

(2018) 01 PAT CK 0052
In the Patna High Court
Case No : 4133 of 2016

Deepti Barnwal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Citation : (2018) 01 PAT CK 0052

Hon'ble Judges : Jyoti Saran

Bench : Single Bench

Advocate : Rajendra Pd. Singh, D.P.Singh, Shilpa Singh, Ramvinay Pd. Singh, R.N.Choudhary, Shail Kumari, Anjani Kumar Sharan, Siddhartha Prasad

Final Decision : Disposed Off

Judgement

1. Heard Mr. Rajendra Prasad Singh, learned Senior Counsel appearing for the petitioner alongwith Mr. Devendra Prasad Singh, Advocate on record, Ms. Shilpa Singh, learned GA-12 for the State, Mr. Anjani Kumar Sharan, learned Assistant Solicitor General for the National Commission for Backward Classes, Mr. Siddharth Prasad, learned counsel for IBPS, Ms. Shail Kumari, learned Central Govt. Counsel for the Union of India and Mr. R.N.Choudhary, learned counsel for the Bank.

2. The petitioner prays for a writ in the nature of certiorari for quashing the letter dated 17.9.2015, impugned at Annexure 6 to the writ petition, whereby the appointment of the petitioner on the post of Probationary Officer, Punjab and Sind Bank, has been cancelled, inter alia, on grounds that the benefit granted to the petitioner as a Backward Class category candidate, was not available to her since her caste "Barnwal" did not figure in the Central list of Backward Classes, as applicable to the State of Bihar.

3. It is not in dispute that the petitioner succeeded in the selection process conducted by the Institute of Banking Personnel Selection for appointment as a Probationary Officer with the Punjab and Sind Bank and an appointment order

was issued on 30.7.2015, a copy of which is placed at Annexure 5 to the writ petition but this appointment order was cancelled by the impugned communication dated 17.9.2015 in view of the clarification received from the National Commission of Backward Classes, Delhi which clarified that her caste "Barnwal" is not mentioned in the Central list of Other Backward Class (hereinafter referred to as the "OBC") for the State of Bihar and thus, she was not entitled to the benefit as an "OBC" candidate for any appointment in the Central Government organization/ institutions. The petitioner in support of her candidature and caste relies upon a certificate issued by the District Magistrate, Gaya on 29.1.2014 at Annexure 1 to the writ petition which according to her stands recognized by the Central Government as Other Backward Class and thus, making her eligible for appointment.

4. Counter affidavits have been filed by the respondents but for the present contest, I am of the opinion that the counter affidavit filed on behalf of the National Commission of Backward Classes as well as the State Government would be relevant.

5. Annexure R/1 and R/2 to the counter affidavit of the National Commission for Backward Classes contains the result of the consideration of the claim advanced by the people coming from "Barnwal" caste as well as some others for their inclusion in the Central list of Backward Classes and the proceedings enclosed with Annexure R/1 would confirm that the claim of "Barnwal" caste for inclusion in the Central list of Backward Class was rejected by the National Commission of Backward Classes as back as on 16.4.1999 and has remained as such. The list of Other Backward Class has been enclosed at Annexure R/2 and Entry-83 is the list which contains the various Sub-castes under "Bania" community which have been included under Other Backward Class in the Central list but does not include the "Barnwal" caste for the State of Bihar.

6. The reliance by the petitioner on the caste certificate issued by the District Magistrate, Gaya, at Annexure 1 has been clarified in the counter affidavit filed on behalf of the State in which it is stated that although as per the circular of the General Administration Department the "Barnwal" caste has been accorded a backward status for appointment on State services but it does not extend to All India Services. It is clarified that on gathering information about the present contest that an enquiry was conducted and when it transpired that the certificate issued in favour of the petitioner, at Annexure 1 in turn rested on a caste certificate issued by the Circle Officer and on realizing the legal position that the orders have been passed by the District Magistrate on 2.1.2018 for cancellation of the caste certificate issued in favour of the petitioner.

7. Ms. Singh, learned GA-12, has invited the attention to the proceedings enclosed at Annexure R-2/C to submit that a meeting was held to enquire into the certificate so issued in favour of the petitioner and when it transpired that although there was no infirmity in so far as the certificate applied to the services under the Government of Bihar but in so far as the service under the

Government of India or its instrumentalities is concerned, since the caste "Barnwal" is not mentioned in the Central list, the certificate was not in tune with the legal position and accordingly, the Committee recommended for cancellation of the certificate, a copy of which is there at Annexure 1 and which has been approved by the District Magistrate vide his order dated 2.1.2018 at Annexure R-2/D.

8. I have heard learned counsel for the parties and have perused the records.

9. As I have said, it is rather unfortunate case where the petitioner having succeeded for appointment as Probationary Officer with an appointment order issued, the same has been cancelled for the reasons not entirely attributable to her, rather in my opinion it is on the mistake of the authorities in issuing a certificate which entitled her to claim such appointment as a Backward Class category candidate. The legal position discussed above would confirm that the claim even though equity based, is not sustainable on the legal position for there is no dispute that the "Barnwal" caste does not figure in the Central list of Other Backward Classes and which claim for inclusion was rejected vide Annexure R/1 to the counter affidavit of the National Commission for Backward Classes way back in 1999. The situation has not changed rather continues as such. Where thus, the "Barnwal" caste is not included in the Central list of Other Backward Class, the appointment of the petitioner founded on her candidature as Other Backward Class category, could not be sustained and had to be considered amongst General Category for the caste benefit was no more available to her. The records confirm that the petitioner was not able to secure marks equal to the last candidate so appointed under the general category.

10. In the aforesaid view of the matter, no indulgence can be granted to the relief so prayed. The writ petition is disposed of.