

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1418 of 2015

IN

Civil Writ Jurisdiction Case No. 3954 of 2015

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

.... Appellants

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.

.... Respondents

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Appearance :

For the Appellants : Mr. Rupak Kumar

For the Respondents : Mr. G.P. OJHA- GP22

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 05-04-2016

The appellants, in the present appeal under Clause 10 of the Letters Patent of this Court, have questioned the legality of the order, dated 25.06.2015, passed by a learned single Judge of this Court in CWJC No. 3954 of 2015, whereby their application, filed under Article 226 of the Constitution of



India, has been dismissed. The appellants had filed the said writ application seeking quashing of the proceedings of the Departmental Promotion Committee (hereinafter referred to as 'DPC'), dated 07.02.2013, which was convened for considering cases for promotion from the rank of Assistant Engineer (Mechanical) to the rank of Executive Engineer (Mechanical), Road Construction Department. The DPC had declined to extend them benefit of reservation for such promotion in its meeting, dated 07.02.2013, in the light of State Government's decision, as contained in Letter No. 70, dated 11.06.1996, issued by the Personnel and Administrative Reforms Department, Government of Bihar. The appellants also sought for quashing of Clause 4 of the said Letter No. 70, dated 11.06.1996, which envisaged that benefit of reservation, in Government services and post, shall be made available only to such candidates, who were permanent residents of the State of Bihar.

2. In order to appreciate the core issue involved in the present appeal, it would be appropriate to refer to certain uncontroverted facts as have been culled out from the pleadings on record.

3. The appellants are from schedule caste, but do not belong to a caste State of Bihar. They were appointed in the State of Bihar as Junior Engineer (Mechanical) under the



Water Resources Department, Government of Bihar, in the year 1995, against posts reserved for schedule castes. Reservation, in the matter of appointment in the services of the Government of Bihar, is governed by Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (hereinafter referred to as 'Act 3 of 1992'). It appears that some of the States, viz., Uttar Pradesh and Madhya Pradesh, had decided not to extend the benefit of reservation to such reserved candidates, who were residents of States other than those States (Uttar Pradesh and Madhya Pradesh). Consequently, candidates, belonging to reserved categories, but residents of the State of Bihar, were not in a position to avail the benefit of reservation in Government services in other States. The State Government of Bihar, too, took a decision that since representation of reserved candidates, who were residents of the State of Bihar was not sufficient in the State Government services, the benefit of reservation in Government services shall be extended to only such candidates, who were permanent residents of the State of Bihar, i.e., they were original residents of the State of Bihar.

4. The appellant Nos. 1 and 2 were given promotion to the rank of Assistant Engineer (Mechanical) against vacancies reserved for scheduled caste with effect

from 23.06.2000 and 20.06.2000 respectively. Notifications to these effects were issued in the year 2005 (in case of appellant No. 1) and 2007 (in case of appellant No. 2). The promotions were granted to them against reserved posts despite the decision of the State Government not to extend benefit of reservation to those persons, who were not the original residents of the State of Bihar.

5. In the year 2003, the Legislature of the State introduced amendment, in Section 4 of the Act 3 of 1992, by adding third proviso to sub-section (2) of the said Section in the following terms:-

"Provided further that the candidates residing out of the State of Bihar shall not claim benefit of reservation under this Act."

6. The said amendment came into force with effect from 11.06.1996, which coincides with the date of the letter issued by the Personnel and Administrative Reforms Department, Government of Bihar, containing similar provision, as noted above.

7. As pointed out above, these appellants were given promotion by notifications issued in the year 2005 and 2007 with effect from 23.06.2000 and 20.06.2000 respectively to the post of Assistant Engineer despite there being bar under the policy of the State Government that

benefit of reservation shall not be extended to the persons, who are not natives of the State of Bihar.

8. It transpires that in view of the insertion of the third proviso in Section 4 (2) of the Act 3 of 1992, they were sought to be reverted to their respective posts, which they were holding before their promotion. Aggrieved by the said decision of the State-respondents and amendment in Act 3 of 1992, as noted above, several writ applications, under Article 226 of the Constitution of India, were filed before this Court by many persons, including these appellants. The writ application, filed by these appellants, had given rise to CWJC No. 3937 of 2007. The writ application filed by these appellants and several others were heard together and disposed of by a Division Bench of this Court by a common judgment and order, dated 04.03.2009, in case of ***Khichri Ram v. The State of Bihar and Others***, reported in **2009 (2) PLJR 265**. The said Division Bench dismissed the writ applications, upholding the validity of amendment brought in the Act 3 of 1992, as noted above, with retrospective effect from 11.06.1996. The Division Bench held, in paragraph 22 and 33, as follows:

"22. ***Here the State Government by an executive decision had provided that the benefit of reservation in all categories of the State services to the native of this***



State and hence it cannot be said that the proviso under challenge was made effective from a date which is irrational or has no nexus. In my opinion, in terms of the letter of the Personnel and Administrative Department dated 11th of June, 1996 petitioners were not eligible to be considered for promotion against the vacancies reserved for the members of the Scheduled Caste. In such a situation, it cannot be said that any right accrued to the petitioners for being promoted to the higher post on the vacancies reserved for the members of the Scheduled Caste. In that view of the matter, it cannot be said that the proviso under challenge had divested the petitioners with any of the right accrued to him.

33. I have found that the order of reversion does not suffer from the vice of discrimination guaranteed under Article 16 of the Constitution of India. Petitioners have not been reverted as a measure of punishment but on the ground that their promotion on the vacancies reserved for the members of the Scheduled Castes is illegal. In such circumstance, it cannot be said that an enquiry as contemplated under Article 311(2) of the Constitution of India is necessary. Thus, the reversion of the

petitioners cannot be said to be either in violation of Article 16 or 311 of the Constitution of India."

(Emphasis added)

9. Aggrieved by the said decision of the Division Bench of this Court, the appellants approached the Supreme Court by filing S.L.P. (C) No. 7934 of 2009, which was disposed of along with several other cases, with the consent of the parties by an order, dated 25.08.2014, in following terms:-

"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 added)

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

10. In the case of these appellants, thus, the Supreme Court passed a consent order to the effect that they would be treated as recruitees from 'general category' for all

intents and purpose. Manifestly, therefore, these appellants cannot be granted benefit of reservation in the matter of appointment and promotion, in the light of the aforementioned order of the Supreme Court passed in appeals wherein the present appellants were parties.

11. What we have noticed, from the pleadings in the writ application out of which the present appeal arises, is that the appellants did not disclose in their applications that they had earlier approached this Court challenging the same action of the respondents denying benefit of reservation to persons, who were not the original residents of the State of Bihar. The appellants concealed the fact in their writ application that they were parties to CWJC No. 3937 of 2007 as petitioners, which was dismissed along with a batch of writ applications, by a Division Bench of this Court, by judgment and order, dated 04.03.2009, in the case of **Khichri Ram** (supra). The writ application was filed on 16.03.2015. They did not disclose that the dispute raised in the writ proceeding had already attained finality with passing of a consent order, dated 25.08.2014, by the Supreme Court, as noticed above. It was only after a counter affidavit was filed on behalf of the State-respondents that the factum of disposal of S.L.P. preferred by the present appellants came to light.

12. Learned Counsel, appearing on behalf of the



appellants, has placed heavy reliance on the Supreme Court's decision in the case of ***Puducherry Scheduled Caste People Welfare Association*** (supra) in support of his submission that it is impermissible for the State Government to tinker with the presidential order issued under Article 341 (1) of the Constitution of India and providing condition that benefit of reservation in services and post shall be given only to the persons, who are residents of the State of Bihar amounts to varying the presidential order. The submission so advanced cannot be entertained in the light of the fact that validity of the amendment in Act 3 of 1992 with retrospective effect, i.e., 11.06.1996, has been upheld by a Division Bench of this Court in a decision rendered on an application filed by these appellants and other similarly situated persons. Placing of reliance on the case of ***Puducherry Scheduled Caste People Welfare Association*** (supra), can be also of no avail to the appellants as the said judgment was delivered on 07.08.2014 and the appeals, preferred by these appellants, were disposed of by the Supreme Court on 25.08.2014. The dispute, raised by the appellants, as regards their claim of reservation in the matter of promotion in the light of the State Government's decision, dated 11.06.1996, and subsequent amendment in the Act 3 of 1992, with effect from 11.06.1996, attained finality in terms of the consent order passed by the

Supreme Court. The said dispute could not have been raked up, again, by the appellants by filing a writ application under Article 226 of the Constitution of India, after disposal of their matters before the Supreme Court, involving the same issue, by order, dated 25.08.2014 aforementioned.

13. We do not find any legal or factual infirmity in the order under appeal passed by the learned single Judge. This appeal is accordingly dismissed with costs.

14. In the facts and circumstances of the case, we have considered it fit to impose cost, which is quantified as Rs. 5,000/- to be paid by each appellant, in the account of the Patna High Court Legal Services Committee, within a period of two weeks from today.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Prabhakar Anand

AFR/NAFR	NAFR
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