

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13012 of 2014

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Mukesh Kumar, S/o Sri Chait Rai, Resident of Village - Sardha, P.O. - Sardha,
P.S. - Charpra Mufassil, District - Saran (Chapra).

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary, Patna, Bihar
2. The District and Sessions Judge, Chapra (Saran).
3. The Registrar (Civil Courts), Chapra (Saran).
4. Ajay Kumar Mahesia, S/o Kishori Lal Mahesia, At Devaria Khas Ward No. 6, Near Bhagwan Chouraha, District Devaria, U.P.-274001.
5. The Patna High Court through the Registrar General

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Suraj Samdarshi, Advocate
For Respondent No 4	:	M/s M P Dixit, S K Dixit, Sanjay Kr Chaubey, Swastika, Shailendra Kr, Advocates
For Respondent No 5	:	Mr Mrigank Mauli, Advocate
For the S t a t e	:	Mr Mujtabaul Haque, GP XII with Mr Manish Kr, AC to GP XII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 20-09-2019

Heard learned counsel for the petitioner, State as well as the private respondent.

2 Writ petition has been filed for a direction in favour of the petitioner for his appointment by observing the provisions of Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (hereinafter referred to as the Reservation Act, 1991). The petitioner, a Member of the Backward Class, has emerged the



first empanelled candidate in the wait list having participated in the process of selection for appointment against Class IV post in the Judgeship of Chapra (Saran).

3 Civil Courts, Saran at Chapra had published an Advertisement for appointment on Class IV Post in the Judgeship. The Advertisement is dated 28.04.2011. The same also provides the percentage of reservation for the various classes. Percentage wise break up of reservation is as follows:

1 Scheduled Caste	16%
2 Scheduled Tribe	01%
3 Extremely Backward Class	18%
4 Backward Class	12%
5 Physically Handicapped	03%

4 Pursuant to the said advertisement, the petitioner, respondent No 4 and many others made their application. They were subjected to a written examination. On being declared successful in the written examination, they were subjected to an interview where after the Judgeship sent the result for approval to the High Court. The communication in this respect is dated 05.07.2013. The same contains the list of the candidates as per their marks obtained in the process of selection.

5 In the merit list, which has been sent for approval to the High Court, Respondent No 4 is the first empanelled candidate in the Backward Class Category having 21 marks. The High



Court, on 11.07.2013, had directed the Judgeship to prepare a waiting list of 13 candidates. The said waiting list was to ensure representation of 6 General Category Candidates, 2 Scheduled Castes, 2 Most Backward Class, 2 Backward Class, 01 Female of Backward Class Candidate according to merit and the Judgeship was directed to send the same for consideration. Petitioner's name was at serial No 1 in the waiting list of Backward Class candidate sent pursuant to the said directions of the High Court.

6 As a result of the process of selection, duly approved by the High Court, respondent No 4, being first empanelled candidate in the category reserved for Backward Class, came to be appointed on Grade IV post on the basis of the merit list which had been communicated on 05.07.2013.

7 The petitioner, thereafter, came to know that respondent No 4 had obtained appointment on basis of certificate showing him to be member of Backward Class Category in the State of Uttar Pradesh. Respondent No 4, was Member of "*Kandu*", caste which is declared a Backward Class in the State of Uttar Pradesh whereas benefit of reservation was to be confined to the castes reserved within the State of Bihar.

8 The Reservation Act, 1991 has been enacted with the object to provide for adequate representation of Scheduled Castes,



Scheduled Tribes and Other Backward Classes in Posts and Services under the State. Backward Class has been defined in Section 2 (j) to mean and include those classes which have been specified in Schedule I and II of the Reservation Act, 1991. Respondent No 4 belongs to “Kandu” caste which has not been specified in either of the two Schedules of the Act. Respondent No 4, by virtue of being a Member of Backward Class in the State of Uttar Pradesh, cannot be allowed to avail benefit of reservation in the State of Bihar as a Backward Class.

9 Since “Kandu” caste has not been specified as a Backward Class in the Reservation Act, 1991, Respondent No 4 was ineligible for availing benefit of reservation as a Backward Class in matters of appointment to the State Government, including Legislature, Judiciary, all local or other authorities within the State of Bihar, or under the control of the State Government, because provisions of the Reservation Act, 1991 extends to all those services in terms of Section 2 (m) of the Reservation Act, 1991.

10 Learned counsel for the petitioner submits that just because the authorities, due to oversight, have failed to consider that respondent No 4 was ineligible for availing benefit of reservation against Backward Class Category, he cannot be



allowed to avail the benefit of his selection against a post reserved for Backward Category.

11 Respondent No 4 has appeared. It is his specific case that he was a bona fide candidate in the process of selection. The Advertisement did not specify that benefit of reservation could be availed only by residents of the State of Bihar. He has applied bona fide, relying upon certificate issued by the authorities in the State of Uttar Pradesh where he is a member of the Backward Class Category. Since respondent No 4 has applied in response to the advertisement bona fide, without any misrepresentation or suppression, his candidature cannot be termed to be in any manner ineligible/illegal. Learned counsel for respondent No 4 is placing reliance on judgment of this Court in the case of *Alok Prasad Verma -Versus- Union of India & Others* reported in 2001 (1) BLJ 262 since selection of respondent No 4 was strictly in accordance with the terms of the advertisement.

12 He has also placed reliance on a decision in the case of *Buddhi Nath Chaudhary & Others -Versus – Abahi Kumar & Others*, reported in 2001 (2) PLJR 52 (SC). He submits that respondent No 4 has continued, pursuant to his selection in the year, 2013 for six long years. Today, if this Court were to allow any relief to the petitioner, having adverse effect on respondent No



4's selection, the same would only give rise to an onerous situation which has been deprecated by the Apex Court in the judgment of *Buddhi Nath Chaudhary (supra)*.

13 Petitioner's counsel, in support of his submissions, has placed reliance on decisions of the Apex Court in the cases of *MCD -Versus- Veena & Others*, reported in (2001) 6 Supreme Court Cases 571, *Bir Singh -Versus- Delhi Jal Bard & Others*, reported in (2018) 10 Supreme Court Cases 312 and *Pannalal Ram -Versus- State of Bihar & Others*, reported in 2007 (1) PLJR 629.

14 In the background of the above noted submissions, this Court would consider it useful to refer to the provisions contained in the Bihar Reservation Act, 1991 as also the Civil Court Rules. Bihar Reservation Act provides for ensuring adequate representation of Scheduled Castes, Scheduled Tribes and other Backward Classes in posts and services under the State. Section 2 is the definition clause. Sub clause (m) defines State so as to include the Government, the Legislature and the Judiciary of the State of Bihar. Section 4 of the Act, which provides modus of reservation for direct recruitment, contains a clear and explicit third proviso which was inserted in sub section (2) of Section 4 in



the year 2003, that candidates, residing out of the State of Bihar, shall not claim for benefits of reservation under this Act.

15 Civil Court Rules also contains a clause regarding reservation. Rule 17 reads as follows:

“17. Reservation – Such number of vacancies shall be reserved for the members of the Scheduled Castes and Scheduled Tribes and Backward Classes. Other Backward Classes and Physically Handicapped as per the policy decision of the State of Bihar.”

16 The Advertisement also specifies the percentage of reservation for various reserved categories. The extent of reservation for the various categories is as per Reservation Act, 1991. In view of the provisions of the relevant Statutes and Rules taken note of herein above, this Court would observe that composition of the reserved class category and extent of reservation could only be gathered from the Reservation Act, 1991 and Schedule appended thereto. Provisions of the Reservation Act, 1991, which contains the policy decision of the State of Bihar for reservation were applicable to the selection process, as per Clause 17 of the Civil Court Rules, under which selection process was being conducted. Therefore, respondent No 4 or any other applicant in the process of selection was required to examine the provisions of the Reservation Act, 1991, if he/she intended to avail the benefit of reservation. If respondent No 4 has availed the



benefit of reservation without examining those provisions which bar his candidature from the benefit of reservation, he has no one to blame but himself.

17 The provisions of the Reservation Act, 1991 are meant to ensure compliance with the constitutional scheme of public employment in furtherance of the provisions contained in Article 16 of the Constitution of India. Non-adherence with the provisions cannot be sustained, even if the same has occurred due to oversight or mistake.

18 Respondent No 4 is, admittedly, member of “*Kandu*” caste. The said caste comes within the backward class category in the State of Uttar Pradesh. On the other hand, the caste of respondent No 4 “*Kandu*” is not a caste declared as a backward class or enlisted in Schedule I of Bihar Reservation Act, 1991. This fact, coupled with the fact that the provision to Clause 4 of the Bihar Reservation Act clearly bars consideration of residents from outside Bihar for consideration for the benefit of reservation under the Act, leads to an irresistible conclusion that respondent No 4 has wrongly been appointed against the post reserved for Backward Class Category. The fact that his caste “*Kandu*” was a caste belonging to the backward class in the State of Uttar Pradesh was irrelevant for availing the benefit of reservation in the process



of selection under the “State” in light of the provisions contained in Section 2 (m) of the Reservation Act 1991.

19 The correspondence on record including the Communication of the District & Sessions Judge, Chapra dated 05.07.2013 (Annexure B to the counter affidavit of respondents No 2 and 3) clearly shows that the authorities were proceeding with the selection in terms of the Reservation Policy made by the State of Bihar. Authorities had no other option than to do so in view of the provisions of the Reservation Act 1991, taken note of herein above.

20 Admitted position is that the selection/appointment in question was in violation of the provisions of the Reservation Act, 1991 read with the Civil Court Rules. Thus, the fact that authorities, during the process of selection/appointment have overlooked or failed to consider the relevant provisions, while assessing the petitioner’s eligibility, cannot create a right in favour of the petitioner for the post in question.

21 It is, thus, clear that selection/appointment of respondent No 4 was contrary to the Bihar Reservation Act, 1991 as also the Civil Court Rules which were to be observed in the process of appointment in the Civil Courts, Chapra. The fact that, respondent No 4 had not made any misrepresentation, cannot be



made the basis to permit respondent No 4 to enjoy the fruits of a selection conducted illegally and contrary to the relevant statutory provisions.

22 In this regard, the learned counsel for respondent No 4 has placed reliance upon the case of *Binod Kumar Gupta & Others -Versus – Ram Ashray Mahoto & Others* reported in *AIR 2005 Supreme Court 2103*. On basis of the said judgment, respondent No 4's counsel has invoked equity. He has submitted that since there was no misrepresentation on his part and since he has continued by virtue of the appointment in question for about six years now, this Court should not interfere with his appointment. It is also submitted that in view of the current vacancy position, there are sufficient vacancies for working out equities between the parties.

23 Such submission of the learned counsel for respondent No 4 is disputed by the learned counsel for the High Court who submits that life of the panel/merit list has lapsed long back and, therefore, at this juncture, no consideration can be shown on basis of the said panel/merit list prepared in July, 2013.

24 For the reasons indicated herein above, this Court is not inclined to allow respondent No 4 to continue on grounds of equity. If respondent No 4 is allowed to continue, the



constitutional scheme of public employment would stand defeated and would result in violation of Article 16 of the Constitution of India. This Court, therefore, would desist from passing an order for continuance of respondent No 4, since his appointment is based on a selection process contrary to the provisions contained in the Bihar Reservation Act, 1991 and the Civil Court Rules. If appointment of respondent No 4 is allowed to continue, the same would amount to perpetuating an illegality. Exercise of jurisdiction under Article 226 of the Constitution of India, is not intended to be used for such a purpose. The respondent-authorities were under a constitutional obligation of giving effect to the provisions of the Reservation Act, 1991 as well as the Civil Court Rules. Appointment of respondent No 4, contrary to the same, cannot be allowed to continue.

25 As a result of appointment of respondent No 4, the petitioner has been deprived of his appointment. Once appointment of respondent No 4 has been held to be illegal, petitioner, being the first candidate in the waiting list of Backward Class Category, is legally entitled to be offered appointment on the post and cannot be made to suffer deprivation on account of the illegal appointment of respondent No 4. This Court would hold



that the petitioner is entitled to be offered appointment in place of respondent No 4, if he was otherwise not disqualified.

26 This Court would direct the respondents to appoint the petitioner against the post reserved for Backward Category, on which post, respondent No 4 had illegally been appointed, after cancelling the appointment of respondent No 4, subject to fulfillment of other requisites for appointment.

27 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.10.2019
Transmission Date	NA

