

**SUPREME COURT OF INDIA**

Sunita Singh

Vs.

State of Uttar Pradesh

C.A.No.487 of 2018

(Arun Mishra and Mohan M.Shantanagoudar,JJ.,)

19.01.2017

**JUDGMENT**

**Mohan M.Shantanagoudar,J.,**

SLP(Civil)No.7181 of 2016

1. Leave granted.

2. Judgment dated 21.12.2015 passed by the High Court of Judicature at Allahabad in Writ-C No. 53689 of 2015, dismissing the writ petition filed by the appellant and confirming the order of termination from service passed against the appellant, is called in question in this appeal.

3. Appellant was born in “Agarwal” family. She married Dr. Veer Singh, who happens to belong to “Jatav” Community (said to one of the Scheduled Castes). A caste certificate dated 9.11.1991 was issued by District Magistrate/Collector, Bulandshahar certifying the appellant as of Scheduled Caste (Jatav). Based on the academic qualifications and the caste certificate, she was appointed initially as a Post Graduate Teacher (Hindi) vide letter dated 16.12.1993 at Kendriya Vidyalaya No.1, Pathankot, Punjab. During the course of her service, she completed her M.Ed and served the institution for about 21 years as teacher.

4. A complaint was lodged against the appellant to the effect that she was born in “Agarwal” family (general caste category) and after her marriage with a person of scheduled caste, she obtained a caste certificate in question. After making preliminary verification, the jurisdictional officer directed to conduct an enquiry in respect of the caste certificate of the appellant. The Tehsildar vide his order dated 22/27.6.2013 cancelled the caste certificate of the appellant and asked the appellant to return the caste certificate issued earlier to the appellant. City Magistrate, Bulandshahar vide letter dated 18.07.2013 communicated to the Deputy Commissioner, Kendriya Vidyalaya Sangathan that the caste certificate issued to the appellant treating her as “Jatav” has been cancelled. Subsequently, the appellant made a representation to District Magistrate, Bulandshahar on 6.1.2014

requesting him to reconsider the matter and the said representation came to be dismissed on 3.9.2014 by District Magistrate, Bulandshahar. The appeal filed by the appellant against the order of the Tehsildar cancelling her caste certificate and the order of the District Magistrate dismissing her representation was also dismissed by the appellate authority i.e., Commissioner, Meerut Division, Meerut on 27.12.2014. As a result of cancellation of the caste certificate, an order was passed by the Kendriya Vidyalaya Sangathan on 18.03.2015 terminating the appellant from the services of Kendriya Vidyalaya Sangathan. The appeal filed by the appellant before the State Level Committee against the order of the appellate authority cancelling her caste certificate also came to be dismissed on 15.05.2015. The appellant's further efforts of approaching the High Court by filing the writ petition also failed, inasmuch as the High Court dismissed the writ petition by the impugned judgment. Hence, this appeal.

5. 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. In that regard, the orders of the authorities as well as the judgment of the High Court cannot be faulted. However, having regard to the fact that the appellant has already served as a Teacher and Vice-Principal of Kendriya Vidyalaya without any black spot in her service career for about 21 years, and that she is going to retire shortly, we take lenient view by exercising jurisdiction under Article 142 of the Constitution of India and order to convert the order of termination to an order of compulsory retirement. While exercising leniency, we have also kept in mind that the appellant has neither played fraud nor misrepresented before any of the authorities for getting the caste certificate and while continuing in service based on the caste certificate. No questions were raised against her till the complaint in question came to be lodged, even when the authorities had seen the High School Certificate, Marks Sheet etc. showing her caste as Agarwal at the initial stage. Having regard to the totality of the facts of the case, the impugned judgment of the High Court is modified. "The order of termination from service" passed against the appellant shall be treated as "the order of compulsory retirement". However, we make it clear that this shall not be treated as a precedent in future.

6. The appeal stands disposed of in the aforesaid terms. No order as to costs.