
(2011) 01 PAT CK 0032
In the Patna High Court
Case No : CWJC No. 1403 of 2003

Janardan Prasad Agrawal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0032

Judgement

Navaniti Pd. Singh, J.—Pursuant to the advertisement dated 8.8.1999, issued by the Bihar Public Service Commission, the Petitioner had applied for the 43rd Combined Examination. The advertisement of the Bihar Public Service Commission is Annexure-1. Petitioner is a permanent resident of Chatra which at that time was in Bihar. Petitioner claims that he was BG-II category person, for which, he has requisite certificate and he applied, as such, seeking privilege of reservation. On 9.12.1999 preliminary examinations were held and Petitioner qualified. Petitioner was then admitted to the final examination, which were conducted towards the end of 2001. When results of final examination were declared, Petitioner got 852 marks. The cut off marks for general category was 853 still on basis of reservation Petitioner being BC-II category Petitioner was not selected. This is what has brought the Petitioner to this Court.

2. State and B.P.S.C. have filed counter affidavits and rejoinders, with consent of parties, the writ petition has been heard for final disposal at this stage itself.

3. In the counter affidavit both the State and B.P.S.C. have taken stand that with effect from 15.11.2000 the erstwhile State of Bihar was bifurcated by the State Reorganization Act, 2000. Chatra now fell under the State of Jharkhand and was not a part of State of Bihar. Petitioner, thus, became a permanent resident of the State of Jharkhand and not the State of Bihar. As per the policy decision of the State Government, as reflected in the circular dated 11th January, 1996 issued by the Personnel and Administrative Reforms Department, Government of Bihar, which provided that the benefit of reservation would only be to permanent residents of Bihar in respect of Scheduled Caste and Scheduled Tribe and other

reserved category falling within the notifications in respect of Bihar, the Petitioner being a non-resident could not get the benefit of reservation.

4. Petitioner, on the other hand, contended that even as per the Schedule of Bihar Petitioner is under BC-II category being "Modi" by caste and he cannot be denied the benefit once the process of selection started prior to bifurcation when he was a resident of Bihar. In other words, what the learned Counsel for the Petitioner submits that the rules of the game cannot be changed once the game has begun.

5. On the other hand, learned Counsel for the State relies on the two judgments of the Apex Court being in the case of State of Uttaranchal and Ors. v. Sidharth Srivastava and Ors. since reported in (2003) 9 S C C 36 and in the case of State of U.P. and Others Vs. Rajkumar Sharma and Others, . Both the cases are dealing with Reorganization Act and clearly hold that upon bifurcation of State the recommendation of the Service Commission of one State would not bind others. Hence, it is submitted that upon bifurcation of the State of Bihar consistent with the policy decision of the year 1996, Petitioner being a resident of Chatra in the State of Jharkhand could not get the benefit.

6. Mr. Lalit Kishore, learned Senior Counsel appearing for the Bihar Public Service Commission submits that after the preliminary examination were held in the year 1999, the State was bifurcated, there was some uncertainty, it is because of that the final examinations were delayed and held in the year 2002. In the meantime, State clarified the position. It reiterated its policy of 1996 and held that it would equally continue to apply to the 43rd Combined Examination and any person who claims benefits of reservation must be permanent resident of the present State of Bihar, meaning thereby, that permanent residents who now fall within the jurisdiction of the Jharkhand State would also get excluded along with other States. He submits that this is merely clarificatory in nature. The substantive policy being the same as was issued in 1996 prior to the advertisement.

7. Having heard the parties and considered the matter, in my view, the stand of the State is correct. The writ petition must fail for the reasons given hereunder.

8. As has been held by various decisions State has a right to provide for reservation and with that goes the right that reservation has to be for residents of the State because it is for the benefit of the State. That reservation is being given consistent with the said policy. In 1996 State took a decision and the circular, as referred to above, was issued. The effect was two fold. Firstly, for claiming reservation both in respect of Scheduled Caste, Scheduled Tribe and economically backward or backward classes the person must qualify in respect of the same as declared for the State of Bihar. Secondly, even, though as per the list of Bihar, he qualifies, he must be a permanent resident of State of Bihar. Then, we come to the advertisement which was issued in the year 1999. Clauses 8 & 9 thereof are relevant. Clause 8 provides that Scheduled Caste and Scheduled Tribe persons who are as such notified in other States outside the

Bihar will not be eligible for the benefit in the State. Clause-9 provides that for taking benefit of reservation backward class, extremely backward class and such other caste or group must be so specified in the Schedule reservation for Bihar. Thus seen, the terms of advertisement is not in conflict in any manner with the policy of 1996. They put together make it clear that the Scheduled Caste, Scheduled Tribe or the other groups must be as specified in relevant notification relevant to Bihar and the person must be permanent resident of Bihar. Had the State not being bifurcated, Petitioner is correct, he would have been fitted as resident of Bihar and would have been entitled for reservation but by the time procedure was completed State of Bihar was bifurcated and he ceases to be permanent resident of State of Bihar. Thus, at the time of selection he was not given benefit of reservation in the State of Bihar and treated as a general category person and, as noticed above, he being secured 852 marks was beyond the general category and not selected.

9. If we look at the 2002 circular it is only clarificatory. There is no change in policy. It only clarifies that the position of State of Jharkhand now be the same as any other State outside Bihar and the same principle would apply to the 43rd Combined Examination. There was no change of policy. There was no change of rule. The advertisement was not departed from. The policy and the advertisement remained the same but by virtue of subsequent legislative intervention Petitioner unfortunately lost his chance.

10. Coming to the two decisions as referred to above by the State, the ratio of the two cases are that once the State is bifurcated, even though the selection process was started in the united State, the Public Service Commission of one State ceases to have been any jurisdiction on the other State and, as such, recommendation of the Public Service Commission of Uttar Pradesh would not be binding on the Uttaranchal (now Uttarakhand) Government and people recommended by Uttar Pradesh Public Service Commission could not get the relief of getting jobs in Uttarakhand. To some extent these decisions do help the State. These decisions would show that to change in the status of the State by the Bifurcation Act has to be taken note of even in an on going selection process and changes in status or selection as a consequence of the Bifurcation Act have to be taken note of.

11. Thus, I find that during course of the selection process the rules of selection were not changed. The only change that came about was by constitutional and legislative changes which have to be taken note of and have rightly been acted upon by the State. Thus, Petitioner, being the resident of Chatra in the State of Jharkhand, cannot get the benefit of reservation in any employment in the State of Bihar.

12. Accordingly, the writ petition is dismissed.