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JUDGMENT

The petitioner was born on 4.4.1996 to parents belonging to the Hindu-Kuravan community. The said community is included in the list of Scheduled Castes in the State of Kerala. The fact that the petitioner belongs to the Hindu-Kuravan community is borne out from Ext.P1, Secondary School Leaving Certificate issued by the Secretary, Board of Public Examinations, Kerala. The admission register of Smt. Ambily A., the mother of the petitioner, which is produced as Exhibit P4 also discloses the fact that the mother belonged to the Hindu-Kuravan community. The petitioner asserts that her father is no more.

2. After acquiring the requisite qualifications, the petitioner applied for the post of Lower Primary School Teacher, pursuant to notification issued by the Kerala Public Service Commission. The petitioner performed well in the written examination and she has been shortlisted for the post. On being asked to upload the caste certificate on the website of the 1st respondent, which was received by the petitioner by way of an SMS, the petitioner approached the Village Officer through the Akshaya Centre and submitted an online application for obtaining the certificate. The petitioner was directed to approach the Village Officer, Ezhukone and the records submitted by the

petitioner was forwarded to the Village Officer, Kottarakkara. Since there was undue delay in issuing the certificate, she approached the Taluk Office, Kottarakkara. According to the petitioner, the Tahsildar refused to issue the certificate on the ground that the petitioner had married a person belonging to the Christian community.

3. The petitioner asserts that she was born as a Hindu - Kuravan and is not a person who had an advantageous start in life being born in a forward caste. According to the petitioner, just because she married a Christian man will not wipe off the benefit of reservation granted to persons such as the petitioner. It is contended that all through her life she has been suffering all handicaps and disadvantages for having been born as a member of the scheduled caste. The petitioner asserts that she is a Hindu by birth and conscience and has not embraced Christianity.

4. As the delay in granting the certificate was likely to impede her effort to secure employment, the mother of the petitioner submitted Ext.P5 representation before the RDO, Punalur, to consider the request made by the petitioner and to issue the certificate in an expeditious manner.

5. The petitioner contends that the Ministry of Home Affairs, Government of India have issued a Circular to all the Chief Secretaries of the State Governments and Union Territory Administration giving guidance for those authorities who are empowered to issue Scheduled Caste and

Scheduled Tribe Certificates. In Ext.P7 Circular dated 2.5.1975, it has been stated in emphatic terms that a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be a member of that of Scheduled Caste or Scheduled Tribe, as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or a Scheduled Tribe.

6. Being aggrieved by the non-consideration of the request made by the petitioner in accordance with the law, the petitioner is before this Court seeking a direction to the 5th respondent to issue community certificate to the petitioner forthwith and in the alternative, to direct the 4th respondent to consider and pass appropriate orders on Ext.P5 appeal immediately.

7. The learned Senior Government Pleader was directed to get instructions. It is submitted by Smt. Nisha Bose, the learned Senior Government Pleader that the request made by the petitioner was considered by the Village Officer, Kottarakkara. In the report, it is stated that the petitioner had submitted an application for issuance of Scheduled Caste certificate on 7.7.2021 through the 'ReLIS software' and the same was rejected on the ground that the applicant and her family had embraced Christianity. Based on the above report, an intimation was given to the petitioner on 28.10.2021 through online mode. It is also stated that if the petitioner has any grievance, it is for her to challenge the order before the

Revenue Divisional Officer.

8. I have considered the submissions. It is undisputed that the petitioner was born as a Hindu-Kuravan. Ext.P1 and P4 emphatically reveal the above fact. This is not a case where the children or grandchildren of "inter-caste married couple" of whom, one belongs to Scheduled Caste or Scheduled Tribe, claim to be members of such caste or tribe for the purpose of availing the privileges, protections, concessions, special rights and other benefits as applicable to the members of the Scheduled Caste. On the other hand, the petitioner asserts that she is a Hindu-Kuravan by birth and continues to be so.

9. The Constitution of India provides that all citizens of India shall have equality of status and of opportunity. Article 15(1) of the Constitution states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (4) states that nothing contained in Article 15 or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Clause (1) of Article 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Clause (2) states the specific grounds on the basis of which citizens shall be eligible for or discriminated against in respect of any employment or office under the

State. Clause (4) permits the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State.

10. Article 341 of the Constitution states that the President may with respect to any State or Union Territory and where it is a State, after consultation with the Governor by public notification, specify the castes, races or tribes or parts for groups within castes, races or tribes which shall for purposes of the Constitution be deemed to be Scheduled Castes in relation to the State, or Union Territory, as the case may be. Article 342 is a similar provision dealing with Scheduled Tribes. Article 366(24) of the Constitution defines "Scheduled Castes" to mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution. Article 366(25) deals with scheduled Tribes. In order to determine whether a particular caste or tribe would come within the meaning of Articles 341 and 342 respectively for the purpose of reservation under Article 15(4) or 16(4), the Presidential order will have to be looked into. Once a Presidential order has been issued, the President has no power to vary it by any subsequent notification. That can only be done by the Parliament by law under Article 341(2) of the Constitution as well as under Art.342(2) of the Constitution.

11. The Kerala (Scheduled Castes and Scheduled Tribes) Regulation

of Issue of Community Certificates Act, 1996, is an Act enacted to provide for and to regulate the issue of Community Certificates to members of the Scheduled Castes and the Scheduled Tribes in the State of Kerala. The preamble to the Act states that, in order to curb effectively the evil practices of securing such certificates by persons other than those belonging to Scheduled Castes and the Scheduled Tribes for claiming the benefits of reservation and such other benefits meant for the Scheduled Castes and the Scheduled Tribes and to make provision for prescribing punishment therefor and to provide for matters connected therewith or incidental thereto, the Act was enacted. In order to prove her/his claim that she/he belongs to Scheduled Caste or Scheduled Tribe, as the case may be, she/he is required to make an application in such form and in such manner, as may be stipulated for issuance of Community Certificate.

12. The Presidential notification issued under Article 341 shows that members of the Hindu-Kuravan community are entitled to be treated as Scheduled Caste. The basis of reservation under Article 15(4) and 16(4) of the Constitution is to provide additional protection to the members of the Scheduled Castes and Tribes as a class of persons who have been suffering for a considerable length of time due to social and economic backwardness. The object of Article 341(1) is to provide additional protection to the members of the Scheduled Caste having regard to the economical and educational backwardness from which they suffer. It is exactly for the said

reason that Ext.P7 Circular was issued by the Ministry of Home Affairs as early as 2.5.1975. As an enclosure to the Circular, the Central Government had issued certain guidelines to be taken note of by the authorities who were empowered to issue scheduled caste and scheduled tribe certificates. Clause (3) of the enclosure deals with "Claims through Marriage"

The Guiding Principle is that no person who was not a scheduled caste or a scheduled tribe by birth will be deemed to be a member of a scheduled caste or scheduled tribe merely because he or she had married a person belonging to a scheduled caste or a scheduled tribe.

Similarly, a person who is a member of a scheduled caste or a scheduled tribe would continue to be a member of a scheduled caste or scheduled tribe, as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or Scheduled Tribe. (emphasis supplied)

13. Since the petitioner was born as a Hindu Kuravan, there was no justification on the part of the respondents in rejecting the application on the ground that she had married a person belonging to the Christian community.

The Apex Court in **Sunita Singh Vs.State of Uttar Pradesh and Ors.** [(2018) 2 SCC 493] had occasion to observe that the caste or community of a person is to be decided on the basis of her/his birth in the said community.

14. None of the above aspects was taken into consideration by respondents 5 and 6 while considering the application filed by the petitioner. The Village Officer proceeded on the wrong basis that by marrying a person belonging to

the Christian community, the petitioner would lose her right as a member of a scheduled caste and she would thereby be disentitled to a certificate showing the community to which she was born. I also note that even the rejection order was not properly communicated. In that view of the matter, I am of the view that the entire matter requires reconsideration by respondents 5 and 6.

Resultantly, there will be a direction to the competent among respondents 5 and 6 to consider the request made by the petitioner and issue the community certificate as prayed for, within a week from the date of receipt of a copy of this judgment. The learned Government Pleader shall communicate the order forthwith.

To expedite the process, the petitioner is directed to furnish a copy of this judgment before respondents 5 and 6 forthwith.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

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APPENDIX OF WP(C) 22994/2021

PETITIONER'S EXHIBITS:

Exhibit P1(a) TRUE COPY OF SECONDARY SCHOOL LEAVING CERTIFICATE.

Exhibit P1(b) TRUE COPY OF HIGHER SECONDARY EXAMINATION CERTIFICATE.

Exhibit P1(c) TRUE COPY OF DIPLOMA IN EDUCATION CERTIFICATE.

Exhibit P1(d) TRUE COPY OF KERALA TEACHER ELIGIBILITY TEST (KTET) CERTIFICATE.

Exhibit P2 TRUE COPY OF NOTIFICATION ISSUED IN EXTRA ORDINARY GAZETTE DATED 31.12.2019.

Exhibit P3 TRUE COPY OF ADMISSION TICKET ISSUED BY KPSC TO THE PETITIONER.

Exhibit P4 TRUE COPY OF EXTRACT OF ADMISSION REGISTER OF PETITIONER'S MOTHER.

Exhibit P5 TRUE COPY OF APPEAL DATED 3.8.2021.

Exhibit P6 TRUE COPY OF LETTER NO. QR III(2) / 295992/20 DATED 17.09.2021 ISSUED BY KPSC, KOLLAM.

Exhibit P7 TRUE COPY OF LETTER NO.35/1/72-RU (SCT V) DATED 2.5.1975 ISSUED BY MINISTRY OF HOME AFFAIRS.

RESPONDENTS' EXHIBITS:

NIL