

Form J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Bibek Chaudhuri

WPA 281 of 2021

Santila @ Santhila Oraon

-versus-

The State of West Bengal & Ors.

**For the petitioner : Ms. Supriya Singh, Adv.,
Mr. Deborshi Dhar, Adv.**

**For the State : Mr. Hirak Barman, Adv.,
Mr. Momenur Rahman, Adv.**

**For the Respondent No. 7 : Mr. Kamal Krishna Banerjee, Adv.,
Mr. Satyaki Basu, Adv.**

Heard & Judgement on : 10.02.2021.

Bibek Chaudhuri, J.

The mother of the petitioner was an employee of Moraghat Tea Estate within Police Station – Banarhat, Jalpaiguri. On her death, her daughter, the petitioner herein was employed as 'Badli' in the said Tea Estate in the year 2008. Subsequently, she became a permanent employee of the said Tea Estate. While she was in employment, the petitioner married to a Mohammadan man, named, Tajgul Ansari on 18th November, 2013. The petitioner is a tribal lady. According to

the prevailing custom of the tribe of which the petitioner belongs and the customary rule of Moraghat Tea Estate, a person of tribal community must marry another person of the opposite sex of the same community living in the Garden. He/she cannot marry an outsider or a person belonging to a different religion. After her marriage with a Mohammadan male the workers under the banner of various trade unions started putting pressure upon the Garden Management to terminate the petitioner from her job. The petitioner lodged a complaint before the local Police Station on 2nd March, 2014. Subsequently, she lodged various complaints and made several representations to the different statutory authorities including the State Human Rights Commission alleging, *inter alia*, that the trade unions operating in the said Tea Garden had no authority to put pressure upon the Management of the Garden to terminate her from her service. The said service is her only livelihood. The petitioner cannot be restrained from marrying a person having different religion.

The petitioner also moved before the Labour Commissioner. The matter was referred to conciliation but the conciliation process also failed. Under such circumstances, the petitioner has prayed for issuance of writ in the nature of mandamus directing the respondents no. 3, 4 and 5 to give protection of her life and livelihood by securing her job.

Though the State respondents did not file any affidavit-in-opposition, it is submitted by the Learned Advocate appearing for the State respondents that the dispute between the petitioner and the workmen of the concerned Tea Garden is essentially a private dispute. The employment of the petitioner is in the nature of personal contract between employee and employer and the Writ Court has no jurisdiction to grant any relief to the petitioner under the facts and circumstances of the case.

The Learned Advocate for the respondent no. 7, Binnaguri Tea Company Private Limited also submits that the dispute between the petitioner and the workmen on the question as to whether she should be terminated or not is an industrial dispute which is required to be adjudicated by the Industrial Dispute Tribunal.

Ms. Supriya Singh, Learned Advocate for the petitioner, on the other hand, submits that the petitioner was denied her employment because she married to a man of different religion. It is submitted by the Learned Advocate for the petitioner that in a free and democratic country like India, once a person becomes major, he or she can marry whosoever he/she likes. Inter-caste or inter-religious marriage is permissible and the couple cannot be harassed by anyone nor subjected to threats or acts of violence. It is the duty of the

administration or police authorities to give protection to such couple if such allegation is made by them. In support of his contention, she refers to a decision of the Supreme Court in the case of ***Lata Singh – Vs.- State of U.P. & Anr.***, reported in ***(2006) 5 Supreme Court Cases 475***. On the same issue he also refers to a decision of the Allahabad High Court in the case of ***Smt. Shaisa Parveen & Anr. – Vs.- State of U.P. & 3 others***, reported in ***2017 SCC OnLine All 1475***.

Having heard the Learned Advocates for the petitioner and the respondents and on careful perusal of the entire materials-on-record I like to state that there is no dispute on the question that inter-caste and inter-religious marriage is permissible in India and if any party to a marriage is harassed by any person, it is the duty of the administration and the police authorities to protect the said person. I am also not unmindful to note that customary regulation cannot prevail over the statute.

However, in the instant case, the petitioner is an employee of a Private Limited Company. She has been restrained from performing her duties by other employees of the said Tea Garden. The matter was referred to conciliation and the conciliation report is annexed at page 51 of the writ petition. On perusal of the said report it appears

that the Conciliation Officer recorded that the Management did not comply with Section 25F of the Industrial Dispute Act, 1947. The Management violated many statutory provisions applicable to a daily wage earner. Therefore, the matter should be sent for adjudication. The petitioner also wanted the matter to be referred to the Industrial Tribunal/Labour Court for adjudication.

Section 2(k) of the Industrial Disputes Act, 1947 defines industrial dispute in the following words:-

"'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons".

From the averment made by the petitioner in the instant writ petition it is clear that she was disallowed to perform her work in the Tea Estate as a result of dispute or difference between her and other workmen. Therefore, the dispute is essentially an industrial dispute. When the Industrial Dispute Act makes elaborate provision as well as the forum for redressal, the petitioner cannot invoke the constitutional writ jurisdiction of this Court.

For the reasons stated above, the instant writ petition being not maintainable is **dismissed** on contest, however, without costs.

This order will, however, not debar the petitioner from approaching the appropriate forum for redressal of her grievance.

(Bibek Chaudhuri, J.)

**Srimanta
A.R.(Court)**