be entitled to benefit of reservation.

12. Counsel for the petitioner places reliance upon a judgment rendered in the case of ***Mrs. Sahendra Bai vs. Rajasthan Public Service Commission, 2008 (2) ILR (Raj) 544*** in support of his argument that a married lady should be entitled to the benefit of reservation. A similar situation arose where the Commission issued an advertisement for the purpose of recruitment on the posts of Teacher Grade-III. One of the petitioners was getting the benefit of OBC in the State of Madhya Pradesh as she belongs to Meena community, which is treated as ST in the State of Rajasthan. It was claimed that before marriage she belongs to ST and after marriage she continued to be an ST with permanent residence in Rajasthan by virtue of the fact that she has married and settled there. The High Court on a detailed consideration of the case law cited before it held that those persons, who belong to the reserved category in their parental State before their marriage and whose castes after their marriage are also in the reserved category even in the State of Rajasthan, are entitled to get the benefit of reservation and the candidature is to be considered in the reserved category especially when certificates to that effect have been issued by the State. The judgments relied upon in ***Dr. Rajesh Kumar Paswan vs. State of Bihar and***

others, 1997 AIR (Patna) 31 and *State of Gujarat and another vs. R. L. Patel, 1992 AIR (Gujarat) 42* are not applicable since the judgments rendered in *Dr. Rajesh Kumar Paswan's* case (supra) is prior to the decision of the Constitutional Bench and the latter case of *R. L. Patel* (supra) has not interpreted the law as laid down.

13. The argument raised by learned counsel for the respondents-State that reservation of SC/ST cannot be given merely because a given caste is specified in one State as belonging to OBC/SC/ST does not necessarily mean that the same caste in another State is entitled to rights, privileges and benefits admissible in other state is supported by the judgments rendered in *Roshan Lal vs. State of Haryana, 2011 (4) PLR 309, M.C.D. vs. Veena, 2001 (6) SCC 571 and Marri Chandra Shekhar Rao vs. The Dean, Seth G.S. Medical College and Others, (1990) 3 SCC 130*. The main case *Marri Chandra Shekar Rao* pertains to a candidate born in the State of Andhra Pradesh belonging to Goudi community which was a community recognized as ST in the Constitution (Scheduled Tribes) Order, 1950. The appellant's father was issued an ST certificate and thereafter the petitioner's father was transferred and settled at Bombay. The petitioner sought admission in a medical college in Bombay and applied for a seat as a member of ST category. He was denied the benefit of reservation. Eventually, the question that arose before the Apex Court was whether one who is recognized as a Scheduled Tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the state of migration or where he later goes? After consideration it was held that the petitioner would not be entitled to such benefit. Similarly there are other judgments of the Supreme Court which have followed the same principal as in *Marri*

Chandra ShekharRao's case (supra).

14. In ***Marri Chandra ShekharRao's*** case (supra), the Supreme Court while dealing with the issue of benefits to be given to SC/ST, has also given their thoughtful consideration to those SC/ST candidates who get transferred involuntarily and if they would be deprived of the benefit of reservation in the State other than their birth state? It was opined as under:

“21. Having construed the provisions of Articles 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those Scheduled Caste and Scheduled Tribe students who get the protection of being classed as Scheduled Caste or Scheduled Tribe in the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary (sic involuntary) transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to another is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the Scheduled Castes or Scheduled Tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has or migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to Scheduled Castes and Scheduled Tribes by virtue of the provisions under Articles 341 and 342 of the

Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration.”

15. The policy as relied upon by the State that ‘migrant’ would only be entitled to claim benefit in the State from where he/she comes from should not be applicable in the instant case, since the petitioners cannot be treated as migrants. In common parlance, migrant is person who migrates from one country to another, from one State to another, in search of better economic conditions. The petitioners herein cannot be treated to be migrants since the change in residence is on account of their marriage and involuntary. Persons like the petitioners have become residents of the State with voters Identity Card, pay taxes to the State where they reside.

16. A question that came up for consideration in the case of ***Union of India vs. Dudh Nath Prasad (2000) 2 SCC 20*** where the validity of a SC certificate issued came up for consideration. The respondent’s parents had settled in West Bengal after coming from Bihar. He was appointed in 1968 against a reserved vacancy in the Indian Audit and Accounts Service, as he was treated to belong to the “Nuniya” community which was declared to be a Scheduled Caste community in the State of West Bengal and not in the State of Bihar where the respondent was born and had his schooling throughout even up to graduate level. It was for this reason that the Comptroller and Auditor General wrote to the respondent that he cannot be treated as a member of the Scheduled Caste community. The Supreme Court held as under:

“29. We have already explained the meanings of the words “ordinarily resident” and have found that notwithstanding that the parents of the respondent lived at one time in a

village in District Siwan in the State of Bihar and that they owned some property there also, they had shifted to the State of West Bengal long ago and had been living there since then. For all intents and purposes, therefore, they shall be treated to be “ordinarily residing” in the State of West Bengal. For the State of West Bengal, the President, in exercise of his powers under Article 341(1) read with Article 366(24) had already declared the “Nuniya” caste as a Scheduled Caste and, therefore, the respondent was rightly treated to be a Scheduled Caste candidate and was rightly appointed against a reserved vacancy, after being declared successful at the examination held by UPSC for the Indian Administrative and Allied Services [sic Indian Audit and Accounts Service (IA&AS)] in 1966.”

17. It is the policy of the State not to give the benefit of reservation to those candidates who are not from the State of Punjab, stipulating that they could avail of such benefits from their native place. It is also well settled that it is not for the Courts to interfere until and unless the policy is totally perverse. The petitioners are married women who are not “migrants” in true sense of shifting from one area to another in search of jobs. On marriage, they have obtained a domicile in the State of Punjab and have become residents thereto. If by birth they are disadvantaged and after marriage their caste which is acquired by birth continues to be recognized as a disadvantage caste/tribe/class, they would require the same protection as has been given to them by the Constitution of India under Article 341/342 at their native place as has been held in the judgment rendered by the High Court of Rajasthan in the case of **Sahendra Bai** (supra). This is situation as envisaged by the Supreme Court in the case of **Marri Chandra Shekar Rao** (supra) where the transfer is involuntary and in that perspective, the policy

dated 17.01.1996 would certainly require reconsideration.

18. Therefore the above noted writ petitions are being disposed of by giving a direction to the State to reconsider the policy dated 17.01.1996 in the light of the observations made herein above and para 21 of the judgment rendered in *Marri Chandra Shekar Rao's* case, where the transfer from one State to the other is involuntary. Let a decision be taken in this regard expeditiously, preferably within a period of four months from the date of receipt of certified copy of this order. The interim protection granted is extended till then.

March 31, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No