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W.A.No.2241 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.No.2241 of 2010 and

M.P.No.1 of 2018

1. Union of India, rep. by Secretary (Revenue),
Government of Puducherry.

2. The Tahsildar, Taluk Office, Oulgaret,
Puducherry.

... Appellants

//vs/

D.Vidjeacoumary

Respondent

...

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the
order passed by this Court in W.P.No.9771/2007 dated 02.09.2010.

For Appellants

: Mr.A.Tamilvanan, Addl.Govt.Pleader
Puducherry

For Respondent

: No appearance



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JUDGEMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court Appeal has been filed by the Puducherry Government, challenging the order passed by this Court in W.P.No.9771/2007 dated 02.09.2010, by which, the order passed by the appellant dated 19.02.2007, *rejecting the claim of the writ petitioner to issue Schedule Caste (Origin) certificate to her daughter, stating that it can be issued only based on the residential status of the father, more specifically, who is resident in Puducherry before the crucial date i.e. 05.03.1964, not on the residential status of mother*, was set aside.

2. According to the appellant/Department, the Writ Court has passed the order, following the decision of the Division Bench of this Court in W.A.No.1326/2005 dated 30.03.2010. Further, the order passed in the above said writ appeal was challenged before the Hon'ble Supreme Court in Civil Appeal No.9082/2014, and by judgment dated 19.04.2023, the Hon'ble Supreme Court has confirmed the order passed by the Division Bench,



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however, granted liberty to the Department that the question of law is open to the appellant to decide the issue in appropriate cases. Based on the above decision of the Hon'ble Supreme court, the learned Additional Government Pleader would submit that the judgment of the Division Bench in W.A.No.1326/2005 has not become final and hence, the order passed by the Writ Court in the present matter requires for reconsideration.

3. Further, to support his contentions, the learned Additional Government Pleader, has relied upon the decision of a ***Division Bench of this Court in W.P.No.2865/2022 dated 22.06.2022***, wherein, accepting the contentions of the appellant, the writ petition was dismissed. He also invited our attention to the paragraph No.10 of the above said decision, wherein, it is held as follows.

10. The decision of the Apex Court in PUNIT RAI Vs. DINESH CHAUDHARY (cited supra) lends support to the arguments of respondents. The Apex Court in para 41 of judgment observes as follows.

Determination of caste of a person is governed by the customary laws. A person under the customary Hindu Law would be inheriting his caste from his father. In this case, it is not denied or disputed that the respondent's father belonged to a Kurmi caste. He was, therefore, not a member of Scheduled Caste. The caste of the father,



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therefore, will be the determinative factor in absence of any law.

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Hence, in the light of the above decisions, it is clear as per customary Hindu law, a person would be inheriting his caste from his father. The petitioner has not produced any law or notification having force of law to say the petitioner is entitled to inherit the caste of his mother. Admittedly in the caste certificate issued to father of the petitioner, his father was treated as " migrant OBC Vanniyar". The instruction issued by Government in memorandum 9565/C2/Rev/2000 dated 10.11.2000 for the purpose of deciding migrant/origin status of the Schedule Caste candidates supports the arguments of respondent that applicant's residential status shall be decided based on residential status of father".

Therefore, he submitted that in the light of latest judgments passed by this Court, the order passed by the Writ Court warrants reconsideration. However, the learned Additional Government Pleader submitted before this Court that the daughter of respondent has subsequently joined in the Medical College under management quota and hence, the respondent is not interested in contesting the present appeal. As such, there is no representation on behalf of the respondent.

4. Considering the submission made by the learned Additional Government Pleader that the respondent/ writ petitioner's daughter was joined in the medical college under management quota, we are not inclined



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to decide the issue on merits, however, the same will be considered in appropriate cases.

5. Before parting the order, it is necessary to discuss that, the Government has passed ***G.O.Ms.No.28, Revenue Department, dated 02.02.1977, wherein, at Claus b(ii),*** it is stated as follows.

b) Cases of migration:-

i) ---

ii) Where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated.

6. Subsequently, by way of a memorandum dated 10.11.2000, the Government of Puducherry, Revenue Department, had issued instructions, as extracted hereunder.

" In supersession of this Department's memorandum 2nd cited, the certificate issuing authorities are hereby directed to follow only the guidelines prescribed in G.O.Ms.No.28 dated 02.02.1977 while deciding the migrant/origin status in respect of Scheduled Caste Certificates. It is informed that the origin/migrant status of applicants for Schedules Caste certificates should be decided based on only the residential status of applicants' 'father' on the crucial dated 05.03.1964, and not on the residential status of the " mother".



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In this connection, complaints are received often that the certificate issuing authorities have been demanding documentary evidence from the applicants in respect of their fathers' residential status as on the crucial date and refusing issue of certificates on the failure on the part of the applicants to produce the same. It is hereby directed that in the event of the applicant's genuine inability to furnish documentary evidence as discussed above, the certificate issuing authorities should institute a formal enquiry to establish his or his father's residential status and decide the case accordingly by drawing up necessary proceedings. Admittedly, this will be a time-consuming step and would put an enormous burden on the certificate issuing authority; yet, in the interest of the public they should endeavor to undertake this task in an efficient and transparent manner."

7. According to us, even though, the Division Bench of this Court in its order dated 22.06.2022 in W.P.No.2865/2022, accepting the contentions of the Puducherry Government and relying upon the above circular, has decided the matter in favour of the appellant, (in which the father of the applicant was a migrant OBC belonging to Vanniyar Caste, but, herein in this case, the father as well as the mother of the girl belonged to Scheduled Caste), it is not made clear by the appellant that ***whether the above clause b(ii) of G.O.Ms No.28, Revenue Department dated 02.02.1977 is over***



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ruled by the said Circular dated 10.11.2000 or not. Therefore, it requires to revisit the above G.O.Ms.No.28 for examining the issue, in the light of earlier and subsequent orders passed by this Court and **to issue a Fresh Guidelines to decide the migrant/ origin status in respect of Scheduled Caste and Scheduled Tribes certificates based on the residential status of applicants' "father" or "mother" or " applicants".**

8. Accordingly, the appellant is directed to revisit the G.O.Ms.No.28 dated 02.02.1977 and to issue Fresh Guidelines. With the above direction, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

9. For reporting compliance, post the matter after six months.

(D.K.K.J.)

(P.B.B.J.)

19.07.2023

Internet: Yes/No

Index : Yes/No

mst



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To

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