

Case Summary

***Tirkey v Chandok and another* ET/3400174/2013**

1. Reference details

Jurisdiction: Employment Tribunal, England and Wales

Date of Decision: 17 September 2015

Link to full judgment: <http://bit.ly/1P9p7e3>

2. Facts of the case

The Claimant, Ms Tirkey, brought a number of claims relating to her period of employment by the Respondents between 2008 and 2012. These claims included ones for unpaid wages and discrimination on grounds of race and religion. The Claimant was born in India and described herself as being of the “servant class” and “low caste”. The facts of the case were heavily disputed by the Respondents but the Tribunal found that the facts as stated by the Claimant were accurate. Ms Tirkey was recruited by the Respondents in India in 2008 to work as a domestic worker in the UK. Until November 2012, when she resigned due to fundamental breaches of her contract, the Claimant worked for the Respondents as a live-in domestic worker, with responsibility for childcare and domestic chores, such as cooking and cleaning. During this time she worked seven days a week, 18 hours a day and was in effect “on call” 24 hours a day. She was paid as little as 11p per hour, which was paid into a bank account set up for her by the Respondents, but which she did not have access to. In addition, the money in this account was frequently used by the Respondents for their own purposes. At all times, the Claimant did not have a bed and slept on a foam mattress on the floor in various bedrooms in the house (though never in her own private bedroom). The Claimant’s passport and other documents were kept from her by the Respondents. In addition, the Claimant was not permitted to bring her Bible to the UK and her work patterns meant she was unable to attend Church.

This judgment was in fact the second time the case had been before the Employment Tribunal. In the first decision of the Employment Tribunal, handed down on 24 January 2014, the Tribunal considered a request by the Respondents to strike out part of the claim. The claim had been amended to explicitly reference discrimination based on “caste”, in addition to discrimination on grounds of race and religion and it was argued that this aspect must be struck out, as, *inter alia*, the Equality Act 2010 did not provide protection against discrimination on grounds of “caste”. Employment Judge Stigworth found that the protected characteristic of race included ethnic origin, which was broad enough to encompass caste. The Respondents appealed on this point, but the Employment Appeals Tribunal¹ (EAT) upheld the earlier decision, confirming that “caste”, in as much as it is an aspect of “ethnic origin”, could fall within the scope the Equality Act 2010. The EAT did not recognise “caste” as a free-standing ground of discrimination, but rather recognised that aspects of the category “caste” overlapped with the definition of “ethnic origin”. Therefore certain instances of alleged discrimination which raised “caste considerations” could fall within the scope of “ethnic or national origins” in Section 9(1)(c) of the Equality Act 2010.² Following this EAT decision on the law, the case was returned to the Employment Tribunal for an evaluation of the facts.

3. Law

- Sections 1 and 8 of the Employment Rights Act 1996;
- Section 1 of the National Minimum Wage Act 1998;
- National Minimum Wage Regulations 1999;

¹ *Chandok and another v Tirkey* UKEAT/190/14, [2015] I.C.R. 527.

² *Ibid.*, Para 53.

- Working Time Regulations 1998;
- Section 94 of the Employment Rights Act 1996; and
- Sections 4, 9(1)(c), 13, 19, and 26 of the Equality Act 2010.

4. Legal Arguments

The Claimant claimed that she had been unfairly dismissed, that her employment rights had been violated in multiple ways, and that she had been discriminated against on grounds of religion, race, and national and/or ethnic origin. She argued that her ethnic origin, including her nationality and her inherited position in society (in whole or in part on the basis of her caste), was the reason she was ill-treated by the Respondents. In addition she claimed that she had been unable to practice her religion during her employment by the Respondents.

The Respondents argued that their treatment of the Claimant was more favourable than she alleged, including that she had her own bedroom, freedom to leave the house and spend her wages, and that her working hours were limited.

5. Decision

The Employment Tribunal found in favour of the Claimant on multiple counts. A number of violations of the Claimant's employment rights were upheld, including that there had been a failure to provide terms and conditions of employment, that pay slips had not been provided, that the Claimant was not paid the National Minimum Wage, and that the Claimant did not receive rest time or annual leave. In addition, the Employment Tribunal found that the Claimant had been the victim of harassment on the ground of her race in a number of situations during her employment. Further, there had been unlawful indirect discrimination on the ground of religion.

Discrimination on grounds of race/caste/ethnic origin

The Employment Tribunal found that the Claimant had been the victim of direct discriminatory harassment due to her race when the Respondents breached her employment rights, when they withheld her passport, when they spoke about her in a derogatory way, and when they prevented her from buying or wearing clothes of her own choosing. The Employment Tribunal throughout the judgment paid particular attention to the Claimant being from a "low caste" Adivasi background, which made her particularly vulnerable to discrimination. Members of the Adivasi caste were, the Employment Tribunal found, in an inherited position in Indian society where they were expected to be nothing more than domestic workers in the homes of wealthy, higher caste Indian families. The judge noted that the Respondents wanted to hire someone who would be servile, and who would not understand her employment rights in the UK. The Claimant's background made her vulnerable to the Respondents, who felt they were able to treat her as they did because of her caste background.

In so finding, the Tribunal confirmed the EAT's approach in *Chandok and another v Tirkey* that "ethnic and national origin" in Section 9(1)(c) of the Equality Act 2010 can encompass "caste". Langstaff J in the EAT held that:

If [the Claimant] proves facts which—whether colloquially or accurately—could be described as "caste considerations" which come within the heading "ethnic or national origins" in Section 9(1)(c) [Equality Act 2010] she will succeed in her claim if the tribunal concludes that she was less favourably treated because of those facts.³

Discrimination on grounds of religion

The Tribunal found that that the Claimant had been the victim of indirect discrimination on grounds of

³ *Ibid.*, Para 53.

her religion, because the control that the Respondents had over her movements and time prevented her from practising her religion. The Claimant had been told by the Respondents that she was unable to bring her Bible to the UK. Further, by effectively being “on call” 24 hours a day, seven days a week, without any designated rest periods or periods of leave, the Claimant was unable to attend Church.

The Employment Tribunal ordered that the Respondents pay the Claimant £183,773.53, a sum representing unlawful deductions from wages. Remedies for the acts of discrimination on grounds of race and religion, the failure to provide terms and conditions, the failure to provide pay slips, the unfair dismissal, and the breaches of the Working Time Regulations remain to be determined at a hearing in November 2015.