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D.M. PREMKUMARI

v.

THE DIVISIONAL COMMISSIONER, MYSORE DIVISION &  
ORS.

(Civil Appeal No. 806 of 2009)

B

FEBRUARY 9, 2009

**[TARUN CHATTERJEE AND H.L. DATTU, JJ.]**

*Constitution of India, 1950:*

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*Article 142 – Complete Justice – Appellant belonged to Telugu Shetty Community falling under reserved Group ‘B’ category – She obtained job under Category ‘B’ – Later, authorities found that the said caste was transferred to Category ‘D’ and held that she was not entitled to retain the post as a person belonging to Group ‘B’ Category – Held: Though Division Bench of High Court was right in holding that she was not entitled to retain the job – However, if her appointment is struck down it would cause great hardship to her – It is not the case of employer that continuation of her service would cause prejudice to any one – To do complete justice, employer directed not to dislodge the appellant from the post held by her.*

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**Appellant belonged to “Telugu Shetty Community”. She claimed reservation under category ‘B’ as provided under the clarification order passed by the Government. She was appointed under the said category as Primary School Teacher. After the selection, authorities sought for verification of the caste certificate from the District Committee and found that the ‘Telugu Balija’ caste was transferred to Group ‘D’ category and as the appellant had sought reservation in Group ‘B’ category, she was not entitled to retain the post of Primary School Teacher as a person belonging to Group ‘B’ category. Accordingly**

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it was held that appellant was not entitled to retain the said post which was upheld by appellate authority. Appellant filed writ petition before High Court. Single Judge allowed the same. Division Bench allowed the writ appeal.

In appeal to this Court, appellant took plea of her pathetic financial condition.

Disposing of the appeal, the Court

**HELD :1.** Deciding this case on merits, and telling the appellant that she has to go out of the employment, would cause great hardship and injustice to the appellant. [Para 11] [1098-G]

**2.** The District Committee, which was asked to verify the appellant's claim, is justified in informing the appointing authorities that, strictly going by the Government's orders issued in 1986, the appellant could not claim any reservation under Group 'B' category. However, the Single Judge, may have taken a very sympathetic view of the matter, and came to the rescue of a poor primary school teacher. The Division Bench strictly applied the true interpretation that requires to be placed while constituting Article 15(4) and Article 16(4) of the Constitution. Therefore, there was no fault with the orders passed by the Division Bench of the High Court also. [Para 13] [1099-B-D]

**3.** This Court, while entertaining the special leave petition, had granted the status-quo order. By virtue of that order, the appellant is continuing to work as a primary school teacher. At this stage, if the appointment of the appellant is struck down and if she is now asked to seek employment elsewhere, it would cause great hardship and injustice, for the reason that by now she

A must have crossed the upper age limit for seeking public employment and she may not get any employment anywhere. It is not the case of the other side also, that if the appellant's service is continued, it would cause any prejudice to any other applicant. [Para 14] [1099-D-F]

B 4. "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. Such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This is a mis-  
C understanding. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. However, judiciary does not believe in misplaced sympathy. [Para 15] [1099-G-H; 1100-A]

D 5. In order to do complete justice, the respondents are directed not to dislodge the appellant from the post of primary school teacher. [Para 16] [1100-B]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 806 of 2009.

From the final Judgment and Order dated 9.1.2006 of the High Court of Karnataka at Bangalore in Writ Petition No. 4031/2003(S-RES).

F P.R. Ramasesh for the Appellant.

Sanjay R. Hegde for the Respondents

The following Order of the Court was delivered:

G **O R D E R**

Leave granted.

H (1) The appellant calls in question the legality or otherwise of the judgment and the order passed by the Division Bench of High Court of Karnataka in Writ Appeal No.4031 of 2003,

dated 9th day of January, 2006.

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(2) The appellant belongs to "Telugu Shetty Community". She claimed reservation under category 'B' as provided under the Classification Order passed by the Government of Karnataka for the purposes of Backward Class Citizens under Article 15(4) of the Constitution. She was selected and appointed under the said category as Primary School teacher by the Deputy Director of Public Instructions, Mysore.

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(3) The Deputy Director of Public Instructions, Mysore, after appointment of the appellant, had sought for verification of caste and income certificate from the District Committee for Backward Classes and minorities for issue of certificate. The Committee, vide its proceedings dated 08.04.1996, was of the view that the 'Telugu Baliija' caste has been transferred to Group 'D' category and as the appellant had sought reservation in Group 'B' category, she would not be entitled to retain the post of Primary School Teacher as a person belonging to Group 'B' category.

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(4) The appellant, being aggrieved by the orders passed by the District Committee, had preferred an appeal before the Divisional Commissioner, Mysore.

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(5) The Divisional Commissioner, vide his order dated 07.02.2000, has dismissed the appeal filed by the appellant and thereby has confirmed the orders passed by the District Committee.

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(6) The appellant, feeling aggrieved by the orders passed by the Divisional Commissioner, had approached the High Court of Karnataka in Writ Petition No.10843 of 2000. The Learned Single Judge, by his order dated 05.03.2003, has allowed the writ petition and has set aside the orders passed by the Divisional Commissioner and also the orders passed by the District Caste Verification Committee.

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A (7) The State, being aggrieved by the orders passed by the learned Single Judge, had preferred Writ Appeal No.4031 of 2003. The Appellate Forum has allowed the State's appeal and, thereby, has set aside the orders passed by the learned Single Judge.

B (8) The appellant, being aggrieved by the orders passed by the Division Bench of the Karnataka High Court in Writ Appeal No.4031 of 2003, is before us in this appeal.

C (9) We have heard learned counsel appearing for the parties to the lis.

D (10) Shri P.R. Ramasesh, learned counsel appearing for the appellant would inform us the pathetic financial condition of the appellant and her family members and also would tell us, that, if for any reason, the appellant's appointment is struck down, the family of the appellant might have to lead the life of penury, and therefore, requests us to set aside the orders passed by the Division Bench of the High Court of Karnataka and confirm the order passed by the learned Single Judge. Shri E Sanjay R. Hegde, learned counsel appearing for the respondent-State would justify the orders passed by the Division Bench of the Karnataka High Court in Writ Appeal No.4031 of 2003.

F (11) Having given our anxious consideration to the case pleaded by the learned counsel for the parties, we are of the view, that, it would not be desirable to decide this case on merits. If we have to do it, we might have to tell the appellant that she might have to go out of the employment. This, in our opinion, would cause great hardship and injustice to the G appellant.

H (12) The appellant, as we have noticed earlier, was appointed as a Primary School Teacher sometime in the year 1994. At the time of her appointment, she had produced the caste certificate issued by the Tehsildar. She might not have

understood the nuances of legal terminologies like Group 'B' Category, Group 'D' Category etc., and therefore, now she is caught in the "cobweb."

(13) The District Caste Verification Committee, which was asked to verify the appellant's claim, is justified in informing the appointing authorities that, strictly going by the Government's orders issued in 1986, the appellant could not have claimed any reservation under Group 'B' category. We cannot find fault with their understanding of the Government Order. However, the learned Single Judge, may be taking a very sympathetic view of the matter, has come to the rescue of a poor primary school teacher. The Division Bench has strictly applied the true interpretation that requires to be placed while constituting Article 15(4) and Article 16(4) of the Constitution. Therefore, we cannot find fault with the orders passed by the Division Bench of the Karnataka High Court also.

(14) This Court, while entertaining the special leave petition, had granted the status-quo order. By virtue of that order, the appellant is continuing to work as a primary school teacher. At this stage, if the appointment of the appellant is struck down and if she is now asked to seek employment elsewhere, in our opinion, it would cause great hardship and injustice, for the reason by now she must have crossed the upper age limit for seeking public employment and she may not get any employment anywhere. It is not the case of the other side also, that if the appellant's service is continued, it would cause any prejudice to any other applicant.

(15) "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This, in our view, is a mis-understanding. Judiciary has a very strong sense of justice and it works to maintain social

A justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy.

B (16) In view of the above discussion and keeping in view the peculiar facts and circumstances of the case, we dispose of this appeal, without going into the merits of the case. In order to do complete justice, we direct the respondents herein, not to dislodge the appellant from the post of primary school teacher. This order of ours shall not be treated as a precedent in any other case.

C (17) The appeal is disposed of accordingly. There shall be no order as to costs.

D.G.

Appeal disposed of.