

State of Tripura and Others

Vs

Namita Majumdar [Barman] (Smt)

Civil Appeal No. 5895 of 1997

(S. C. Agarwal, G. T. nanavati JJ)

29.08.1997

ORDER

1. Delay condoned.
2. Special leave granted.
3. We have heard learned counsel for the parties.
4. The question that falls for consideration in this appeal is whether a person born in a forward caste family can be treated as belonging to a Scheduled Caste by virtue of his/her marriage to a person who belongs to a Scheduled Caste and can claim the benefit of the reservation contemplated by Article 16 of the Constitution in the matter of employment in service.
5. The facts, briefly stated, are that the respondent was born in a forward caste family. She married a person belonging to the Namsudra community which is a Scheduled Caste in the State of Tripura. On 30-4-1975 the respondent submitted an application to the District Magistrate & Collector, West Tripura stating that she belongs to a Scheduled Caste community (Namsudra) and she requested for a certificate certifying the same. On the basis of the averments made by her in the said application, the District Magistrate & Collector, West Tripura, issued a certificate dated 5-5-1975 certifying that the respondent belongs to the Namsudra community which is recognised as a Scheduled Caste. In 1987 the respondent appeared as a Scheduled Caste candidate in the examination conducted by the Tripura Public Service Commission (hereinafter referred to as "the Commission") for recruitment to the cadre/ex-cadre post (junior grade) of the Stenographers' Service. She was placed at Sl. No. 159 in the merit list prepared by the Commission. Her name was recommended by the Commission on 6-11-1987 for appointment to the post of Stenographer (junior grade) in the reserved category. Before an offer of appointment could be made on the basis of the said recommendation a complaint was received regarding the genuineness of the certificate issued to the respondent. The District Magistrate & Collector was asked to verify the genuineness of the certificate issued in favour of the respondent. An enquiry was conducted by the Sub-Divisional Officer who submitted the report dated 19-7-1988 wherein it was stated that the father of the respondent was a member of the forward caste and that she had concealed this fact and claimed the certificate by virtue of her marriage to a person belonging to a Scheduled Caste community. After considering the said report the Government decided that the respondent should not be treated as a Scheduled Caste candidate, in view of her claim to this category by virtue of marriage with a Scheduled Caste person. By the order dated 3-12-1988 the respondent was appointed in an excadre post in the general category since at that time there was no vacancy in the cadre of Junior Grade Stenographers in this category. After accepting the said appointment the respondent filed a writ petition, Civil Rule No. 127 of 1988, in

the Guwahati High Court praying that a writ be issued directing the State Government to allow the respondent all the benefits due to her in view of her Scheduled Caste certificate. The said writ petition has been allowed by the High Court by the impugned judgment dated 31-10-1995. The High Court has held that the respondent is entitled to claim the benefit of reservation on the basis that she belongs to a Scheduled Caste by virtue of her marriage to a person belonging to a Scheduled Caste and that she shall be deemed to be a Scheduled Caste and shall be entitled to all the benefits of a Scheduled Caste.

6. Shri P. K. Goswami, learned Senior Counsel appearing for the appellants, has submitted that the High Court was in error in holding that the respondent, though born in a forward caste family, is entitled to claim the benefits of a Scheduled Caste on the basis of her marriage to a person belonging to a Scheduled Caste. The submission is that a person by reason of her/his marriage to a person belonging to a Scheduled Caste is not entitled to claim the benefit of a Scheduled Caste. The learned counsel has placed reliance on the decision of this Court in the case of Valsamma Paul v. Cochin University ((1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713). The appellant, in that case, was, by birth, a Syrian Catholic, a forward class in the State of Kerala. She had married a person who was Latin Catholic, a Backward Class in the said State. It was held that the said appellant could not claim the benefits under Articles 15(4) and 16(4) of the Constitution. Dr. N. M. Ghatate, learned Senior Counsel appearing for the respondent, has submitted that the said decision in Valsamma Paul case ((1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713) needs reconsideration and has pointed out that in the context of election law this Court has recognised that the benefit of reservation for Scheduled Castes can be availed of by a person on the basis of marriage. The said decisions have been taken note of and distinguished in the decision in Valsamma Paul case ((1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713). We do not find any reason to take a view different from that taken in Valsamma Paul case ((1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713). It must, therefore, be held that the respondent cannot be declared to be entitled to the benefits of a Scheduled Caste on the basis of her marriage to a person belonging to a Scheduled Caste.

7. The appeal is accordingly allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondent is dismissed. There shall be no order as to costs.