

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.752 of 2015

IN

Civil Writ Jurisdiction Case No. 1187 of 2014

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Runa Kumari, W/o Ajay Kumar Thakur, R/o village + P.o. -
Khodavanpur, P.S. - Khodavanpur, District - Begusarai.

.... Petitioner-Appellant

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department, Bihar, Patna.
2. The Director, I.C.D.S., Bihar, Patna.
3. The Divisional Commissioner, Munger, District - Munger.
4. The District Magistrate, Begusarai, District - Begusarai.
5. The District Programme Officer, Begusarai, District - Begusarai.
6. The Child Development Programme Officer (CDPO), Khodavandpur, District - Begusarai.
7. Ms. Premlata Kumari, W/o Santosh Kumar Sharma, R/o village + P.O.+ P.S. - Khodawanpur, District - Begusarai.
8. The Secretary, Gram Panchayat, Narpa, Bithan, Samastipur.

.... Respondents

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Appearance :

For the Appellant : Mr. Amaresh Kr. Singh, Sr. Adv.

For the Respondents-State : Mr. S.K. Ranjan, A.C. to S.C.-15

For the Respondent No.7 : Mr. Ashok Kr. Mishra, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 08/10/2015

What would be the effect of a change in the
reservation policy, if a change in reservation policy is



introduced subsequent to initiation of a selection process, is the question, which has arisen in the present appeal, under Clause 10 of the Letters Patent Appeal, preferred against the judgment of a learned single Judge, dated 12.02.2015, passed in C.W.J.C. No.1187 of 2014, the question posed above stands answered by a Division Bench of this Court, in ***Sanjay Kumar vs. The State of Bihar and Others***, reported in **2015 (2) P.L.J.R. 31**.

2. The facts, giving rise to the said C.W.J.C. No.1187 of 2014 and the present L.P.A. No.752 of 2015, are not at all in dispute, which are as under:-

(i) There came to be published an advertisement, in the year 2007, inviting applications for appointment to the post of Anganbari Sevika/Sahayika, for the Gram Panchayat Raj, Khodavanpur. The petitioner, who is appellant herein, submitted her application, pursuant to the said advertisement, as a candidate belonging to Most Backward Class (M.B.C.) (Annexure-I) category, being "Nayee" by caste. She had 56.6% marks to her credit in the matriculation examination. Respondent No.7 had also submitted her application for appointment pursuant to the said advertisement, as Backward Class candidate (Annexure-II), with 61.17% of marks in the matriculation examination.

(ii) For some reason or the other, the process of selection could not be undertaken



immediately after the advertisement was published. The fact remains that based on the said advertisement, the petitioner-appellant, on 05.06.2010, was declared selected for the post of Anganbari Sevika of concerned Anganbari Centre No.59. In the meanwhile, an advertisement took place with the issuance of resolution of the Personnel and Administrative Reforms Department, Government of Bihar, dated 12.06.2009, whereby, with effect from 03.08.2009, caste "*Badhai*" was deleted from the category of Backward Class (Annexure-II) to be included in the category of Most Backward Class (Annexure-I).

(iii) Respondent No.7 herein raised a complain before the District Magistrate, Begusarai, against selection of the appellant for the post of Anganbari Sevika, under the category of Most Backward Class, on the ground that she also belonged to Most Backward Class category in the light of said resolution, dated 12.06.2009, of the State Government, as aforesaid, and she had obtained more marks than the present appellant.

(iv) By order, dated 16.02.2013, passed in Miscellaneous Case No.6 of 2012, the District Magistrate, Begusarai, rejected the claim of the respondent No.7, on the basis that in her application, she had annexed caste certificate, showing her to be belonging to Backward Class.

(v) We have not lost sight of the fact, as appears from the pleadings on record, that applications were received for the said post up-to 30.07.2009.



(vi) Respondent No.7, herein, thereafter, had preferred an appeal before the Divisional Commissioner, Munger, giving rise to Service Appeal No.10 of 13. The Divisional Commissioner, Munger, by an order, dated 20.11.2013, allowed the said appeal, preferred by the respondent No.7, accordingly, on the ground that the caste "*Badhai*" was declared Most Backward Class (M.B.C.) by resolution of the State Government, dated 12.06.2009 and, therefore, she ought to have been given the benefit of inclusion of her caste in the said category, Annexure-I.

(vii) The petitioner-appellant, aggrieved by the order of the Divisional Commissioner, Munger, dated 20.11.2013, preferred writ application, under Article 226 of the Constitution of India, giving rise to C.W.J.C. No.1187 of 2014. A learned single Judge, by the judgment, dated 12.02.2015, has dismissed the writ application, holding as follows:-

"..... No doubt Barhai as a caste were treated as a backward class prior to the year 2009. The advertisement was issued in the year 2007 but if the selection has come to be made after the change of class and category of the private respondent, then the benefit of reservation extended to such class or caste cannot be snatched away on technicality by the petitioner in this regard. The order of the Divisional

Commissioner is, therefore, rational, cogent and in accordance with the existent classification of Barhai as a caste.

Writ application is dismissed."

(viii) The petitioner-appellant, aggrieved by the said judgment, dated 12.02.2015, passed by the learned single Judge, in C.W.J.C. No.1187 of 2014, has preferred the present appeal.

3. We have heard Mr. Amaresh Kumar Singh, learned senior counsel, appearing on behalf of the appellant, Mr. S.K. Ranjan, learned A.C. to S.C.-15, appearing on behalf of the respondents-State of Bihar and also Mr. Ashok Kumar Mishra, learned counsel, appearing on behalf of the respondent No.7.

4. Mr. Amaresh Kumar Singh, learned Senior Counsel, appearing on behalf of the appellant, assailing the judgment, under appeal, has relied upon a Division Bench decision of this Court in **Sanjay Kumar** (*supra*), and has contended that the qualification or eligibility of a candidate for his/her selection and appointment has to be considered on the basis of the criteria, as existing on the date of advertisement. Mr. Singh, learned Senior Counsel, has also submitted that there is no dispute about the fact that on the basis of the population of persons, belonging to Most



Backward Class category, a person of that category was required to be selected for the post of Anganbari Sevika. He has further submitted that, admittedly, as on the date of advertisement, against which the applications were received, the respondent No.7 did not belong to Most Backward Class.

5. It is pointed out by Mr. Singh, learned Senior Counsel, that even at the time of selection, the respondent No.7 had not submitted any certificate, issued by the competent authority, showing her to be belonging to Most Backward Class category. He has, accordingly, argued that learned single Judge fell in error, while dismissing the writ application, without considering the admitted fact that, as on the date of advertisement, respondent No.7 did not belong to Most Backward Class category and that the qualification and eligibility of respective candidates were required to be assessed on the basis of their status as on the date of advertisement.

6. On the other hand, Mr. Ashok Kumar Mishra, learned counsel, appearing on behalf of respondent No.7, has submitted that there being no dispute about the fact that on the date of selection, respondent No.7 belonged to Most Backward Class, there was no error in the order, passed by the Divisional Commissioner, Munger, and, therefore, the learned single Judge has rightly dismissed the writ

application.

7. After having gone through the pleadings on record and considered submissions made on behalf of the parties, we find force in the submission made by Mr. Amaresh Kumar Singh, learned Senior Counsel, appearing on behalf of the appellant, while relying upon Division Bench decision of this Court, in **Sanjay Kumar** (*supra*), wherein this Court, while dealing with a similar situation, has held, in Paragraphs 24 and 25, as follows:-

"24. *Consistent with its decision in P. Mahendran (supra), the Supreme Court, in N.T. Devin Katti vs. Karnataka Public Service Commission & Ors. [AIR 1990 SC 1233 (1)], observed, at paragraph 11, as follows:-*

"11.....Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has



right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has not absolute right in the matter. If the Recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the Amended Rules. Whether the Rules have retrospective effect or not primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the Amended rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set event rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

25. *In the present case, the learned counsel for the appellant tried to impress upon us the true import of the change in*



reservation policy by which the appellant could draw benefit from the amended rules, especially, in view of the fact that the Government, in its enthusiasm, had issued advertisement calling upon the candidates to have their changed castes incorporated in the application already made by them earlier. It is evident from the advertisement that on the date of application, the reservation policy, as applicable, would be effective and the last date for submission of applications had been fixed as 25.2.2005. The process of selection, thus, started soon after cut-off date fixed for filing applications and any changes made, subsequent thereto in the reservation policy, could not have been read into the said advertisement. The Staff Selection Commission, though having taken notice of the changes adopted by the State Government including certain castes as being those belonging to Most Backward Caste and permitting the applicants to change their reservation criteria, had, in fact, subsequently, resolved not to permit such changes inasmuch as permitting such a change would amount to a clear contravention of the settled position of law with regard to appointments. Thus, at the time of publication of the final results, i.e. after the interview, the State opted to follow the reservation policy as existed on

the cut-off date i.e. 25.2.2005, which has been, in fact, affirmed as the correct procedure.”

8. In our considered view, in the absence of any dispute that the advertisement was issued in the year 2007 and the applications were received in the light of said advertisement, the selection process was required to be completed, in terms of the said advertisement, on the basis of respective status of the candidates, as on the date of advertisement.

9. Having discussed thus, we are constrained to interfere with the judgment, under appeal, dated 12.02.2015, passed by the learned single Judge, in C.W.J.C. No. 1187 of 2014. The judgment, dated 12.02.2015, is, accordingly, set aside. The order, dated 20.11.2013, passed by the Divisional Commissioner, Munger, in Service Appeal No.10 of 2013, is also hereby set aside and quashed.

10. C.W.J.C. No.1187 of 2014 (Runa Kumari vs. The State of Bihar & Ors.) stands allowed accordingly.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

I. A. Ansari, ACJ.:

11. While agreeing with the decision of my esteemed brother, Chakradhari Sharan Singh, J., I would like to clarify that generally, a candidate has,



in the light of the decision in **Sanjay Kumar** (supra), the right to be considered for selection in terms of the conditions of the advertisement, pursuant to which he/she has applied, inasmuch as his rights crystallize on the date of publication of the advertisement. However, this right of a candidate is not an absolute right. If the recruitment rules are amended retrospectively, the selection shall be held in accordance with the amended rules. If the amended rules are not retrospective in nature, the selection shall be held in accordance with the rules and orders, which were in force on the day of the advertisement. When a candidate makes an application for a post pursuant to an advertisement, he does not acquire any vested right of selection. However, if he is eligible and is, otherwise, qualified in accordance with the relevant rules and the terms contained in the advertisement, pursuant to which selection process is initiated, he does acquire a vested right of being considered for selection in accordance with the relevant rules as existed on the day of advertisement and such a candidate cannot be deprived of that limited right on the amendment of the rules during the pendency of the selection process unless the

amended rules are retrospective in nature. In the case at hand, the amendment, made on 03.08.2009, was, admittedly, not retrospective in nature.

12. Necessarily, therefore, the selection ought to have been made in terms of the advertisement, which had been issued in the year 2007, treating respondent No. 7 as a candidate belonging to Backward Class candidate and not a person belonging to Most Backward Class. On the date of the advertisement, since *Badhai* community did not stand notified as a Most Backward Class, the question of appointing respondent No. 7, by treating her as a candidate of Most Backward Class, could not have arisen. In other words, since *Badhai* was notified as a Most Backward Class community with effect from 03.08.2009, i.e., after the selection process (pursuant to the advertisement, published in the year 2007) had commenced, the question of treating respondent No. 7 as a candidate, belonging to Most Backward Class, did not arise.

13. Considering the fact that the advertisement was, admittedly, published in the year 2007 and the applications were received pursuant thereto, the selection process ought to have been

completed in terms of the said advertisement and on the basis of the status of the candidate, as they had, on the date of the advertisement.

14. In the face of the fact that it was the appellant-writ petitioner, who, as a member belonging to *Nayee* community, fell in the category of Most Backward Class, she was the one, who ought to have been appointed and had accordingly been appointed; whereas respondent No. 7, being a member of *Badhai* community, fell in the category of Most Backward Class with effect from 03.08.2009 only and she could not have, therefore, been appointed — and had rightly not been appointed — as Anganbari Sevika/Sahayika.

15. The appeal is, therefore, allowed and the judgment and order, under appeal, are hereby set aside. Also set aside and quashed is the order, dated 20.1.2013, passed by Divisional Commissioner, Munger.

(I. A. Ansari, ACJ.)

Prabhakar Anand/
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