

(2011) 02 PAT CK 0031

In the Patna High Court

Case No : LPA No. 1568 of 2010 in CWJC No. 709 of 2007 and I.A. No. 8727 of 2010 in LPA No. 1568 of 2010

Animesh Sil

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0031

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—Feeling aggrieved by the common judgment and order dated 3rd August, 2010 passed by the learned Single Judge, in so far as CWJC No. 709 of 2007 has been allowed, the Respondent No. 5 (hereinafter referred to as "the Appellant") has preferred this Appeal under Clause 10 of the Letters Patent. Respondent No. 5 is the writ Petitioner.

2. Pursuant to the advertisement published by the Respondent Rajendra Agricultural University (hereinafter referred to as "the University"), the Appellant applied for appointment to the post of Junior Scientist-cum-Assistant Professor in Agriculture Statistics as an Extremely Backward Class candidate. Out of the three posts advertised post was reserved for Extremely Backward Class candidate. After due recruitment process, the Appellant was selected and appointed as Junior Scientist-cum-Assistant Professor in Agriculture Statistics on 20th November, 2006. Feeling aggrieved by the selection of the Appellant, the writ Petitioner filed above CWJC No. 709 of 2007 to challenge the selection and appointment of the Appellant.

3. According to the writ Petitioner, the Appellant did not belong to the Extremely Backward Class as claimed by him. He was a "Nayee". and a native of Tripura. The caste "Nayee" in the State of Tripura is recognized as "Backward Class". The Appellant not being a native of Bihar and not being an "Extremely Backward Class" recognized by the State of Bihar, he could not have been selected for or appointed on a post reserved for Extremely Backward Class candidate.

4. The petition was contested by the Appellant. At first, the University also contested the petition. According to the Appellant, though he was a native of Tripura, he had migrated and settled in Bihar since 1983. He had thus been residing in the State of Bihar for more than 20 years and had acquired domicile of the State of Bihar.

5. By a latter affidavit the University supported the writ petition. According to the University, the domicile and the caste certificate dated 27th May, 2006 issued by the District Magistrate, Lakhisarai declaring that the Appellant was a resident of Bihar and that he belonged to "Chany" community was not valid.

6. The learned Single Judge allowed the writ petition. The learned Single Judge has held that the Appellant did not acquire domicile of the State of Bihar by continuous and long residence. As he is a native of Tripura, he cannot take benefit of the reservation in the State of Bihar. Therefore, this Appeal.

7. The facts are not in dispute. It is admitted that the Appellant is a native of Tripura. He was born and had received education at Tripura. He passed his Secondary and Higher Secondary Examinations from Tripura Board of Secondary Education. Since then he shifted to Bihar to pursue higher studies in the University. He has also secured a Caste Certificate dated 5th December, 1995 issued by the Sub-Divisional Officer, Udaipur, South Tripura declaring that the Appellant was "Napit" (Barber), a community which is recognized as a "Backward Class" under the Government of India Resolutions dated 10th September, 1993 and 19th October, 1994 and that the Appellant and his family ordinarily reside in the South District of Tripura State. The Appellant has also secured a Caste Certificate dated 8th November, 2006 issued by the Sub-Divisional Officer, Samastipur declaring that the Appellant was a resident of Pusa, District-Samastipur and belongs to "Nayee" community.

8. The short question that arises for our consideration is whether the Appellant can be said to be a domicile of Bihar and whether he is entitled to the benefit of reservation for "Extremely Backward Class" in the State of Bihar.

9. The terms and conditions of the appointment, inter alia, provides:

2. Reservation facility for candidate of SC/ST, Other Backward Classes and physically handicapped will be given as per Bihar State Government Reservation Rules. The SC/ST and Other Backward Class candidates can also apply on unreserved posts. No reservation facility will be provided to the candidate belonging to other than domicile of the Bihar State.

10. Learned Advocate Mr. Y.V. Giri has appeared for the Appellant. He has submitted that the Appellant belongs to a Barber community. The Barber community is recognized as a Backward Class in the State of Tripura and Extremely Backward Class in the State of Bihar. The Appellant is residing in the State of Bihar continuously since 1983. He has thus acquired domicile of Bihar by long and continuous residence. He was, therefore, entitled to appointment on the

post reserved for "Extremely Backward Class". In support of his submission, he has relied upon the judgments of the Hon"ble Supreme Court in the matters of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ; of Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, ; of Subhash Chandra and Another Vs. Delhi Subordinate Services Selection Board and Others, ; of U.P. Public Service Commission, Allahabad Vs. Sanjay Kumar Singh, ; of Union of India and Others Vs. Dudh Nath Prasad, .

11. The Appeal is contested by the University, the State of Bihar and the Respondent No. 5. Learned Advocate Mr. Anil Kumar Upadhyay has appeared for the University. He has submitted that the Barber community is not recognized in the State of Tripura as "Extremely Backward Class". The Appellant, being domicile of Tripura and a "Backward Class" there, cannot claim the benefit of reservation meant for the "Extremely Backward Class".

12. Learned Advocate Mr. Ram Chandra Prasad Bharti has appeared for the State of Bihar. He too has submitted that the Appellant being a "Backward Class" candidate in the State of Tripura could not have been selected and appointed on a post reserved for "Extremely Backward Class" candidate.

13. Learned Advocate Mr. Arjun Kumar has appeared for the Respondent No. 5. He has contested the Appeal and has supported the judgment of the learned Single Judge.

14. We must first clarify that the word domicile used in the terms and conditions of the University is a misnomer. Domicile can be one and only one and that is of India. As discussed by the Hon"ble Supreme Court in the matter of Dr. Pradeep Jain (supra), there cannot be a domicile of a State i.e., domicile of Tripura or of State of Bihar etc. However, the word domicile is frequently used by the States and other authorities to convey the meaning "a resident" or "a native". By the aforesaid Condition No. 2, what the University meant was that the candidate claiming reservation as a Scheduled Caste or Scheduled Tribe or Other Backward Class candidate shall be a native of the State of Bihar. In other words, the candidates who are not native of Bihar, irrespective of their long residence in the State of Bihar, would not be entitled to the benefit of reservation in the State of Bihar.

15. We believe, it is high time that the State Government and its authorities should know that the word domicile has specific meaning as envisaged by Article 5 of the Constitution and should not be used loosely as is done in the present case. The usage of specific words "resident of" or "native of" would avoid any misgiving about its meaning.

16. In the matter of Dr. Pradeep Jain and Ors. (supra) the Hon"ble Supreme Court has succinctly discussed what the word "domicile" means. Hon"ble Mr. Justice P.N. Bhagwati (as he then was) observed that the area of "domicile" is the country which has the distinctive legal system and not merely the particular place in the country where the individual resides. In the backdrop of Article 5 of

the Constitution the court held that it recognizes only one domicile, namely, domicile in India. It would not be right to say that citizen of India is domiciled in one State or another forming part of the Union of India. In the opinion of the Hon"ble Supreme Court it is highly detrimental to the concept of unity and integrity of India to think in terms of State domicile. The word "domicile" in the rules of the State Governments is not used in its technical legal sense but in a popular sense as meaning residence and is intended to convey the idea or intention to reside permanently or indefinitely.

17. In the matter of Marri Chandra Shekhar Rao (supra) the Hon"ble Supreme Court held that:

Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas.

18. In the matter of Subhash Chandra and Anr. (supra) same is the view reiterated by the Hon"ble Supreme Court. The Hon"ble court observed that the persons belonging to a particular caste or tribe may suffer some disadvantages in one State but may not suffer the same disadvantages in the other. Said view is reiterated in the matter of Sanjay Kumar Singh (supra).

19. In the matter of Dudh Nath Prasad (supra) the Hon"ble Supreme Court upheld the claim of the Respondent for benefit of reservation in the State of West Bengal though the Respondent was born and educated in Bihar on the premise that he belonged to Nuniya Caste notified as Scheduled Caste in the West Bengal and that his parents were residing in West Bengal for past 30 years.

20. We are of the opinion that on the facts of the present case, contrary to the law decided by the Hon"ble Supreme Court, the Appellant cannot raise his matter to a higher pedestal relying upon the above referred judgment in the matter of Dudh Nath Prasad.

21. The law on the point is quite well settled. We do not need to delve upon the issue. As discussed in the above referred judgments and as it is the policy of the Government of India, the reservation for a post in any State is made for the benefit of the natives of that State. If a native of one State migrates to another State, he does not become entitled to reservation in the latter State merely by a long residence. The learned Single Judge has rightly held that the Appellant being a native of Tripura, having been born and educated there, cannot claim benefit of reservation in the State of Bihar. The selection and appointment of the Appellant on a post reserved for Extremely Backward Class candidate was, therefore, not justified. The Appellant in the State of Bihar is an ordinary citizen. While making application for appointment to a post in the University he could have applied for appointment on an unreserved post and not on a post reserved for a specific category of persons.

22. For the aforesaid reasons, we dismiss this Appeal. The parties will bear their own cost.

Jyoti Saran, J.

23. I agree.