

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.399 of 2022

In
Civil Writ Jurisdiction Case No.9632 of 2022

=====

Ashutosh Kumar, Son of Chandeshwar Sharma, Resident of Bishunpur
Giddha, P.S.-Maniyari, District-Muzaffarpur, Bihar.

... .. Appellant.

Versus

1. The State of Bihar.
2. The Principal Secretary, Science and Technology Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Science and Technology Department, Govt. of Bihar, Patna.
4. The Bihar Public Service Commission Patna through its Secretary.

... .. Respondents.

=====

Appearance :

For the Appellant	:	Mr. Satyabir Bharti, Senior Advocate. Mr. Prince Kumar Mishra, Advocate.
For the State	:	Mr. Pratik Kumar, AC to GA-5.
For the BPSC	:	Mr. Nishant Kumar, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-03-2025

In the instant L.P.A., Appellant has assailed the order of
the learned Single Judge dated 13.07.2022 passed in C.W.J.C.
No.9632 of 2022.

2. The appellant was a candidate for recruitment to the
post of Assistant Professor, Computer Science and Engineering
in the Government Engineering College of Bihar, pursuant to
the Advertisement No.52 of 2020 dated 09.09.2020. He had
claimed his candidature under Scheduled Tribes Category. He



had applied for the post before the last date of submission of application, i.e., on 12.10.2022. He had participated in the process of selection. He was successful in written examination and invited for interview on 02.04.2022. His name was also recommended on 06.05.2022.

3. The State Government had issued a Gazette Notification No.689 of 2016 dated 23.08.2016 while including 'Lohar Caste in Scheduled Tribes List'. The appellant had obtained Scheduled Tribes Caste Certificate on 10.09.2016, pursuant to the aforementioned Gazette Notification dated 23.08.2016 insofar as inclusion of 'Lohar Caste in Scheduled Tribes List'.

4. Inclusion of 'Lohar Caste in Scheduled Tribes List' dated 23.08.2016 was the subject matter of litigation before the Hon'ble Supreme Court in **Writ Petition (Civil) No.1052 of 2021 (Sunil Kumar Rai & Ors. Versus The State of Bihar & Ors.)** in which it was struck down on 21.02.2022. In this backdrop, question for consideration is whether the appellant is entitled to claim Scheduled Tribes benefit for the purpose of selection and appointment to the post of Assistant Professor, Computer Science and Engineering under ST category, in the light of the fact that his name has been recommended for



appointment under the aforementioned category on 06.05.2022 or not?

5. Perusal of dates and events, it is evident that as on the date of recommendation of the appellant's name to be considered for appointment to the post of Assistant Professor, Computer Science and Engineering, under Scheduled Tribes Category (Lohar Caste) it was not noticed by the authority insofar as striking down the Government Gazette Notification dated 23.08.2016 insofar as inclusion of 'Lohar Caste in Scheduled Tribes List' on 21.02.2022 by the Hon'ble Supreme Court. To that effect, authorities while recommending the name of the appellant have not taken note of the Hon'ble Supreme Court decision in the case of **Sunil Kumar Rai & Others Versus The State of Bihar & Others** (cited supra). Thereafter Appellant's name was not considered, resultantly he had approached this Court in filing C.W.J.C. No.9632 of 2022 and it was dismissed. Hence the L.P.A..

6. Learned counsel for the appellant submitted that as on the last date of submission of application whatever the status of the candidate is required to be taken into consideration. In the present case, last date of submission of application being 12.10.2020, as on that date, Gazette Notification dated



23.08.2016 insofar as inclusion of 'Lohar Caste in Schedule Tribes List' was very much existing in the eye of law. Therefore, in order to give effect to the Advertisement No.52 of 2020 dated 09.09.2020 and complete the process of selection and appointment, appellant's candidature is required to be considered under Scheduled Tribes Category. Exclusion of the name of the appellant from the select list under ST category or quota and in not issuing the order of appointment is incorrect. In support of the aforementioned contentions, he has cited two decisions of the Hon'ble Supreme Court in the case of **R. Unnikrishnan and Another Versus V.K. Mahanudevan and Others**, reported in (2014) 4 Supreme Court Cases 434 (Paragraphs-12, 34 to 36 and 40 to 42) and **State of Bihar and Others Versus Mithilesh Kumar**, reported in (2010) 13 Supreme Court Cases 467 (Paragraphs-18 to 20).

7. Per contra, learned counsel for the respondents resisted the aforementioned contentions and submitted that the appellant has no indefeasible right to claim for selection and appointment. His name has been only selected for the purpose of consideration of his name for selection and appointment to the post of Assistant Professor, Computer Science and Engineering under ST category. He has no vested right to claim over the



post. In this regard, the Hon'ble Supreme Court time and again held that merely inclusion of name of the candidate in the select list, he/she does not confer any right to claim for the post. It is submitted that in the light of the fact that as on the date of recommendation of the appellant's name for selection and appointment on 06.05.2022 to the post of Assistant Professor, Computer Science and Engineering under Scheduled Tribes Category, the foundation material relating to inclusion of 'Lohar Caste in Scheduled Tribes List' vide Government Gazette Notification dated 23.08.2016 has been struck down by the Hon'ble Supreme Court in the case of **Sunil Kumar Rai & Others Versus The State of Bihar and Others** (cited supra) on 21.02.2022. Therefore, the authorities have not taken note of the Hon'ble Supreme Court decision as on the date of recommendation of the appellant's name on 06.05.2022. In the meanwhile, GAD issued notification vide Memo No.6026 dated 19.04.2022 by which it cancelled the Scheduled Caste Certificate and other benefits of 'Lohar' caste and decided that the 'Lohar' caste candidates would restore their reservation under EBC category. This crucial document was also ignored by the Selecting authority while including Appellant's name in the select list. The cited decisions on behalf of the appellants



are misplaced having regard to the factual aspects of the matters. In the case of **R. Unnikrishnan and Another Versus V.K. Mahanudevan and Others** (cited supra), he was appointed way back in the year 1987 whereas show cause notice was issued in the year 1999. In the case of **State of Bihar and Others Versus Mithilesh Kumar** (cited supra), it is submitted that factual aspects of the matter are different.

8. Heard the learned counsel for the respective parties.

9. Core issue involved in the present lis is whether the appellant's name is required to be considered for the post of Assistant Professor, Computer Science and Engineering, against the Scheduled Tribes Quota/Category or not?

10. Undisputed facts are that on 23.08.2016, the State Government issued a Gazette Notification insofar as inclusion of 'Lohar Caste in Scheduled Tribes List'. Pursuant to the aforementioned Gazette Notification, appellant being a 'Lohar Caste' submitted application and obtained Caste Certificate of Scheduled Tribes Category on 10.09.2016. The selecting authorities notified the post of Assistant Professor, Computer Science and Engineering, on 09.09.2020. Appellant being a candidate submitted his claim under Scheduled Tribes Category. He is successful in written examination and he was called for



interview on 02.04.2022. As on 21.02.2022, the Hon'ble Supreme Court has struck down the State Government Gazette Notification No.689 of 2016 dated 23.08.2016 in the case of **Sunil Kumar Rai and Others Versus The State of Bihar and Others** (cited supra), therefore, appellant's case has not been considered under Scheduled Tribes Category for the aforementioned post. The contention of the appellant that as on the last date of submission of application whatever the status of candidate is required to be taken into consideration for the purpose of selection and appointment. The aforementioned principle is not applicable to the matters like status of a caste. Last date of submission of application would be with reference to qualification for the post. No doubt, category is also equally applicable but at the same time, once the Hon'ble Supreme Court struck down the Government Gazette Notification No.689 of 2016 dated 23.08.2016 on 21.02.2022, its impact is that the Appellant's status would restore to EBC Category vide Government notification dated 19.04.2022. The appellant has no indefeasible right to claim over the post with reference to Scheduled Tribe Category. Hon'ble Supreme Court in the case of **Tej Prakash Pathak and Ors. Versus Rajasthan High Court and Ors. (CA No.2634 of 2013)**, reported in 2024



LiveLaw (SC) 864, held that no right to be appointed merely because of placement in the select list, but State must justify the exclusion. Recommendation was made on 06.05.2022 and on that date, his Caste was not under ST category in view of Hon'ble Supreme Court decision in the case of **Sunil Kumar Rai & Others Versus The State of Bihar and Others** (cited supra).

11. It is to be noted that as on the date of interview, namely, 02.04.2022, and recommendation of the appellant's name on 06.05.2022, Government Gazette Notification dated 23.08.2016 insofar as inclusion of 'Lohar Caste in Scheduled Tribes List' was not existing in the eye of law in the light of Hon'ble Supreme Court decision. Moreover as on the date of inclusion of the Appellant's name in the select list or on the date of recommendation of his name, the State Government issued notification vide Memo No.6026 dated 19.04.2022 in cancelling Caste Certificate of Lohar (ST) while restoring reservation under EBC. This was not appreciated by the Selecting authority on 06.05.2022 that Appellant's name cannot be considered under ST category. The cited decisions on behalf of the Appellant are not assisting the Appellant's case on factual aspects of the matter. He cannot have benefit of social



reservation of ST which is not existing in the eye of law insofar as 'Lohar' Caste. Moreover inclusion of any Caste under SC/ST is vested with the Hon'ble President of India under Article 341/342 respectively of the Constitution. Scheduled Tribes is defined in the Constitution under Article 366(25) thereof. It reads as under:

“366(25). “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.”

Article 342, it reads as under:

“342. Scheduled Tribes.- (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not



be varied by any subsequent notification.”

Underline Supplied.

The President officially designate Castes as SC/ST through public notification. Parliament can amend SC/ST lists through legislation, but only by including or excluding Castes, not by making changes on its own. In other words, the President holds primary power. At the same time, State Governments cannot add or remove Castes from SC/ST lists. In the light of aforementioned legal position the State Government's notification dated 23.08.2016 insofar as inclusion of 'Lohar Caste' under Scheduled Tribes category was without authority of law. Therefore, it is nullity in the eye of law from the inception.

12. The next question would be as to whether the Hon'ble Supreme Court decision has prospective effect or retrospective effect?

The Hon'ble Supreme Court decision dated 21.02.2022 passed in the case of **Sunil Kumar Rai & Others Versus The State of Bihar and Others** (cited supra), it is not crystal clear from the Judgment whether it has retrospective or prospective. In the absence of any specific observation made by the Hon'ble Supreme Court, one cannot draw inference that it has prospective



effect. On the very same issue relating to retrospectivity or prospectivity is concerned, the Hon’ble Supreme Court in the case of **Kanishk Sinha and Another Versus The State of West Bengal and Another**, reported in **2025 LiveLaw (SC) 259**, held that if there is no observation made by the Hon’ble Supreme Court to the extent whether any Judgment has prospective or retrospective effect in that event one has to draw inference that it has retrospective effect.

13. In the light of these facts and circumstances, the appellant has not made out a case to so as to interfere with the order of the learned Single Judge dated 13.07.2022 passed in C.W.J.C. No.9632 of 2022.

14. The present L.P.A. No.399 of 2022 stands dismissed.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.03.2025.
Transmission Date	NA

