

CWP-1109-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-1109-2024 (O&M)
Date of Decision: 15.02.2024

Sushma Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sandeep Kumar Tada, Advocate for the petitioner
Mr. Aman Dhir, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of action of the respondents whereby candidature of the petitioner for the post of Constable (Female) under Scheduled Caste Category has been rejected.
2. Mr. Aman Dhir, Deputy Advocate General, Punjab, at the outset, submits that identical issue has been considered by a Division Bench of this Court in *Haryana Public Service Commission v. Shweta Kashyap and another, 2019 (3) SCT 214* wherein the Court has held that everybody gets caste status by birth and on account of marriage it does not change. If a lady belonging to one State marries with a man belonging to another State, she would not be entitled to benefit of reservation available to candidates of her husband's State.

3. Mr. Sandeep Kumar Tada, Advocate submits that aforesaid judgment is based upon Constitution Bench judgment in ***Marri Chandra Shekhar Rao v. The Dean, Seth G.S. Medical College and others, 1990 (3) SCC 130***. The Division Bench of this Court has misread the judgment of Supreme Court, thus, judgment of Division Bench is per incuriam.

4. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

5. The facts and findings recorded by the Division Bench of this Court in ***Shweta Kashyap (supra)*** read as:

“14. The question before us for adjudication thus stands answered by the aforesaid authoritative pronouncements of the Hon’ble Supreme Court. Now we proceed to test the impugned judgment on the touchstone of the parameters laid down by the Hon’ble Apex Court.

15. Learned Single Judge proceeded to allow the writ petition on the ground that since as per the caste certificate, the petitioner-respondent belongs to Jatav community which was approved as a Scheduled Caste category in Uttar Pradesh, the proposal of rejection dated 24.11.2017 is patently illegal. We are afraid the learned Single Judge has failed to even address the issue arising in the case. The issue was whether the respondent-petitioner who was a Scheduled Caste in the State of her origin will be entitled to the benefit of reservation after shifting to the State of Haryana on account of her marriage even though the particular caste which she belongs fell in the same category in the State of Haryana where she migrated and was also issued a Domicile Certificate. The view taken by the learned Single Judge in respect of the issue arising for consideration is directly in contrast and in teeth of the pronouncements of the Hon’ble Apex Court.

16. Learned Single Judge while holding that the respondentpetitioner would be entitled for the benefit of reservation in the migrant State of Haryana has relied upon the pronouncement of the Hon'ble Supreme Court in *Sunita Singh v. State of Uttar Pradesh and others*, Civil Appeal No. 487 of 2018 decided on 19.01.2018 and two judgments of the Rajasthan High Court rendered in the cases of *Mrs. Sahendra Bai etc. vs. RPSC* and another, 2008(4) SCT 222 and *Mrs. Mukesh Devi v. State and others* Civil Writ Petition No. 8385 of 2007 decided on 01.12.2010.

17. Reliance placed by the learned Single Judge on the aforesaid three pronouncements is totally misfounded and the facts of the judgments upon which reliance has been placed are clearly distinguishable from the facts of the case at hand.

18. In the case of *Sunita Singh's* case (*supra*), the issue was whether the caste is determined by birth and if a person of a general category marries with a scheduled caste whether he/she would be entitled to be extended the benefit meant for the Scheduled Caste category. The facts were that the lady born in 'Agarwal' family which falls in general category married with a person of a Scheduled caste and was issued a certificate certifying her to be belonging to a Scheduled Caste. In the circumstances, Hon'ble Apex Court held as under:-

"There cannot be any dispute that the caste is determined by birth and the caste cannot be changed by marriage with a person of scheduled caste. Undoubtedly, the appellant was born in "Agarwal" family, which falls in general category and not in scheduled caste. Merely because her husband is belonging to a scheduled caste category, the appellant should not have been issued with a caste certificate showing her caste as scheduled caste."

19. The ratio of the aforesaid judgment of the Supreme Court is on the entirely different issue and cannot said to stand attracted in the facts of the present case.

20. *The two judgments referred to above rendered by Rajasthan High Court in our considered opinion are directly in the teeth of the two Constitution Bench judgments of the Hon’ble Apex Court in Marri Chandra Shekhar Rao’s case (supra) and Action Committee’s case (supra), as also the latest three Judges judgment in the case of Ranjana Kumari v. State of Uttranchal (supra) and thus cannot be treated to be laying down a good law.*

21. *In the wake of the above facts and discussion as also the law settled by the pronouncements of the Hon’ble Apex, impugned judgment rendered by the learned Single Judge is not liable to be sustained and is hereby set aside. As a consequence, the appeal stands allowed.”*

6. The facts of the present case are identical to afore-cited judgment, thus, this Court, in view of principles of consistency, binding judicial precedent and uniformity, cannot form an opinion contrary to the opinion of the Division Bench of this Court especially when different opinion of a Division Bench of this Court or Supreme Court is not available.

7. In the wake of above discussions and findings as well as Division Bench judgment of this Court in *Shweta Kashyap (supra)*, this Court is of the considered opinion that present petition deserves to be dismissed and accordingly dismissed.

8. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.02.2024
Mohit Kumar

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