

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 307 of 2015****Order reserved on 18.09.2017****Order delivered on 21.09.2017**

Smt. Ranikori W/o. Naresh Kumar Kori, aged about 32 years, Working as Anganbadi Assistant, R/o. Harratola, Tahsil Pendra Road, District Bilaspur (Chhattisgarh).

---Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Department of Women & Child Welfare, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District Raipur (Chhattisgarh).
2. Chief Executive Officer, Janpad Panchayat, Gourela, Tahsil Pendra Road, District Bilaspur (Chhattisgarh).
3. Project Officer, Integrated Child Development Department, Gourela, Janpad Panchayat, Gourela, District Bilaspur (Chhattisgarh).
4. Smt. Mankunwar W/o. Bajrang Prasad Kori.
5. Smt. Sushila W/o. Late Amar Singh Gond.
6. Smt. Satyawati W/o. Raijiyawan Kori.

Respondents No. 4 to 6 are R/o. Harratola, Tahsil Pendra Road, District Bilaspur (Chhattisgarh)

Respondents

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| For petitioner | : Mr. Prakash Tiwari, Advocate. |
| For respondent No.2 | : Mr. Arun Sao, Advocate. |
| For respondent No.1 & 3/State | : Mr. Ashish Surana, Panel Lawyer. |
| For respondent No.4 | : Mr. P. K. Mishra, Advocate. |

Hon'ble Shri Justice Sanjay K. Agrawal**Order [C.A.V.]**

1. The petitioner was appointed as Anganbadi Assistant by the Chief Executive Officer, Janpad Panchayat, Gourela. Her caste certificate (Scheduled Caste) issued by competent authority of the

State of Madhya Pradesh was accepted and she was awarded ten marks against that. Her appointment was challenged by unsuccessful candidate by filing an appeal before the Additional Collector, Pendra Road. The appellate authority by its order dated 23.07.2014 allowed the appeal holding that the petitioner is not entitled for ten marks on the basis of caste certificate issued by the State of Madhya Pradesh relying upon the decision of the Supreme Court in the matter of Action Committee on issue of Caste Certificate to SCs/STs v. Union of India¹ and set aside her appointment on the said post. Feeling aggrieved against that order, she preferred a revision before the Additional Commissioner, Bilaspur Division, Bilaspur. The revisional authority by its impugned order concurred with the appellate authority and dismissed the revision. Questioning the said order, the instant writ petition has been filed by the petitioner herein.

2. Mr. Prakash Tiwari, learned counsel appearing for the petitioner, would submit that the petitioner's caste is *Kori*, which is notified as Scheduled Caste in the State of Madhya Pradesh and also notified as Scheduled Caste in the State of Chhattisgarh and her marriage having been solemnized with Shri Naresh Kumar prior to the re-organization of the State of Madhya Pradesh, therefore, she is entitled for benefit of caste certificate issued by the State of Madhya

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Pradesh and the order passed by the Additional Collector and affirmed by the Additional Commissioner in revision is liable to be set aside.

3. On the other hand, learned counsel for respondents would support the impugned order.

4. I have heard the learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. In order to judge the correctness of the submissions raised at the Bar, it would be proper to take notice of Article 341 of the Constitution of India, which states as under:-

“341. Scheduled Castes.- (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or part of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

6. A fair and close reading of Article 341 of the Constitution of India would show that President after consultation with the governor, *where the States are concerned*, by public notification, may specify the castes, races or tribes or part of or groups within castes, races or tribes, which shall be deemed to be “Scheduled Castes” in

relation to that State under Article 341.

7. In exercise of power conferred by Clause I of the Article 341 of the Constitution of India, after consultation with the Governor and *Rajya Pramukh* of the State concerned Constitution (Scheduled Castes) Order, 1950 has been made. Part-IX of the said order deals with the Scheduled Castes of Madhya Pradesh, which states as under:-

PART IX.- Madhya Pradesh

1. to 30. *** ***
31. Koli, Kori

8. Now, the State of Chhattisgarh is carved out upon organization of State of Madhya Pradesh with effect from 01.11.2000 and by Section 19 of the Madhya Pradesh Reorganization Act, 2000, Constitution (Scheduled Castes) Orders, 1950 has been amended, which states as under:-

THE THIRD SCHEDULE

(See Section 19)

Amendment of the Constitution (Scheduled Castes) Order, 1950

In the Constitution (Scheduled Castes) Order, 1950.-

- (a) in paragraph 2, for the figures "XXII" the figures "XXIII" shall be substituted;
(b) in the Schedule, after Part XXII, the following shall be inserted, namely:-

PART XXII- Chhattisgarh

1. to 29. *** ***
30. Koli, Kori

9. Admittedly, caste certificate of the petitioner has been issued by the State of Madhya Pradesh and she is a member of Scheduled

Caste of the State of Madhya Pradesh and after her marriage she came to the State of Chhattisgarh and claiming benefit of Scheduled Caste status. Admittedly, *Kori* caste is Scheduled Caste in the State of Madhya Pradesh as well as in the State of Chhattisgarh.

10. The question for consideration would be whether the petitioner, who is Kori by caste (Scheduled Caste) notified as SC in relation to State of Madhya Pradesh as well as in State of Chhattisgarh, is entitled for benefit of her SC status in the State of Chhattisgarh.

11. In Marri Chandra Shekhar Rao v. Seth G.S Medical College², the Constitution Bench of the Supreme Court has considered the question whether the petitioner, who was a member of Scheduled Tribe in the State of Andhra Pradesh, was entitled to admission in MBBS course in Maharashtra against the quota reserved for Scheduled Tribes. His claim was not accepted on the ground that he does not belong to Scheduled Tribe of State of Maharashtra; and after examining the scheme of the relevant constitutional provision, the Supreme Court has observed as under:-

“9. It appears that the Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of underdevelopment to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for

² (1990) 3 SCC 130

including a community in the list of the Scheduled Castes and Scheduled Tribes. The social conditions of a caste, however, varies from State to State and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country. This, however, is a different problem whether a member or the Scheduled Caste in one part of the country who migrates to another State or any other Union Territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated. That question has to be judged taking into consideration the interest and well-being of the Scheduled Castes and Scheduled Tribes in the country as a whole.

10. It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities.”

12. Later on, in the matter of **Action Committee on Issue of Caste Certificate to Scs/Sts** (supra), again the Constitution Bench of

Supreme Court considered the identical issue by framing following question in opening paragraph of the judgment as under:-

“1. Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to the persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B.”

13. The Constitution Bench referred to the relevant constitutional provisions including Articles 341 and 342, the judgment of the earlier Constitution Bench in Marri Chandra Shekhar Rao case (supra) and held that merely because a given caste is specified in State A as a Scheduled Caste or Tribe does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the later State. The Constitution Bench answered the question in negative. Their Lordships, considering Article 341 & 342, observed as under:-

3. What is important to notice is that castes or tribes have to be specified in relation to given State or union territory. That means a given caste or tribe can be a scheduled caste or tribe in relation to State or Union territory for which it is specified.”

In the later part of the judgment, after referring to another Constitution Bench decision, it was observed by Their Lordships of Supreme Court as under:-

“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of the Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally *non est* in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State ‘for the purposes of this Constitution’.”

14. The principle of law laid down in the aforesaid judgments (supra) has been reiterated and followed by Their Lordships of the Supreme Court in case of S. Pushpa v. Sivachanmugavelu³ and held as under:-

“20. Part XVI of the Constitution deals with special provisions relating to certain classes and contains Articles 330 to 341. Articles 330 and 332 make provision for reservation of seats in the House of the People and Legislative Assemblies of the States respectively, for the Scheduled Castes and Scheduled Tribes. Similar provisions have been made for Anglo-Indian community in Articles 331 and 333. Article 338 provides that there will be a Commission for the Scheduled Castes to be known as National Commission for the Scheduled Castes and it also provides for its composition, powers and duties. Clause (2) of Article 330 provides that the number of seats reserved in the States or Union Territories for the Scheduled Castes or Scheduled Tribes shall bear, as nearly as may be, the same proportion to the number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes in the State or Union Territory or

³ (2005) 3 SCC 1

of the Scheduled Tribes in the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory. Similar provision for reservation of seats in favour of SC/ST in the Legislative Assembly of any State is contained in clause (3) of Article 332 of the Constitution. Therefore, in order to ascertain the number of seats which have to be reserved for the Scheduled Castes or Scheduled Tribes in the House of the People or in the Legislative Assembly, it is absolutely essential to ascertain precisely the population of the Scheduled Castes or Scheduled Tribes in the State or Union Territory. A fortiori, for the purpose of identification, it becomes equally important to know who would be deemed to be Scheduled Caste in relation to that State or Union Territory. This exercise has to be done strictly in accordance with the Presidential Order and a migrant Scheduled Caste of another State cannot be taken into consideration otherwise it may affect the number of seats which have to be reserved in the House of the People or Legislative Assembly. Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Articles 341 and 342 after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of a forward caste.”

15. This Court also in the matter of Raj Kapoor Kachwaha v. State of Chhattisgarh⁴ following the decision of Supreme Court in Marri Chandra Shekhar Rao (supra) has clearly held that if a particular caste belonging to same nomenclature is specified in two states, then also the Scheduled Tribe candidate of one State is not entitled for privilege and benefits of other State and held as under:-

“11. Therefore, in view of the above judgments of the Apex Court in case of *Marri Chandra Shekhar Rao* (supra), it is clear that even if a particular caste belonging to same nomenclature is specified in two states but the considerations on the basis of which they had been specified may be totally different, looking to

⁴ (2005) 2 C.G.L.J. 243

the degree of dis-advantages of various elements which constitute the data for specification may also be entirely different. In view of the above law laid down by the Apex Court even if the Khatik caste has been notified as Scheduled Caste in the State of Chhattisgarh, the petitioners being residents of Katni, State of Madhya Pradesh, automatically do not entitle for the same benefit which are available to the persons of the Khatik caste who are residents of the State of Chhattisgarh as there may be different considerations and degree of disadvantages or various elements which constitute the Khatik caste as Scheduled Caste in the States of Madhya Pradesh & Chhattisgarh. Therefore, petitioner No. 2's father being resident of Katni, State of Madhya Pradesh, petitioner No. 2 is not automatically entitled for the benefit of Scheduled Caste on parity with the persons of Khatik community of State of Chhattisgarh because, the Khatik community of Madhya Pradesh was classified as Scheduled Caste in respect of the State of Madhya Pradesh under the Constitution, whereas the Khatiks of the State of Chhattisgarh have been classified as Scheduled Caste by the Act of Parliament (M.P Reorganization Act, 2000) under clause (2) or Article 341 of the Constitution in respect of the State of Chhattisgarh under the Constitution.”

16. The principle of law laid down in Marri Chandra Shekhar Rao (supra) and in Action Committee on issue of Caste Certificate to SCs/STs (supra) has been followed with approval by the Supreme Court recently in the matter of Melwin Chiras Kujur v. State of Maharashtra and others⁵ by holding as under:-

“8. The legal position as rightly pointed out by the learned counsel for the appellant has been firmly settled by the two decisions of the Constitution Bench referred to by us in the earlier paragraphs. Benefits of reservations are not available to those migrating from one State to the other even if such candidates belong to the same case. That part of the controversy, therefore, stands concluded and does not require any further elaboration.”

⁵ (2015) 17 SCC 549

17. Marri Chandra Shekhar Rao (supra) and Action Committee on Issue of Caste Certificate to SCs/STs (supra) has further been followed in Sanjeev Kumar & another v. State of Bihar & others⁶.

18. Thus, taking into consideration the constitutional provisions and authoritative decisions rendered by Their Lordship of the Supreme Court (Constitution Bench) in the matters of Marri Chandra Shekhar Rao (supra) and Action Committee on Issue of Caste Certificate to SCs/STs (supra) and the judgment of this Court in the matter of Raj Kapoor Kachwaha (supra), this Court is of the opinion that the petitioner being a member of Scheduled Caste in relation to the State of Madhya Pradesh having caste certificate of that State is not entitled to the rights, privileges and concessions admissible to the Scheduled Castes of the State of Chhattisgarh.

19. The next contention raised by Mr. Tiwari that the Supreme Court in the matter of Ranjana Kumari v. State of Uttaranchal and others⁷ has referred the matter to the larger Bench doubting the correctness of the earlier decision of the Supreme Court in Marri Chandra Shekhar Rao (supra) and Action Committee on issue of Caste Certificate to Scs/Sts (supra), therefore, the writ petition be kept pending till reference is answered.

20. In State of Maharashtra and another Vs. Sarva Shramik

⁶ (2016) 13 SCC 105

⁷ (2013) 14 SCC 710

Singh, Sangli and others⁸, the Supreme Court has held that the principle of law laid down in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa**⁹ is binding until reference is answered and held that the determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is delivered. It was observed as under:-

“27. It is, however, contended on behalf of the appellant that the said undertaking was being run by the irrigation department of the first appellant, and the activities of the irrigation department could not be considered to be an “industry” within the definition of the concept under Section 2(j) of the I.D. Act. As noted earlier, the reconsideration of the wide interpretation of the concept of “industry” in Bangalore Water Supply and Sewerage Board (supra) is pending before a larger bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in *State of Orissa v. Dandasi Sahu* (supra), referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger bench is received.”

21. In **Ashok Sadarangani and another Vs. Union of India and others**¹⁰, the Supreme Court relying upon the judgment of **Harbhajan Singh Vs. State of Punjab**¹¹ has further held that the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. It was observed as under:-

“29. As was indicated in *Harbhajan Singh case* (supra), the pendency of a reference to a larger Bench, does not

8 (2013) 16 SCC 16

9 (1978) 2 SCC 213

10 (2012) 11 SCC 321

11 (2009) 13 SCC 608

mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in *Gain Singh Vs. State of Punjab*¹² need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

22. In view of the aforesaid pronouncement of the Supreme Court, the issue cannot be kept un-decided and contention of learned counsel sans rejection and it is held that learned appellate authority and revisional authority are justified in rejecting the claim of the petitioner.

23. As a fallout and consequence of the afore-stated discussion, the writ petition being devoid of merit is liable to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (227) No.307 of 2015

Petitioner

Smt. Ranikori

Versus

Respondents

State of Chhattisgarh and others

Head Note

(English)

The petitioner notified as Scheduled Caste in relation to State of Madhya Pradesh is not entitled for benefit of Scheduled Caste status in State of Chhattisgarh.

(हिन्दी)

मध्य प्रदेश राज्य के संबंध में अनुसूचित जाति के तौर पर अधिसूचित वादी छत्तीसगढ़ राज्य में अनुसूचित जाति की हैसियत से लाभ का पात्र नहीं है।

