

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

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**CWP No. 1159 of 2016  
Date of Decision: 7.3.2018**

**Smt. Reena**

**.....Petitioner**

**v.**

**State of Punjab and others**

**.....Respondents**

**CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present:- Mr. K.S. Dadwal, Advocate, for the petitioner

Mr. Ayush Sarna, AAG, Punjab

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**RAKESH KUMAR JAIN, J. (Oral)**

The petitioner has challenged the communication dated 4.9.2015, 7.9.2015 and the order of cancellation dated 22.12.2015 by which the certificate of Scheduled Caste issued to her has been cancelled.

In brief, the petitioner hails from Uttarakhand. She belongs to a caste called Kanjarh. The said caste find mentioned at Serial No. 42 in the Notification issued by the State of Uttarakhand/Uttaranchal and is, thus, a Scheduled Caste. The petitioner has appended the certificate of Scheduled Caste issued to her father (belonging to the caste Kanjarh)(Annexure P-2). The petitioner is married to one Vijay Kumar resident of Hoshiarpur, who belongs to the caste of Sirki Bandh which is a Scheduled Caste in Punjab as mentioned in the Schedule at Serial No. 37. The petitioner contested the election of Councillor of Municipal Corporation, Hoshiarpur from Ward No.17 on reserved seat on the strength of her certificate of Scheduled Caste which she

obtained after marriage, belonging to the caste of Sirki Bandh. She was successful in the election in which the result was declared on 26.2.2015. The losing candidate/respondent No.7, made a complaint on 20.5.2015 to the District Commissioner, Hoshiarpur, against the petitioner that the Scheduled Caste certificate appended by her of her caste is wrong. The caste Kanjarh is not a caste mentioned in the Schedule in the State of Punjab and by getting married to a person belonging to Sirki Bandh caste, which is of course a caste mentioned in the Schedule, she cannot get the certificate of Sirki Bandh caste. The Deputy Commissioner, Hoshiarpur got the matter enquired through the Tehsildar, Hoshiarpur, who vide his impugned report dated 4.9.2015 observed that the Caste Sirkibandh is not equal to the Caste Kanjarh in Uttarakhand, therefore, the petitioner has wrongly been issued the Scheduled Caste certificate (Annexure P-3) on the strength of which she has contested election to the post of Councilor of Municipal Corporation, Hoshiarpur. The said report was followed by another report by the Tehsildar dated 11.9.2015 and the impugned order dated 22.12.2015 and the certificate issued to the petitioner (Annexure P-3) was cancelled by the Tehsildar. As a result thereof, if the certificate of the petitioner is cancelled, the petitioner would be unseated from the post of Councilor to which she has been elected being Schedule Caste candidate. Therefore, she has challenged the cancellation of her Caste Certificate by way of this writ petition in which, at the time of issuance of notice, operation of the impugned order was stayed.

The respondents have filed their reply in which they have taken the stand that the petitioner belonged to the Caste Kanjarh which is not listed in the Schedule. The certificate was issued by the competent authority but it is

not declared that the said caste kanjarh is similar to caste Sirkibandh which is a Scheduled Caste in the State of Punjab. The stand of the respondents is that the petitioner would not belong to Sirkibandh Caste after her marriage and shall have to be treated as a General Category candidate because of the reason that her Caste Kanjarh, which is a Scheduled Caste in Uttarakhand, is not a Scheduled Caste in the State of Punjab, and being a General Category candidate, marriage to a Scheduled Caste person, will not give her the status of the Schedule Caste.

Learned counsel for the petitioner has submitted that the petitioner is a Scheduled Caste by birth in the State of Uttarakhand. Her husband is also a Scheduled Caste by birth in the State of Punjab. It is not a case where petitioner married to a Scheduled Caste person and then seeking to obtain certificate for the purpose of contesting election. She has referred to a letter issued by the Ministry of Home Affairs dated 18.11.1982 which has been addressed to The Chief Secretaries to all State Governments/Union Territories Administrations, in which it is observed that “the certificate will be issued irrespective of whether the Caste/Tribe in question is schedule or not in relation to the State/Union Territory to which the person has migrated. This facility does not alter the Scheduled Caste/Scheduled Tribes status of the person in relation to the one or the other State”. He has also submitted that for the purpose of contesting elections of the Municipal Corporation, the certificate of the petitioner cannot be cancelled and in this regard he has referred to a decision of the Delhi High Court in the case of **“Ms. Sunita v. Krishan Lal and others’ 2005 AIR (Delhi) 284”**.

It is submitted that in the case of **Sunita** (supra), Sunita was a

member of a Jatav Caste (a Scheduled Caste). She was got elected on the reserved seat. Her election was challenged on the ground that she could not have contested the election on the reserved seat. In this regard, Delhi High Court has held that in such a situation, a person would not be entitled to the benefits of Articles 15(4) and 16(4) of the Constitution of India but would not be precluded from claiming other benefits. The observation made by Delhi High Court in this regard is reproduced as under :-

*“31. The Supreme Court has drawn a distinction between the benefits under Articles 15(4) and 16(4) of the Constitution and in respect of these, the Supreme Court has clearly held that such a lady would not be entitled to these constitutional benefits. This does not mean that the lady would not be entitled to other benefits that her husband may be entitled to such as standing for an election from a reserved constituency. It is in failing to appreciate this distinction that the impugned decision has gone wrong. The learned Judge applied the constitutional philosophy to statutory benefits and on that basis concluded that the petitioner could not have stood as a candidate from a reserved constituency. This is clearly incorrect as has been pointed out by the Supreme Court in some of the cases discussed above. The law is that in a case such as the present, the petitioner would not be entitled to the benefits of Articles 15(4) and 16(4) of the Constitution but that does not preclude her from claiming other benefits such as contesting an election from a reserved category.”*

After hearing learned counsel for the parties and taking into consideration the aforesaid facts and circumstances much less the fact that the petitioner herself belongs to a Scheduled Caste from Uttarakhand and her husband belongs to a Scheduled Caste from Punjab and there are instructions issued by the Central Government that the certificate has to be issued irrespective of the fact whether the caste is scheduled or not in relation to the State/UT to which the person has migrated and because of the said facility, the

status of the person does not alter in relation to the one or the other State and that the issue in hand has been squarely dealt with similarly in the case of **Sunita** (supra), in which the position was rather more grave because in that case the candidate who had contested the election and returned was belonging to General Category, married to a Schedule Caste person and in that situation Delhi High Court has held that the said person, married to a Schedule Caste, may not get benefit of Articles 15(4) and 16(4) of the Constitution of India but she would not be precluded from contesting the election from the reserved constituency.

In view of the above, I am of the considered opinion that the impugned communication and order are patently erroneous and the certificate of the petitioner could not have been cancelled on that account resulting into loosing of the seat by the petitioner, on which she has been elected, as she is entitled to this kind of benefit in terms of Delhi High Court's decision.

With these observations, the present petition is hereby allowed and the Annexures P-10 dated 4.9.2015, P-11 dated 7.9.2015 and Order dated 22.12.2015 (Annexure P-14) are hereby set aside.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**7.3.2018**

*Ashwani*

Speaking/Reasoned  
Reportable

Yes/No  
Yes/No