

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.15193 of 2016

&

W.M.P.Nos.13240 & 13241 of 2016

S.Paul Raj,
S/o P. Susai (Late)
E.B. Quarters Backside,
Salem Camp,
Mettur Taluk
Salem District

... Petitioner

Vs.

1. The Tahsildar
Mettur Taluk
Salem District

2. The District Collector,
Salem District.

... Respondents

(R2 Suo Motu impleaded Vide order dated 20.09.2021)

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records from the Respondent's proceedings vide order O.Mu.8147/14A5 dated 19.06.2015, and quash the same and consequently direct the Respondent to issue the inter-caste marriage certificate to the petitioner.

For Petitioner : Mr.P.Saravanan

For Respondents : Mr.C.Jayaprakash
Government Advocate

ORDER

The petitioner possesses the educational qualification of Bachelor of Electrical & Electronics Engineering. The petitioner belongs to Christian Adi-Dravida. The 1st respondent has given a community certificate to the petitioner as Backward Class as per G.O.Ms.1564, Social Welfare Department dated 30.07.1985. The petitioner married one girl, namely, G.Amutha, who studied up to Master of Physical Education. She belongs to Hindu Arunthathiyar community. The marriage between the petitioner and the said Amutha was solemnized on 02.03.2009 at Thippi Reddy Thirumana Mandapam, Kolathur Mettur (Taluk), Salem District. The wife of the petitioner was given the Community Certificate as Scheduled Caste as per SI.No.5 of SC/ST (Amendment) Act, 1976.

2. Under these circumstances, the petitioner relying on G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel-P) Department dated 28.12.1976, has submitted an application for grant of inter-caste marriage certificate for the purpose of availing the benefits of priority in public employments.

3. The learned counsel for the petitioner relied on the said G.O.Ms.No.188 dated 28.12.1976 and contended that the Government Order says that *"Where one of the spouses belongs to SC/ST, then inter-caste marriage certificate has to be issued in favour of the petitioner"*. In the present case, the petitioner was issued with the community certificate as 'Backward Caste' and his wife was issued with the community certificate as 'Scheduled Caste' and therefore, it is an inter-caste marriage and accordingly, the petitioner is entitled to get inter-caste marriage certificate for the purpose of availing the benefits including priority in public employment.

4. The learned Government Advocate contended that the Government has issued clarification that conversion of religion would not entail a person to get an inter-caste marriage certificate.

5. In this regard, the clarification was issued by the Government in letter No.235, Social Welfare Department dated 21.07.1997. As per the said clarification, change of religion could not be a ground to grant inter-caste marriage certificate. Relying on the said clarification letter, the learned Government counsel reiterated that the case of the petitioner was

rightly rejected. Even in the impugned order, it is stated that, as per the inquiry report received from the Revenue Inspector, Mettur, the petitioner S.Paulraj as well as his wife Smt.G.Amutha by birth belongs to Christian Adi-Dravidar and Hindu Arunthathiyar community, respectively. Therefore, the inter-caste marriage certificate cannot be granted.

6. The Hon'ble Supreme Court in the case of ***Soosai Etc. Vs. Union of India and others – 1986 AIR 733***, delivered a judgment on 30.09.1985 and made an observation that *"The expression Scheduled Caste is defined in clause 24 of Article 366 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 purpose of this Constitution."*

The Apex Court further observed that *"Now it cannot be disputed that the Caste System is a feature of the Hindu Social structure. It is a social phenomenon peculiar to Hindu Society. The division of the Hindu social order by reference at one time to professional or vocational occupation was moulded into a structural hierarchy which over the centuries crystallized into a stratification where the place of the individual was determined by birth. Those who occupied the lowest rung*

of the social ladder were treated as existing beyond the periphery of civilised society, and were indeed not even "touchable". This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness"

7. The issue regarding the inter-caste marriage was considered in the case of ***M.A.Salam Vs. Principal Secretary to Government of Andhra Pradesh - 2003 (1) ALD 699***, on 27 December, 2002 by the Andhra Pradesh High Court, wherein, the following observations were made:

"The purpose of issuing G.O.Ms.No.371 was in case of inter-caste marriage, if the off-spring suffered the same social stigma or status of either of the parents who comes from a lower caste then the off-spring is also entitled for the benefit of reservation. In other words as an example - if a Brahmin (OC) man marries a Scheduled Tribe lady, but the couple and the propency are accepted into Brahmin community and the boy is raised in the surroundings of Brahmins and live like a Brahmin, he never had the stigma of being called as Scheduled Tribe and hence he cannot claim

the reservation as Scheduled Tribe. The reservations are provided only for those who are suppressed and had social stigma. Had it been a case that upon marriage the Brahmin man was also accepted into Scheduled Tribe and the family lived with and in the surroundings of the Scheduled Tribes and the boy being brought up as Scheduled Tribe, then he can claim as Scheduled Tribe. In this background and legal position what has to be seen now is whether Sri Mohd.Abdul Salaam had a Muslim life with Muslim surroundings or Christian life with Christian Surroundings."

8. It is also brought to the notice of this Court that the Social Welfare Department of the Tamil Nadu Government recently considered this issue and passed orders, wherein, the types of inter-caste marriages are categorically stated as two categories, which are as follows:

“Category-I : Either of the Spouse of the inter-caste marriage couples should be from Scheduled Caste or Scheduled Tribes while the other spouse may be from any other community.

Category-II : Either of the spouse should be from Forward or other community and the other spouse from Backward Class / Most Backward Class).”

Thus, except the cases falling under the categories stated in the Government Order, no other couples are entitled to get inter-caste marriage certificate.

9. This Court is of the considered opinion that conversion from one religion to another religion will not change the caste of a person which he belongs. In the present case, the petitioner admittedly belongs to Christian Adi-Dravidar community and by virtue of conversion to Christianity he was issued with the Backward Class certificate. However, by birth, the petitioner belongs to 'Adi-Dravidar' community and change of religion will not change the community. The classification of Scheduled Caste, Scheduled Tribes, Most Backward Classes, Backward Classes and Other castes will not change the caste.

10. However, various communities are classified for the purpose of issuance of certificate and they are based on the social structure and

other factors. Thus, many number of castes are classified as Scheduled Caste and Scheduled Tribes and uplifted communities are classified as other Classes, based on certain assessments.

11. Therefore, the classification cannot be a ground for the purpose of issuing an inter-caste marriage certificate. The certificate itself is named as “*inter-caste marriage certificate*”. Therefore, by conversion from one religion to another religion, the caste of the person remains unchanged and therefore based on the conversion to other religion, inter-caste marriage certificate cannot be issued.

12. In the event of converted person claiming inter-caste marriage certificate, it would pave way for the citizen to abuse the benefit to be granted under the inter-caste marriage quota. The repercussion will be large and therefore the inter-caste marriage certificate has to be issued only if any one of the spouses belongs to the Scheduled Caste and other spouse belongs to the other caste, but not otherwise.

13. In the present case, admittedly the petitioner belongs to Christian Adi-Dravidar, which is also a Schedule Caste community and by

virtue of conversion to Christianity he was issued with the Backward Class Certificate. The wife of the petitioner, admittedly is a Scheduled Caste. When, both the petitioner and his wife belongs to Scheduled Caste community by birth, merely because the petitioner by virtue of conversion changed the religion would not entail him to get the inter-caste marriage certificate.

14. The very purpose and object of issuance of inter-caste marriage certificate is to provide certain welfare schemes and in such circumstances the classification of various castes as Backward Class, Scheduled Caste, Most Backward Class and other classes cannot be a ground to claim inter-caste marriage certificate. It is the caste / community which has to be taken into consideration and when both the husband and wife belongs to the same caste / community, then they are not entitled for the inter-caste marriage certificate for the purpose of availing the benefits under various schemes. Thus, the order impugned passed is in consonance with the principles laid down.

15. Thus, there is no infirmity in the impugned order dated 19.06.2016. Accordingly, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petitions are also closed. No costs.

17.11.2021

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Internet : Yes

Index : Yes

Speaking order : Yes

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