

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28751 of 2013(O&M)
Date of decision: 10.04.2023

Sunita

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulbhushan Raheja, Advocate
for the petitioner.

Mr. R.K.Kapoor, Addl.A.G., Punjab

ANIL KSHETARPAL, J(Oral)

1. Rejoinder to the written statement filed by the respondents is taken on record.

2. With the consent of the learned counsels representing the parties, taken on Board for final disposal.

3. The petitioner prays for the issuance of a writ in the nature of certiorari to quash the order dated 18.06.2013 passed by the Special Secretary(H)-cum-Chairman, Scrutiny Committee, whereby the Schedule Caste Certificate issued to her has been sought to be cancelled. During the pendency of the writ petition, her services have been terminated by the Director, Rural Development and Panchayat, Punjab, vide order dated 16.12.2013.

4. In substance, the controversy is “Whether the petitioner is entitled to claim reservation as Scheduled Caste (Ramdasia) on account of her marriage with a person belonging to Scheduled Caste category though

she belongs to general category?

5. At one stage, on account of her marriage, the petitioner was issued Schedule Caste Certificate on the basis whereof the petitioner applied for recruitment as Elementary Trained Teacher claiming reservation. However, on account of her higher merit, she was selected and appointed in the General Category somewhere in the year 2007-2008. At the time of filing the writ petition, it was asserted that she has already completed around 7 years of her service which fact has not been denied by the respondents.

6. Initially the courts interpreted that if a general category women marries with a person belonging to Schedule Caste category, the wife shall also be entitled to reservation. However, in *Mrs. Valsamma Pau vs. Cochin University & Ors, 1997(1) Mh. LJ 618*, it was held that 'caste' is determined by birth and not by marriage. It was on account of this development, the Scrutiny Committee has recommended the cancellation of the 'Caste' certificate issued to the petitioner.

7. The learned counsel representing the petitioner does not dispute its correctness in view of the interpretation of law on the subject. However, he prays that since the petitioner was selected against the seat of general category, therefore, the order terminating her services should be set aside.

8. On the other hand, the learned State counsel while highlighting that the petitioner applied under the reserve category, contends that she does not deserve to continue in service.

9. This court has considered the submissions and perused the record.

10. Once it is undisputed that the petitioner was selected against the seat of general category, then, at the most, her fault is that she applied under the reserve category on the basis of the certificate issued to her by the competent authority, who may have been unaware of the change in the interpretation of law at the relevant time. The question is “whether, at this stage, particularly when she has already served the State for nearly 15-16 years, her services should be terminated from the civil post?”

11. As is evident, the petitioner has not made any factually incorrect statement with ill-will or malafide. She applied on the basis of Schedule Caste Certificate issued by the competent authority. Hence at this stage, it is not considered appropriate to dispense with her services.

12. Consequently, the order dated 16.12.2013 is set aside. She shall be treated as an employee holding post under the General Category and she should not be entitled to claim any benefit of the reservation.

13. Disposed of accordingly.

14. All the pending miscellaneous applications, if any, are also disposed of.

April 10, 2023
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(ANIL KSHETARPAL)
JUDGE

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