

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00920/2016

DATED THIS THE 4th DAY OF MARCH, 2020

**HON'BLE DR.K.B.SURSH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

Nitu Kumari
W/o Syed Md Nuran Ali
Aged about 32 years
Working as Stenographer-III
O/o Subsidiary Intelligence Bureau
Ministry of Home Affairs,
Government of India,
8th Floor, BMTC Buildings, Koramangala
Bengaluru
Resident of B11/196 CPWD Complex
Domlur, Bengaluru.

...Applicant

(By Advocate Shri P. Sreedhara)

Vs.

1.The Assistant Director
O/o Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
8th Floor, BMTC Buildings, Koramangala
Bengaluru.

2.The Assistant Director General
Intelligence Bureau
Head Quarters, New Delhi.

3.The Union of India,
Rep. by its Secretary
Ministry of Home Affairs,
New Delhi.

...Respondents

(By Shri N. Amaresh, Standing Counsel for Respondents)

ORDER

HON'BLE DR.K.B.SURESH ...MEMBER(J)

"Apartheid was legal. The Holocaust was legal. Slavery was legal.

Colonialism was legal. Legality is a matter of power, not justice.”

“What is the degree of infraction to be attached to a Hindu girl marrying a Muslim boy, is just the crux of the matter.”

2. The applicant Smt Nitu Kumari, obtained employment with the respondents. But this is a curious case in which we cannot actually find any fault with the contesting respondents. But then, the circumstances of the case and activities of the other parts of governance had made it a fit case for us to look into it.

3. The matrix of the case is as follows:

The applicant's father was engaged and working as a Sheristidar in Munsiff Court Saharsa in Bihar. We will take judicial notice to the effect that when the applicant applied for a job, it would have been with the active support and connivance of the parents and may be even the brothers who were Government employees at that point of time. The applicant belongs to a backward caste, but then the income of the father had, at that time probably more, which do not enable the applicant to be considered under the creamy layer. But then, it has been pointed out that subsequently this limit had been enhanced by the Government several times and even on that income she could have been considered as being in the creamy layer.

4. The issue arose when the applicant's father filed a complaint indicating that defeating the term of creamy layer, the applicant had obtained the employment with the respondents, SIB and that appropriate action should be taken against her. The reason for this is that the applicant had come to Bangalore and had

married a Muslim boy and then the brothers of one who is a Lok Sabha reporter and another in Railway service had assaulted her and she was admitted in the hospital. However, on the family pressure and other circumstance she had withdrawn this complaint, even though this complaint was made through the Director of SIB.

5. Now the contesting respondents correctly conducted an enquiry and found that the applicant could not have applied for the post under Government system without the creamy layer certificate which she apparently did not have correctly at that point of time.

6. But at the same time, the case of the applicant is that her brothers had also obtained employment under the same context and thus the same being instrumental in all these things. The reason for the complaint filed by the father and objections of the brothers was that she had married a Muslim. Therefore, she will not be considered to be belonging to other backward caste and appropriate action to follow.

7. Thinking in terms of right or wrong, we were also convinced after hearing the learned counsel that great injustice had taken place as, if the applicant had to loose her job, without any doubt the brothers who had also obtained jobs under the same terms had to loose their jobs, otherwise if it so happens that if the applicant alone is loosing her job, then the Government system fails to provide reasonable care to life and livelihood for a person.

8. Therefore, we had directed impleadment of the brothers of the applicant and their employers as well. We granted umpteen number of opportunities for

them to file reply, but none of the Government departments responded, even though they have received the notices. Thus we have to hold that they are also complicit in suppressing the fact of the brothers of the applicant alone receiving employment on false pretence.

9. We also take note of the fact that the applicant, even though at the time of consideration for employment may not have been eligible to receive the creamy layer certificate as her father's income was 2.5 lakhs, this amount had been subsequently enhanced immediately after that and therefore some benefit of this should be allowed to the applicant. Therefore, we will pass the following order in the light of greater justice:

1. The applicant will be continued in her employment till the governance system as a whole wakes up and takes action against applicant's brothers.
2. We also hold that the applicant, is otherwise eligible to continue in her position, because in the near days itself the eligibility criteria was enhanced by the Government.

10. Therefore, the orders removing her from service are hereby quashed. OA allowed as above. No costs.

(C.V. SANKAR)
MEMBER(A)

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(DR.K.B.SURESH)
MEMBER(J)

Annexures referred in O.A. No. 170/00920/2016

Annexure-A1: Copy of Offer of appointment.
Annexure-A2: Copy of OBC Certificate.
Annexure-A3: Copy of OBC Format.
Annexure-A4: Copy of 7th CPC Arrears.
Annexure-A5: Copy of Police complaint & Medical records.
Annexure-A6: Copy of Impugned Memorandum.
Annexure-A7: Copy of Representation.

Annexures referred by the Respondents in the Reply

Annexure-R1: Copy of Memorandum dated 07.11.2012.
Annexure-R2: Copy of Admission Certificate of SSC.
Annexure-R2A: Copy of Admission Certificate of SSC.
Annexure-R3: Copy of letter dated 22.01.2015.
Annexure-R4: Copy of Salary Statement of Sudheshwar Prasad
Annexure-R5: Copy of Memorandum dated 27.1.2016.
Annexure-R6: Copy of letter dated 05.02.2016.
Annexure-R7: Copy of letter dated 27.03.2015.
Annexure-R8: Copy of Memorandum dated 22.3.2016.
Annexure-R9: Copy of representation dated 06.4.2016.
Annexure-R10: Copy of letter dated 22.03.2016.
Annexure-R11: Copy of letter dated 01.08.2016.
Annexure-R12: Copy of representation dated 20.10.2016.
Annexure-R13: Copy of Form IV
Annexure-R14: Copy of Rule 11 –Swamy's Disciplinary Proceedings

Annexures referred to in the Written Argument

Annexure A- DOPT OM dated 14.10.2004.
Annexure A- DOPT OM dated 13.09.2017.
