

KERALA HIGH COURT

Kunjamma Alex

Vs

Public Service Commission

O.P. 3430 of 1978

(Subramonian Poti, J.)

03.12.1979

JUDGMENT

Subramonian Poti, J.

1. When a Syrian Catholic girl marries a Latin Catholic boy, does the girl become a Latin Catholic? No, says the Kerala Public Service Commission and in this it is echoing the voice of the State Government. An answer to this question is called for in this case. This question has assumed relevance because 'Latin Catholic' is a backward class for the purpose of service under the State, while 'Syrian Catholic' does not belong to the backward class.

2. Dr. Kunjamma Alex. the petitioner here, applied to the Kerala Public Service Commission for recruitment to the post of Assistant Surgeon in the department of Health services This was in DLcember 1976. Dr. Kunjamma was born in the Syrian Catholic Community. She married Dr. Alex, a Latin Catholic When she applied for the post of Assistant Surgeon, she supported her claim to be a Latin Catholic by production of a certificate (Ext. P1) issued by the Tahsildar, Kodungallur. The petitioner is said to have been successful in the interview conducted by the Commission on 20-11-1977. Her name found a place in the supplementary rank list of Latin Catholic candidates selected for the post of Assistant Surgeons. Naturally the petitioner was awaiting advice. But then she was served with a memo dated 27-7-1978 issued by the Commission asking her to show cause why her name should not be removed from the rank list and why she should not be debarred permanently from applying for any post. She explained her position to the Commission. It was true that her S S.L.C. book showed that she was a Syrian Catholic. Born as such she continued to be a Syrian Catholic till she married Dr. Alex on 30th December, 1970 She was married in the St. Michel's Church at Kottappuram which was a Latin Catholic church and the marriage was according to Latin rites. The petitioner is said to have become a member of the parish of St. Michel's Church according to church regulations. The parish priest of the Church Fr. David Vadachery issued a certificate to the petitioner evidencing

her marriage in the Latin Church and the fact of her belonging to the Latin Catholic Parish after her marriage. The certificate was also produced by Dr. Kunjamma along with her explanation before the Commission. But the Commission was not satisfied. though there appears to have been no further enquiry by the Commission. The Commission seems to have taken the view that caste cannot be changed by marriage. Consequently the inclusion in the rank list was cancelled. It was this order dated 8-9-1978 passed by the Commission that is challenged by the petitioner in this petition. Though this order does not make mention of any advice of the Government for the view taken by the Commission, along with the counter affidavit of the Commission a Government letter Ext. R1 containing such advice is produced. This is not a letter which is of particular application to the facts here. The Government expressed the view therein that a Hindu who embraces Christianity after her marriage with a person belonging to the Latin Catholic community cannot belong to that community for the purpose of reservation. The Government cites a passage from a purported decision of a court. The passage reads "The caste is a social combination, the members of which are enlisted by birth and not by enrolment". The citation is shown as 1891 ILR. 599. In the absence of reference to the specific court the citation is unintelligible, and despite diligent efforts by the counsel on both sides the citation remains unidentified. The passage quoted is, on the face of it, of no application to a case such as the one here since the case is not concerned with a change of caste much less with any enrolment. If the Government letter had been read carefully with a view to arrive at an independent judgment it would have been obvious to the Public Service Commission that it was of no guidance. much less of any authority. Ext. P5 communication from the Commission does not indicate any independent decision based on other materials available for assessment. It is not contended in this Court that there were materials other than Ext. R1 letter from the Government available to the Commission to enable it to arrive at its decision as it did in Ext. P5.

3. I shall now examine the question independently. In this State, with a record of high literacy, and an equally significant record of unemployment among the educated, for appointments to civil service reservation is a matter of great consequence. It secures to the candidates entitled to its benefit considerable advantage in the scramble for appointment. Naturally therefore it would be the attempt of any candidate to seek the benefit of the rule of reservation if he could possibly bring his case within it. Whatever may be the view this Court may ultimately take on the claim by the petitioner it cannot be denied that the claim is made in good faith. There is no case that Dr. Kunjamma married Dr. Alex so that she may get the benefit of Rule of Reservation for Latin Catholics. I would even say that even if Dr. Kunjamma had that intent when she married Dr. Alex that cannot be said to be a wrong intent. Now that the petitioner has married a Latin Catholic in a Latin Catholic church under Latin rites and is said to have become a member of a Latin parish, could it be said that she cannot, nevertheless, claim to be a Latin Catholic? In other words is it the law that a Syrian Catholic taking a Latin Catholic husband and living with him in his parish can under no circumstances and at no time become a Latin Catholic?

4. Latin Catholics and Syrian Catholics cannot be said to belong to two castes in the sense we

generally understand the term caste. Both belong to the same faith of the Christian religion. "In matters of faith and morals all Catholics, without distinction of race, nationality or rite are bound by the authoritative pronouncements of the Holy See. There can be but one rule in these matters for all who belong to the Catholic Church". The essential distinction between the Syrian and Latin churches is founded on the difference in the adoption of religious rites. "To maintain the disciplinary laws of the Oriental Rites in their purity and in harmony with their ancient customs, the Holy See has established a special Sacred Congregation of Oriental Rites." (Page 2, Practical Commentary on the Code, by Woywod and Smith). In thy: State of Kerala the Latin and Syrian Catholic churches have their followers generally from distinct sections of people. Naturally, because of the different classes of adherents in the two churches marriages between the members of these churches are not the general rule though such marriages take place quite often. There does not appear to be any objection on the ground of prohibited religious practice to marriages between the Latin Catholics and Syrian Catholics. A Syrian Catholic becoming a Latin Catholic cannot be said to be a process of conversion or transformation into a different caste.

5. Ext. P2 certificate of the Vicar, the veracity of which is evidently not challenged, indicates the practice or at any rate possibility of a Catholic other than a Latin Catholic being accepted as a Latin Catholic on marriage. I do not propose to go into the larger question of the feasibility of acceptance by the Latin Catholic Church of a non-Latin Catholic into its fold otherwise than by marriage. That is a larger question and since the facts of this case do not call for a decision on this question, it would be inadvisable to venture into the consideration of that question here. This case could be resolved on the determination of two questions:

- (i) Whether a Syrian Catholic could, on marrying a Latin Catholic, become a Latin Catholic?
- (ii) If that is possible has that happened in this case?

6. The essential properties of marriage, as indicated by the Code of Canon Law are "unity and indissolubility which obtain a special firmness or stability in Christian marriage by reason of it being a sacrament." The spouses are bonded together for life. Pharisees came up to Jesus 'and tested him by asking, 'Is it lawful to divorce ones wife for any cause'?. He answered: 'Have you not read that He who made them from the beginning made them male and female and said, 'For this reason a man shall leave his father and mother and the two shall become one flesh'? So they are no longer two but one flesh. What, therefore God has joined together, let not man put as under'." (New Testament, Math.,w 19 (3-6)). "This man is the head to which the woman's body is united, just as Christ is the head of the Church, He, the Saviour, on whom the safety of His Body depends." (The Epistle of the blessed Apostle Paul to the Ephesians, 5-23). It is to illustrate the Christian approach to matrimony that these citations have been made There is nothing unnatural or unsavory in assuming that on marriage it is possible for the spouses to live as parishioners of the church to which the husband belongs. On marriage "unless the special law rules otherwise, the wife shares in the state of her husband as far as canonical effects are concerned" (Canon 1112 vide Page 798 of A Practical Commentary on the Code of Canon Law).

7. A domicile is acquired by residence in any parish. Such residence must necessarily be associated with intent to become a member of the parish.

8. A person belongs to that Rite by the ceremonies of which he was baptized, unless (1) the baptism was administered by a priest of another Rite, who had no right to batize but did so fraudulently. or who baptized in a case of necessity where no priest of the proper Rite could he secured; or (2) by apostolic indult a person obtained permission to be baptized according to a certain Rite without the obligation of adhering thereto (Page 53, para 75, A Practical Commentary on the Code of Canon Law, Woywod and Smith). Though the general rule is that the clergy shall not presume to induce Catholic of the Latin Rite to join an Oriental Rite, or Catholic of an Oriental Rite to join the Latin Rite, and nobody is allowed without permission from the Apostolic See to go over to another Rite, in the case of a bride who belongs to a rite different from her bridegroom, she may at the time of her marriage or at any time during the marriage join the Rite of her husband. When the marriage is dissolved she is free to return to her own rite unless particular laws rule otherwise. The Code of Canon Law of the Catholic church of the Latin rite provides in Canon 98 that this would be the position. The oriental churches also recognize a similar rule in Cannon 9. The choice of the bride of a different rite to assume the rite of the bridegroom at marriage or during the married state with freedom to go back to her original rite if the marriage is dissolved is recognized by the Oriental churches too.

9. Evidently there is no ecclesiastical prohibition to the change over from the Syrian Catholic rites to the Latin Catholic rites on the marriage of a Syrian Catholic woman. Whether in any particular instance the bride who is a non-Latin Catholic has adopted the Latin rites would necessarily be a question of fact. But the fact remains that it is possible for her to adopt it either at marriage or thereafter during matrimony. That answers the main question arising in this case in favor of the petitioner.

10. When once I find that it is possible for a Syrian Catholic to become a Latin Catholic on marriage the answer to the question raised in this case is simple There is no dispute that the marriage was conducted according to Latin rites. The certificate of the Parish priest, the genuineness of which is not in question, indicates the conduct of the bride, adopting the rites of the Latin church. The certificate issued by the Tahsildar, Ext. P1, also supports this stand of the petitioner. The Public Service Commission happened to pass the order against the petitioner not on appreciation of facts, but on the assumption that by marriage a Syrian Catholic cannot become a Latin Catholic This was a question which should have been decided by resort to an approach different from that adopted by the Public Service Commission. Evidently the Commission was guided merely by the observation of the Government-unintelligible at that-and not by any independent consideration of the matter. The approach by the Kerala Public Service Commission is therefore erroneous. Ext. P5 order removing the name of Dr. Kunjamma Alex from the ranked list has to be cancelled. The Original Petition is allowed and the Kerala Public Service

Commission is directed to take further action as if the petitioner continued to be in the supplemental rank list of Assistant Surgeons all along. In the circumstances no costs. Allowed.