

(2012) 02 PAT CK 0113
In the Patna High Court
Case No : CWJC No. 14292 of 2006

Braj Bhushan Prasad Sinha	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Constitution of India, 1950 — Article 16(4A), 335

Citation : (2012) 2 PLJR 469

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Kali Das Chatterji and Amlesh Kumar Verma, for the Appellant; Anis Akhtar, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. At the relevant time petitioner served as Assistant Engineer in the Public Health Engineering Department of the State Government. He filed this writ petition questioning the validity of notification of the State Government dated 5.7.2005, Annexure-3 whereunder 11 Assistant Engineers have been promoted as Executive Engineer on the ground that Kishori Lal Baitha and Suresh Prasad Soor, respondent nos. 6, 7 were granted such promotion contrary to the reservation roster point fixed by the Government under letter no. 458 dated 30.9.2002 pursuant to Article 16(4-A) of the Constitution inserted under Constitution (85th Amendment) Act, 2001 and the corresponding amendment made in the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 vide Amending Bihar Act 17 of 2002.

2. It is submitted by the counsel for the petitioner that notification issued by the Government providing for reservation in promotion for the Scheduled Castes/Tribes under resolution of the Government bearing no. 213 dated 7.6.2002 was issued without undertaking any exercise to objectively collect quantifiable data

showing backwardness inadequacy of representation of the members of the Scheduled Castes/Tribes in the Engineering Services of the State keeping in view the efficiency of the Engineering Services, as is required under Articles 16(4-A), 335 of the Constitution. Appreciating such aspect of the matter this Court in the case of Arun Prasad vs. The State of Bihar & Ors., reported in 2011(3) PLJR 764 quashed subsequent instruction of the State Government dated 5.2.2008 issued reiterating the contents of the resolution dated 7.6.2002. Learned counsel for the petitioner further submitted that even without going into the correctness or otherwise of the resolution dated 7.6.2002 and letter dated 5.2.2008 promotion granted to the private respondents is bad as they have been promoted against vacancy, which was meant for unreserved members of the service.

3. From the counter affidavit filed in the matter it appears that the impugned notification was issued in the light of the reservation policy of the Government contained in letter no. 117 dated 30.9.1995 which was issued after insertion of Article 16(4-A) of the Constitution w.e.f. 17.6.1995 enabling the State to make provision for reservation in the matters of promotion with consequential seniority to the members of Scheduled Castes/Tribes member of the service, provided in the opinion of the State Scheduled Castes/Tribes are not adequately represented in the service under the State. In the instant case, nothing has been placed on record by way of counter affidavit that before applying the new reservation policy in terms of Article 16(4-A) of the Constitution the Government ever applied its mind to the question that the members of Scheduled Castes/ Tribes are not adequately represented in the Engineering Services of the State. The State Government without undertaking any exercise to objectively collect the quantifiable data showing backwardness, inadequacy of representation of the members of SC/ST in the Engineering Services proceeded to implement the new reservation policy. Such aspect of the matter has already been, considered by the High Court in the case of Arun Prasad (supra) and the instruction of the State Government dated 5.2.2008 reiterating the contents of resolution of the Government bearing no. 213 dated 7.6.2002 has already been quashed. Even otherwise promotion granted to respondent nos. 6 and 7 is contrary to the reservation point as they have been promoted against unreserved vacancy contrary to the roster point fixed by the Government in terms of the new reservation policy under letter no. 458 dated 30.9.2002, Annexure-6 against vacancy which was meant for unreserved member of service which cannot be sustained. Earlier authorities considered promotion of 47 members of the Engineering Service including the three against whom departmental proceeding was pending by either promoting or keeping post reserved by adopting under sealed cover procedure vide letter no. 843 dated 14.3.2005, Annexure-5. Impugned notification is issued for filling up 14 posts for which exercise has to be made as per the category of vacancy between roster points 43 to 61 taking into account seniority position of the members of the service, which is made hereinbelow for ready reference:--

Roster Point

Roster system

Gradation list serial no.

Name

48

Reserved

17

Sri Janeshwar Kumar (Resp. No. 4 deleted)

49

Unreserved

4

Sri Raman JiJha

50

Unreserved

5

Sri Ajay Kr. Sinha

51

Scheduled Caste

6

Sri Ashok Kumar

52

Unreserved

7

Sri Vijay Kumar Shrivastava

53

Unreserved

8

Sri Sanjay Dubey

54

Unreserved

9

Sri Ramchandra Prasad

55

Unreserved

10

Sri Satyenda Prasad

56

Reserved

19

Sri SriArbindPrakashRanjan (Resp. No. 5 deleted)

57

Unreserved

11

Sri Sanjay Kumar Singh

58

Unreserved

12

Sri Wajid Ali Ansari

59

Unreserved

13

Sri BishundeoDiswa

60

Unreserved

14

Sri Md. Sahdullah Javed

61

Unreserved

15

Sri BrajBhushan Prasad Sinha (petitioner)

4. Appreciating the aforesaid aspect of the matter that respondent nos. 6, 7

being below in the seniority position could not have been promoted under impugned notification against unreserved vacancy, this Court issued notice to both respondent nos. 6 and 7 who have not chosen to appear in spite of valid service of notice. In the circumstances, this Court has no option but to quash their promotion made under notification nos. 236, 237 dated 5.7.2005, Annexure-3 with further direction to the State respondents to consider the request of the petitioner to advance the date of his promotion with effect from the same date others have been so promoted under notification dated 5.7.2005, Annexure-3- Necessary compliance of this order be made by the authorities as early as possible, in any case within two months from the date of receipt/production of a copy of this order. The writ application is, accordingly, allowed.