

**211 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-22489-2015(O&M)
Date of decision: 21.09.2022**

POORNIMA

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Balram Singh, Advocate for the petitioner.
Mr. Saurav Verma, Addl. A.G., Punjab.
Mr. Abhay Sharma, Advocate for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

CM-19092-CWP-2018

The instant application filed under Order 1 Rule 10 of the Civil Procedure Code (hereinafter referred to as 'CPC') to implead the applicant i.e. Baljinder Kaur w/o Mukesh Kumar r/o Ward No.11 Plahi Gate Phagwara as respondent No.3.

Learned counsel for the applicant contends that the petitioner had moved an application on 09.02.2015 for seeking a Scheduled Caste Certificate by furnishing a false declaration of belonging to Ad-Dharmi caste. On the basis of the said application she was issued a Scheduled Caste Certificate whereupon the petitioner filed a nomination for Ward No.11 of the Municipal Corporation, Phagwara.

That on 24.02.2015 an application was moved by Balwinder Kumar (brother-in-law of the applicant) before the Additional Deputy Commissioner, Phagwara seeking inquiry into the issuance of Caste

Certificate in favour of the petitioner. The said application was marked to Tehsildar, Phagwara who submitted his report on 25.02.2015 to the effect that the Scheduled Caste Certificate issued in favour of the petitioner was wrong and consequently the same was cancelled. The applicant also contested the Post of Municipal Councilor from Ward No.11 and was second in the counting of votes held on 26.02.2015. However, the petitioner held the seat of the Municipal Councilor against the seat reserved for a Scheduled Caste, despite the petitioner not being eligible.

The applicant thus claim to be the affected party and necessary and contends that even though a relief may not be sought against the applicant, however, the outcome of the petition shall prejudice the rights of the applicant.

Reply to aforesaid application has been filed by the petitioner wherein he has stated that no relief is being sought against the applicant and as such her application is misplaced and she is not a necessary party for adjudication of the present complaint.

I have heard learned counsel for the applicant as well as the petitioner/non-applicant and going through the same, I am of the opinion that the rights/interest of the applicant shall be effected by the final outcome of this petition. Thus, even if no relief may be claimed against the applicant, however, it cannot be said that the applicant has no interest in the outcome of the present petition, especially when there will be a direct bearing on the rights/interest of the applicant. Consequently, the application is allowed. The applicant Baljinder Kaur w/o Mukesh Kumar is impleaded as respondent No.3.

Amended memo of parties is taken on record.

Registry is directed to tag the same at an appropriate place.

CM-19093-CWP-2018

The present application has been filed under Section 151 of Civil Procedure Code for seeking revival of the writ petition and for final adjudication of the issue on merit since the case had been adjourned sine die to await the Larger Bench Judgement of the Hon'ble Supreme Court. He contends that the Constitutional Bench of the Hon'ble Supreme Court has adjudicated the issue in the matter of **Bir Singh Vs. Delhi Jal Board and others reported as AIR 2018 SC 4077.**

Application is accordingly allowed and the main writ petition is taken up on board today itself.

Main Case

The question which arises for consideration in the present petition is whether a person can claim benefit of Scheduled Caste in the State where one has re-settled even if such caste is not notified as a Scheduled Caste for the said State.

The petition raises a challenge to the report No.43-46/MC dated 25.02.2015 whereby the Certificate of Scheduled Caste issued in favour of the petitioner on 09.02.2015 has been cancelled. The aforesaid inquiry report is appended as Annexure P-7 and the subsequent order of cancellation of Scheduled Caste Certificate has been cancelled.

Briefly summarized the facts of the present case are that the petitioner was born in District Bhandra of the State of Maharashtra and belongs to Mahar Caste which is a recognized Scheduled Caste as per the Constitution (Scheduled Castes) Order, 1950 for the State of Maharashtra.

The petitioner was married to Harbhajan Lal s/o Dhannu Ram who belongs to Ad-Dharmi Caste that is recognized as a Scheduled Caste as per the Constitution (Scheduled Castes) Order, 1950 for the State of Punjab. The marriage in question was solemnized in the year 2008 and the petitioner started living at Phagwara. Two children were also born out of the said wedlock.

Election to the Municipal Corporation, Phagwara was announced and Ward No.11 where the petitioner has her house was reserved for Scheduled Caste (woman).

Desirous of contesting the election, the petitioner applied for issuance of certificate of Scheduled Caste in the office of the Tehsildar Phagwara, Kapurthala on 09.02.2015. The petitioner applied for the Scheduled Caste of Punjab i.e. Ad-Dharmi. The same was issued by the Tehsildar. She contested the election and was returned as a successful candidate from Ward No.11 on 26.02.2015. However, her Scheduled Caste Certificate issued by the Tehsildar stood cancelled on 25.02.2015. The aforesaid decision of the Tehsildar was challenged by means of filing the present writ petition.

Written statement on behalf of respondent Nos.1 and 2 has been filed wherein a specific stand was taken by the respondent-authorities that the petitioner belongs to "Mahar" caste which is a recognized Scheduled Caste of Maharashtra and that the petitioner concealed the said vital fact and instead sought Scheduled Caste certificate for Ad-Dharmi Caste. It is pointed out that the petitioner does not fall in the Scheduled Caste as notified for the State of Punjab and that the Tehsildar, Phagwara had issued the Scheduled Caste Certificate on the report of the Municipal

Councilor and his endorsement. It is further contended that the application itself was submitted for seeking a Scheduled Caste Certificate for Ad-Dharmi Caste and that such fact was even though known to the petitioner to be incorrect, and that she was not born in the said Scheduled Caste and was rather married in the same. It is submitted that the aforesaid material misrepresentation vitiates the entire application as well as the process thereof. It is also contended on behalf of the respondent-State that the petitioner, not being a notified Scheduled Caste in the State of Punjab, cannot claim any benefits reserved for the Scheduled Caste belonging to the State of Punjab and as such, the cancellation of Certificate of Scheduled Caste issued in favour of the petitioner was correct.

Learned counsel appearing on behalf of the petitioner has vehemently argued that the decision of the respondents is based upon an illegality and the petitioner, having been married in the Scheduled Caste notified for the State of Punjab, was rightly issued the Scheduled Caste Certificate. He has further placed reliance on a Single Bench Judgement of this Court passed in CWP No. 1159 of 2016 decided on 07.03.2018 titled as **Smt. Reena Vs. State of Punjab and others**. The relevant extract of the same judgement reads as under:

“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 Rana Rajput by birth i.e. a candidate of General Category who has married to 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 losing 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. "

Reference was also made to the judgment of the Delhi High Court in the matter of **Ms. Sunita Vs. Krishan Lal and others reported as AIR 2005 Delhi 284**. The relevant part of the said judgment has already been extracted above.

Learned counsel thus vehemently argued that decision of the respondents in cancelling the Scheduled Caste Certificate is bad in as much

as the mandate of Article 341 of the Constitution of India, 1950 and the List issued thereunder is applicable only with respect to the reservations in employment and admissions as contemplated under Articles 15 and 16 of the Constitution of India, 1950 and would not be applicable to the reservation of seats or any other benefits contemplated elsewhere in Constitution of India, 1950, including the elections. He further contends that no notice prior to cancellation of the Scheduled Caste Certificate had been given to the petitioner and as such the order of cancellation of Scheduled Caste Certificate is violative of the principles of natural justice and is thus liable to be set aside.

Per contra, learned counsel for the State as well as the added respondent have placed reliance on the Constitutional Bench Judgement of the Hon'ble Supreme Court in the matter of **Bir Singh Vs. Delhi Jal Board** (supra) to contend that the Constitutional Bench has already held that the benefit of reservation is restricted to the particular State where such a caste is notified as Scheduled Caste and that a person cannot claim the same status in another State merely because he was declared as Scheduled Caste in another State. They further contend that the Constitutional Bench Judgement of the Hon'ble Supreme Court does not restrict itself to only the matter of employment and admissions, rather, the aforesaid judgement relates to benefits admissible to a Scheduled Caste under the Constitution of India. A reference is placed on the following extract of the aforesaid judgment of the Constitutional Bench:-

“30. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The

expressions "in relation to that State or Union Territory" and for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'."

R. Banumathi, J. Reference Order:-

63. I have gone through the judgment proposed by His Lordship Justice Ranjan Gogoi. I agree with the following conclusions arrived at in paras (30) and (34) and the reasonings thereon.

"A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A.....'."

".....It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential orders for a particular State/Union Territory within the geographical area of that State/Union Territory (Union Territory added by me) and not beyond."

91. My Conclusion for agreeing with the view taken in paras (30) and (32): It is now settled law that a person belonging to Scheduled Caste/Scheduled Tribe in State 'A' cannot claim the same status in another State B on the ground that he is declared as a Scheduled Caste/Scheduled Tribe in State A. The expressions "in relation to that State or Union Territory and for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India are to be meaningfully interpreted. A given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to that State

or Union Territory for which it is specified. Thus, the person notified as a Scheduled Caste in State A cannot claim the same status in another State on the basis that he was declared Scheduled Caste in State A. Article 16(4) has to yield to the Constitutional mandate of Articles 341 and 342.”

138. Conclusion:-

Insofar as the States, I agree with the majority view that a person who is recognised as a member of Scheduled Castes/Scheduled Tribes in his original State, will be entitled to all the benefits of reservation under the Constitution in that State only and not in other States/Union Territories and entitled to the benefits of reservation in the migrated State/Union Territory”

While adverting to the arguments advanced by the counsel for the petitioner on the other aspects, including the judgment relied upon by him, it is contended that the Single Bench Judgement of this Court was passed prior to the Constitutional Bench Judgment of the Hon’ble Supreme Court and therefore any proposition of law laid down by the Single Judge of this Court cannot have precedence over the Constitutional Bench judgment of the Hon’ble Supreme Court. In response to the argument that there was non-compliance of the principles of natural justice, it is contended that the said argument is bereft of merit as the question of fact is not in dispute. The petitioner herself does not claim to be covered under the Scheduled Caste for the State of Punjab. Once the facts are undisputed and the Certificate in question had been obtained by playing a fraud upon the authorities, the said fraud cannot be permitted to be capitalized on mere technicalities that serve no real purpose. Moreover, once the authoritative judicial pronouncement of the Hon’ble Supreme Court is already there, a

mere reference to principles of natural justice would be a formality which is not likely to substantiate any real cause of justice.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents with their assistance.

Before proceeding further, it would be essential to refer to the Constitutional provision relating to the notification of the Scheduled Castes and their scope.

Article 341 of the Constitution of India, 1950 deals with the issue of Notification of Scheduled Caste for the respective States. The same is extracted hereinafter below:-

*“341. Scheduled Castes.-(1) The president ¹[may with respect to any State ²[or Union Territory], and where it is a State ³[***], after consultation with the Governor ⁴[***] thereof], by public notification⁵, specify the castes, races or tribes or parts of or groups within castes, races or tribes which **shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State ²[or Union territory, as the case may be].***

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

(Emphasis supplied)

A perusal of the same shows that the notification is made with reference to specific State only and that such notified caste shall be deemed to be a Scheduled Caste for the purposes of the Constitution in

relation to that State. The language of the provision is unambiguous and is not specific to any particular benefits.

Reservation of seats in the Municipalities is provided for in Article 243 T (Part IXA) of the Constitution of India, 1950 recorporated by the 74th Amendment Act of 1992. The reservation in Municipalities for Scheduled Castes under Article 243T has to be read in harmony with Article 341 and Article 366(24) of the Constitution of India, 1950. The said provisions are also extracted as under:-

243T. Reservation of seats.

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for

women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

366. Definitions.

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

Hence, the seats reserved as per Article 243T for the Scheduled Castes have to be read and interpreted as per Article 341 read with Article 366(24) and Scheduled Castes have to be seen as per the notification and in reference to the specific State.

Reservation of the seats in the Municipalities is prescribed in the Constitution itself. No other meaning can be assigned to a Scheduled Caste under the Constitution of India by assigning a restricted application.

Furthermore, the Constitutional Bench of the Hon'ble Supreme Court, in the matter of **Bir Singh Vs. Delhi Jal Board** (supra), has specifically held that the benefits of belonging to a Scheduled Caste are admissible only with respect to the State to which the person belongs and that such status of Scheduled Caste cannot be transposed with the petitioner to any other State where she so chooses to relocate herself on account of any intervening circumstances viz marriage, job etc. The interpretation given by the Constitutional Bench is pertaining to the "benefits" under the Constitution of India. The contesting against a seat reserved for a Scheduled Caste is undisputedly a benefit made available to

a person belonging to the Scheduled Caste under the Constitution of India, 1950. Any interpretation that the benefit of reservation under Article 341 and the List so notified is limited and restricted only to the matters of employment and admission contemplated in Articles 14 and 16 of the Constitution of India enshrined in Part-III is not based on correct reading of the judgment of the Hon'ble Supreme Court or the provision itself.

It is also not disputed that the judgment of Single Bench of this Court is prior to the passing of Constitutional Bench Judgment and therefore the reliance on the aforesaid Single Bench judgment of this Court is misplaced.

Even otherwise, a judgment has to be read in the context in which the same has been rendered. Single Bench judgment relied on by the petitioner has not been rendered in the context of Article 243T, 341 and 366(24) of the Constitution of India, 1950. Consequently, it cannot be safely relied upon for adjudicating the controversy involved in the present case.

While adverting to the second argument given regarding non-compliance of principles of natural justice, I am of the view that in the light of the authoritative pronouncement of the Hon'ble Supreme Court any such argument is bereft of any merit. A case should not be relegated to the authorities solely for a technical compliance of principles of natural justice once no real purpose is to be served or to be advanced. This Court finds its support from the judgment passed by the Hon'ble Supreme Court in the matter of **Natwar Singh Vs. Director of Enforcement and another** reported as **(2010) 13 SCC 255**. The relevant part of the said judgment is extracted hereinafter below:-

“26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.”

Emphasis supplied

Once there is no dispute regarding the factual aspect and position of law as expounded by the Hon’ble Supreme Court, no real purpose would be served by directing the authorities to pass a fresh order or to afford an opportunity of hearing at this belated stage.

The present petition is thus devoid of any merit. I find there is no illegality, perversity or impropriety in the order passed by the respondent-authorities in cancelling the Ad-Dharmi Scheduled Caste Certificate issued in favour of the petitioner on the basis of representations made by her and that such representation undisputedly was a fraudulent act since it was known to the petitioner at all times that she did not belong to the Ad-Dharmi caste and instead belong to Mahar caste.

The present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

21.09.2022
Sonia

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No