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NEWS REPORT

Country:	United Kingdom
Title:	Tirkey v Chandok & Chandok
Date:	13 October 2015
Expert:	Aileen McColgan
<u>Context</u>	
Issue at stake:	Caste discrimination
Ground of discrimination:	Race, ethnic origin, religion
Source:	Employment Tribunal, Employment Appeal Tribunal
Field:	Employment
Applicable law:	Equality Act 2010

Content

Case development: This case was brought by a domestic servant who complained, *inter alia*, that she had been discriminated against because of her race, religion and caste (she was of the "Adavasi" or servant caste) by her employers who had subjected her to harassment, failed to pay her the national minimum wage and unfairly dismissed her (Her employers, a married couple, were a Buddhist born in Indian to Afghan Hindu parents and a German national born to Afghan Hindu parents). It was unclear whether the Equality Act 2010, which prohibits discrimination *inter alia* because of national or ethnic origins, colour or nationality, prohibited such discrimination. (As reported in Flash Report 61, the Act was amended in 2013 to require the prohibition of caste discrimination by regulation but those regulations are still awaited.)¹. The employer had initially sought to have the case dismissed on the basis that caste discrimination did not fall within the Equality Act. In December 2015 the Employment Appeal Tribunal (EAT) confirmed that, although caste discrimination was not yet regulated as such by the Act, many aspects of "caste" might fall within it, particularly because "ethnic origins" has a wide and flexible ambit and included characteristics determined by "descent". It was agreed by the parties at the EAT that the matters upon which the claimant relied might fall within "ethnic origin", and the case was returned to an employment tribunal for determination.

The tribunal found that the claimant had been subject to discrimination because of religion and race, as well as being denied payment by the respondents, and she was awarded over £180 000 (about 250 000 EUR) by the Tribunal in unpaid wages. The tribunal adjourned its decision on damages in respect of race and religious discrimination to be determined at a later date.

Decision of the Court: The Tribunal accepted that the Claimant had been subjected to indirect religious discrimination (she was not permitted to bring her bible from India where the respondents had recruited her, because it was "too heavy", and was not allowed to attend church). It also ruled that she had been paid radically less than the statutory minimum and had been denied the holidays and other rest periods to which she

¹ UK 61- Caste discrimination flash report, 11 June 2013

was lawfully entitled. She had worked at least 18 hours a day, 7 days a week and had often been denied a bed to sleep in. Her passport had been removed from her and she did not have access to the bank account into which her employers purported to pay her wages. She was not permitted to leave the house in which she worked except with the children for whom she was responsible.

The Tribunal accepted that the Claimant had been treated in the manner in which she was treated by the respondents in part because of her caste position: they had recruited her "not because of her skills but because she was by birth, by virtue of her inherited position in society, and by virtue of her upbringing – i.e. because of her ethnic origins – a person whose expectations in life were no higher than to be a domestic servant ... The treatment afforded to the Claimant ... was because she was a low caste, Indian national, who could not speak English [sic] and by upbringing and by her inherited position in Indian society expected and was expected by others to do no more than serve others..."

Key points of analysis: The EAT did not rule that caste was a form of race for the purposes of the Equality Act 2010, rather that aspects of caste overlapped with aspects of race and so the facts of a particular caste-related case may be caught within the Act. The Tribunal accepted that the ill-treatment to which she had been subjected amounted to harassment on grounds of race without specifically addressing the relationship between caste and race. The Tribunal also found that the religious discrimination to which the Claimant was subjected was indirect; the Respondents had not permitted her to practice her religion because they wanted to keep her isolated from the outside world so that she would not recognise the unacceptability of her working conditions.

Internet link source:

http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKEAT/2014/0190_14_1912.html&query=tirkey&method=boolean,

<https://drive.google.com/file/d/0Bw20oNMQGJI2bEI3YmRYcHFUbWc/view?pli=1>,

Both last accessed 5 October 2015.