

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 169/2025

Shivaeta Rani

.... Petitioner(s)

Through :- Mr. Abid Khan, Advocate.

V/s

Union of India and Ors.

....Respondent(s)

Through :- Ms. Monika Kohli, Sr. AAG.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
07.02.2025.

1. The petitioner through the medium of the instant petition has called in question order dated 30.12.2024 which has been passed in an application bearing No. JK-REV-ST/2024/222786 whereby the application of the petitioner for issuance of the Scheduled Tribe Category Certificate has been rejected by the respondent No. 5 and feeling aggrieved of the same, the instant petition has been preferred whereby a direction has been sought against the said respondent to issue the said category certificate being a member of Padri Tribe.

2. Learned counsel further submits that feeling aggrieved of the aforesaid order passed by the respondent No. 5 whereby the case of the petitioner was rejected, he has preferred an appeal before respondent No. 4- the Additional Deputy Commissioner, Kishtwar being the appellate authority under the Public Service Guarantee Act, 2011 against the said rejection order.

3. The appeal preferred by the petitioner was also rejected by giving liberty to the parties to approach the competent authority if aggrieved as according to the appellate authority the issue in hand was more technical in nature which warrants

further adjudication either under the Reservation Act or by the Law Department by way of clarification. The appellate authority in absence of the aforesaid clarification granted liberty to the parties to approach the competent authority.

4. The learned counsel for the petition has drawn the attention of the Court to the legal opinion of the Law Department dated 16.12.2024, a copy whereof has been forwarded to the Deputy Commissioner, Kishtwar wherein it has been conveyed that the matter was taken up with the Social Welfare Department who in turn has informed that the necessary clarification has already been shared with all the Deputy Commissioner's of J&K and the copy of the same has been enclosed with the aforesaid communication.

5. The communication further reveals that the Social Welfare Department has examined the matter in consultation with the Law Department and necessary clarification with regard to the issuance of the SC and ST and OBC Certificate to the married woman has already been communicated to all Deputy Commissioners of J&K and also to the Revenue Department wherein it has been held in unambiguous terms that a woman cannot be denied her SC/ST/OBC status after marriage to a non-SC/ST/OBC person, as a woman's caste is determined by birth and not by marriage. While conveying the decision to all the Deputy Commissioners, the clarification issued by the Ministry of Home Affairs has also been relied upon with a view to resolve the issue of SC and ST Certificates wherein the guiding principle which has been relied upon by the appropriate authority is that no person who was not a SC and ST by birth will be deemed to be a member of SC or ST category merely because he or she had married a person belonging to a SC or ST and similarly a person who is a member of the SC or ST would continue to be a member of the SC or ST, as the case may be even after his or her marriage with a person who does not belong to a SC or ST.

6. In light of the aforesaid guiding principle and the clarification issued by the Ministry of Home Affairs and the Law Department coupled with the decisions of various Courts including this Court, the opinion has been conveyed to all the field functionary with a view to examine the eligibility criteria of the applicants for issuance of such category certificates.

7. In the light of the aforesaid clarification Ms. Monika Kohli learned Senior AAG appearing on behalf of the respondents has filed an affidavit on behalf of the respondent No. 5 and submits that she is not averse in case the case of the petitioner is disposed of strictly in the light of the aforesaid clarification/opinion in pursuance to the fresh application/application preferred by the petitioner.

8. However, at this stage, the learned counsel appearing for the petitioner has expressed urgency in the matter as the petitioner has to apply before the Union Public Service Commission for Civil Services Examination in pursuance to notification dated 22.01.2025 in which the last date for filling of the examination form is 11.02.2025.

9. Keeping in view the urgency expressed and the career of the petitioner is involved, this Court deems it proper to dispose of the instant petition by directing the respondent No. 5 to take a decision in the instant matter for issuance of a certificate i.e., ST category certificate in favour of the petitioner being a member of Padri Tribe, on or before 11.02.2025 and the decision for issuance of the certificate which is likely to be taken by the said respondent, be forwarded to the petitioner on or before the said date so that petitioner is in a position to apply for the said examination well within time.

10. It is made clear that the decision shall be taken strictly in conformity with the clarification issued by the Social Welfare Department in pursuance to the

opinion of the Ministry of Home Affairs and the Law Department which has been reproduced here as under:

“The guiding principle is that no person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of a Scheduled Caste or a Scheduled Tribe merely because he or she had married a person belonging to a Scheduled Caste or a Scheduled Tribe. Similarly a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be a member of that Scheduled Caste or Scheduled Tribe as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or a Scheduled Tribe”.

11. The writ petition is, accordingly, **disposed of** in the manner indicated above.

12. Copy of the reply and the clarification certificate has been provided to this Court, be taken on record.

13. In light of the urgency expressed by Ms. Monika Kohli, learned Senior AAG, fairly assures this Court that decision will be taken on or before the said date.

14. Let the order passed by this Court be complied with on or before the said date i.e. 11.02.2025. Copy of this order be provided to learned counsel for the petitioner under the seal and signatures of the Bench Secretary of this Court.

(Wasim Sadiq Nargal)
Judge

Jammu:
07.02.2025.
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