
(1992) 11 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5695 of 1991

Chandrika Prasad

APPELLANT

Vs

The State of Bihar and other

RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Constitution of India, 1950 — Article 15(1), 15(2), 15(4), 16(1), 16(4)

Citation : (1993) 1 PLJR 204

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Anil Kumar, Dineshwar Prasad, Subodh Kumar and Aruna Sahay, for the Appellant; R.A. Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—The petitioner originally prayed for a writ of a direction from this Court to promote him to the post of Superintendent (Typing) in the Directorate of Industries and pay to him his arrear of salary and other emoluments from the date he has been working against this post since 1.8.1990. The petitioner however, filed an application for amendment of the writ application on 11.5.1992 praying therein to quash the instructions issued by the State of Bihar contained in letter No. 20165 dated 8.11.75 read with letter No. 148 dated 2.11.1991 as contained in Annexures 6 and 7 thereto.

2. Bereft of all unnecessary details the fact of the matter lies in a very narrow compass.

3. The petitioner is the senior most man in the cadre of Typists of the Directorate of Industries. He by reason of the order was directed to perform the duties of the vacant post of Superintendent, Typing. The said letter is contained in Annexure-1 to the writ application. Pursuant to the said order he joined the said post on 1.8.1990 but he had not been given a regular promotion to the said post. The petitioner filed a representation as also served legal notice which are contained

in Annexures 3 series and 4 respectively.

In a counter affidavit filed on behalf of the State it has been contended that only the post of Superintendent (Typing) has been created in the department which fell vacant on the retirement of one Shri Raj Behari Sinha on 30.11.1985. It has been contended that the vacant post is meant for scheduled caste candidate and in support thereof the State has relied upon the circular letter dated 2.11.1991 (Annexure-A) and dated 8.11.1975 (Annexure-B) to the counter affidavit for the purpose of showing that in case there exists one post and although there can be no reservation therefor; but once a post is held by a general candidate and the said post becomes vacant in future, it would be filled up by the reserved candidate and not by a general one.

3A. It is not disputed at the bar that no reservation policy can be enforced when there exists only one post as the same would mean cent-percent reservation. The question, therefore, which falls for consideration, is whether even 50 point Roster system can be applied in such a case.

4. The question is no longer res Integra. In Chakradhar Paswan Vs. State of Bihar and Ors, , the question as to whether the post of Deputy Director (Homoeopathy) could be treated as a reserved post the Supreme Court held :?

Another serious infirmity in the argument of the Learned Counsel for the appellant is that it overlooks the basic principle that if there is only one post in the cadre, there, can be no reservation under Article 16(4) of the Constitution. The whole concept of reservation for application of the 50 Point roster is that there are more than one post, and the reservation as laid down by this Court in M. R. Balaji case can be up to 50 percent. The Government cannot for instance declare that the post of the Director of Indigenous Medicine shall be reserved for the candidates belonging to Scheduled Castes. The Director is a paramedical Service with Director in its head and the three Deputy Directors belonging to three distinct and separate disciplines viz, Homoeopathic, Unani and Ayurvedic under him. In the para-medical system the three posts of Deputy Directors pertain to three distinct systems and therefore such of them is an isolated post by itself. The same principle should, we think, in the case of the Director, apply.

It further held :

It is quite clear after the decision in Devandaran case that no reservation could be made under Article 15 (4) so as to create a monopoly. Otherwise it would render the guarantee of equal opportunity contained in Articles 16 (1) and 15 (2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling of a future vacancy in respect of that post. A reservation which would come under Article 15 (4) presupposes the availability of at least more than one post in that cadre.

4. This aspect of the matter has also been dealt with by a learned Single Judge of this Court in *Md. Fasli Ahmad vs. State of Bihar and others* in CWJC No. 300 of 1989 disposed of on 6th January, 1990, wherein it has been held that the post of Senior Selection Grade Typist cannot be treated as reserved post.

5. In *Md. Fasli Ahmed's* case (*supra*) it has categorically been held that it would be unreasonable to keep a post so that the same may be filled up by a candidate belonging to Scheduled Caste and Scheduled Tribe. In that case also *Chakradhar Paswan's* case has been followed. Recently the same view has been reiterated by a Bench of this Court in which one of us, namely, S. B. Sinha, J. was a member in the case of *Anand Kumar Singh Vs. State of Bihar* .

6. In this view of the matter, that portion of Annexure-B whereby 50% roster system is sought to be applied even in a case where there exists only one post must be held to be ultra vires Article 15 (1) of the Constitution of India.

7. For the reasons aforementioned, this application must be allowed and the respondents are hereby directed to consider the case of the petitioner for promotion to the post of Superintendent (Typing) treating the same to be a general post in accordance with law.

8. In the facts and circumstances of the case, the State shall also consider that in the event the petitioner is found fit for promotion to that post whether he should be promoted with retrospective effect. This application is thus allowed but there will be no order as to costs.