

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5680 of 2016

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Chandra Kishore Kumar Son of Bajrangi Pandit, Resident of village- Amain,
P.S.- Parasbigha, District- Jehanabad

... .. Petitioner/s

Versus

1. The Registrar General, Patna High Court Patna
2. The Coordination Selection Committee through its Convener-cum-District and Sessions Judge, Patna
3. The Convener-cum-District and Sessions Judge, Patna
4. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
5. The Secretary, Law Department, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar
For the Respondent/s : Mr. Ajeet Kumar, SC-28

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 18-10-2019

The present writ petition has been filed to direct the respondent authorities to issue appointment letter in favour of the petitioner against the employment notice, advertised in daily newspaper 'Dainik Jagran' dated 06th February, 2011 under the signature of Convener-cum-District & Sessions Judge, Patna.

The admitted facts of the case are that an employment notice was published in the daily newspaper 'Dainik Jagran' on 07.02.2011 for the purposes of appointing, 1296 Clerks and 578 Stenographers. As far as the petitioner is concerned, he had



applied for the post of Clerk and admit card was issued to the petitioner for appearing in the examination, which he had given on 16.10.2011 and was declared successful. The petitioner was called for interview on 11.06.2012 and thereafter he had appeared in the interview. The petitioner is stated to be a candidate belonging to Extremely Backward Category. It is stated by the petitioner that 811 candidates have been issued appointment letters for being appointed on the post of Clerk.

The learned senior counsel for the petitioner, by referring to the list of 1296 candidates selected as per their category and according to their merit qua the marks obtained by them, based on their performance in the written test and interview, as brought on record by the respondents in their counter affidavit, submits that the breakup of the 1296 selected candidates, category wise, is as follows:-

1. General Category	-629
2. Backward Category	-151
3. Backward Category (Female)-	38
4. Most Backward Category	-226
5. Scheduled Caste	-201
6. Scheduled Tribe	- 13
7. <u>Physically Handicapped</u>	<u>- 38</u>
<u>Total=1296</u>	



The learned senior counsel for the petitioner further submits that 18% quota is earmarked for the EBC/MBC category candidates and, therefore, 18% of the total number of candidates i.e. 1296 would come to 234 candidates, however, the respondents have only selected 226 EBC/MBC candidates.

At this juncture, the learned counsel appearing for the respondents has submitted that out of 38 Physically handicapped candidates, 7 Physically Handicapped candidates belong to the EBC/MBC category, hence, the total number of EBC/MBC candidates selected for the post of clerk out of total number of 1296 candidates are equal to $226+7=233$. This position, as existing on facts, is not disputed by the learned senior counsel for the petitioner.

At this juncture, the learned senior counsel for the petitioner submits that since 18 % quota of EBC/MBC category candidate, considering the vacancy to be 1296, comes to 234, whereas admittedly the number of EBC/MBC candidates, selected by the respondents are 233, hence, the petitioner can be accommodated.

In response to the aforesaid submission made by the learned senior counsel for the petitioner, the learned counsel



appearing for the respondents, submits that the issue under consideration can be viewed from two angles, firstly, selection of 233 EBC/MBC candidates out of total number of 1296 candidates amount to filling up of 17.978 % quota of EBC/MBC, hence, no further vacancy remains. The second view is that 18% quota of EBC/MBC category candidates, out of total number of selected candidates i.e 1296 candidates, comes to 233.28 and the respondents have already filled up EBC/MBC category vacancy to the extent of 233 candidates, as such, since the fraction is less than “.5” and the respondents have already filled up 233 vacancies, the permutation and commutation does not permit any further vacancy under the EBC/MBC category.

The learned senior counsel for the petitioner has submitted that in order to give adequate representation to the Backward Classes, the percentage quota fixed qua the reserved category have to be strictly followed and in case after providing for the particular reserved category, even if the percentage quota so fixed falls short by a fraction, the same is required to be rounded up to the nearest whole number, thus, since 18% of 1296 candidates comes to 233.28, the same is



required to be rounded up to 234 so that there is adequate representation of the EBC/MBC category. In this connection, the learned senior counsel for the petitioner has referred to the celebrated judgment rendered by the Hon'ble Apex Court in the case of **Indra Sawhney vs. Union of India and Ors.**, reported in **AIR 1993 SC 477**, paragraph nos. 94A and 95 whereof are quoted herein below:-

"94A. We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State Legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of [Article 16](#) should also be exercised in a fair manner and within reasonable limits - and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extra-ordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and



Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in [Narayan Rao v. State](#) 1987 A.P. 53, striking down the enhancement of reservation from 25% to 44% for O.B.Cs. The said enhancement had the effect of taking the total reservation under [Article 16\(4\)](#) to 65%.

It needs no emphasis to say that the principle aim of [Article 14](#) and [16](#) is equality and equality of opportunity and that Clause (4) of [Article 16](#) is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in [Article 14](#). The provision under [Article 16\(4\)](#) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in Clause (1) of [Article 16](#) which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in para 28). No other member of the Constituent Assembly suggested otherwise. It is, thus clear that reservation of a majority of seats was never envisaged by the founding fathers. Nor are we satisfied that the present context requires us to depart from that concept.

From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of [Article 16](#) should not exceed 50%.

While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main stream of



national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

In this connection it is well to remember that the reservations under [Article 16\(4\)](#) do not operate like a communal reservation. It may well happen that some members belonging to, say Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.

95. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under [Article 16\(4\)](#). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under [Article 16\(4\)](#)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of [Article 16](#)] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of [Article 16](#). The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should



remain the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

It is, however, made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be - indeed cannot be - applicable to exemptions, concessions or relaxations, if any provided to 'Backward Class of Citizens' under [Article 16\(4\)](#)."

The learned senior counsel for the petitioner has further referred to a judgment reported in **AIR 1987 Andhra Pradesh 53**, rendered by the Full Bench of the Hon'ble Andhra Pradesh High Court in the case of **V. Narayana Rao vs. the State of A.P. & Anr.**, paragraph nos. 123, 124 and 125 (vi) whereof are reproduced herein below:-

"123. The above discussion yields the following broad propositions; (a) the rule enunciated in Balaji, and affirmed in Devadasan is that reservation of Seats/posts cannot exceed 50%. May be, it is a ceiling, may be it is only a rule of caution; it has got to be adhered to. May be also that in certain exigencies there may even be a slight excess, but generally speaking the rule has to be observed; (b) where, however, the rule of carry forward is applied, in the sense that the unfilled reserved posts are filled up by OC candidates in a given year, and the corresponding number of posts are carried forward to the next year, the rule of 50% ceiling may be exceeded but, even here, the excess cannot go far beyond the said ceiling, say, 66.2/3% of the vacancies arising in the next year. If, however, the unfilled reserved vacancies are not filled up by OC candidates but the vacancies are carried forward, then there is no room for applying the Devadasan rule, since these



vacancies continue to be reserved only for the particular categories, and never join or added to the normal vacancies arising in the next year. In other words, these carried forward vacancies will be in addition to the normal vacancies arising each year, to which vacancies the rule of reservation will be applied in the usual course.

124. In the light of the above principles, we must hold that the raising of the quota of reservation for Backward Classes to 44% which together with unquestioned reservation in favour of Scheduled Castes and Scheduled Tribes (15% plus 6% : 21%) comes to 65%, is far in excess of the permissible level of reservation and must, accordingly, be held to be bad. Accordingly contention No. 8 argued by the petitioners is upheld.

Part V. Summary of Findings and Conclusions.

125. We may now summarise our findings and conclusions:

(6) In view of the decisions of the Supreme Court referred to in our judgment, the total reservations under [Art. 15\(4\)](#) or [Art. 16\(4\)](#), as the case may be, cannot, as a general rule, exceed 50%, subject to marginal adjustment if the exigencies so require. Situation may, however, be different where the carry forward rule is applied."

I have heard the learned senior counsel for the petitioner as also the counsel appearing for the respondents as also have gone through the materials on record. First of all, this Court finds that the the aforesaid judgments relied upon by the learned senior counsel for the petitioner are not at all applicable in the facts and circumstances of the present case as also qua the proposition which has been formulated by the



learned senior counsel inasmuch as the said judgments merely postulate that the total reservation under Article 15(4) or Article 16(4) of the Constitution of India, as the case may be, cannot exceed 50%. This Court further finds that the respondents have selected 233 candidates out of 1296 vacancies under the EBC/MBC category for the purposes of being appointed on the post of Clerk, hence, in terms of percentage, the same comes to 17.978%. Thus, this Court is of the opinion that the 18% quota required to be filled up from the EBC/MBC category candidates have duly been given regard to by the respondents. Moreover, this Court finds that in case even one more candidate of the EBC/MBC category is granted employment on the post of Clerk, the same would make the total number of EBC/MBC candidates to be 234, which would come to 18.056 per cent of the total number of vacancies i.e. 1296, hence, the quota earmarked for the EBC/MBC would exceed 18%, which is against the mandate of the law laid down by the Hon'ble Apex Court in the celebrated judgment rendered in the case of Indra Sawhney (supra).

Last but not the least, it may be pointed out that the last candidate from the EBC/MBC category who has been



selected, has obtained 63.33% marks whereas the petitioner has obtained only 56.7% marks and, therefore, on merits also he is not entitled for selection, by any stretch of imagination.

Having regard to the facts and circumstances of the present case and for the reasons mentioned herein, I do not find any merit in the present case, hence, the writ petition stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

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