

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.309 of 2010

IN

Civil Writ Jurisdiction Case No. 12708 of 2004

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Kaushal Kusum S/O Sri Bankeshwari Prasad R/O Vill.- Poraha, P.S.-
Manpur, Distt.- Nalanda

.... Appellant

Versus

1. The State of Bihar through the Commissioner-Cum-Secretary
Department of Personnel and Administrative Reforms, Government of
Bihar, Patna
2. District Magistrate Nalanda at Bihar Sharif
3. Sub Divisional Officer Nalanda at Bihar Sharif
4. Block Development Officer Bihar Sharif
5. Circle Officer Bihar Sharif

.... Respondents

With

Miscellaneous Jurisdiction Case No. 104 of 2015

IN

LPA 309 of 2010

=====

Kaushal Kusum Son of Sri Bankeshwari Prasad Resident of Village -
Poraha, P.S. - Manpur, District - Nalanda.

.... Petitioner

Versus

1. The State of Bihar through Amir Subhani son of not known to the
petitioner Commissioner cum Secretary, Department of Personnel and
Administrative Reforms, Govt. of Bihar, Patna.
2. Binay Kumar, son of not known to the petitioners Secretary, Animal
and Fisheries Resources Department, Govt. of Bihar, Patna.
3. Kanhaiya Prasad Shrivastava Son of not known to the petitioner
Deputy Secretary, Animal and Fisheries Resources Department, Govt.
of Bihar, Patna.
4. Brajeshwar Pandey Son of not known to the petitioner under
Secretary, Animal and Fisheries Resources Department, Govt of Bihar,
Patna.
5. Dr. Alok Ranjan Ghosh Son of not known to the petitioner Director,
Animal and Husbandry Department, Govt. of Bihar, Patna.
6. Dr. Bipin Kumar Son of not known to the petitioner Regional

Director, Animal and Husbandary Department, Govt. of Bihar, Patna.

7. Dr. Satendra Prakash Son of not known to the petitioner District Animal Husbandary Officer, Jehanabad.

8. B. Kartikey Son of not known to the petitioner District Magistrate, Nalanda.

9. Rajesh Kumar Son of not known to the petitioner Sub-Divisional Officer, Biharsharif, Nalanda.

10. Anjan Dutta Son of not known to the petitioner Block Development Officer, Biharsharif, Nalanda.

11. Devendra Kumar Singh Son of not known to the petitioner Circle Officer, Biharsharif, Nalanda.

.... Respondents

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Appearance :

(In LPA No. 309 of 2010)

For the Appellant : Mr. Naresh Kr. Malhotra, Sr. Advocate
Mr. Binod Kumar Sinha, Sr. Advocate

For the Respondents : Mr. Mayank Rukhaiyar, AC to GA-1.

(In MJC No. 104/2015)

For the petitioner : Mr. Pramod Kumar, Advocate
Mr. Ritesh Kumar, Advocate

For the State : Mr. S.K. Sharma, G.A.1

For the C.A.R. : Mr. S.N. Pathak, 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: 25-04-2016

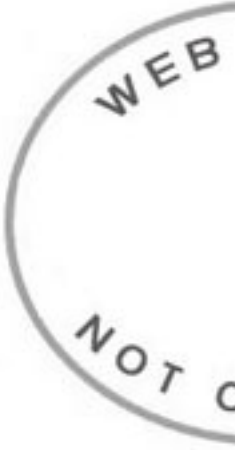
The present Letters Patent Appeal being an Intra-Court under Clause 10 of the Letters Patent of Patna High Court is directed against the judgment and order dated 22.12.2009 passed in C.W.J.C. No. 12708/2004 by learned Single Judge of this Court.

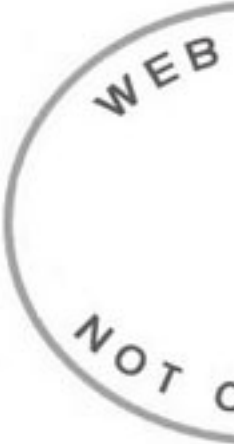
2. We have heard Sri N.K. Malhotra, learned Senior Counsel in support of the appeal and Sri Mayank Rukhaiyar, learned counsel for the State.

3. We have in detail perused the record of not only this appeal but also the writ petition which was decided analogous and against which no appeal has been filed, the latter being C.W.J.C. No. 12654/2005.

4. The writ petitioner/appellant had been granted a scheduled caste certificate which had been cancelled. This is what led to C.W.J.C. No. 12708/2004 from which the present appeal arises. Consequent to the cancellation of the scheduled caste certificate, the post graduation degree and other benefits derived by the writ petitioner/appellant was sought to be nullified, against which action, the writ petition being C.W.J.C. No. 12654/2005 was filed.

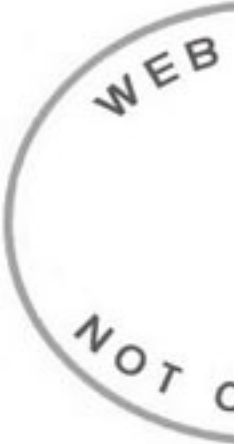
5. The first writ petition and the second writ petition were heard together. The learned Single Judge disposed of the two writ petitions by common judgment and order dated 22.12.2009. The learned Single Judge noted that so far as the first writ petition being C.W.J.C. No. 12708/2004 is concerned, the writ petitioner does not





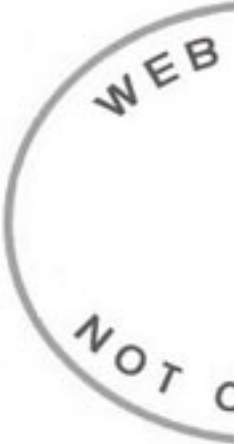
challenge the actions, meaning thereby, that the writ petitioner had given up a challenge to the cancellation of his caste certificate, but when it came to the second writ petition being C.W.J.C. No. 12654/2005, this Court protected the degrees obtained by the writ petitioner/appellant on his own merits, including topping in the University, but held that the caste certificate would never be used to derive any benefit in future, either in studies or employment.

6. The writ petitioner, thus, having obtained this vital relief from the Court with regard to protection of his academic achievements on the basis of wrongly obtained caste certificate, now has chosen to file the appeal, against first judgment in the first writ petition i.e. C.W.J.C. No. 12708/2004 in which it was observed that, the writ petitioner was not challenging the correctness or otherwise of cancellation of his caste certificate. From the order-sheet of this appellate proceedings, it appears, when the appeal was sought to be taken up for hearing, as reflected in order dated 27.04.2012, learned counsel appearing for the appellant sought leave to avail of an opportunity to file Civil Review Application before the learned Single Judge.



Liberty was granted and accordingly Civil Review No. 250/2012 was filed before the learned Single Judge. In Civil Review Application, which we have perused, nowhere it is stated that the writ petitioner/appellant had not conceded, not to challenge the correctness or otherwise of the order cancelling the caste certificate, and the fact was wrongly recorded by the learned Single Judge. But, in one of the grounds such is the mention, but again when we look to the order of learned Single Judge being order dated 18.09.2013 passed in Civil Review No. 250/2012, by which the Civil Review Application was finally disposed of, the entire tenor of the order clearly shows that nowhere the writ petitioner/review petitioner mentioned to the Court the fact that he had conceded not to challenge the order of cancellation of the caste certificate and it was wrongly recorded and he had sought adjudication upon this. Rather, the tenor of the order clearly shows that the writ petitioner/review petitioner sought leave to argue the point afresh.

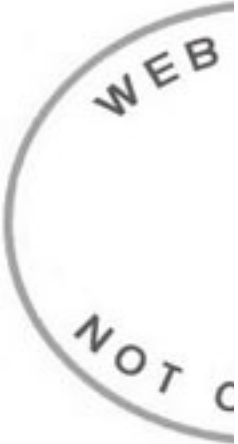
7. The learned Single Judge in the Civil Review Application noted that the point that had been conceded earlier in the writ proceedings, cannot be allowed



to be argued and reopened in Review Application. This clearly shows that the writ petitioner/appellant had originally conceded not to challenge the order of cancellation of his caste certificate if his qualifications were protected. Once, he got his qualifications protected, at the appellate stage, he now wants to challenge the cancellation of his caste certificate and continue with the benefits wrongly obtained therein, even in future. We have noted this fact to show our disapproval to the manner in which these proceedings have been conducted.

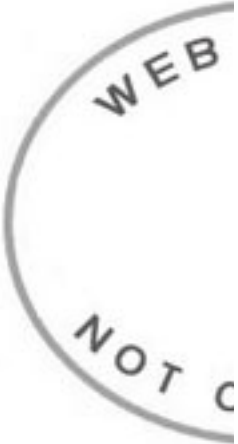
8. However, as the matter has been argued with regard to correctness of the order of Sub-Divisional Magistrate, Biharsharif, in cancelling the caste certificate, we intend to deal with it. In our view, the question now stands concluded by the judgment of the Apex Court in the case of *Anjan Kumar Vs. Union of India* since reported in *(2006) 3 SCC 257*.

9. First, to the facts of the present case. The writ petitioner/appellant claims to be the son of Sri Bankeshwari Prasad, who is supposed to be *Kurmi* by caste, which is a declared Other Backward Class, so far as this State is concerned. He claims his mother Girja Devi



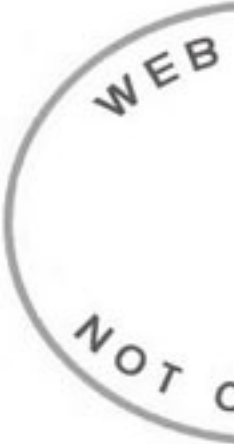
belonged to “Pasi” community, which is designated Scheduled Caste in this State. They were married in the year 1969. Being son of a Scheduled Caste mother, he claimed that, in view of State Government circular issued from the Department of Personnel and Administrative Reforms, being Circular no. 99 dated 03.03.1978, he was entitled to be granted Scheduled Caste status, being status of his mother and not his father. It may be noted that on 11.12.1985, vide memo no. 605, the aforesaid Circular was clarified that both the husband and wife who intends to take benefit of the earlier Circular must be a “Hindu”. We may note yet another important Circular which has been brought on record by the appellant himself in this appellate proceeding which is Circular of the Personnel and Administrative Reforms Department, Govt. of Bihar, dated 11.09.2007, wherein, in view of the decision of the Apex Court in the case of Anjan Kumar (Supra), the earlier Circular no. 99 dated 03.03.1978, Circular no. 605 dated 11.12.1985 and another Circular no. 106 dated 03.03.1979 were all cancelled.

10. Two submissions have been made by Sri N.K. Malhotra, learned Senior Counsel, in regard to the



aforesaid circulars. First, that the Circulars issued in 1978 and clarified to some extent in 1985, gave certain benefits to the writ petitioner/appellant. That being so, those benefits even if were to be cancelled, could not be cancelled retrospectively, though would stand cancelled prospectively. Secondly, all benefits that had accrued to the writ petitioner/appellant would continue, and, certificate validly granted when it was so granted, cannot now become invalid.

11. The two submissions are two sides of the same coin. We would deal with them, but before doing so, we may notice some other facts. It appears that on the alleged ground that writ petitioner/appellant's father was a Kurmi and in 1969, he had married Girja Devi who was daughter of Pasi couple (Scheduled Caste) in view of the 1978 circular, as noticed above, writ petitioner/appellant applied for caste certificate treating him to be Pasi. He managed to obtain a Scheduled caste certificate. Soon thereafter, the caste certificate, as granted to him, was cancelled by the Sub-Divisional Magistrate, Biharsharif, which was challenged in this Court. The order was set aside on the technical ground that the writ petitioner/appellant



was not heard and no inquiry was conducted in his presence and the matter was thus remanded. While the matter was now pending, writ petitioner/appellant along with his mother Girja Devi filed a Title Declaration Suit in the Bihar Sharif Civil Court against alleged Dr. Amrit Prasad, who was the sole defendant showing him to be the father of Girja Devi, in other words, the maternal grandfather of the writ petitioner/appellant, and obtained a declaratory decree from the Court that Dr. Amrit Prasad being Pasi, his daughter, the mother of the writ petitioner/appellant being plaintiff no. 2 was a Pasi.

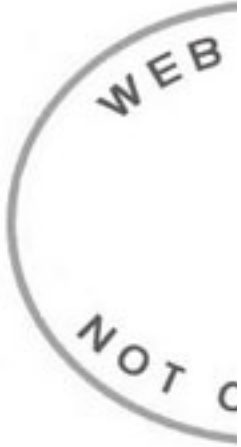
12. To the question, as to what was the necessity of the suit, the answer that has been given to us is that some people had started doubting, even this fact that writ petitioner/appellant's mother was not Pasi, and therefore, the suit was filed.

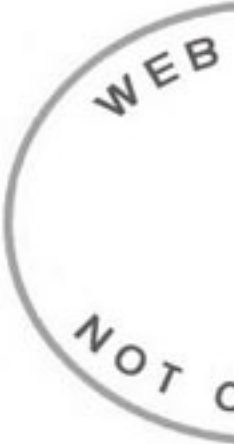
13. The explanation may be reasonable but the decree in the suit, in our view, has no effect. It is well established principle that a decree in a suit binds the parties to the suit or claimants thereunder. It does not bind anyone else, muchless persons, who are not party thereto. That being so, the declaratory decree obtained would at best

operate against the defendant Dr. Amrit Prasad or *inter se* between the parties i.e. the writ petitioner/appellant or his mother or his mother's father. It can never act or binds the State or any other authority who were never made a party to the litigation aforesaid.

14. It is, in this view of the matter, being held that the decree is of no legal consequence except, as noted above, we may also see what was the apprehension upon remand for rehearing of the matter and then deciding the matter of the caste certificate to be granted to the writ petitioner/appellant. The Sub-Divisional Magistrate, Biharsharif, again cancelled the caste certificate. This time clearly holding, firstly, that the father of the writ petitioner/appellant admittedly being a Kurmi and not a Pasi, the son cannot be treated as a Pasi. Secondly, he clearly gave a finding that Girja Devi was not the daughter of Dr. Amrit Prasad, who was a Pasi, but was daughter of Saryug Garai, who was a Kurmi. The marriage was between Bakeshwari Prasad, a Kurmi and Girja Devi, a Kurmi, and therefore, the Pasi caste certificate was wrongly obtained.

15. Before us, it has been strenuously argued that the caste certificate granted to the writ



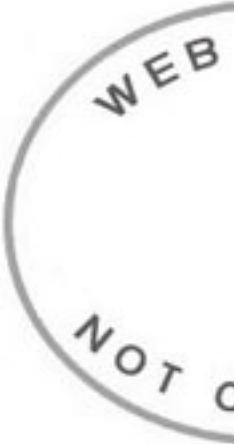


petitioner/appellant was correct. We are not impressed for a moment. The filing of a Title Suit clearly shows that the writ petitioner/appellant knew that there was going to be a challenge to the lineage or ancestry. Even though he knew of it, he chose not to make the Sub-Divisional Officer/ Sub-Divisional Magistrate or State a party to the suit. He knew that the suit was being filed to use the decree against him (SDO/SDM) but still he did not make State or Sub-Divisional Magistrate/ Sub-Divisional Officer as a party.

16. As noted above, the said decree does not operate to bind anyone except the parties to the suit. Therefore, the findings in the suit, however, collusive, it cannot be used to challenge the correctness of the order of SDM that Girja Devi was not a daughter of Dr. Amrit Prasad, and further that she was not a Pasi.

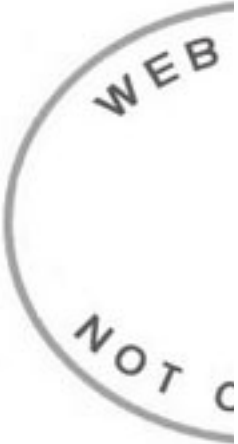
17. The second thing to be noted is that, the Sub-Divisional Magistrate clearly held that the writ petitioner/appellant would take the caste from his father in which family he was brought up. Again, we do not think that the view was wrong, rather, the State Government Circulars of the year 1978 and 1985 were clearly wrong.

18. This matter was squarely for consideration



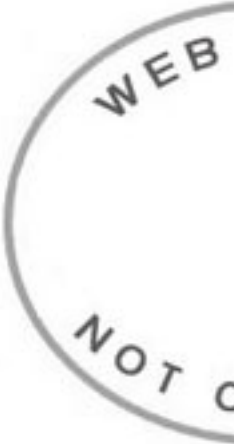
before the Apex Court in the case of *Anjan Kumar (supra)* itself. These circulars, that were issued by the State Government, as has been held by the Apex Court in the case of Anjan Kumar (supra) itself, are not law being mere executive circulars. They would not be law within the meaning of Article 309 and it would be of no assistance to the appellant on the face of the constitutional provisions.

19. Now, to the facts of the case of Anjan Kumar (supra). There, the claim was that out of the wedlock as between Lakshmi Kant Sahay (a Kayastha) and Smt. Angela Tigga (a Tribal woman), the appellant before the Apex Court, Anjan Kumar was born. Smt. Angela Tigga belonged to Oraon Tribe, that is a Tribe also recognized in the State of M.P. Certificate, showing Anjan Kumar to be Scheduled Tribe, being tribe of his mother, was granted by SDM, Gaya (Bihar). Apparently, this would be on the basis of 1978 circulars. In spite of this, everywhere *Anjan Kumar* was not given benefit of the status of Scheduled Tribe, and that is how, the matter reached the Apex Court. The Apex Court held that the circulars issued by the State of Bihar had no legal validity. They were not law. Further, the Apex Court pointed out that in order to qualify for the



benefits of caste of tribe of the mother, it must be shown that after marriage, the family was living and was being accepted by the Scheduled Caste or Scheduled Tribe and the child was brought up in the social background of Scheduled Caste or Scheduled Tribe. It would be a case where a husband would virtually give up his caste background and move to his wife's caste or tribal background and where the children would be brought up. By reason of the aforesaid, having been brought up in the Scheduled Caste or Scheduled Tribe social background, the children would consequently suffer disabilities. It is only and only in those cases, could the children get the benefit of Scheduled Caste or Scheduled Tribe, as the case may be. The case of *Anjan Kumar (supra)* was dismissed holding that he could not derive any benefit from the said certificate. The aforesaid proposition has been summarized in paragraph-9 in the case of *Anjan Kumar (supra)* which reads as such:

“9. The object of Articles 341, 342, 15(4), 16(4) and 16(4-A) is to provide preferential treatment for the Scheduled Castes and Scheduled Tribes having regard to the economic and educational backwardness and other disabilities wherefrom they suffer. So also considering the typical characteristic of the tribal including a common name, a contiguous territory, a relatively uniform culture, simplistic way of life and a



tradition of common descent, the transplantation of the outsiders as members of the tribe or community may dilute their way of life apart from such persons do not suffer any disabilities. Therefore, the condition precedent for a person to be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, one must belong to a tribe and suffer disabilities wherefrom they belong.”

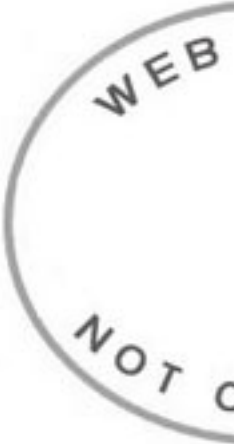
Thus, relying on the case of ***Murlidhar Dayandeo Keshkar v. Vishwanath Pandu Barde and R. Chandavarappa v. State of Karnataka*** since reported in ***1995 Supp (2) SCC 549 : (1995) 6 SCC 309***; that acquisition of status of Scheduled Caste by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution that the Circular of 11.09.2007 was issued, whereby earlier Circulars all of 1978, 1985 and 1979 were cancelled. Hence, the Apex Court in the case of ***Anjan Kumar (supra)*** held that such caste certificates procured led to violation of Articles 14 and 21 of the Constitution and frustrated constitutional policy of Articles 15(4) and 16(4) of the Constitution and hence the 2007 Circular dated 11.09.2007 issued by the Personnel and Administrative Reforms Department, Government of Bihar, applies retrospectively

as all earlier circulars had been cancelled.

20. Thus, on these facts, even if we permit the writ petitioner/appellant to raise an issue, which he had conceded not to raise, is considered on its merits, it does not hold that the caste certificate could have been granted to the writ petitioner/appellant showing him to be a Pasi, a Scheduled Caste. The Sub-Divisional Officer was thus correct in holding that being the son of a Kurmi he could not get Pasi caste certificate. To other ground taken by the Sub-Divisional Magistrate, that, Girja Devi was the daughter of Late Saryug Garai and not Dr. Amrit Prasad as claimed, this is a question of fact.

21. The only thing that has been brought on record to contradict this is the title declaration suit, which we have already noticed, could not bind anyone except the parties to the suit. No other material has been brought, either in the writ proceedings or at this appellate stage to show that the finding given by the Sub-Divisional Officer as to lineage of the writ petitioner/appellant was contrary to that as stated in the declaratory suit. At the appellate stage, for the first time, certain self serving certificates have been obtained from Mukhiya and local authorities.





22. Suffice to say that these certificates were obtained after the judgment of the learned Single Judge, they inspire no confidence at all. Those certificates were never placed before learned Single Judge, having been obtained after the judgment. There being a finding of fact of the Sub-Divisional Officer/ Sub-Divisional Magistrate, we would not interfere in it.

23. Thus, having taken advantage of the sympathy shown by the learned Single Judge in the second writ petition, by which the academic achievements were preserved and protected writ petitioner/appellant chose to challenge what he had conceded in the first writ petition.

24. Having considered the matter in detail. For the reasons noted above, we find the challenge unsustainable. This appeal is, accordingly, dismissed.

25. However, we would like to clarify that the academic achievements secured by the writ petitioner/appellant would remain intact and valid for all purposes, but for no other purpose, may it be for seeking privilege in job or any other privilege. The writ petitioner/appellant would not be entitled to use his caste certificate, as being Scheduled Caste, in any other manner

and no benefit would accrue to him in this regards. Any benefit of service or otherwise taken on the basis of the Scheduled Caste certificate would consequently stand withdrawn.

26. In view of order which we pass, no order need be passed in the Contempt Proceeding being M.J.C. No. 104/2015.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/-

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CAV DATE	
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Transmission Date	