

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17892 of 2024

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1. Suman Kumar, Son of Ramdhani Tanti, Resident of Village- Charoum, Nwagarhi, P.S.- Mufassil, Munger, District- Munger.
 2. Munna Kumar, Son of Sri Krishnanandan Tanti, Resident of Village- Dharhara, P.S.- Dharhara, District- Munger.
 3. Rajnish Prasad, Son of Umeshwar Prasad, Resident of Village- Sikariya, Nawadih, P.S.- Karakat, District- Rohtas.
 4. Dhiraj Kumar, Son of Lakhichand Prasad, Resident of Kagzi Mohalla, Ranchi Road, P.S.- Biharsharif, District- Nalanda.
 5. Rahul Kumar, S/o Yugal Kishore Prasad, Resident of Mohalla- Manpur Shivcharal Lane, Masjid Gali, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Labour Resources Department, Directorate, Employment and Training, Niyojan Bhawan, 4th Floor, Bailey Road, Patna.
2. The Chairman, Bihar Technical Service Commission, 19 Harding Road, Patna.
3. The Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
4. The In-charge Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
5. The Deputy Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
6. The Director, Employment and Training, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ram Shankar Das, Advocate
For the Respondent/s	:	Mr. Madhukar Mishra, AC to SC -16
For the BTSC	:	Mr. Nikesh Kumar, Advocate
		Mr. Akshansh Shanker, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT



Date : 11-08-2025

Heard the parties.

2. The petitioners, who are the aspirants for the post of Trade Instructor (Fitter) in terms with Advertisement No. 10 of 2023, have approached this Court on being aggrieved with the Resolution no. 03/Pari-BTSC-64/2019-3343 dated 30.10.2024, whereby the Bihar Technical Service Commission (hereinafter referred to as 'the Commission') came out with an important notice in connection with subject "Advertisement", in consequent to which the petitioners have been excluded from the zone of consideration, by changing the rule of game in midway of the recruitment process. The petitioners further sought a direction commanding upon the respondent Commission to select and appoint the petitioners on the basis of the prescription of the subject "Advertisement" by treating the petitioners under the prescribed reserved category of Scheduled Caste, on which category they were falling on the date of advertisement.

3. Assailing the action of the respondent Commission and the impugned resolution dated 30.10.2024, learned Advocate for the petitioners, Mr. Ram Shankar Das submitted with all vehemence that the method and manner of



selection in the midst cannot be altered/changed depriving the petitioners of the guarantee of equal opportunity in the matter of public employment; so the petitioners are entitled to be considered for appointment against the post, which were duly advertised and filled up as per the Rules prevalent at the time of advertisement.

4. Referring to the Advertisement, especially Clause 4(vii), learned Advocate for the petitioners submitted that there was a specific stipulation that the recruitment process shall be taken place in the light of Memo No. 16144 dated 28.11.2012 issued by the General Administration Department and there shall be no modification/change in the reservation category during the recruitment process. Clause 8 thereof further made it clear that all the certificates pertaining to eligibility of a candidate, including the certificate for claiming reservation shall be valid only, the particulars of which was duly mentioned in the Online application form. However, all the certificate must have been issued prior to the cut off date on 03.08.2023.

5. In tune with the terms of the advertisement, the petitioners, who were the candidates falling under the category of Scheduled Caste submitted their respective castes certificates



along with necessary documents. The petitioners along with others upon receipt of the admit-card participated in the examination and declared successful, whereupon called for the document verification. List of selected candidates under different streams along with respective cut off marks were issued and they were called for document verification. In the meanwhile, the Commission vide letter no. 3178 dated 15.10.2024 directed the candidates to submit their valid caste certificate, failing which the claim of reserved category may be changed or considered appropriately. It is respectfully submitted that petitioner no.1 and 2 have filed their Online applications under Scheduled Caste category and both have claimed their respective caste category on the basis of their caste as “**Tanti-Tantwa**”. However, while the recruitment process was going on in the meanwhile the Department of General Administration, Government of Bihar in compliance with the order of the Hon’ble Supreme Court of India in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna Vs. The State of Bihar & Ors.** (Civil Appeal No. 18802 of 2017) has issued a Gazette Notification No. 764 dated 12.08.2024.

6. In the light of the aforesaid Gazette Notification, the Labour Resources Department vide its Letter No. 2441 dated



04.09.2024 and further vide letter no. 2594 dated 19.09.2024 has directed the Commission to rectify the merit list in view of the mandate of the Hon'ble Supreme Court. The Commission requested the petitioners and other candidates to submit on record, their respective caste certificates/Non-creamy layer certificates for grant of reservation benefit in terms with the judgment rendered by the Hon'ble Supreme Court in SLP No.18802 of 2017 and clarified the position. In the light of the decision of the Hon'ble Supreme Court and the Gazette Notification as well as consequential letters, the caste of all these petitioners, which was "**Tanti-Tantwa**" prior to 2015, but later on their reservation category was declared to be Extremely Backward Class (EBC) from Scheduled Caste (SC), the candidatures of the petitioners were considered, however, they could not get the cut off marks under EBC category and thus were not selected. The entire action and impugned resolution are put to challenge by the petitioners.

7. Adverting the aforesaid facts, Mr. Das, learned Advocate for the petitioners further urged that the caste/category applicable for reservation in selection process must be based upon the category existing at the time of advertisement or at the time of cut off date or submission of application, subsequent



changes in caste/category will not have any retrospective application. To support the aforesaid contention, reliance has been placed on a Bench decision of this Court in the case of **Ram Krishna Babloo Vs. The State of Bihar & Ors.** (C.W.J.C. No. 10518 of 2013). Referring to the decision in the case of **Ashutosh Kumar Vs. the State of Bihar & Ors.**, reported in **2015 (4) PLJR 609**, learned Advocate for the petitioners further submits that once the process for conducting examination was initiated, the petitioner falling under the category of Schedule Caste or Backward Caste cannot be altered. Any resolution though indicated to take effect immediately can take effect prospectively for future examinations. The changes made in midway would not effect the process initiated earlier, otherwise it would have serious fall out.

8. Further reliance has been placed on a decision in the case of **Kusum Kumari Vs. The State of Bihar & Ors.**, reported in, **2021 (1) BLJ 702** where the Court considering the fact of changing the reservation category of Most Backward Class (MBC) to Scheduled Tribe (SC) during on going selection process has held that the petitioner was entitled for reservation in terms of the Act of 1991, based upon which she had



submitted her application under MBC category. Later on, even if she made correction and claimed to be a candidate under the category Scheduled Tribe, in view of the amended resolution, was only a bonafide act of the petitioner and that would not take away her right to get reservation as Most Backward category candidate.

9. Reliance has also been placed on a learned Division Bench decision of this Court in the case of **Registrar, Bihar Animal Sciences University Vs. Md. Aman Hassan & Ors.**, (L.P.A. No.829 of 2023) to the effect that introduction of new criteria after advertisement would render the entire selection process vulnerable to challenge. Selection process must adhere to the rules and terms prevailing at the time of advertisement. Any amendment or imposition of new requirements during or after the process is not permissible, as it changes the rules of the game.

10. Learned Advocate for the petitioners further cited the Division Bench decision of this Court in the case of **State of Bihar & Ors. Vs. Archana Kumari & Ors.**, reported in **2024 (2) PLJR 645** and submitted that to abandon the earlier selection process is held to be impermissible by the learned Division Bench. The Court having taken note of the fact that the



selection process initiated under the 2018 Rules, but subsequently fresh advertisement issued under 2023 Rules altering the mode of selection, held that it constituted a change of rule midway, prejudicing earlier applicants and thus set aside the subsequent advertisement.

11. Mr. Nikesh Kumar, learned Advocate for the Commission and Mr. Madhukar Mishra, learned Advocate for the State dispelling the aforesaid contention have submitted that the contention of the petitioners is wholly misplaced in view of the decision of the Hon'ble Supreme Court in the case of **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna Vs. The State of Bihar & Ors.** (Civil Appeal No. 18802 of 2017) and other analogous cases bearing SLP (Civil) No.18294 of 2021 whereby the Court while setting aside the Resolution dated 01.07.2015 issued by the General Administration Department held that all such posts of the Scheduled Castes reserved quota which have been extended to the members of the "Tanti-Tantwa" community appointed subsequent to the Resolution dated 01.07.2015 be returned to the Scheduled Castes Quota and all such members of the "**Tanti-Tantwa**" community, who have been extended such benefit may be accommodated under their original category of Extremely Backward Classes, for which the



State may take appropriate measures.

12. The Gazette notification dated 12.08.2024 has been duly issued in deference with the decision rendered in the case of **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra); since the recruitment process has not been culminated and as such the Gazette notification has been made applicable and the petitioners have been treated as the candidate under the Extremely Backward Class category. Furthermore, the petitioners did not get the cut off marks under the EBC category, hence they have been non-suited.

13. Mr. Nikesh Kumar, learned Advocate for the Commission has also placed reliance upon a decision of the learned Division Bench of this Court in the case of **Ashutosh Kumar Vs. The State of Bihar & Ors.** (LPA No. 399 of 2022) and submitted that identical issue had come up for consideration and the Court held that in absence of any specific observation made by the Hon'ble Supreme Court, one cannot draw inference that it has prospective effect. Placing reliance upon the decision rendered in the case of **Kanishk Sinha and Another Vs. 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. In identical situation, the learned Division Bench did not interfere with the order of the learned Single Judge dismissing the writ petition seeking similar reliefs.

14. Having bestowed anxious consideration to the submissions advanced by the learned Advocate for the respective parties and on careful consideration of the materials available on record, it appears that the position is admitted that the petitioners before this Court, falling under the category of **“Tanti-Tantwa”** as Scheduled Caste category, but on account of re-location/restoration from Scheduled Castes to Extremely Backward Class, as also having not obtain the cut off marks under the Extremely Backward Class category, they have been left out in the revised recommendation list, which has been published in terms with the Extraordinary Gazette Notification dated 12.08.2024 by the Department of General and Administration in compliance with the order passed by the Hon’ble Supreme Court in the case of **Dr. Bhim Rao Ambedkar Vihar Manch Bihar, Patna** (supra).

15. In order to appreciate the issue as formulated here, it would be pertinent to refer the mandate of the Hon’ble



Supreme Court, as rendered in the aforementioned case. The correctness of the judgment and order dated 03.04.2017 passed by a Division Bench of this Court, affirming and validating the second part of the Resolution dated 01.07.2015, whereby **“Tanti-Tantwa”** caste was sought to be merged with Entry-20 of the Scheduled Castes list, namely, the caste of **“Pan, Sawasi, Panr”** and extending all the benefits of Scheduled Castes, has come up for consideration before the Hon’ble Supreme Court.

16. The challenge was mainly on the ground that the State Government had no competence/authority/power to add a caste or sub-caste to any entry in the Scheduled Castes list notified under the Presidential Order under Article 341 of the Constitution of India. Once the list under the Presidential Order is published, thereafter, any amendment, addition, deletion or modification to the said list can be made only by law enacted by Parliament and not otherwise. The Hon’ble Supreme Court after having given in depth consideration held that the Resolution dated 01.07.2015 was patently illegal, erroneous as the State Government had no competence/authority/power to tinker with the lists of Scheduled Castes published under Article 341 of the Constitution. The submission of the respondent-State that Resolution dated 01.07.2015 was only clarificatory, not found



worth considering for a moment and out rightly rejected. The Hon'ble Supreme Court observed that the State of Bihar has tried to read something in order to suit its own ends for whatever reason and thus held that the High Court fell in serious error in upholding the said Notification on a completely wrong premise without referring to Article 341 of the Constitution. The Hon'ble Supreme Court finally in its penultimate paragraph ruled as follows:

“39. Now comes the question with regard to protecting those Members of **“Tanti-Tantwa”** community who were extended benefit of Scheduled Castes pursuant to the Resolution dated 01.07.2015. In the present case, the action of the State is found to be *mala fide* and *de hors* the constitutional provisions. The State cannot be pardoned for the mischief done by it. Depriving the members of the Scheduled Castes covered by the lists under Article 341 of the Constitution is a serious issue. Any person not deserving and not covered by such list if extended such benefit for deliberate and mischievous reasons by the State, cannot take away the benefit of the members of the Scheduled Castes. Such appointments would under law on the findings recorded would be liable to be set aside. However, as we have found fault with the conduct of the State and not of any individual member of the **“Tanti- Tantwa”**



community, we do not wish to direct that their services may be terminated or that recovery may be made for illegal appointments or withdrawal of other benefits which may have been extended. We are of the view that all such posts of the Scheduled Castes reserved quota which have been extended to the members of the “**Tanti-Tantwa**” community appointed subsequent to the Resolution dated 01.07.2015 be returned to the Scheduled Castes Quota and all such members of the “**Tanti-Tantwa**” community, who have been extended such benefit may be accommodated under their original category of Extremely Backward Classes, for which the State may take appropriate measures.

40. Accordingly, the Appeals succeed and are allowed.

41. The impugned Resolution dated 01.07.2015 is, hereby, quashed.

42. It is further directed that such posts of the Scheduled Castes Quota which had been filled up by members of “**Tanti-Tantwa**” community availing benefit on the basis of Resolution dated 01.07.2015 may be returned to the Scheduled Castes category and such candidates of “**Tanti-Tantwa**” community be accommodated by the State in their original category of Extremely Backward Classes by taking appropriate measures.”



17. Bare reading of the mandate of the Hon'ble Supreme Court there is not even slightest ambiguity that the Court having been found fault with the conduct of the State and not of any individual member of the "**Tanti-Tantwa**" community have taken a lenient view and directed that their services may not be terminated by treating it as illegal appointments or there should not be any order for recovery or withdrawal of other benefits which may have been extended. However, all such posts of the Scheduled Castes reserved quota which have been extended to the members of the "**Tanti-Tantwa**" community appointed subsequent to the Resolution dated 01.07.2015 be returned to the Scheduled Castes Quota and all such members of the "**Tanti-Tantwa**" community, who have been extended such benefit may be accommodated to the original category of Extremely Backward Classes, for which the State may take appropriate measures. The Court further clarified that the posts of the Scheduled Castes Quota which had been filled up by members of "**Tanti-Tantwa**" community availing benefit on the basis of Resolution dated 01.07.2015 may be returned to the Scheduled Castes category and such candidates of "**Tanti-Tantwa**" community be accommodated by the State in their original category of Extremely Backward Classes by



taking appropriate measures.

18. In the light of the mandate of the Hon'ble Supreme Court, the Department of General Administration, Government of Bihar has come out with Gazette Notification No. 764 dated 12.08.2024 repealing the Resolution No. 9532 dated 01.07.2015.

19. In view of the Gazette Notification noted hereinabove, the Department of General Administration, Government of Bihar, Patna also informed the requisitionist Labour Resources Department vide its letter no. 2441 dated 04.09.2024 and further by letter no. 2594 dated 09.09.2024 to rectify the merit list in view of the direction of the Hon'ble Supreme Court in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra). In the Aforesaid premise, the Commission has afforded opportunity to all the petitioners to file their respective caste certificate(s)/non creamy layer certificate(s) for grant of reservation benefit in terms with the judgment of the Hon'ble Supreme court and the consequent notification issued by the General and Administrative Department. However, the petitioners failed to do so and placed reliance upon their earlier certificates, which have been filed at the time of filling their applications. Subsequent thereto, taking note of the fact that the



caste of all the petitioners prior to 2015 was “**Tanti-Tantwa**” and thus their reservation category was changed to Extremely Backward Class (EBC) from Schedule Caste (SC). Since the petitioners could not get the cut off marks of selected candidates in EBC category and thus they were not selected in the fresh select list, which was published in the Public Notice dated 30.10.2024, whereby the impugned resolution dated 01.07.2015 is quashed and cancelled based upon which resolution, the claim of the petitioners for reservation under Schedule Caste category was stood.

20. It would be pertinent to note here that the submissions of the petitioners that the change in selection criteria after the commencement of selection process is impermissible and amounts to altering the rules of game is wholly misconceived and not applicable in the present case in view of the mandate of the Hon’ble Supreme Court noted hereinabove.

21. Suffice it to observe that the Hon’ble Supreme Court time without number has made it clear that in absence of a declaration that the decision of the Court would operate prospectively, it must be given retrospective effect. The Hon’ble Supreme Court in the case of **Directorate Of Revenue**



Intelligence vs Raj Kumar Arora & Ors., reported in, **2025**

(3) PLJR (SC) 124 while addressing the issue of retrospective effect of a judicial decision has been pleased to held in paragraph no.94, which is as follows:

94. While addressing the issue of the temporal and retrospective effect of a judicial decision and declaring that a tribunal or court is bound by a higher court's decision on the point in issue, irrespective of whether it is declared either prior to or subsequent to the order which is sought to be called into question by a party, this Court in **Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stick Exchange Limited** reported in (2008) 14 SCC 171 stated that a judicial decision acts retrospectively by placing reliance on the Blackstonian theory. According to this theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". Therefore, if the subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively. In other words, if in a given situation an earlier decision of the court operated for quite some time and it is overruled by a subsequent decision, the



decision rendered subsequently would have retrospective effect and would serve to clarify the legal position which was not clearly understood earlier. Any transaction would then be covered by the law declared by the overruling decision. The overruling is generally retrospective with the only caveat being that matters that are res judicatae or accounts that have been settled in the meantime would not be disturbed. The relevant observations made by this Court are reproduced hereinbelow:

“35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a “new rule” but to maintain and expound the “old one”. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have



retrospective effect clarifying the legal position which was earlier not correctly understood.

36. Salmond in his well-known work states:

“[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime.”

(Emphaasis supplied)

22. It would also be pertinent to observe here that identical issue has come up for consideration before the learned Division Bench of this Court in the case of **Ashutosh Kumar Vs. The State of Bihar & Ors.** (L.P.A. No. 399 of 2022) wherein the appellant, who was a candidate for recruitment to the post of Assistant Professor in pursuant to the Advertisement No.52 of 2020 had claimed his candidature under Scheduled Tribes Category. However, despite the recommendation of his name for appointment under the aforementioned category, he



could not be appointed and thus on being aggrieved, the petitioner preferred C.W.J.C. No.9632 of 2022, but the same did not get any succor and thus the order of the learned Single Judge has been put to question before the learned Division Bench of this Court. It was the specific contention of the appellant that he had participated in the process of selection in terms of Advertisement No. 52 of 2020 under the category of Scheduled Tribe based upon Gazette Notification issued by the State Government, bearing No.689 of 2016 dated 23.08.2016, wherein the '**Lohar Caste**' was included in the Scheduled Tribes list. 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 the Writ Petition (Civil) No.1052 of 2021 (**Sunil Kumar Rai & Ors. Versus The State of Bihar & Ors.**) in which the same was struck down on 21.02.2022.

23. Notwithstanding the aforesaid position, the appellant had led his submission that on the last date of submission of application, whatever the status of the candidate was required to be taken into consideration and since the 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, exclusion of the petitioner and



unsuited him against the post of Assistant Professor under Scheduled Tribe was wholly illegal. The learned Division Bench of this Court having taken note of undisputed fact that 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 & Ors.** (supra), held the contention of the appellant is not applicable to the matters like status of a caste. The Court categorically observed that the appellant has no indefeasible right to claim over the post with reference to Scheduled Tribe Category. Referring to the decision rendered in the case of **Tej Prakash Pathak and Ors. Vs. Rajasthan High Court and Ors.**, reported in, **2024 LiveLaw (SC) 864** it has further been observed that no right to be appointed merely because of placement in the select list, but State must justify the exclusion.

24. The Court further clarified that the judgment whether it has retrospective or prospective can very well be looked into by the decision itself; in the absence of any specific observation made by the Hon'ble Supreme Court, one cannot draw inference that it has prospective effect. The Hon'ble Supreme Court in the case of **Kanishk Sinha & Another Vs. 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. The learned Division Bench finally on being found no merit in the appeal, dismissed the same.

25. In the case in hand, from bare perusal of the ruling in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra), there is no iota of confusion that it has specifically given retrospective effect with a clear mandate, as noted hereinabove.

26. In view of the mandate of the Hon’ble Supreme Court in the case of **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra), as also the subsequent notification(s) issued by the State Government, this Court does not find any merit in the writ petition; accordingly it is hereby dismissed.

27. The parties shall bear their own costs.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2025
Transmission Date	NA

