

# RAJASTHAN HIGH COURT

Vikas Soni

Vs.

Malaviya Regional Engineering College

Civil Writ Petn. No. 4220 of 2002

(K.S. Rathore, J.)

09.09.2002

## ORDER

**K.S. Rathore, J.**

1. The petitioner applied for admission in Engineering Colleges of Rajasthan and Rajasthan seats of other regional engineering colleges. The petitioner submitted this form in the category of "children of defense personnel killed" and in this regard he also submitted the certificate in the prescribed format along with the form which was duly verified by the Zila Sainik Welfare Officer, Sikar.
2. The petitioner was informed by the Co-coordinator, RPET that as per the certificate which has been produced by him for claiming as children of defense kill personnel category the date of death of father was mentioned 20-9-1965 whereas date of birth of the petitioner is 2-7-1983 and the petitioner was asked to justify the claim for category of reservation in view of this fact.
3. Petitioner submitted a detailed reply to the aforesaid letter before the Co-ordinator wherein it was submitted that when the petitioner was of five years of age, his mother Smt. Sushila Devi widow of late Shri Hajari Singh adopted him as per the settled and religious customs and thereafter an adoption-deed was also registered before the Registrar, Chirawa, Distt. Jhunjhunu on 1-6-1989.
4. Learned counsel for the petitioner further submits that since the initial stage of start of education by the petitioner, the name of father is mentioned as S/o late Sri Hajari Singh in the entire education record from Class I to Senior Secondary Examination. He also placed the marksheet of Class IV, Transfer Certificate of Class VIII, Mark

Sheet of Secondary Examination and Senior Secondary Examination as Annexs. 4, 5, 6 and 7 wherein name of father is mentioned Late Shri Hajari Singh.

5. Co-ordinator RPET examination, 2002 issued Roll No. 51705 and in the admission card issued to the petitioner the category was mentioned as OBC and D.K. (Defense killed). In the result declared by the respondent the petitioner's name was shown in the category of General/OBC vide Annex. 10.

6. Since the petitioner applied reservation for category of defense killed but the respondent in the result intentionally and deliberately failed to provide the benefit of reservation to the petitioner in the category of defense killed. It is also given out by learned counsel for the petitioner that the petitioner is only one candidate who has been given admission in this category. Therefore, seats are still available against the category of defense killed. Petitioner also represented before the respondents to provide benefit of the category of defense killed. Since no reply to the representation has been received by the petitioner nor any order on the representation so moved on behalf of the petitioner has been passed, therefore, petitioner preferred this writ petition.

7. Learned counsel for the petitioner submits that the petitioner is adopted son and being adopted son he is entitled to get all benefit under the category of defense killed.

8. He further submits that merely mentioning natural father in the certificate for children of defense personnel killed or severely disabled category pro forma and does not debar the petitioner to get the benefit under this category.

9. He also referred the checklist Clause 9 wherein it has been mentioned your and your father's name in all certificates [including certificate(s) of reservation (s)] tally with the names mentioned in your secondary Marks Sheet/Certificate.

10. Learned counsel for the petitioner further submits that petitioner has not changed the category and gone in adoption to get the admission in the engineering college as evident by bare perusal of the certificates which are annexed by the petitioner along with the writ petition as Annexs. 4, 5, 6 and 7. The name of the petitioner's father is shown Shri Hajari Prasad in the certificates given by the school. And the name of the father is also tallied with the secondary examination mark sheet. This is the only requirement. So far as the natural father is concerned after adoption the natural father

of the petitioner is Late Sri Hajari Prasad.

11. Learned counsel for the petitioner has mentioned the provisions of Rajasthan General Clauses Act 1955 wherein son is defined that "son" in the case of any one whose personal law permits adoption, shall include an adopted son."

12. He also referred words and phrases - "son".

"Son", in the case of any one whose personal law permits adoption, shall include an adopted son.

13. In support of Section 12 of the Hindu Adoptions and Maintenance Act learned counsel for the petitioner established its case. Section 12 reads as under :

An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family :

Provided

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopting child shall not divest any person of any estate which vested in him or her before the adoption.

14. Thus, the petitioner has legal right to be considered under the defense killed category.

15. Learned counsel for the petitioner referred the certificate which was issued and verified by the Lt. Col. Sangram Singh Rathore that Shri Hajari Singh is the natural father of the petitioner.

16. He also referred the proof of Rajasthan Pre Engineering Test guidelines for the Rajasthan Pre Engineering Test. Item No. 2 deals with the eligible criteria and in Item No. 2.5 A, He/She is a son/daughter of an employee of Rajasthan origin, serving in

Defense/Central Government services/Public Sector undertaking/National Institutes of Government of India, who has put in at least three years service on the last date for submission of application irrespective of his/her place of posting provided a certificate is submitted by the employee from the employer to this effect stating the State of origin and the home town as given by him/her at the time of his/her entry in service.

17. He also referred Note 2 which reads as under:

Ex-Servicemen (Ex.-S) and the Defense Killed (DK) persons should be of Rajasthan origin for eligibility of their children in these categories under 2.4 and 2.5(A). The State of origin and home town as entered in the discharge certificate shall only be accepted as proof in respect of the above. The discharge certificate and PPO must be produced in original at the time of Counseling.

18. After referring Section 2.5A and Note 2 he submitted Instruction for the Guidance of Candidates Appearing at Rajasthan Pre Engineering Test 2002. For Admission to First Year of B.E./B.Sc. (Engg.)/B.Tech./B. Text./B.Arch. Degree Courses for the Session 2002-2003. None of these provisions provide that adopted son is not entitled to get the benefit under the category of defense killed personnel. Therefore, the guidelines as stipulated by the co-ordinator of REPT Examination does not include such rider. Mere submission in the pro forma of the certificate that natural father does not give any right to the respondents for denial of benefit of defense killed category to the petitioner.

19. Learned counsel for the petitioner further placed reliance on the Chapter 4 of the Central Government Concessions and Benefits available to war widows/war disabled and retired/serving defense personnel. Educational concessions are also given to the children of Defense personnel killed or disabled in action, including casualties of OP Pawan and OP Meghdoot, who are studying in educational institutions under the Department of Education are entitled to complete exemption from tuition fee and other fees levied by the educational institution concerned, grants to meet hostel charges in full for those studying in Boarding Schools and Colleges, full cost of books and stationery, full cost of uniform where this is compulsory.

20. Pursuant to the notification issued by the Education (Gr. V) Department dated 6-7-

1982, the reservation of seats of the children of Armed Forces personnel and Ex-Servicemen in the Medical Engineering and other professional Colleges is provided.

21. Similarly vide notification dated 17-10-1992 further this benefit has been extended to the children of defense personnel.

22. Learned counsel for the petitioner in support of his contention placed reliance on the judgment reported in *(K.V. Muthu v. Angamuthu Ammal)*<sup>1</sup> wherein the Hon'ble Supreme Court has dealt with this aspect in para 19 that "Son" as understood in common parlance means a natural son born to a person after marriage. It is the direct blood relationship which is the essence of the term in which "son" is usually understood, emphasis being on legitimacy. In legal parlance, however, "son" has a little wider connotation. It may include not only the natural son but also son's son, namely, the grandchild, and where the personal law permits adoption, it also includes an adopted son.

23. Hon'ble Supreme Court has also considered the judgment in the case of *Adit Narayan Singh v. Mahabir Prasad Tiwari*<sup>2</sup> of the Privy Council has held that "sons" in Mitakshara Chapter II 6(1) includes a grandson. In the ancient Hindu Law, twelve sons are mentioned by the truth-seeing sages all of whom need not be mentioned here. The attempt only is to indicate that the term "son" itself is a flexible term and may not be limited to the direct descendant. Its true meaning, like the term "family" discussed above, will depend upon the context in which it is used. Even illegitimate son may be treated as legitimate, as for example, the "son" referred to in Section 16 of the Hindu Marriage Act, as originally enacted.

24. In the instant case the petitioner has been adopted by the grand mother from the early years and petitioner is entitled to get all benefits which are available to the defense killed personnel.

25. Learned counsel for the respondent Mr. Naina Saraf has emphatically denied the contention raised by the counsel for the petitioner. She submits that in the form itself it is clear indication mentioning natural father. Natural father means person should be naturally born to a defense personnel to get the benefit of the reservation under the category of defense killed personnel.

26. Learned counsel for the respondent further submits that by bare perusal of the Annex-1 appended along with the writ petition reveals this fact that the petitioner is not a naturally born son of Late Sri Hajari Singh, therefore, the petitioner is not eligible to get the benefit of reservation.

27. She also referred the eligibility criteria laid down in the instruction book as 2.5A and Note 2.

28. In support of her submissions, she placed reliance on the judgment reported in, (*Mrs. Valsamma Paul v. Cochin University*)<sup>3</sup> and referred Head Note E wherein it has been held by the Hon'ble Supreme Court that who could claim - candidate born in forward class - Transplanted in Backward Class by marriage, adoption or any other voluntary act - Not entitled to benefit of reservation for SC/ST. Learned counsel for the respondent further referred paras 5, 6, 13 and 14 of the judgment whereby the Hon'ble Supreme Court has opined that the recognition of the appellant by the member of Latin Catholic would not, therefore, be relevant for the purpose of her entitlement to the reservation under Article 16(4), for the reason that she, as a member of the forward caste, had advantageous start in life and after her completing education and becoming major married Yesudas; and so, she is not entitled to the facility of reservation given to the Latin Catholic, a backward class.

29. Learned counsel for the respondent also placed reliance on the judgment of this Court in the case of *Arun Kumar Tyagi v. U.O.I.* reported<sup>4</sup> wherein this Court has held that being a member of Scheduled Tribe, cannot claim right of Scheduled Castes through marriage. She also submitted a Division Bench judgment dated 2-7-2002 by which judgment of *Arun Kumar Tyagi v. U.O.I.* (supra) is upheld.

30. While upholding the judgment rendered in *Arun Kumar Tyagi v. U.O.I.*<sup>5</sup> the Division Bench of this Court has held that essentially any candidate belonging to a particular reserved category cannot be allowed to take the benefit of other reserved category on the basis of social relationship such as marriage as has happened in this case. Such social relationship may be relevant for the purpose of domicile, but not for claiming reservation in other category.

31. Looking to the ratio decided by the Hon'ble Supreme Court in the case of *Mrs. Valsamma Paul v. Cochin University*<sup>6</sup> and this Court in the case of *Arun Kumar Tyagi*

*v. U.O.I.* <sup>7</sup> which is ultimately upheld by the Division Bench of this Court in the case of *Smt. Anju Kataria v. Arun Kumar Tyagi* that one cannot change the category taking advantage of the reservation as held by the Supreme Court that the Arts. 16(4) and 15(4) are intended to remove handicaps and disadvantages suffered by backward class citizens due to social and educational backwardness like the members of Scheduled Caste and Scheduled Tribes. Therefore, persons who by birth belong to Scheduled Castes, Scheduled Tribes or Backward Classes alone are entitled to the benefit of Arts. 16(4) and 15(4). By marriage, adoption or any other device, viz., by procuring false social status certificates, they are not eligible to avail of protective discrimination for appointment to an office or to a post under the State or admission in educational institution.

32. Here in the instant case, the petitioner was not born children of the defense personnel but the petitioner was adopted after the death of Late Sri Hajari Singh and therefore, the adopted cannot be recognized for the purpose of admission in educational institution taking advantage of this reservation.

33. Learned counsel for the respondent further submits that same analogy has been drawn by this Court in the case of *Arun Kumar Tyagi v. U.O.I.* <sup>8</sup> and *Smt. Anju Kataria v. Arun Kumar Tyagi* by the Division Bench. Therefore, the result which was declared vide Annex-10 considering the petitioner in General/OBC category, the petitioner can only be considered in this category for the purpose of admission and cannot be considered under defense killed personnel.

34. Having heard rival submissions of the learned counsel for the parties and after careful examination of the material available on the record as well as provisions of Rajasthan General Clauses Act, 1955 and Hindu Adoptions and Maintenance Act as well as the judgments referred by the respective parties.

35. In the present writ petition, sole controversy is that petitioner claimed admission on the basis of dependent of defense killed personnel of Children of defense killed personnel and also appended a certificate given by Zila Sainik Welfare Officer, Sikar.

36. Although the petitioner was allotted the roll number and he was allowed to appear in the RPET examination, but during the course of examination the petitioner was asked to clarify this fact that since his father died on 20-9- 1965 and his date of birth

as shown by the petitioner is 2-7-1983, how he claimed for the reservation in the category of children of defense killed personnel as he was not naturally born son of late Sri Hajari Singh.

37. I also gone through the format of the certificate which was given by the Zila Sainik Welfare Officer, Sikar wherein Lt. Col. Sangram Singh Rathore has verified this fact that petitioner is the son of late Shri Hajari Singh.

38. I also carefully examine the An-nexures 4, 5, 6 and 7 which was issued by the educational institutions from time to time. By bare perusal of the certificate the facts reveal that since Class IV the petitioner is using the name of late Shri Hajari Singh as a father and throughout the education upto the level of Sr. Secondary the name of Hajari Singh is shown as a father of the petitioner.

39. In view of the condition No. 9 of the checklist of the form which was duly submitted by the petitioner, it is only stipulated that the father's name in all certificates including the certificates of reservations should tally with the names mentioned in Secondary mark sheet/certificate. And it is evident by Annex-7 Secondary Education Certificate that the name of Late Sri Hajari Singh is shown as father of the petitioner. Thus the petitioner fulfils this requisite requirement to furnish the certificate. Further the case of the petitioner is strengthened by the instruction/guidance which are issued by the co-coordinator of the RPET examination for the session 2002-2003. In Clause 2 eligibility criteria is laid down.

40. Both the learned counsel has referred the Clause 2.5-A and their option of sub-Clause 3 also reproduced hereinabove. By bare perusal of the clause 2.5-A option of sub-clause (3) it is only mentioned that son/daughter of an employee of Rajasthan origin, serving in Defense. Herein the instant case this is not disputed that the petitioner does not belong to Rajasthan and served in defense department.

41. Note 2 which is also referred by both the learned counsel speaks about Ex-servicemen and the Defense killed persons should be of Rajasthan origin for eligibility of their children in these categories under 2.4 and 2.5 (A). This note only be verified by the State of origin and home town as entered in the discharge certificate and discharge certificate shall only be accepted as proof in respect of the Rajasthan origin.

42. It is further indicated for the purpose of counseling that discharge certificate and PPO must be produced in original at the time of Counseling. This is not disputed that discharge certificate and PPO has been granted by the State of Rajasthan and by bare perusal of the discharge certificate and PPO it reveals that the defense person was of Rajasthan origin.

43. In Clause 2.5-A and 2.4, there nothing has been mentioned that the natural born children are only entitled to get the admission in the engineering college and the adopted sons are not having any legal right for admission. No specific indication has been given in the eligibility criteria.

44. As defined in Rajasthan General Clauses Act, 1955 that "son" in the case of any one whose personal law permits adoption, shall include adopted son meaning thereby that adopted son in view of Section 32, sub-clause (74) is son for all purposes.

45. In view of Section 12 such adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption.

46. Looking to the facts and circumstances of the case since the petitioner from beginning is adopted by the widow of Late Sri Hajari Singh and this fact is verified by the certificate given by the various institutions, thereafter the adoption deed has been registered before the Registrar in the year 1989 vide Annex.-3, it cannot be said that this adoption is only shown to get the admission in the engineering college.

47. As held in the case of *Mrs. Valsamma Paul v. Cochin University* <sup>9</sup> by Hon'ble Supreme Court that person who does not belong to the particular caste, by marriage, adoption or any other device, are not eligible to avail of protective discrimination for appointment to an office or to a post under the State or admission in the educational institution.

48. Same ratio has been decided by this Court in the case of *Arun Kumar Tyagi v. U.O.I.* <sup>10</sup> and *Smt. Anju Kataria v. Arun Kumar Tyagi*, where in the candidate belonging to Scheduled Tribe category cannot be allowed to take the benefit of the Scheduled Caste category on the basis of marriage. Such social relations may be relevant for the purpose of domicile, but not for claiming reservation in other category.

49. The ratio decided by Hon'ble Supreme Court in the case of *Mrs. Valsamma Paul v.*

*Cochin University*<sup>11</sup> and this Court in the case of *Ajay Kumar Tyagi v. U.O.I.* are not applicable to the instant case.

50. Whereas the ratio decided by the Hon'ble Supreme Court in the case of *K.V. Muthu v. Angamuthu Ammal*<sup>12</sup> is fully applicable to the instant case wherein Hon'ble Supreme Court has held that "son" is usually understood, emphasis being on legitimacy. In legal parlance also includes an adopted son.

51. Merely because in the format natural father has been mentioned. On this technical ground petitioner cannot be denied for consideration under the category of defense killed personnel.

52. This Court vide order dated 22-7-2002 issued notice to the respondents and respondents were directed to allow the petitioner provisionally for counseling/admission in the Engineering College in the category of "Children of Defense Personnel Killed." Learned counsel for the respondents Mrs. Naina Saraf submits that pursuant to this interim order, the petitioner was given provisional admission in the subject of Electronic Engineering in Malviya Regional Engineering College and petitioner is pursuing his study in this faculty.

53. Be that as it may. As discussed hereinabove, I am of the view that the petitioner is adopted son and as per the legal proposition, being adopted son and as per the legal proposition, being adopted son, he is entitled to get the benefit of the reservation which are available to the naturally born son. In view of the criteria laid down by the respondents, respondents are only to verify the father's name mentioned in the Secondary Mark sheet so tally with all the certificates.

54. Herein the instant case, it is not disputed that father's name is not tallied with the Secondary Mark sheet. It is only disputed on the ground that petitioner has been adopted after the death of late Sri Hajari Singh, therefore, he is not natural born son and cannot be given benefit of defense killed personnel under the category of defense killed personnel.

55. I unable to understand this proposition and I am of the firm view that the judgments referred by learned counsel for the respondents are not applicable to the

instant case and in view of the provisions of Hindu Adoptions and Maintenance Act and in view of Section 32, sub-clause (74) of Rajasthan General Clauses Act, 1955 and in view of the ratio decided by the Hon'ble Supreme Court in the case of *K.V. Muthu v. Angamuthu Ammal*<sup>13</sup> petitioner is of course entitled to get the benefit under the category of "children of defense personnel killed". And the respondents are directed to provide him admission under the category of "children of defense personal killed".

56. With these observations writ petition stands allowed.

Petition allowed.

Cases Referred.

1. (1997) 2 SCC 53
2. (AIR 1921 PC 53)
3. AIR 1996 SC 1011
4. 2002 (2) Raj LR 501
5. (2002 (2) Raj LR 501)
6. (AIR 1996 SC 1011)
7. (2002 (2) Raj LR 501)
8. (2002 (2) Raj LR 501)
9. (AIR 1996 SC 1011)
10. (2002 (2) Raj LR 501)
11. ( AIR 1996 SC 1011)
12. (AIR 1997 SC 628)
13. (AIR 1997 SC 628)