

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3954 of 2015

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1. Chandrika Prasad aged about 46 years, Son of Sri Jiut Ram resident of Road No. 2, Sri Nagar, A.G. Colony, Police Station Shastri Nagar, District- Patna.
 2. Rajendra Pratap aged about 45 years, Son of Late Hiral Lal resident of Tubewell Road No. 2, Brahm Sthan Road, Raja Bazar, Police Station Shastri Nagar, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Road Construction Department, 'Vishweshwarraiya Bhawan', Patna.
2. The Principal Secretary, General Administration Department, Old Secretariat, Patna.
3. The Special Secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.
4. The Deputy Secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar

For the Respondent/s : Mr. GP22- Gyan Prakash OJHA

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 25-06-2015

25.06.2015

Heard learned counsel for the parties.

There are two petitioners before this Court.

Both of them are aspirants and desirous of being promoted to the post of Executive Engineer (Mechanical) from the due date. Their claim is based on a judgment rendered by the Hon'ble Apex Court on 07.08.2014, which is the case of ***Puducherry Scheduled Caste People Welfare Association Versus Chief Secretary to Government Union Territory of Pondicherry and others, reported in 2014 (9) SCC 236.***



Besides a mandamus or a direction, petitioners also want quashing of the decision, contained in Annexure-1, by virtue of which the case of the two petitioners were rejected by the Departmental Promotion Committee. This decision is dated 07.02.2013. Annexure-2 is the circular, dated 11th of June, 1996. Clause 4 of the said circular seems to be the stumbling block for these petitioners and since this is the circular, which has been quoted in the decision of the DPC as the reason for rejection of the claim of these petitioners, the 1996 resolution, especially clause 4 has also been challenged.

The facts are that these two petitioners were selected as Junior Engineers on the basis of an advertisement and selection made by the BPSC. The notification indicates that they are appointees under the reserved category of scheduled caste. There is no factual dispute that the petitioners belong to the State of Uttar Pradesh and since they are by caste “chamar” therefore, the benefit of reservation in terms of the Presidential notification and Order, entitles them to the benefit, which was extended.

They have also earned promotion to the next higher post, but when it came down to promotion as an

Executive Engineer, Annexure-1 was issued and Annexure-2 was relied upon.

Submission of the counsel for the petitioners is that the reason for rejection of the claim of these petitioner is misplaced, especially in view of the recent decision of the Hon'ble Apex Court in the case of Puducherry SC People Welfare Association (supra) and the alternative argument of res judicata raised by the State is also required to be negated on the basis of the principles laid down by the Hon'ble Apex Court in the case of *Nand Kishore Versus State of Punjab, reported in 1995 (6) SCC 614*.

The issue has to be judged and considered in view of certain developments, which had taken place in the past. Those issues cannot be ignored outright, because every issue raised by the petitioner may not require to be adjudicated at the asking of the petitioners who want to ignore the past decisions, which clarified the status of such claims in unambiguous terms by the Apex Court.

What is of significance is that the State authorities, especially in the counter affidavit filed on behalf of Respondent Nos. 3 and 4 have annexed an order of Hon'ble Apex Court passed in *Civil Appeal Nos.*



8169-8235 of 2014. From a reading of the cause title it appears that atleast one of the petitioner was very much a party in the said proceeding. Since it is a short order, therefore, the said order is reproduced hereinbelow :-

“Leave granted.

2. After arguing for some time, the consensus emerged among Mr. Guru Krishna Kumar, learned senior counsel for the appellants and Mr. Ranjit Kumar, learned Solicitor General for the following order:

(i) The impugned order does not call for any interference by us.

(ii) However, no recovery shall be made from the appellants in respect of the service rendered by them on promotional post under the reserved quota.

(iii) The appellants though are not entitled to promotion under the reserved category from 11.6.1996, but their right of consideration of promotion in the ‘general category’ shall not be affected. As and when the appellants become entitled to promotion under the ‘general category’ they will be promoted accordingly in that category.

(iv) The appellants shall be treated as recruitees from ‘general category’ for all intents and purposes. However, their promotion in reserved category before 11.6.1996 in the peculiar circumstances shall remain protected up to 11.6.1996. (emphasis mine)

3. We order accordingly. Civil Appeals are disposed off as above. No costs.”

From reading of the above order of the Bench



of the Hon'ble Apex Court, especially paragraph (iii) and (iv), it is clear that the fate of these two petitioners or such persons has been decided and sealed. The direction of the Hon'ble Supreme Court is that they will be considered as a 'general category' candidate for all intent and purposes. The benefit which they had initially derived at the time of their appointment shall not be taken away.

If this is what the Hon'ble Apex Court had to say with regard to the right of atleast one of the petitioners, coupled with many others, who had taken the matter to the Hon'ble Supreme Court, then they can not circumvent the decision of the Hon'ble Apex under the garb of some subsequent developments in law rendered by the Hon'ble Supreme Court, especially in the case of Puducherry SC People Welfare Association (supra).

It may be clarified that the reason given in the impugned decision, contained in Annexure-1, may be misplaced. The correct reason ought to have been the reference of the Hon'ble Supreme Court's direction, but merely because DPC may not be fully made aware of developments in identical claim referred above, it does not become a case for interference.

This writ application is required to be dismissed on this ground alone. Petitioners cannot be permitted to overcome the rigorous of the adjudication already made by the Hon'ble Supreme Court by adopting a via media.

Claim of the petitioners for promotion will be required to be considered as a 'general category candidate'.

Writ application is dismissed, accordingly.

(Ajay Kumar Tripathi, J.)

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