

(2011) 11 SHI CK 0153
High Court of Himachal Pradesh
Case No: C.W.P. No. 8662 of 2011-G

Rakesh Kumar

APPELLANT

Vs

H.P. Subordinate Services
Selection Board, Hamirpur and
Others

RESPONDENT

Date of Decision: Nov. 17, 2011

Acts Referred:

- Constitution of India, 1950 - Article 15(3), 15(4), 16(4), 39, 46

Hon'ble Judges: Rajiv Sharma, J; Kurian Joseph, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Justice Rajiv Sharma, J.

The respondent No. 1 has issued an advertisement bearing No. 18 of 2010, dated 01.11.2010, whereby applications were invited for filling up three posts of Craft Instructor (Electronics Mechanic), out of which, one post was to be filled up on regular basis in General (un-reserved) category and remaining two posts, one in O. B.C. (un-reserved) category and one in S.T. (un-reserved) category. Petitioner being fully eligible and qualified, submitted an application for considering his candidature under O.B.C.(un-reserved) category. The written test was held on 10.05.2011. Petitioner qualified that same and was called for interview on 19.09.2011. However, fact of the matter is that respondent No. 1 has recommended the name of respondent No. 3 for the post, in question, against O.B.C. (un-reserved) category.

2. Mr. Neeraj K. Sharma, learned counsel for the petitioner has strenuously argued that respondent No. 3 belongs to S.C. category and only her husband belongs to O.B.C. category.

3. Mr. Inder Sharma, learned counsel for the respondent-Board submits that respondent No. 3 has submitted the certificate of O.B.C. on the date of interview,

i.e., 19.09.2011 and on the basis of her performance in the written and interview, her name was recommended.

4. Mr. Lokender Thakur, learned counsel for respondent No. 3 has adopted the reply filed by respondent No. 1.

5. We have heard the learned counsel for the parties and gone through the pleadings carefully.

6. It is not in dispute that one of the posts was reserved for O.B.C. (un-reserved) category. Petitioner has submitted his application form, pursuant to which, he was permitted to sit in the examination on 10.05.2011 and was also called for interview on 19.09.2011. The result was declared on 22.09.2011, pursuant to which, the name of respondent No. 3 was recommended by respondent No. 1 for appointment to the post of Craft Instructor (Electronics Mechanic). Respondent No. 3 does not belong to O.B.C. category. Her parents belongs to S.C. category. It is evident from the reply filed by respondent No. 1 that respondent No. 3 has produced Annexure R-II, O.B.C. certificate issued in favour of her husband. It is settled law by now that a person cannot acquire the status of S.C., S.T. and O.B.C. on the basis of marriage.

7. Their Lordships of the Hon"ble Supreme Court in [Mrs. Valsamma Paul Vs. Cochin University and others](#), have held that a candidate who had the advantageous life but is transplanted in Backward Caste by adoption or marriage is not entitled for the benefits flowing under Article 15(4) or 16(4) as the case may be. Their Lordships have held as under:

34. In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu (1995) 3 JT (SC) 563 : AIR 1995 SCW 2224; and R. Chandavarappa v. State of Karnataka (1995) 7 JT (SC) 93, this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission into educational institution, or in case of other economic benefits under Articles 15(4) and 46 or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs he/she must of necessity also undergo same handicaps, be subject to the same disabilities, disadvantages, 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) 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. Their Lordships of the Hon"ble Supreme Court in [Arshad Jamil Vs. State of Uttarakhand and Others](#), have held that a caste certificate is a very important and substantial document and, therefore, while granting the same, a proper inquiry is required to be made by the Tehsildar.

9. In view of the observations and discussions made hereinabove, the candidature of respondent No. 3 could not be considered for the post in question against O.B.C. (un-reserved) category.

10. Accordingly, the writ petition is allowed. The selection of respondent No. 3 is quashed and set aside. Respondent No. 1 is directed to consider the case of petitioner for appointment to the post of Craft Instructor (Electronics Mechanic) on the basis of written test and interview held on 10.05.2011 and 19.09.2011, as per merit, within a period of four weeks from the date of production of a certified copy of this judgment by the petitioner. The pending application(s), if any, also stands disposed of.