

Before K. Kannan, J.

BALWANT RAM - Petitioner

versus

STATE OF PUNJAB AND OTHERS - Respondents

CWP No. 9448 of 1991

March 28, 2012

Constitution of India, 1950 - Art. 226 - Jails Manual, Chapter VI, Para 270 - Service of the petitioner terminated on the ground that he belonged to Ramdasia caste and did not belong to Dogra race - Order passed without joining the petitioner in any form of enquiry - On an intervention of the writ Court case was opened and show cause issued - SDO maintained the order of termination - The expressions "Race", "Caste" and "Religion" as found in the Constitution have distinct connotations - A person cannot be denied his racial status by the only fact that he also carries a caste tag - It is a matter of fact to be elicited by evidence whether a particular race has caste divisions as well - Rejection cannot be a matter of such inference without collecting specific evidence therefore and examining the historical incidence of the settlement of persons belonging to Dogra race - Impugned order quashed and matter remitted to hold an enquiry about the 'racial' status about the petitioner - Specific directions issued.

Held, that the expressions "Race", "Caste" and "Religion" as found in the Constitution have distinct connotations. "Caste" is determined by birth in the Hindu community and in the constitutional scheme of things, only persons belonging to Hindu religion could obtain consideration of a Scheduled Caste status. "Race" is a distinct expression which is understood as persons belonging to specific geographical regions with distinct anthropological features.

(Para 2)

Further held, that it is a matter of either custom or practice that there are sub sects and whether there exists any caste divisions. The issue whether there exists any caste divisions within a race will be a matter of historical evidence than an assumption that a caste cannot exist within a race.

"Religion" is determined under a different context viz., a matter of faith. It can be changed any time, but to the extent to which it is relevant in the constitutional scheme, as we have seen above, it shall be possible for a person to obtain a Scheduled Caste status only if he belongs to Hindu religion. Scheduled Tribes are a class by themselves which is not appurtenant to religion. Indeed, the quartet of the Hindu Code brought in the year 1956, namely, the Hindu Adoption and Maintenance Act, Hindu Succession Act, Hindu Marriage Act and Hindu Minority and Guardianship Act specifically exclude from the operation of the Hindu Code persons belonging to Scheduled Tribes. The tribals are a distinct class in themselves, the same way as certain races in India are. The references to religion, caste and tribe are brought here only to understand the concept of race itself, within whose sweep, the other divisions may either fit or stay outside it. In the former way of understanding, a concept to race need not exclude caste. The relevance to anthropological features for a 'race' may obtain relevance even in public appointments and, therefore, stipulations as to height obtains an exceptional treatment for persons belonging to certain races. In this case, while the minimum height for a Jail Warder is given as 5'-6", a lesser height is provided for persons belonging to Dogra race. A person cannot be denied his racial status by the only fact that he also carries a caste tag. It is a matter of fact to be elicited by evidence whether a particular race has caste divisions as well.

(Para 3)

Further held, that in the proceedings of the SDO, Gurdaspur, that was relied on by the authority while passing the impugned order, there is evidently a confusion between the expression "Race" and "Caste". The rejection of the petitioner's case for his racial status is on the ground that he belongs to Ramdasia caste and, therefore, cannot belong to Dogra race. It cannot be a matter of such inference without collecting specific evidence therefor and examining the historical incidence of the settlement of persons belonging to Dogra race. The petitioner has outlined in his petition, several instances of persons belonging to Dogra race as having caste tags also. The petitioner has also sought to bring to light some of the relatives as having been assigned the Dogra status in public appointments. All these facts will have to be examined before a final decision is taken.

(Para 5)

Further held, that the Laconic order passed by the SDO on 12.03.1991 makes no reference to any form of enquiry that these situations demand. The impugned order is quashed and the matter is remitted to the Superintendent Headquarters Jail, Amritsar. He shall hold an enquiry about the 'racial' status about the petitioner. If there is any executive guideline in Punjab about who could issue a certificate, the same shall be followed. Indeed, it is desirable that the State nominates a public authority by notification a competent authority to issue such a certificate, especially when it becomes relevant to make a relaxation as to height in a public post. The Superintendent Headquarters Jail shall himself hold an enquiry and entrust to any competent authority, if notified by Government, to hold an enquiry in this regard. The petitioner shall be given opportunity to produce all the evidence both documentary and oral before such authority and determination of the status shall be done after such enquiry. The Enquiry Officer shall also be at liberty to secure appropriate expert evidence drawn from the academic community to elicit the features of Dogra community and whether there exists for the petitioner any credible evidence to assign to him such a status. Having regard to the fact that the matter relates to a litigation that has stood on for more than two decades, I direct that the consideration is made and an appropriate decision is taken within a period of 6 months from the date of receipt of copy of this order. The ultimate decision that is taken with reference to his race will also determine the right of reinstatement or otherwise.

(Para 6)

Alka Chatrath, Advocate, *for the petitioner*:

S.S. Sahu, Assistant Advocate General, Punjab.

K. KANNAN, J. (ORAL)

(1) The petitioner, who had secured an exemption relating to the height for the post as a Jail Warder on the ground that he belonged to Dogra race in the manner provided to Chapter VI, Para 270 of the Jails Manual came to lose his job, on the ground that he belonged to Ramdasia caste and that he did not belong to Dogra race. An order had been passed without joining the petitioner in any form of enquiry and, therefore, on an intervention

by the High Court in a writ petition in CWP No.6974 of 1990, the case was opened and the report was given to the petitioner to show cause as to why he could not have been terminated and that the certificate of 'race' which he had given, was to be treated as not genuine. On a further enquiry undertaken, the petitioner's contention was that he belonged to Dogra race and sought to rely on the fact that there were several persons of Dogra race, who were working in the Army as well as in the jail department and he was trying to bring out the fact that within Dogra race itself, there were castes and sub-castes and the fact that he belonged to Ramdasia caste did not derogate from the status as a person that he belonged to Dogra race. The Sub Divisional Officer, on the other hand, chose to rely on the certificate of the Tehsildar Gurdaspur to show that he belonged to Ramdasia caste and did not belong to Dogra community. In the termination order issued by the Superintendent, he had observed that the Sub Divisional Officer, Gurdaspur, had informed that 'Dogra' was not a caste residing in the sub division where the petitioner was said to have resided, namely, at Mustfabad-Jattan, Tehsil and District Gurdaspur (Punjab), and persons belonging to Dogra caste/Dogra race were residing in Jammu, Kashmir, Himachal Pradesh and Pathankot tehsil only.

(2) The expressions "Race", "Caste" and "Religion" as found in the Constitution have distinct connotations. "Caste" is determined by birth in the Hindu community and in the constitutional scheme of things, only persons belonging to Hindu religion could obtain consideration of a Scheduled Caste status. "Race" is a distinct expression which is understood as persons belonging to specific geographical regions with distinct anthropological features. The American Heritage Dictionary defines 'race' as "as local geographic or global human population distinguished as a more & less distinct group by genetically transmitting physical characteristics." Referring to its usage, it says, "The notion of race is nearly as problematic from a scientific point of view as it is from a social one. European physical anthropologists of the 17th and 18th centuries proposed various systems of racial classification based on such observable characteristics as skin colour, hair types, body proportions and skull measurements, essentially codified perceived differences among broad geographic populations as humans..... The biological aspect of race is described today not in observable physical features but rather in such genetic characteristics as blood groups

and metabolic processes, and the groupings indicated by these factors seldom coincide very nearly with those put forward by earlier physical anthropologists. Citing this and other points—such as the fact that a person who is considered black in one society might be non-black in another—many cultural anthropologists now consider race to be more a social or mental construct than an objective biological fact.”

(3) It is a matter of either custom or practice that there are sub sects and whether there exists any caste divisions. The issue whether there exists any caste divisions within a race will be a matter of historical evidence than an assumption that a caste cannot exist within a race. “Religion” is determined under a different context viz., a matter of faith. It can be changed any time, but to the extent to which it is relevant in the constitutional scheme, as we have seen above, it shall be possible for a person to obtain a Scheduled Caste status only if he belongs to Hindu religion. Scheduled Tribes are a class by themselves which is not appurtenant to religion. Indeed, the quartet of the Hindu Code brought in the year 1956, namely, the Hindu Adoption and Maintenance Act, Hindu Succession Act, Hindu Marriage Act and Hindu Minority and Guardianship Act specifically exclude from the operation of the Hindu Code persons belonging to Scheduled Tribes. The tribals are a distinct class in themselves, the same way as certain races in India are. The references to religion, caste and tribe are brought here only to understand the concept of race itself, within whose sweep, the other divisions may either fit or stay outside it. In the former way of understanding, a concept to race need not exclude caste. The relevance to anthropological features for a ‘race’ may obtain relevance even in public appointments and, therefore, stipulations as to height obtains an exceptional treatment for persons belonging to certain races. In this case, while the minimum height for a Jail Warder is given as 5’-6”, a lesser height is provided for persons belonging to Dogra race. A person cannot be denied his racial status by the only fact that he also carries a caste tag. It is a matter of fact to be elicited by evidence whether a particular race has caste divisions as well.

(4) The Wikipedia that offers global encyclopedic context captures under the title ‘Dogra’ the following:

“The Dogras (Dogri, Kashmiri, Punjabi, Hindi, Urdu: dogra; Tibetan, Ladakhi/*sin-pa* or *shin-pa*) are an Indo-Aryan ethnic group in South

Asia. Being a diversified group, the Dogras include both Savarnas such as Brahmins, Rajputs and Non-savarnas. The Dogras also include merchant castes (Vaishyas) such as Mahajans. Rajput Dogras are believed to be Suryavanshi along with Chandravanshi Rajputs of Chattari origin, migrating many centuries ago from Rajputana (now called Rajasthan) to the hilly areas of Jammu and lower altitude areas of Himachal Pradesh (Una, Kangra, Mandi, Bilaspur and Hamirpur). They live predominantly in the Jammu region of Jammu and Kashmir but also in adjoining areas of Punjab, Himachal Pradesh, and northeastern Pakistan. They speak their own language, Dogri, which was recognized as one of the national languages of India in 2003. Most Dogras are Hindus, but some are Muslims and Sikhs.”

The Encyclopedia Britannica, 11th Edition, Volume 8, says,

“Dogra, a race of Hill Rajputs in India inheriting Kashmir and the adjacent valleys of the Himalays..... There are numerous castes in the Dogra country and the Hindu, Mohammedan and Sikh religions are represented. All, whether Hindus or Mohammedans, whether highborn Rajputs of Maharaja's caste or low-born menials, are known as Dogras.....”

(5) In the proceedings of the SDO, Gurdaspur, that was relied on by the authority while passing the impugned order, there is evidently a confusion between the expression “Race” and “Caste”. The rejection of the petitioner's case for his racial status is on the ground that he belongs to Ramdasia caste and, therefore, cannot belong to Dogra race. It cannot be a matter of such inference without collecting specific evidence therefor and examining the historical incidence of the settlement of persons belonging to Dogra race. The petitioner has outlined in his petition, several instances of persons belonging to Dogra race as having caste tags also. The petitioner has also sought to bring to light some of the relatives as having been assigned the Dogra status in public appointments. All these facts will have to be examined before a final decision is taken.

(6) The impugned order cannot be sustained, for, the reliance which the order makes is not worth reckoning. The laconic order passed by the SDO on 12.03.1991 makes no reference to any form of enquiry that these

situations demand. The impugned order is quashed and the matter is remitted to the Superintendent Headquarters Jail, Amritsar. He shall hold an enquiry about the 'racial' status about the petitioner. If there is any executive guideline in Punjab about who could issue a certificate, the same shall be followed. Indeed, it is desirable that the State nominates a public authority by notification a competent authority to issue such a certificate, especially when it becomes relevant to make a relaxation as to height in a public post. In the adjoining State Jammu, there is a legal advisory that Panchayats are competent to issue Dogra Certificate. I have not been apprised of any executive instruction as to who is the competent person in the State of Punjab. The Superintendent Headquarters Jail shall himself hold an enquiry and entrust to any competent authority, if notified by Government, to hold an enquiry in this regard. The petitioner shall be given opportunity to produce all the evidence both documentary and oral before such authority and determination of the status shall be done after such enquiry. The Enquiry Officer shall also be at liberty to secure appropriate expert evidence drawn from the academic community to elicit the features of Dogra community and whether there exists for the petitioner any credible evidence to assign to him such a status. Having regard to the fact that the matter relates to a litigation that has stood on for more than two decades, I direct that the consideration is made and an appropriate decision is taken within a period of 6 months from the date of receipt of copy of this order. The ultimate decision that is taken with reference to his race will also determine the right of reinstatement or otherwise.

(7) With these observations, the writ petition is disposed off.

Sd/-

(K.KANNAN)
JUDGE

Note: The Registry is directed to circulate a copy of this judgment to the Advocate General's office, Punjab for onward transmission to competent authority in the Government of Punjab for appropriate action.