

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3680 of 2016

IN

Civil Writ Jurisdiction Case No. 16673 of 2016

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Ranjit Kumar Yadav, Advocate, Son of Sri Rajendra Yadav, Resident of Hanuman Nagar, New Punaichak, Police Station- Shastrinagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Patna.
2. Sri Anjani Kumar Singh, Father's name not known, the chief Secretary, Government of Bihar, Patna.
3. Sri R.K. Mahajan, Father's name not known, the Principal Secretary, Department of Health, Government of Bihar, Patna.
4. Sri Tripurari Sharan, Father's name not known, the Chairman, Bihar Combined Entrance Competitive Examination Board, IAS Bhawan, Patna.
5. Sri Sudhir Kumar, Father's name not known, the Chairman, Bihar Combined Entrance Competitive Examination Board, IAS Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Suraj Narain Yadav, Advocate

For the State : Mr. Surya Deo Yadav, AAG-9

For the Board : Mr. Vikas Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-10-2016

Heard Sri Suraj Narain Yadav for the petitioner,

Sri S.D. Yadav for the State and Sri Vikash Kumar for the Bihar Combined Entrance Examination Board, Patna (hereinafter referred to as the Board).

The controversy in the present case relates to counselling and consequential admission to Government Medical

Colleges in the State in respect of balance seat other than 15% all India quota. It may be clarified that any seat remaining unfilled under the 15% all India quota would also fall for being filled up through this joint combined competitive examination conducted by the Board.

The allegation of the petitioner is that notwithstanding the clarification given by the Full Bench of this Court in the case of *The Controller of Examination, Bihar Combined Entrance Competitive Examination, 1999 Vs. Nidhi Sinha and another* since reported in 2016(3) PLJR 273 and in particular in paragraph 15 (iii) thereof, the same principle is not being implemented by the Board in its true letter and spirit. Earlier a writ petition was filed being C.W.J.C. No. 16673 of 2016 pointing out to the Court that notwithstanding the judgment of the Full Bench, the Board was not following the same. The plea of the Board was that they were awaiting clarification from the State in this regard. This Court took a serious view of the matter and disposed of the writ petition by order dated 06.10.2016 clearly observing that the orders and directions of the Full Bench could not be made subordinate to a clarification or a decision of the executive. Once the Board was aware of the said judgment it had to implement the same without waiting for any further clarification. In spite of the orders of this Court in the writ proceedings aforesaid, when the Board was not proceeding to act in

accordance with the Full Bench judgment and the judgment in the writ proceedings this present contempt proceeding was instituted on or about 17.10.2016.

A show cause has now been filed on behalf of the State in these contempt proceedings. In the show cause a clarificatory resolution has been annexed as Annexure-A issued by the State Government in the Department of Health vide letter No. 1479 (1) dated 26.10.2016.

It is submitted by the learned counsel for the petitioner that the substantive part of the resolution is in conformity with the judgment of the Full Bench but the illustration that is given is contrary thereto.

We have heard the parties in detail and considered the matter. We have not only gone through the Full Bench judgment (supra), our attention has also been drawn to the judgment of the Apex Court in the case of ***Samta Aandolan Samiti and another Vs. Union of India and others*** since reported in ***(2014) 14 SCC 745*** which was also a case dealing with admission to Medical Colleges and reservation. We are of the considered opinion that the illustration given in the clarificatory circular dated 26.10.2016 is indeed inapt and incorrect. We would like to re-state the principles very briefly once again, for, in our view, if we leave it to the Government, once again it

will again lead to confusion.

The principles of applying the reservation policy in matters of service recruitment is different when the same reservation policy is applied to admissions to educational institutions. This is what the Full Bench clarified. This is what is the judgment in the case of Samta Aandolan (supra). The difference is, whereas in case of service matters when a meritorious reserved candidate chooses to migrate to his original reserved category for better preference, one reserved category candidate from the bottom of that list would go out of consideration but this is not so when we come to educational institutions and admission therein. What happens there, is that though a meritorious reserved candidate opts to be treated not as a general candidate but as a reserved candidate for better preference, the consequential vacancy created in the general category is not to be filled up by the next general candidate in the merit-list, but by the reserved candidate, who would otherwise ordinarily be ousted by reason of migration of MRC (Meritorious Reserved Candidate). He (the last reserved candidate) would get adjusted against the vacancy caused by migration of the MRC. Thus, in service matter, reserved candidate could lose his position in the merit-list by virtue of MRC taking benefit of reservation but that would not happen in academic i.e. admission to educational institutions. No reserved candidate, who

is once in the merit-list, can at all be ousted. They will all be adjusted against those persons who are migrating from the general list as MRC to the reserved category.

To illustrate, once a merit-list of 150 general candidates including MRC is made and consequential merit-list of 150 reserved candidate is made then notwithstanding any number of MRC candidates from the general list migrating for preference of course or institution to the reserved list, the equal number of reserved candidates would get adjusted as against the vacancy caused in the general list by migration of reserved candidates. Over all, what would happen is the list of 150 in each category would remain intact. There would be no ouster of anyone and no inclusion of anyone. It is this that we find that the illustration given in the clarificatory circular which in effect increases the number of unreserved candidates in the analysis and decreases the number of reserved candidates, is incorrect.

We hope that instead of adding to more confusion we have earnestly attempted to clear confusions as made by the illustration. We, accordingly, direct the State and the Board aforesaid to proceed in accordance with these directions which are in conformity with the judgment of the Full Bench and the judgment of the Apex Court in the case of Samta Aandolan (supra). In our view, though the substantive part of the clarificatory resolution issued by the

State was correct while representing it in an illustration, the principles of service law were applied, rather than medical admissions.

Board would take remedial action forthwith.

We are informed that by 7th of October, 2016 all admissions were made and closed. As we have noticed above, seeing illegality being committed by the Board petitioner had moved this Court immediately and on 06.10.2016 this Court had clarified that the Board could not ignore the order of the Apex Court and the Full Bench on the spacious plea of awaiting clarification from the State. It must implement the judgment of the Full Bench of which it was aware and act accordingly, but it seems our orders were ignored. Admissions without applying the Full Bench judgment were closed. Thus, there was conscious, clear and deliberate effort on part of the Board in ignoring the prior judgment of the Apex Court. The result was that about 90 reserved candidates were ousted from consideration and consequently about 90 general candidates wrongly taken in against the migration of about 90 MRC to reserved category. In our view, it is, in view of the judgment of the Apex Court too late to interfere, but equity demands some correction which may be possible. To us, if there is any seat that has now remained vacant for any reason and the Board finds that there were some reserved candidates who were excluded by wrong application of the reservation principles, it would

immediately fill up those vacant seats by the reserved candidates according to merit. This is an exception and only for the twin purpose of not leaving vacant seats in medical colleges and avoiding the injury caused to the reserved candidates as far as possible. This is an exception.

We, accordingly, dispose of this proceeding with the aforesaid directions. State to ensure compliance of our order.

This judgment would equally apply to admissions to other Government institutions as well where admission process is going on.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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