Harpreet Kaur Vs The Government of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 3, 2008

Acts Referred: Constitution of India, 1950 â€" Article 14, 15(1), 15(2), 15(4), 16

Citation: (2009) 2 ILR (P&H) 467

Hon'ble Judges: Nawab Singh, J; Hemant Gupta, J

Bench: Division Bench

Advocate: R.S. Bains, for the Appellant; M.S. Ambika Luthra, Assistant A.G., for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.
The Petitioner claims admission on the basis of Punjab Medical Entrance Test-2008 (for short PMET-2008) against the

seats meant for Scheduled Caste category in Bachelor of Dental Science Course.

2. The Petitioner qualified her matriculation examination from ICSE in the academic year 2005-06 and 10+2 examination in the academic session

2007-08 from the Punjab School Education Board. Baba Farid University of Health Sciences, Faridkot, conducted PMET-2008 for admission to

Medical Courses in the State of Punjab. The Petitioner obtained 369 marks. It is the case of the Petitioner that her mother is a Scheduled Caste

and as per Government of India policy instructions dated 21st May, 1977 regarding the case status of the offspring of inter caste marriage, such as

the Petitioner, Scheduled Caste certificate was rightly issued by the Tehsildar, Grudaspur. The Petitioner was not admitted against the seat meant

for Scheduled Caste category on an objection raised by the Welfare Department to the effect that the Petitioner cannot be granted benefit of

reservation category seat. The Petitioner submitted representation for admission to the course but in spite of Government of India circular, the

Petitioner was not granted provisional admission. It is the case of the Petitioner that the State and the University authorities are bound by the

instructions issued by the mandate of the Central Government and, thus, action of the Respondent in not admitting the Petitioner against the seat

reserved for Scheduled Caste category is not jusitfied.

3. The relevant extract from the instructions, dated 21st May, 1977 reads as under:

3. ... In view of the above observations by superior Court, it can safely be concluded that the crucial test to determine is whether a child born out

of such a wedlock has been accepted by the Scheduled Caste community as a member of their community and has been brought up in that

surrounding and in that community or not. The nexus between the child and the community or class or class is a real test irreespective of the fact

whether the accommodating class or caste or community is Scheduled Caste community or a caste Hindu community. Even if the mother of the

child is a member of the Scheducled Caste community, it is possible that the child it accepted by the community of his father and brought up in the

surroundings of his father''s relations. In that case, such a child cannot be treated as a member of the Scheduled Caste community and cannot get

any benefit as such. Similarly, when the mother belongs to a higher caste and the father is a Scheduled Caste community and the child may be

brought up in a different surrounding under the influence of his mother''s relations and her community members. In such cases'' also, the child

cannot be said to be a member of the Scheduled Caste community. In the alternative, where the child irrespective of the fact whether the father or

the mother is a member of Scheduled Caste community, is brought up on the Scheduled Caste community as a member of such community, then

he has to be treated as a member of the Scheduled Caste community and should be entitled to receive benefits as such.

(4) It can be derived from this that the illegitimate children are generally brought up by the mother and in her own surroundings. Therefore, if the

mother belongs to the Scheduled Caste and brings up the child within a Scheduled Caste community, the child can be taken as a member of the

Scheduled Caste community. But in this case also the major factor for consideration is whether the child has been accepted by the Scheduled

Caste community as a member of their community and he has been brought up as such.

4. The Petitioner obtained a certificate on 12th June, 1995 that she belongs to a Scheduled Caste wherein it has been pointed out that the

Petitioner has been brought up as a Scheduled Caste under the care and supervision of her mother who has contracted inter caste marriage with

Dr. Satnam Singh Basra. Apart from such certificate, the Petitioner has not brought any document, material or circumstance to show that she was

brought up as Scheduled Caste offspring. The father of the Petitioner is a doctor but his educational qualifications, financial status or social standing

has not been brought on record.

5. The issue whether the Petitioner, an offspring of inter caste marriage with mother belonging to Scheduled Caste is entitled to the benefit of

reservation as a Scheduled Caste candidate, is not res integra. Such issue come up for consideration before Hon''ble Supreme Court in cases

reported as Mrs. Valsamma Paul Vs. Cochin University and others, and Anjan Kumar Vs. Union of India (UOI) and Others, .

6. In Punit Rai Vs. Dinesh Chaudhary, , it has been held by the Hon''ble Supreme Court that the caste system is ingrained in the Indian''s mind and

a person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of inter caste marriage.

However, the caste or tribe of the parents to be determined depended upon several factors including customary laws. A person under the

customary Hindu law would be inheriting his caste from his father. It has been held that a person can take the benefit of reserved category

candidate if he satisfies the test laid down by the Constitution of India. One cannot be considered to be a member of the Scheduled Caste unless

he is accepted by the community. In Meera Kanwaria Vs. Sunita and Others, it has been held that it is required to be established that a candidate

has been accepted as a member of Scheduled Caste by the community as contra distinguished from acceptance of her marriage by her husband''s

family. That was a case where the woman was Rajput by caste but she married a member of Scheduled Caste and, thus, she claimed the benefit of

reservation.

7. In Valsamma Paul''s case (supra), the issue was appointment against the reserved post in the University. The Appellant before the Supreme

Court, a forward class, competed for the post as reserved candidate having married in backward caste. A Full Bench of Kerala High Court held

that by marriage the Appellant cannot claim the status as a backward class. It was held that special provisions under Articles 15(4) and 16(4) of

the Constitution intended for the advancement of socially and educationally backward classes of citizens cannot be defeated by including

candidates by alliance or by any other mode of joining the community. It was held that it would tantamount to making a mockery of the

constitutional exercise of identification of socially and educationally backward classes of citizens. Hon''ble Supreme Court while considering the

issue raised quoted from Dr. Paras Diwan to the following effect:

20. Dr. Paras Diwan in his 2nd Education of Law of Marriage and Divorce stated at p. 75 that in inter-caste and inter-sect marriages in anuloma

form, a male of superior caste marries as female of inferior caste; and in pratiloma marriage of a male of inferior caste marries a female of superior

caste. During British Raj, pratiloma marriage came to be considered as invalid and obsolete but anuloma marriage was held valid. Customary inter-

caste marriages were held valid. They were performed under Special Marriages Act, 1872. The Arya Marriages Validation Act, 1937 permitted

performance of both anuloma and pratiloma marriages under the auspices of the Arya Samaj. Inter-sub-caste marriages were validated under the

Hindu Marriage (Removal of Disabilities) Act, 1946. The Hindu Marriage Validity Act 1949 permitted performance of both forms of inter-caste

marriages. Under the Hindu Marriage Act, 1955 inter-caste marriages among all castes are valid as under the Act Marriage between any two

Hindus is a valid one. At p.76 he stated that under Muslim Law inter-sect marriages between Muslims belonging to different sects or schools are

valid. The Christian Marriage Act permitted marriage between Roman Catholics and Protestants. Among Parsis there are no sects or

denominations. It would thus be clear that in Hindu social order, the prohibition of inter-caste marriage and looking down upon the progeny born

to such inter-caste couple resulted in shunning the inter-caste marriages as a social mobility and resulted in rigidity in social structure. The Hindu

Marriage Act has done away with that rigidity and made valid the inter-case marriages....

31. It is well-settled law from Bhoobum Moyee Debia v. Ram Kishore Acharj Chowdhry (1865) 10 MIA 279 that judiciary recognised a century

and a half ago that a husband and wife are one under Hindu law, and so long as the wife survives, she is half of the husband. She is ''Sapinda'' of

her husband as held in Lulloobhoy Bappoobhoy Cassidass Moolchund v. Cassibai (1879) 7 IA 212. It would, therefore, be clear that be it either

under the Canon law or the Hindu law, on marriage the wife becomes an integral part of husband''s marital home entitled to equal status of husband

as a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity breaks down and would stand

no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted.

33. However, the question is: Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC Citizen, or one transplanted by adoption or

any other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16 (4), as the case may be ? It is seen that Dalits

and Tribes suffered social and economic disabilities recognised by Articles 17 and 15(2). Consequently, they became socially, culturally and

educationally backward; the OBC''s also suffered social and educational backwardness. The object of reservation is to remove these handicaps,

disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBC''s were subjected and was sought to bring them in

the mainstream of the nation''s life by providing them opportunities and facilities.

34. ...Therefore, when a member is transplanted into the Dalits, Tribes and OB Cs, he/she must of necessity also have had undergone the same

handicaps, and must have been subjected to the same disabilities, disadvantage, indignities or sufferings so as to entitle the candidate to avail the

facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is

transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article

15 (4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud

on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

8. Supreme Court concluded that since the Appellant as a member of forward class had advantageous start in life and after her completing

education and becoming major married a backward class, she is not entitled to the facility of reservation given to backward class.

9. In Anjan Kumar''s case (supra), the Appellant was the son of a forward class father and a Scheduled Tribe mother. It was held that offshoot of

a tribal woman married to a non-tribal husband cannot claim Scheduled Tribe status. It was held to the following effect:

10. ...In view of the catena of decisions of this Court, the questions raised before us are no more res Integra. The condition precedent for granting

tribe certificate being that one must suffer disabilities wherefrom one belongs. The offshoots of the wedlock of a tribal woman married to a non-

tribal husband-Forward Class (Kayastha in the present case) cannot claim Scheduled Tribe status. The reason being such offshoot was brought up

in the atmosphere of Forward Class and he is not subjected to any disability. A person not belonging to the Scheduled Tribe claiming himself to be

a member of such caste by procuring a bogus caste certificate is a fraud under the Constitution of India. The impact of procuring fake/bogus caste

certificate and obtaining appointment/admission from the reserved quota will have far-reaching grave consequences. The meritorious reserved

candidate may be deprived of reserved category for whom the post is reserved. The rerserved post will go into the hands of non-deserving

candidate and in such cases it would be violative of the mandate of Articles 14 and 21 of the Constitution of India.

11. The Scheduled Caste and Scheduled Tribe Certificate is not a bounty to be distributed. To sustain the claim, one must show that he/she

suffered disabilities-- socially, economically and educationally cumulatively. The concerned authority, before whom such claim is made, is duty

bound to satisfy itself that the applicant suffered disabilities socially, economically and educationally before such certificate is issued. Any

concerned authority issuing such certificate in a routine manner would be committing the dereliction of Constitutional duty.

10. In B. Basavalingappa Vs. D. Munichinnappa, , Supreme Court held that it was not open to any person to lead evidence to establish that the

caste to which he belongs to is the same as and or part of another caste. In Bhaiya Lal v. Harkishan Singh, Supreme Court held that the object of

Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational

backwardness from which they suffer. In Srish Kumar Choudhury Vs. State of Tripura and others, Supreme Court held that it is not open to the

Court to make any additional or substraction from the Presidential Order. In Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others,

Supreme Court held that the benefit of reservation under Article 15(4) or 16(4) of the Constitution is available only to those who belong to

Scheduled Castes/Scheduled Tribes and not to those who acquire the status by marriage. That was a case where a forward caste lady married a

backward class man and claimed the benefit of reservation.

11. Article 15(1) of the Constitution prohibits the State from discriminating any citizen on the ground of religion, race, caste, sex, place of birth or

any of them. Clause (4) states that nothing contained in Article 15 or in Clause (2) of Article 29 shall prevent the State from making any special

provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled

Tribes Clause (1) of Article 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment

to any office under the State. Clause (4) permits the State to make my provision for the reservation of appointments or posts in favour of any

backward class of citizens which in the opinion of the State, is not adequately represented in the services. Article 341 states that the President may

with respect to any State or Union Territory and where it is State after consultation with the Governor by public notification, specify the castes,

races or tribes or parts for groups within castes, races or tribes which shall for the purpose of the Constitution be deemed to be Scheduled Castes

in relation to the State or Union Territory, as the case may be. In order to determine whether a particular caste would come within the meaning of

Article 341 and 342 respectively for the purpose of reservation under Article 15(4) or 16(4) one has to look at the terms of the Presidential

Order. Once Presidential Order has been issued, President has no power to vary it by any subsequent notification. It is the Parliament which is

competent to include in or exclude from the list of Scheduled Castes specified in a notification within any caste, race or tribe. Codified Hindu Law

is applicable to all the castes of Hindu, Jains, Buddhists and Sikhs by religion in the matter of marriage, succession, adoption and maintenance.

Even under Customary Law, a person would inherit his caste from his father.

12. The benefit of reservation is to provide opportunities to the persons who faced handicap on account of social, cultural and educational

backwardness. When the mother of the Petitioner married a forward class man, she becomes member of such family and get herself transplanted in

the family. By such marriage, social backwardness, which her family might have suffered before her marriage, gets obliterated. With such marriage,

status of the family is not downgraded. The law of nature is to flow and not to obstruct the natural growth. It is strange that even after 60 years of

independence and the reservation policy in place, the persons are finding ways and means to claim the benefit of reservation rather than denouncing

it. In fact, the craving is for the State largesse for one or the other ground even though social, educational and cultural backwardness is not suffered

by the family.

13. Therefore, the Petitioner has been rightly denied admission as a Scheduled Caste candidate. In view of the above, we do not find any merit in

the present writ petition and the same is dismissed with no order as to costs.