



REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 7th DAY OF NOVEMBER, 2022

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE VIRENDER SINGH

CIVIL WRIT PETITION (ORIGINAL APPLICATION)

NO. 2309 OF 2020

Between:-

**PRIYANKA W/O SH. NAIN
SINGH, R/O VPO BIKRAMBAG,
TEHSIL NAHAN, DISTRICT
SIRMOUR, H.P.**

....PETITIONER

**(BY SH. TEJINDER SINGH,
ADVOCATE)**

AND

**1. STATE OF HIMACHAL PRADESH
THROUGH SECRETARY
EDUCATION TO THE
GOVERNMENT OF HIMACHAL
PRADESH.**

**2. DIRECTOR, ELEMENTARY
EDUCATION, HIMACHAL
PRADESH, SHIMLA.**

**3. DEPUTY DIRECTOR,
ELEMENTARY EDUCATION,
DISTRICT SIRMOUR AT NAHAN.**

....RESPONDENTS

**(SH. ASHOK SHARMA, A.G.
WITH SH. KUNAL THAKUR, MS.
DIVYA SOOD, DY. A.GS. AND SH.**

**RAJAT CHAUHAN, LAW OFFICER,
FOR RESPONDENTS-STATE).**

*This Petition coming on for orders this day, the **Hon'ble Mr. Justice Tarlok Singh Chauhan**, passed the following:-*

ORDER

The petitioner by birth belongs to Other Backward Class Community (for short 'OBC Community') in the State of Haryana and was married to one Nain Singh, who also belongs to the Gujjar caste. The caste of the petitioner, before and after marriage, remained same i.e. Gujjar. Gujjar Community is recognised as Scheduled Tribes (for short 'ST') in the State of Himachal Pradesh, whereas in the State of birth of the petitioner i.e. Haryana, it is recognised as OBC Community.

2. The petitioner applied for the post of Language Teacher (ST), for batch-wise recruitment, however, the same was refused vide order dated 10.03.2017 on the ground that the petitioner was not scheduled Tribes, so as to accord the benefit of reservation as sought for by the petitioner.

3. Thus, essentially, the moot question that arises for consideration is whether by migration or some reasons from one State to another, can a person, who may be belonging to Scheduled Castes, Scheduled Tribes or OBC can claim the benefit of such status in the migratory State.

4. The issue is no longer *res integra* and had been considered and decided by the Hon'ble Constitutional Bench of the Hon'ble Supreme Court in **Marri Chandra vs. Dean, S.G.S. Medical College and others (1990) 3 SCC 130**, wherein it was categorically held that the migration for whatsoever reason from one state to another cannot be a sufficient ground for claiming the benefit of SC, ST and OBC in the migratory State. The objective criteria for declaration of a particular Caste or Tribe as SC/ST/OBC in one State is the specific level of backwardness, social disparage and economic disadvantages prevalent in such state. Though, one Caste notified as Scheduled Caste/ Tribe/ OBC in one State may also find place in the list of notified Scheduled Caste/ Tribe/OBC in the other, but the same has not been held to be sufficient for claiming the benefit in other State by a person after migration even through marriage.

5. This has been the consistent view of the Hon'ble Supreme Court as would be evident from the judgment of the Hon'ble Constitutional Bench of the Hon'ble Supreme Court in **Dr. Jaishri Laxman Rao Patil vs. Chief Minister and others (2021) 8 SCC 1**.

6. In a very recent judgment of the Hon'ble Supreme Court in **Bhadar Ram (deceased) through legal representatives vs. Jassa am and others (2022) 4 SCC**

259, while reiterating the ratio laid down in **Marri Chandra's** case (supra), has observed as under:-

10. Whether the appellant herein - original defendant - purchaser of the land in question, situated in the State of Rajasthan, can be said to be an ordinarily resident of State of Rajasthan, it is to be noted that in bainama, his address is shown as Village Burajwala, Tehsil Fajilka, District Ferozpur, Punjab. In the mutation record also, his address is shown as that of Punjab. In the cross examination, he has admitted that he was a resident of Punjab. However, according to the appellant - original plaintiff, as his grandfather and father had purchased the lands in the State of Rajasthan, he can be said to be an ordinarily resident of State of Rajasthan. The aforesaid cannot be accepted. Merely because his grandfather and father had purchased the agricultural lands in the State of Rajasthan, the appellant cannot be said to be an ordinarily resident of Rajasthan.

11. 'Ordinarily Resident' has been defined under the Representation of the People Act, 1950. As per Section 20(1) of the Representation of the People Act, 1950, 'ordinarily resident' means a person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein. Considering the documentary evidences referred to hereinabove, it cannot be said that the appellant - original defendant is an ordinarily /permanent resident of State of Rajasthan.

12. Now whether the sale transaction in favour of the appellant original defendant can be said to be in violation of Section 42 of the Rajasthan Tenancy Act, 1955 is concerned, it is to be noted that as per Section 42 of the

Rajasthan Tenancy Act, 1955, there is a restriction on sale, gift or bequest by a member of Scheduled Caste in favour of a person, who is not a member of Scheduled Caste. Looking to the object and purpose of such a provision, it can be said that the said provision is to protect a member of the Scheduled Caste belonging to the very State he belongs i.e., in the present case the State of Rajasthan. Being a Scheduled Caste in the State of Punjab whether the sale transaction in favour of the appellant original defendant could have been saved from the bar under Section 42 of the Rajasthan Tenancy Act, 1955 is now not res integra.

13. In the case of Marri Chandra Shekar Rao (supra) in paragraph 10 it is observed and held as under:

“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. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult."

14. While holding so, it is observed in the aforesaid decision 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, and therefore, 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, a particular caste who has suffered more in a particular State might be given reservations or protection in their favour. It is also observed that social condition of a State varies from State to State and it will not be proper to generalize any Caste or any Tribe as a Scheduled Caste or Scheduled Tribe for the whole country.

15. In the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra) after

considering the decision of this Court in the case of Marri Chandra Shekar Rao (supra) the question arose, Whether a person belonging to caste or tribe specified for the purpose of Constitution to be 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 Constitution to be a Scheduled Caste or Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to Scheduled Caste and /or Scheduled Tribe in State B? Holding that a person belonging to Scheduled Caste /Scheduled Tribe in relation to his original State of which he is permanent or an ordinarily resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education etc.

16. In paragraph Nos.3 and 16 it is observed and held as under:

“3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in

relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.”

“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule 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". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

High

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

17. The decision of this Court in the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra) shall be applicable with full force to the facts of the present case also. The submission on behalf of the appellant original defendant that the said decision shall not be applicable to the facts of the case on hand as in that case the Court was considering the issue

with respect to employment, education and in the present case dispute is with respect to sale /sale of property has no substance and cannot be accepted. ◊

18. The reasoning given by this Court in the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra) are on interpretation and on a plain reading of Clause 1 of Articles 341 and 342 of the Constitution of India, which are referred to hereinabove. We see no reason to restrict the applicability of the decision of this Court in the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra) only with respect to employment, education or the like and not to make applicable the same with respect to purchase and sale of the property in case of sale and purchase of the land belonging to a Scheduled Caste person in the State of Rajasthan and when the said land was allotted to the original land owner - Chunilal as Scheduled Caste landless person.

19. At this stage, it is required to be noted that in the subsequent decision in the case of Ranjana Kumari (supra), a Three Judge Bench of this Court had an occasion to consider the same issue. Before this Court the appellant belonged to Valmiki Caste (Scheduled Caste of the State of Punjab), who married a person belonging to Valmiki Caste of Uttarakhand migrated to that State. It was found that in the State of Uttarakhand also under the Presidential order 'Valmiki' was also recognized as notified Scheduled Caste. Even the State of Uttarakhand also issued a certificate to the appellant. However, the State of Uttarakhand denied the benefit, which may be available to the Scheduled Caste belonging to State of Uttarakhand.

Thereafter the appellant approached the High Court. The High Court rejected the claim. The decision of the High Court was carried before this Court. While dismissing the Appeal, it is observed in paragraph 4 as under:

“4. Two Constitution Bench judgments of this Court in Marri Chandra Shekar Rao Vs. Dean, Seth G.S. Medical College & Ors. and Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr. have taken the view that merely because in the migrant State the same caste is recognized as Scheduled Caste, the migrant cannot be recognized as Scheduled Caste of the migrant State. The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench Judgments in Marri Chandra Shekar Rao (supra) and Action Committee (supra).”

20. In view of the above, the appellant - original defendant being a Scheduled Caste belonging to State of Punjab and being an ordinarily and permanent resident of the State of Punjab cannot claim the benefit of a Scheduled Caste in the State of Rajasthan for the purpose of purchase of the land belonging to a Scheduled Caste person of State of Rajasthan, which was given to original allottee as Scheduled Caste landless person, and therefore, as rightly held by the Division Bench of the High Court, the sale transaction in favour of the appellant - original defendant was in clear breach and / or in violation of Section 42 of the Rajasthan Tenancy Act, 1955.

7. Similar reiteration of law can be found in a detailed judgment rendered by a Coordinate Bench of this Court in **CWP**

No. 8043 of 2021, titled as **Subeena Sabri vs. State of H.P. & Ors.**, decided on 19.05.2022.

8. In view of the aforesaid reasons, we do not find any merit in this petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge

7th November, 2022

(Virender Singh)
Judge

High Court of H.P.