

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18598 of 2016

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Chandradip Ram, Son of Sri Sheokeshwar Ram, Resident of Village- Merourni, P.S.- Ketar, P.O. Hariharpur, District- Garhwa. At Present residing at the house of Rajendra Prasad Singh, Mohalla- Adarsh Vihar Colony, Rukanpura, P.S.- Rupaspur, P.O. B.V. College, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Dept. Govt. of Bihar, Patna.
3. The Principal Secretary, Personnel and Administrative Department, Government of Bihar, Patna.
4. The Engineer in Chief, Road Construction Dept. Govt. of Bihar, Patna.
5. The Executive Engineer, Mechanical Division, Road Construction Department, Khagaria.
6. The Additional Secretary, Road Construction Department, Govt. of Bihar, Patna.
7. Bihar Public Service Commission, Bailey Road, Patna through the Chairman.
8. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar Sinha, Advocate
For the Respondent-State : Mr. Rakesh Kumar Chandran, AC to GP-19
For the Respondent-BPSC : Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-05-2017

Heard Mr. Deepak Kumar Sinha, learned counsel appearing for the petitioner, Mr. Rakesh Kumar Chandran, learned Assisting Counsel to Government Pleader No.19 for the State and Mr. Sanjay Pandey, learned counsel appearing for the Bihar Public Service Commission.

The petitioner is aggrieved by the show cause notice bearing No.7376(S) dated 10.8.2015 requiring his explanation against the proposed reversion to the post of Junior Engineer



(Mechanical), inter alia, relying upon an observation made by the Supreme Court in the case of Rajendra Pratap and Chandrika Prasad, the colleagues of the petitioner passed in SLP (Civil) No.8169-8235 of 2014, whereby the Supreme Court has not chosen to interfere with the order of reversion passed in the case of the said petitioners who were sought to be reverted on grounds that they were permanent residents of the State of Uttar Pradesh and thus not entitled to reservation benefits extended to the local population. A copy of the show cause notice is impugned at Annexure 13 to the writ petition.

This matter was heard on 14.12.2016 and while allowing time to the respondents for filing counter affidavit a Bench of this Court required the parties to maintain status-quo which continues to operate. Meaning thereby the petitioner still holds the promoted post of Assistant Engineer (Mechanical).

Facts briefly stated leading to the writ petition is that the petitioner, a permanent resident of Garhwa in the district of Palamau, was appointed against the post of Junior Engineer in the year 1995 when the said district formed part of the undivided State of Bihar. Under the Bihar Reorganization Act, 2000 the State of Bihar was bifurcated to create a State of Jharkhand and consequently now the residence of the petitioner falls in the State of



Jharkhand. The petitioner was promoted against the post of Assistant Engineer (Mechanical) vide Notification bearing No.9985(S) dated 31.12.2005, a copy of which is present at Annexure-7 and the name of the petitioner appears at serial no.15 thereof. The promotion against the post of Assistant Engineer (Mechanical) was granted to the petitioner with effect from 19.6.2000 as confirmed from the letter bearing Memo No.607(S) dated 16.1.2007 of the Deputy Secretary, Road Construction Department addressed to the Under Secretary, Finance Department present at Annexure 6/A. While the matter rested there that the State enforced the Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Amendment Act, 2003 (hereinafter referred to as 'the Amendment Act') amending the Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (hereinafter referred to as 'the Act') and section 3 of the 'Amendment Act' inter alia, provided that the candidates residing out of the State of Bihar would not be entitled to the benefits of reservation. A copy of the 'Amendment Act' is present at Annexure-9.

The provision in question was enforced from 11th of June, 1996. It is undisputed that the petitioner gained appointment much



prior thereto in the year 1995 and also got promotion with effect from 19.6.2000 as a resident of the undivided State of Bihar which got bifurcated under the Reorganisation Act, 2000 only on 15.11.2000. The petitioner apprehending the proposed action in view of the amendment at Annexure-9 moved this Court through CWJC No.3949 of 2008 questioning the virus of the amendment and the matter was considered by the Division Bench presided over by Hon'ble the Chief Justice. The order of the Division Bench is at Annexure-11 records the stand of then Additional Advocate General No.3 who informed the Court that since promotion of the petitioner to the post of Assistant Engineer (Mechanical) under the Scheduled Castes category was prior to the bifurcation of the State of Bihar on 19.6.2000 his promotion would not be effected by the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 as amended vide Amendment Act, 2003.

In the nature of the dispute which now engages this Court, I deem it proper to reproduce the entire order passed by the Division Bench which runs as follows:

“Mr. Lalit Kishore, Additional Advocate General-III submits that since promotion of the petitioner to the post of Assistant Engineer on its turn under Scheduled Caste category is prior to the bifurcation of the State of Bihar on 15th November, 2000, the petitioner's promotion is not and shall not



be affected by the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (amended in the year 2003). In other words, the submission of the Additional Advocate General is that the amendments made in the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 shall not result in taking away the benefit of promotion given to the petitioner prior to the bifurcation of the State.

2. Since the promotion to the post of Assistant Engineer effective from 19th June, 2000 is not to be affected as stated by the Additional Advocate General, it is not necessary for us to go into the diverse aspects raised in the writ petition including the constitutional validity of 3rd proviso of Section 4(2) and Section 1(3) Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991. As a matter of fact the petitioner is not at all affected by the said amendments as submitted by the Additional Advocate General.

3. No further order needs to be passed in this writ petition. It is disposed of accordingly.”

The dispute thus whatsoever as regarding the promotion of the petitioner against the post of Assistant Engineer (Mechanical) stands closed by the judgment of the Division Bench and is sought to be reopened by the impugned show cause notice dated 10.8.2015 relying upon an observation of the Supreme Court in the case of two colleagues of the petitioner who admittedly belong to the State of Uttar Pradesh and held such status even at the stage of initial appointment, which is not the case of the petitioner.

It is appreciating the arbitrary exercise that the Bench of



this Court directed the authorities to maintain status-quo and in my opinion considering the stand taken by the Additional Advocate General No.3 before the Division Bench protecting the promotion of the petitioner in the light of the statutory provisions underlying the ‘Amendment Act’ as well as the provisions of ‘the Act’, it is not only an arbitrary action of the Additional Secretary to issue show cause notice to the petitioner rather it is an attempt to overreach a judgment.

Considering that the issue stood concluded by the Division Bench judgment present at Annexure-11 and bearing in mind that the ‘Amendment Act’ present at Annexure-9 has no applicability on the promotion of the petitioner as a resident of the undivided State of Bihar, the show cause notice impugned at Annexure-13 is held illegal and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01-06-2017
Transmission Date	NA

