

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5757 of 2012

1. Kamaldeo Prasad, Son of Sri Sudama Prasad, Resident Of Village-Sarisawan, P.O.-Tirma Sahun, P.S. Turk Patti, District -Deoria Now Kushinagar U.P.. At Presented Posted as Incharge Sub-Divisional Prosecution Officer, Biraul At Benipur, Sub-Division-Biraul At Benipur, District-Darbhangha Bihar
2. Chhangur Ram, Son Of Sri Jagroop Ram, Resident Of Village And P.O.-Mohamdalla, P.S.-Sidhari, District-Azamgarh U.P. At Present Posted As Assistant Prosecution Officer, Sadar Court, Bhagalpur, District-Bhagalpur Bihar
3. Ram Pratap, Son Of Sri Ram Pati, Resident Of Village-Pohila, P.O.-Mahuapar P.S.-Barahalganj, District-Gorakhpur U.P.. At Present Posted As Assistant Prosecution Officer, Civil Court, Bagaha, West Champaran, District-West Champaran Bihar
4. Lallan Prasad, Son Of Late Druyodhan Prasad, Resident Of Village-Pipara Ghat, Tola Benia, P.O.-Pipara Ghat, P.S. Seorahi, District-Deoria Now Kushinagar U.P.. At Present Posted As Assistant Prosecution Officer, Civil Court, Begusarai, District-Begusarai Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Chief Secretary, Government Of Bihar, Old Secretariat, Patna
3. The Principal Secretary, The Home (Police), Department Of Home (Police), Government Of Bihar, Old Se
4. The Deputy Secretary To The Government, Department Of Home (Police), Government Of Bihar, Old Secret
5. The Commissioner-Cum-Secretary, Department Of Personnel And Administrative Reforms, Government Of Bihar Old Secretariat, Patna.
6. The Joint Secretary to The Government, Department Of Personnel And Administrative Reforms, Government Of Bihar Old Secretariat, Patna.
7. The Secretary-Cum-Secretary, Department Of Finance, Government Of Bihar, Old Secretariat, Patna.
8. The Director Of Prosecution, Department Of Prosecution, Government Of



Bihar, Old Secretariat, Patna .

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Nityanand Mishra, Adv, Mr. Sanjay Kumar Chaubey, Adv.
For the Respondent/s	:	Mr. Pawan Kumar, AC to AG.

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

Date : 18-08-2020

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.

Heard learned counsel for petitioner and learned counsel for the State.

Heard the learned counsel for the petitioners and learned counsel for the respondents.

Petitioners have prayed for following reliefs:-

- (I) For a declaration that the 3rd proviso of Section 4(2) of the Bihar RESERVATION OF VACANCIES IN POSTS & SERVICES (FOR SCHEDULED CASTES, SCHEDULED TRIBES AND OTHER BACKWARD CLASSES) Act, 1991 (AMENDED IN THE YEAR 2003) as contained in Annexure-6 to the extent it denies the benefits of reservation to the



scheduled castes of other States but on the list of Scheduled castes in the State of Bihar to be ultra vires to the Constitution of India being arbitrary, discriminatory and not applicable at all in the cases of promotion/promotional benefits belongs to the petitioners.

(II) For a declaration that Section 1(3) of the Bihar Reservation of Vacancies in posts and Services (for Scheduled Casts, Scheduled tribes and other Backward Classes) Act, 1991 amended by Bihar Act no. 15/2003 as contained in Annexure-6 by which it has been sought to be made applicable with effect from 11.06.96 issued vide letter no. 70 dated 11.06.96 by the respondent no. 5 as contained in Annexure-5 is ultra vires being unreasonable, arbitrary, discriminatory and applicable in case of the petitioners regarding promotion/promotional benefits on the ground of originally residence of out of Bihar i.e. State of Uttar Pradesh.

(III) For a declaration that even if the aforesaid provision are held to be valid, it cannot affect the already concluded appointments and promotions of the persons belonging to the scheduled castes though not being the original residence of the State



of Bihar.

(IV) For a declaration that even if the aforesaid provisions are held to be intra vires, it cannot take away the right already accrued in favour of the members of the scheduled castes of the other States i.e State of Uttar Pradesh included in the list of the Scheduled casts of the State of Bihar.

(V) For issuance of a writ in the nature of certiorari to quash and setting aside the notification issued vide no. 9994 dated 26.11.08 by the respondent no.4 as contained in Annexure-4 whereby and whereunder the petitioners have been debarred from promotion as well as promotional benefits under department of prosecution as Scheduled Caste Employment under 16% fixed quota on the basis of outsider of the state of Bihar i.e. they originally belongs to the State of Uttar Pradesh whereas by the said notification the promotion/promotional benefits have been given to those similar situated employees like the petitioners, who originally belongs to the State of Bihar, whereas no such provision was existed at the time of appointment of the petitioners as well as other employees like the petitioner, who belongs to the State of Bihar.

(VI) For issuance of a writ in the nature of



mandamus directing/commanding the respondents to consider the case of the petitioners regarding 1st promotion/promotional benefits as junior selection grade after completion of 4 years service from the date of appointment in the light of the letter issued by the Finance Department, Government of Bihar, Patna, vide memo no. 7373 dated 18.10.2000 which has not been given to the petitioners till date.

(VII) For restraining the respondents from interfering with the present posting held by the petitioners as Assistant Prosecution Officers and stay the operation of the notification issued by the respondent no.4 vide no. 9994 dated 26.11.08 as contained in Annexure- 4 and to save the petitioners from humiliation.

(VIII) For a direction to the respondents to grant the promotion to the petitioners as Sub-Divisional Prosecution Officer like the other similar situated employees as the petitioners, who originally belongs to the State of Bihar as mentioned in the notification dated 26.11.2008 as contained in Annexure-4.

(IX) For any other relief/reliefs for which the petitioners are entitled to in the facts and circumstances of the case and also in



accordance with law.

It has been submitted on behalf of State that issue raised in this petition is no more *res integra* and has been decided by Division Bench of this Court in C.W.J.C No. 15153 of 2008 dated 04.03.2009 (Khichari Ram Vs. State of Bihar and others) which has been affirmed by the Apex Court in S.L.P. (C) No. 7934 of 2009 by order dated 25.08.2014 which reads as follows:

“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 11.06.1996, 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



recruiters from ‘general category’ for all intents and purposes. However, their promotion in reserved category before 11.06.1996 in the peculiar circumstances shall remain protected up to 11.6.1996.

For the reasons as stated above, the writ petition is devoid of any merit and is accordingly dismissed. However, if any grievances of the petitioners still survives, liberty reserve to them to take recourse to such remedies as are otherwise available in accordance with law.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

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

