

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE MS. JUSTICE J. UMA DEVI

+ W.P.No.38323 of 2017

%Date: 20-11-2018

Between:

Madhuri Undrajavarampu, D/o. Satyanarayana,
R/o. D.No.19-11-10,Kondurivari Street,
Near Kanyaka Parameswari Temple,
Tanuku -534 211, West Godavari District
Andhra Pradesh State.

... Petitioner

Vs.

1. The Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad, rep. by its Registrar (Administration) (Recruitment).
2. State of Andhra Pradesh, Law Department, Andhra Pradesh Secretariat, Velagapudi, Amaravathi, rep. by its Secretary.
3. State of Andhra Pradesh, Social Welfare Department, Andhra Pradesh Secretariat, Velagapudi, Amaravathi, rep. by its Secretary.
4. The District Collector, Chittoor District, Chittoor.
5. The Tahsildar, Tirupathi, Chittoor District.
6. State of Telangana, Law Department, Telangana Secretariat, Hyderabad, rep. by its Secretary.
7. Balaji Kumar S.P., S/o. S. Prem Kumar, R/o. D.No.13-3-344/14, Jabbar Layout, Tirupathi.

... Respondents

! For the Petitioner : Mr. G. Vidyasagar, Sr. Counsel

^ For the Respondents 1 to 5 : G.P. for Law (A.P)

^ For the respondent No.6 : G.P. for Law (Telangana)

^ For respondent No.7 : Mr. Chandraiah Naidu

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

HON'BLE MS. JUSTICE J. UMA DEVI

W.P.No.38323 of 2017

ORDER: (per VRS,J)

The petitioner, who appeared for selection to the post of Civil Judge (Junior Division), in response to a notification issued on 16.08.2016 has come up with the above writ petition challenging the selection of the 7th respondent herein under the quota reserved for Scheduled Castes, on the ground that he does not belong to the Scheduled Castes.

2. We have heard Mr. G. Vidya Sagar learned Senior Counsel for the petitioners, the learned Government Pleader for Law, for the State of Andhra Pradesh, learned Government Pleader for Law, for the State of Telangana, Mr. S. Sri Ram, learned Standing Counsel for the Registry of the High Court and Mr. Chandraiah Naidu, learned counsel appearing for the 7th respondent.

3. By a notification issued on 16.08.2016, applications were invited for recruitment of 53 Civil Judges (Junior Division). After a written test held on 19.02.2017 and interviews conducted on 12.04.2017, a provisional list of selected candidates was published on 29.04.2017 and it was communicated to the State Government on 16.05.2017. The name of the petitioner found a place in the said list.

4. However, by a notification dated 16.08.2017, the name of the petitioner was deleted from the provisional list and the name of the 7th respondent herein was included in the said place, on the ground that the 7th respondent herein belongs to the Scheduled Castes and that he had secured more marks than the petitioner, who also belongs to the Scheduled Castes. Challenging the said notification dated 16.08.2017, the

petitioner filed a writ petition in W.P.No.29812 of 2017. The writ petition is still pending.

5. After filling the aforesaid writ petition, the petitioner started making enquiries about the social status of the 7th respondent. The enquiries indicated that the 7th respondent was a native of Tamil Nadu and that the community certificate obtained by him was not correct and valid. Thereafter, the petitioner made a representation to the High Court seeking a clarification as to the social status of the 7th respondent. But by the proceedings dated 21.10.2017, the Registry of the High Court rejected the representation. Therefore, the petitioner came up with the above writ petition challenging not only the proceedings dated 21.10.2017, but also seeking to set aside the selection of the 7th respondent on the ground that he did not belong to the Scheduled Castes.

6. The 7th respondent has filed a counter affidavit. The facts pleaded by the 7th respondent in his counter affidavit proceed on the basis – (1) that the parents of the 7th respondent migrated to Tirupati from Tamil Nadu way-back in the year 1975; (2) that the 7th respondent was born on 30.06.1980 at Tirupati; (3) that his maternal grandparents belonged to Adi Dravida community classified as Scheduled Caste; (4) that after completion of SSLC, he joined the higher secondary course in a school in Chennai and later shifted to a school in Krishnagiri in Tamil Nadu for the second year; (5) that thereafter he joined a school in Arakonam in Tamil Nadu and completed the higher secondary course; (6) that while studying in Arakonam in Tamil Nadu, he used to go everyday by Garudagiri Passenger Train from Tirupati to Arakonam; (7) that his mother belonged to Adi Dravida community; (8) that Adi Dravida community is notified as a Scheduled Caste in Andhra Pradesh as also in Tamil Nadu;

(9) that his father belongs to Godda community, which is one of the species of Adi Dravida community and it is notified as a Scheduled Caste in Tamil Nadu; (10) that his father migrated from Tamil Nadu to Tirupati in 1975 and married his mother in Tirumala in March 1979; (11) that he studied up to 12th standard in Tamil Nadu, but his permanent residence was at Tirupati; (12) that even the school certificates of his sister discloses that they belong to Adi Dravida community; (13) that after enrolling himself with the Bar Council of A.P., the 7th respondent received a training, offered to Scheduled Caste candidates; (14) that he was provided a monthly stipend of Rs.3000/- after joining the office of the Assistant Public Prosecutor on account of his being a Scheduled Caste candidate; (15) that he obtained a community certificate to the effect that he belonged to Hindu Adi Dravida; (16) that the Government of A.P. enacted the A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000, creating sub-categories within the Scheduled Castes; (17) that the said Act was declared unconstitutional by the Supreme Court in *E.V. Chinnaiah v. State of A.P.*¹; (18) that thereafter, the Revenue Authorities started mentioning all Scheduled Caste candidates either as belonging to Mala caste or as belonging to Madiga caste; (19) that this is how the caste certificate issued by the Mandal Revenue Officer, Tirupati Urban described the petitioner as belonging to Mala caste; (20) that so long as the community certificate issued to him is not cancelled, by the appropriate authority, after an enquiry by the District Level Scrutiny Committee, it is not open to the petitioner to seek a direction to the High Court to cancel his appointment and that even the order recently passed by the District Level Scrutiny Committee, is only recommendatory in

¹ (2005) 1 SCC 394

nature and will come into effect only if it is acted upon and that therefore, the writ petition was liable to be dismissed.

7. We have carefully considered the above submissions.

8. For a moment, we shall keep aside the submissions contained in the affidavit in support of the writ petition, but proceed solely on the basis of the averments contained in the counter affidavit filed by the 7th respondent. As per the averments contained in the counter affidavit of the 7th respondent, (1) his father belonged to the Godda community, which is notified as a Scheduled Caste in Tamil Nadu, but not in Andhra Pradesh; (2) his mother belongs to the Adi Dravida community, which is notified as a Scheduled Caste in both the states of Andhra Pradesh and Tamil Nadu; (3) he was born in Tirumala, but had his entire schooling up to 12th standard only in Tamil Nadu in his maternal grandparents' house and hence he is entitled to claim the social status of his mother.

9. There is no difficulty in accepting the contention of the learned counsel for the 7th respondent that if any one of the parents belong to a caste which is included in the list of Scheduled Castes in a particular State, the ward of such parents can claim the benefit on the ground that he was brought up by such parent and the community also accepted him as such. Admittedly, the petitioner's father belongs to Godda community, which is included in the list of Scheduled Castes only in the State of Tamil Nadu and not in the State of Andhra Pradesh. However, the caste of Adi Dravida is included in the list of Scheduled Castes, in both the States of Tamil Nadu and Andhra Pradesh. Keeping these admitted facts in mind, let us now go to the documents on the basis of which the 7th respondent staked a claim in respect of his social status.

10. Admittedly, the 7th respondent secured a caste certificate, way back on 18.03.2004 from the Mandal Revenue Officer, Tirupati showing him to belong to Mala caste recognized as a Scheduled Caste. In paragraph 23 of the counter affidavit, the 7th respondent claimed that the Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act, 2000 was declared unconstitutional by the Supreme Court on 05.11.2004 and that the concerned revenue authorities used to give certificate only by mentioning either Mala or Madiga as the caste.

11. In the Transfer certificate issued by Sri Venkateswara College of Law, Tirupati, dated 04.02.2004 the caste of the petitioner is mentioned as Hindu Adi Dravida. But in the certificate issued by the Government Boys Higher Secondary School, Arakonam where the 7th respondent studied the 2nd year of + 2, it is stated that as per the school records, the community of the 7th respondent was Godda. The transfer certificate issued by the Madras Seva Sadan Higher Secondary School, Chennai, where the 7th respondent studied classes 7 to 10 during the period 1991-1995 also shows that the 7th respondent gave the name of his caste as Godda (SC).

12. Therefore, at the outset the contention of the 7th respondent that he was brought up by his maternal side and that the community accepted him as belonging to Adi Dravida caste (to which his mother belonged) is obviously false. If this is true, the 7th respondent could not have declared his caste as Godda, in the Schools in which he studied in Chennai and Arakonam in the State of Tamilnadu. Godda is the caste to which the 7th respondent's father admittedly belonged.

13. Be that as it may, the 7th respondent, who obtained a caste certificate from the Mandal Revenue Officer, Tirupati on 18.03.2004, as

though he belonged to Scheduled Caste Mala, also obtained another Caste certificate on 24.11.2005 indicating his caste to be SC Adi Dravida. The 7th respondent obtained a third certificate through an online portal called “Mee Seva Service” from the Tahsildar, Tirupati Urban Mandal on 30.01.2014, as though he belongs to the Scheduled Caste Adi Dravida.

14. Interestingly, the petitioner already had a community certificate issued by the Tahsildar, Arakonam, Tamil Nadu on 20.07.2000 to the effect that he belonged to Hindu Adi Dravida community.

15. Therefore, in essence, the 7th respondent has four certificates, one issued by the competent authority in Tamil Nadu in the year 2000, showing him to belong to Hindu Adi Dravida, the second issued by the Mandal Revenue Officer, Tirupati on 18.03.2014 showing him to belong to Mala caste (SC), a third issued by the Mandal Revenue Officer, Tirupati on 24.11.2005 showing him as belonging to SC Adi Dravida and a fourth issued by the Tahsildar, Tirupati Urban on 30.01.2014 showing him as belonging to SC Adi Dravida community. This is apart from the fact that in all the school records in the State of Tamil Nadu, his caste is reflected as Godda, which is not included in the list of Scheduled Casts in the State of Andhra Pradesh though it is included in the list in the State of Tamil Nadu.

16. The law is well settled to the effect that a person cannot carry his social status upon migration. In *Marri Chandra Sekhar Rao v. Dean, Seth G.S. Medical College*², the Supreme Court pointed out that the expressions “for the purposes of this Constitution” and “in relation to that State” appearing in Articles 341 and 342 must be construed

² (1990) 3 SCC 130

harmoniously. The decision in *Marri Chandra Sekhar Rao* was reiterated by another Constitution Bench in *Action Committee v. Union of India*³.

17. However, a different view was taken by a Three Member Bench in *S. Pushpa v. Sivachanmugavelu*⁴. This prompted a Two Member Bench of the Supreme Court to hold in *Subhash Chandra v. Delhi Subordinate Services Selection Board*⁵ that the dicta in *S. Pushpa* was *obiter*.

18. In order to settle the controversy, another Bench of the Supreme Court before which a case came up in *State of Uttaranchal v. Sandeep Kumar Singh*⁶, referred to a Larger Bench, the question as to the extent and nature of interplay and interaction among Articles 16(4), 341(1) and 342(1). However the Larger Bench did not answer the reference.

19. Therefore, the same question was taken up by another Constitution Bench in *Bir Singh v. Delhi Jal Board*⁷. This Constitution Bench, by a majority, held that if the special privileges or rights granted to Scheduled Castes or Scheduled Tribes in a particular State are to be made available in all the States and if such benefits are to be carried from one State to another on migration, the mandate of Article 341/342 would get compromised.

20. In the case on hand, the allegation of migration from Tamil Nadu to Andhra Pradesh is denied by the 7th respondent on the ground that though his father migrated, the marriage of his parents took place in Tirupati and he was born only in Tirupati. But unfortunately for him, three

³ (1994) 5 SCC 244

⁴ 92005) 3 SCC 1

⁵ (2009) 15 SCC 458

⁶ (2010) 12 SCC 794

⁷ (2010) 3 SCC 402

things go against such a defense put up by the 7th respondent. They are :

(1) A cloud is cast upon the entry in the birth register available in the Municipal Corporation of Tirupati. The Registrar of Births and Deaths of the Municipal Corporation of Tirupati has come on record in proceedings Rc.No.427/DSO/2018, dated 10.04.2018 to the following effect:

“In the reference cited Smt. U. Madhuri asked for the Birth registration Details against the Reg.No.1429 dated 04.07.1980. On verification it is noticed that the name of the Father and Mother and Child who was born on 30.06.1980 and registered in Municipal Birth register under Reg.No.1429 dated 04.07.1980 was altered without proper approval from the Competent Authority, i.e., Registrar of Births and Deaths.

As per Original Register No Name was entered for child and Sri Venkata Reddy as Father and Venkatamma as Mother. But the above entry was Tampered as Name of Child S.P. Balaji Kumar Father S. Prem Kumar Mother P. Selvi.

On perusal of the records it is here by ordered that the Tampered entry is cancelled as per the provision under Section 15, Registration of Births and Deaths Act, 1969. The Old Original entry is restored.”

(2) In the LAWSET-1998 Examination, the 7th respondent has indicated his place of birth as Madras.

(3) The claim of the petitioner that he was a permanent resident of Tirupati, but was undergoing schooling in his maternal grandparents house in Tamil Nadu, cannot be believed in the light of the caste certificate obtained by him in the year 2000 from the Tahsildar, Arakonam in Tamil Nadu. A person, who claims to be a permanent resident of Andhra Pradesh but merely travelling on a daily basis for studies to a town in the State of Tamil Nadu, could not have obtained a caste certificate from a competent authority in Tamil Nadu.

21. Therefore, the claim of the petitioner that he did not belong to Tamilnadu is not established. As a consequence, the law relating to social status on Migration, as laid down by the Supreme Court in the aforesaid decisions would squarely apply to the case of the 7th respondent.

22. In any event, a subsequent development has now taken place.

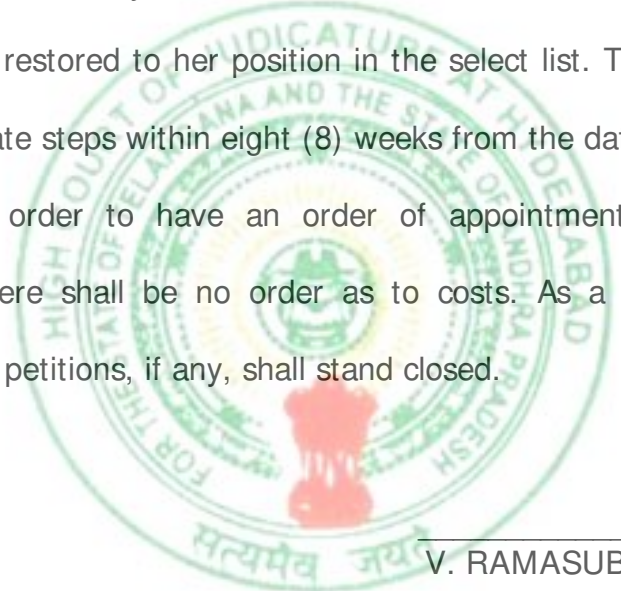
On the representation made by the writ petitioner about the social status of the 7th respondent, the caste certificates obtained by the 7th respondent in the State of Andhra Pradesh were referred to the District Level Scrutiny Committee. In a meeting held on 28.04.2018, the District Level Scrutiny Committee has concluded that the 7th respondent does not belong to SC Adi Dravida community. The Committee declared (1) the certificate dated 18.03.2004 issued as though the 7th respondent belongs to Mala caste; (2) the certificate issued on 24.11.2005 as though the 7th respondent belongs to SC Adi Dravida; and (3) the caste certificate issued on 30.01.2014 as though he belongs to SC Adi Dravida, are not genuine. The operative portion of the order of the District Level Scrutiny Committee reads as follows:

“Hence the “mala” caste certificate bearing No.C.No.167/2004 dt.18.03.2004 issued by the then Mandal Revenue Officer, Tirupathi (U), SC-Adi Dravida Caste Certificate bearing No.C.No.271/05, dt.24.11.2005 issued by the then Mandal Revenue Officer, Tirupathi (U) and SC-Adi –Dravida Caste certificate bearing No.CG 112472802 dated 30.01.2014 issued by the then Tahsildar, Tirupathi (U) in favour of claimant, viz., Sri S.P. Balaji Kumar S/o. Premkumar, Junior Civil Judge, Kothuru Srikakulam District resident of 13-3-344/14, Jabbar Layout, Gangamagudi Street, Near Head Post Office, Tirupati is not belong to “(SC) Mala/Adi-Dravida” Community are not genuine one. Any caste certificates issued by any officer for “(SC) Adi-Dravida” caste to the claimant viz., Sri S.P. Balaji Kumar S/o. Premkumar, Junior civil Judge, Kothuru Srikakulam District resident of 13-3-344/14, Jabbar Layout, Gangamagudi Street, Near Head Post Office, Tirupati may be cancelled.”

23. Though Mr. Chandraiah Naidu, learned counsel for the 7th respondent contended that the proceedings of the District Level Scrutiny Committee are only recommendatory in nature and that it is for the appropriate authority to take a decision on the basis of the recommendations, we do not think that such a contention can be allowed to be taken by a judicial officer. The authority competent to issue a caste

certificate for Scheduled Castes is the Tahsildar. The District Level Scrutiny Committee comprises of the Joint Collector, the Joint Director, Social Welfare, the District Backward Classes Welfare Officer and the District Tribal Welfare Officer. The fact that the 7th respondent had obtained 3 caste certificates in the State of Andhra Pradesh in the years 2004, 2005 and 2015, after having obtained a caste certificate in the State of Tamil Nadu, does not speak well.

24. Therefore, the writ petition is allowed and the appointment of the 7th respondent is set aside. Since the writ petitioner was displaced by the 7th respondent, by the order dated 16.08.2017, she is naturally entitled to be restored to her position in the select list. The Registry may take appropriate steps within eight (8) weeks from the date of receipt of a copy of this order to have an order of appointment issued to the petitioner. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.



V. RAMASUBRAMANIAN, J.

J. UMA DEVI, J.

20th November, 2018

Js.

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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