

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No.6874 of 2020

Decided on: 08.04.2026

Neha Gangwal

...Petitioner

Versus

State of Himachal Pradesh & Ors .

...Respondents

Coram

Ms. Justice Jyotsna Rewal Dua

¹ *Whether approved for reporting?*

For the petitioner:

Mr. Karan Singh Parmar, Advocate.

For the respondents:

Mr. Y.P.S.Dhaulta, Additional
Advocate General, for respondents
No. 1 to 3.

Mr. Vikrant Thakur, Advocate, for
respondent No.4.

Mr. Shubham Singh Guleria,
Advocate, for respondent No.5.

Jyotsna Rewal Dua, Judge

Notwithstanding pendency of some applications including CMP(T) No. 477 of 2025, at the request of learned counsel for the petitioner and with consent of learned counsel for the parties, matter has been heard at this stage.

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

2. The Case

2(i). The case set up by the petitioner is that she was born at Farukhabad, Uttar Pradesh and by birth belongs to Kurami Caste, which falls in the category of Other Backwards Classes (OBC) in the State of U.P. Petitioner's marriage was solemnized with Dr. Mukesh Kumar, R/o VPO Kalwari, Tehsil Banjar, District Kullu, H.P. during the year 2009. Petitioner's husband belongs to Kumhar Caste and falls in OBC Category in the State of Himachal Pradesh. According to the petitioner, certificate of belonging to OBC Category was issued to her by the respondents-State Revenue Authorities.

2(ii) Petitioner participated in the selection process undertaken by the respondents for filling the posts of Medical Officers (Dental) in OBC Category in the State of H.P. At that stage, respondent No.5 preferred ***Bhawana Chaudhary Vs. State of H.P. and others***², seeking directions to the respondent-State not to consider the case of the petitioner for appointment to the post of Medical Officer (Dental) in OBC Category in the State of H.P. on the ground that present petitioner belonged to OBC Category in State of U.P.. In the

² CWPOA No.5257 of 2020 decided on 06.01.2022

aforesaid writ petition, respondent-State filed reply, supporting the stand taken by the present respondent No.5 that present petitioner was not entitled for benefit of OBC Category in State of Himachal Pradesh. Taking note of stand of the respondent-State, which was in favour of present respondent No.5, her writ petition was disposed of as under having been rendered infructuous:-

- “3. Respondent No.4, in its separate reply, has also reiterated the same by stating that “However, State Government vide instructions and clarification issued vide letter No.Wel-(B)-F(1)- 1/2001-Vol-II dated 21.09.2015 (Copy enclosed as Annexure R/1) has clarified that if a woman from OBC category from another State gets a OBC Certificate from the legally authorized entity in the State, it would still not entitle her for the benefits of OBC in the State of Himachal Pradesh as she may not be covered under the State OBC list of H.P. which makes the notified castes in the State of H.P. eligible for an OBC certificate. The above instructions/clarification have already been circulated to revenue authority/concerned authority and as per the above instructions/clarification the respondent No.3 Neha Gangwar is not entitled to avail the benefits of OBC in this State.”*
- 4. In this view of the matter, the grievance of the petitioner has already been redressed, rendering the petition as infructuous. The same is accordingly disposed of, so also the pending miscellaneous application(s), if any.”*

2(iii) It is not in dispute that subsequent to the aforesaid decision, respondent No.5 now stands appointed to the post of Medical Officer (Dental) in OBC Category.

In the above background, petitioner has instituted this writ petition seeking appointment as Medical Officer (Dental) under OBC Category of Himachal Pradesh.

3. Learned counsel for the petitioner placed reliance upon ***Pinki Bagga vs. State of H.P. & Ors.***³ and on that basis submitted that in view of OBC certificate produced by the petitioner, the action of the respondents in not considering the candidature of the petitioner under OBC category was not in consonance with the law laid down in aforesaid decision.

4. Consideration

4(i). In *Pinki Bagga's*³ case, petitioner's candidature had been converted from SC (UR) to General category. The petitioner (therein) had grievance against conversion of her candidature from SC (UR) to General category. She was issued a caste certificate to the effect that she belonged to Ramdasia caste recognized as Scheduled Caste in the State of Punjab. Petitioner (therein) had solemnized marriage with a resident

³CWP No.8181 of 2021 decided on 20.04.2022.

of Himachal Pradesh. She was issued a *Bona fide* Himachali certificate. Scheduled Caste certificate was also issued in her favour certifying that she belonged to Ramdasia caste, considered as Scheduled Caste in the State of Himachal Pradesh. The Hon'ble Division Bench allowed the writ petition filed by Pinki Bagga, placing reliance upon decisions rendered in ***Naveen Kumari vs. State of H.P. & Others***⁴ and ***State of H.P. and Others vs. Smt. Naveen Kumari***⁵. It was observed that in the aforesaid decisions it had been held that 'when a person is issued a *Bona fide* Certificate, it means that he/she is a permanent resident of the State for all intents and purposes as he/she has intention to live permanently there and he/she no longer remains a migrant.' Hon'ble Division Bench further held that 'a person after her marriage no more remains a migrant and she for all intents and purposes is now settled in the house of her husband.' Relevant paras from the decision are as under:-

"5. Shri Vikas Rathore, learned Additional Advocate General, while placing reliance upon the judgment of Hon'ble Apex Court in Ranjana vs. State of Uttrakhand 2019 SCC(15) 664, vehemently argued that merely because in migrant State some caste is recognized as SC, migrant cannot be recognized as SC of migrant

⁴CWP No.2651 of 2020 decided on 04.09.2021.

⁵Review Petition No.47 of 2021 decided on 04.09.2021.

State. However, he was unable to dispute that Executive Magistrate, Nurpur besides issuing caste certificate in favour of petitioner also issued Bonafide Himachali Certificate in her favour certifying therein that she is permanent resident of Himachal Pradesh.

7. In support of his aforesaid contention, Mr. Harish Kumar Verma, learned counsel appearing for the petitioner, invited the attention of this Court to the judgment dated 22.02.2021 passed by a Division Bench of this Court in CWP No.5951 of 2020, titled as Naveen Kumari vs. State of H.P. & Others and judgment dated 04.09.2021, passed by same Division Bench in Review Petition No.47 of 2021, titled as State of H.P. and Others vs. Smt. Naveen Kumari, wherein it has been categorically held that when a person is issued a Bonafide Certificate, it means that he/she is a permanent resident of State, for all intents and purposes as he/she has intention to live permanently there and he/she remains no more a migrant. Division Bench has further held that a person after her marriage no more remains a migrant, and she for all intents and purposes is now settled in the house of her husband. It would be apt to take note of the following paras:-

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8. Reliance is also placed upon judgment passed by aforesaid Division Bench in Review Petition No.47 of 2021 supra wherein the Division Bench of this Court has held as under:-

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9. In view of aforesaid law laid down by Division Bench of this Court, grounds raised by respondents-State to defeat the claim of the petitioner are not sustainable and as such deserve outright rejection. Reply filed on behalf of respondents No.1 and 2 i.e. State of Himachal Pradesh clearly reveals that the aforesaid judgment passed by Division Bench of this Court has attained finality and in terms of directions contained in the aforesaid judgment, the Deputy Director, Elementary Education, Kangra at Dharamshala, being Cadre Controlling and Appointing Authority in respect of Classical and Vernacular Teachers, declared the result of the petitioner in that case and offered her appointment as Language Teacher under SC category on contract basis in Government High School, Ghandran, District

Kangra vide his Office Order dated 28th October, 2021.

11. *Consequently, in view of above, this Court finds merit in the instant petition and the same is allowed and the action of respondents in treating the candidature of the petitioner under General unreserved category instead of Scheduled Caste unreserved category is held to be bad and accordingly the same is quashed and set aside and the respondent-No.3 is directed to consider the candidature of the petitioner against the category of Scheduled Caste unreserved and accordingly offer her appointment against the post in question, if she is otherwise eligible. Since petitioner has already suffered for a considerable time, this Court hopes and trusts that the needful shall be done by the competent authority expeditiously, preferably within a period of four weeks from today. Pending applications, if any, are also disposed of.”*

Learned counsel has placed heavy reliance upon the above decision in support of petitioner’s case.

4(ii). It is pertinent to take note of a subsequent decision rendered by the Hon’ble Division Bench in ***Subeena Sabri vs. State of H.P. & Ors.***⁶. In *Subeena Sabri*⁶, petitioner was born in State of Bihar and belonged to Ansari Caste, which had been declared as Other Backward Class (OBC) in State of Bihar. She married a bonafide resident of State of Himachal Pradesh, who belonged to a caste declared as OBC in State of Himachal Pradesh. Petitioner had been issued a Bonafide Himachali Certificate based upon her

⁶CWP No.8043 of 2021 decided on 19.05.2022.

marriage and residence in the State of Himachal Pradesh. She was not issued Certificate of eligibility for reservation of jobs for OBC. The issue for determination before the Court was whether the petitioner, by virtue of being married to a person belonging to the OBC category in Himachal Pradesh, or by inclusion of the original caste of the petitioner in the list of Other Backward Classes in Himachal Pradesh, was entitled to the issuance of a certificate of eligibility for reservation of job for the OBC category in the State of Himachal Pradesh.

While deciding *Subeena Sabri*⁶, the Court also considered ***Ranjana Kumari Versus State of Uttarakhand and others***⁷. In the said case, the appellant belonged to Valmiki Caste (Scheduled Caste) of State of Punjab. She married a person belonging to Valmiki Caste of Uttarakhand and migrated to that State. In State of Uttarakhand, under the Presidential Order 'Valmiki' is recognized as notified Scheduled Caste. State of Uttarakhand issued a certificate to the appellant. The High Court rejected appellant's contention that she was a Scheduled Caste of State of Uttarakhand. Hon'ble Apex Court dismissed the appeal and affirmed the decision of the High Court as under:-

⁷(2019) 15 SCC 664

“4. *Two Constitution Bench judgments of this Court in Marri Chandra Shekhar Rao v. Seth G.S. Medical College and Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India* have taken the view that merely because in the migrant State the same caste is recognised as Scheduled Caste, the migrant cannot be recognised as Scheduled Caste of the migrant State. The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench judgments in *Marri Chandra Shekhar Rao and Action Committee*.

*Subeena Sabri*⁶ noticed ***Bhadar Ram vs. Jassa Ram & others***⁸, wherein above judgment was followed.

The Court declined to grant relief to the petitioner and observed that the fact that petitioner (Subeena Sabri) is married in State of Himachal Pradesh to a person belonging to OBC and even the caste to which the petitioner belongs in the State of her origin, has been declared as OBC in State of Himachal Pradesh, cannot be held sufficient to carve out an exception of law as declared by Hon’ble Apex Court. After exhaustively deliberating over the issue and taking note of several precedents in timeline from the High Courts and from the Hon’ble Apex Court, the Division Bench held that the view taken in *State of H.P. and Others vs. Smt. Naveen Kumari*⁵

⁸2022 (4) SCC 259

(relied upon in case of *Pinki Bagga*³), was *per incuriam*.

Relevant portion of the judgment reads as under:-

“14. Thus, the Coordinate Bench of this Court, while partly allowing the Review Petition No. 47 of 2021 held paragraphs 6 to 8 thereof, *per incuriam*. However, it was held that since none of the judgments referred before it had dealt with a situation where a person having migrated from one State to another had married in the migratee State and had been granted a bonafide resident certificate in that State, therefore, a person under such category could not be denied the benefit of having a certificate of SC/ST/OBC, as the case may be, in the migratee State.

15. With due deference to the judgment passed by the Coordinate Bench of this Court in *Naveen Kumari's* case (*supra*), we are not inclined to scribe to the view taken by the said bench, for the reasons that in *Ranjana Kumari vs. State of Uttaranchal & others* (Civil Appeal No. 8425 of 2013), a two Judges Bench of Hon'ble Supreme Court had referred to larger bench, the question as noticed above, which already was germane with the issue as noticed in *Naveen Kumari* (*supra*).

19. In our considered view, in none of the judgments noticed by the Coordinate Bench of this court while deciding Review Petition No. 47 of 2021, scope for any exception was left. It cannot be overlooked that in all the cases the purpose was to protect the salutary principle enshrined in Articles 341 & 342 of the Constitution of India. To achieve such purpose, Hon'ble Apex Court repeatedly has held that migration for whatsoever reason, from one State to another, cannot be a sufficient ground for claiming benefit of being SC/ST/OBC in the migratee state. The objective criteria for declaration of a

*particular Caste or Tribe as SC/ST/OBC in one State is the specific level of backwardness, social disparage and economic disadvantages prevalent in such state. Though, one Caste notified as Scheduled Caste/ tribe/ OBC in one State may also find place in the list of notified Scheduled Caste/ Tribe/OBC in the other, **but the same has not been held to be sufficient for claiming the benefit in other State by a person after migration for the reason that the degree of disadvantages of various elements which constitute the data for specification may be entirely different. The migrations be it voluntary or involuntary have been taken care of in the judgments passed by the Hon'ble Supreme Court, as noticed above. Thus, in our considered view, mere grant of a certificate of bona fide resident to a person by the migratee State after her marriage in such State cannot be an exception. The view taken by a Coordinate Bench in Review Petition No. 47 of 2021, titled State of H.P. & others Vs Navin Kumari to that effect, in our understanding, is per incuriam.***

20. *In the instant case, the facts that petitioner is married in the State of Himachal Pradesh to a person belonging to OBC and even the Caste to which the petitioner belonged in the State of her origin has been declared as a OBC in the State of Himachal Pradesh, cannot be held sufficient to carve out an exception to the mandate of law, as declared by Hon'ble Supreme Court in Marri Chandra Shekhar Rao vs. Deen, Seth G.S. Medical College and others 1990 (3) SCC, 130, Action Committee on issue of Caste Certificate to*

Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another vs. Union of India and others, 1994 (5) SCC, 244 and Subhash Chandra and another vs. Delhi Subordinate Services Selection Board and others 2009 (15) SCC, 458, Pankaj Kumar vs. State of Jharkhand & others, 2021 SCC (online) SC 616 and Ranjana Kumari Vs State of Uttaranchal 2019 (15) SCC 664.”

5. In view of decision in case of *Subeena Sabri*⁶, wherein the judgment relied upon and which formed the basis of decision in case of *Pinki Bagga*³, was held as *per incuriam*, the relief as prayed for by the petitioner cannot be granted to her.

Accordingly, the petition is dismissed.

All pending miscellaneous application(s) to also stand disposed of.

Jyotsna Rewal Dua
Judge

April 8, 2026
R.Atal