(2002) 03 PAT CK 0057

In the Patna High Court

Case No : C.W.J.C. No. 15175 of 2001

Jawaharlal Prabhakar APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2003 Patna 1 : (2002) 50 BLJR 740 : (2002) 2 PLJR 142 : (2002) 3 RCR(Civil) 976

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : S.D. Sanjay, for the Appellant; Sudhir Kumar, J.C. to G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

The petitioner had come to this Court making a complaint that the respondents be directed to decide the petitioner''s application for grant of a OBC certificate after following the circular of the State Government, as contained in Annexure 4. It appears that during the pendency of this writ petition the application filed by the petitioner for issuance of the OBC certificate was rejected, therefore, the petitioner filed an application for amendment challenging the correctness of the order passed by the District Magistrate on 20-12-2001, as contained in Annexure A to the counter-affidavit. The petitioner submits that the order passed by the District Magistrate runs contrary to the circular issued by the State Government and as such the same deserves to be quashed.

2. The respondents in their counter have stated that the petitioner does not come within the purview of the OBC and is to be counted out or excluded from the reservation in accordance with the circular issued by the Central Government. It is also contended by the respondents that as the petitioner

belongs to the creamy layer of the society he is not entitled to a certificate.

3. Learned counsel for the petitioner has placed his strong reliance on an order dated 20-12-2000 passed in C.W.J.C. No. 13111/ 2000 (Maheshwari Prasad Yadav v. Slate of Bihar and Ors.) to contend that if the income of the petitioner or his father from two different sources is below Rs. 1,00,000/-than the same cannot be clubbed together and the salaried income of the petitioner''s father has to be excluded from consideration. He also placed his reliance upon the circular of the State Government issued on 3-7-2001 to contend that if the salary is above Rs. 1,00,000/- but the income from other sources is less than Rs. 1.00.0007-then such a person is entitled to a certificate from the authority concerned.

4. Learned counsel for the State on the other hand contended that a fair perusal and understanding of the order passed by this Court in the matter of Maheshwari Prasad Yadav would clearly show that income of two persons should not be clubbed together and the Court being alive to the circular issued by the Central Government had observed that income from salaries and agricultural land should not be clubbed. According to him the order passed in the matter of Maheshwari Prasad Yadav does not help the case and cause of the petitioner.

5. Appendix 1, which is annexed to the petition as Annexure 5. says that particular persons/sections are excluded from reservation. Category I relates to the Constitutional Posts, if held by a particular person then his sons and daughters are to be excluded from the zone of consideration. Category II relates to Service Category of Group ''A''/Class 1 Officers of the All India Central and State Services. If a person is employed in such services then his sons and daughters are also to be excluded. Category III relates to Armed Forces including Paramilitary Forces and in case of such employees, their sons and daughters are again excluded from the zone of consideration or for grant of a certificate that they belong to OBC. Category IV is relating to the Professional class and those engaged in Trade and Industry. Category V relates to the property owners, who are holding agricultural holdings, plantations, vacant land and/or buildings in urban areas or urban agglomerations. The question in the present petition relates to applicability and Interpretation of Category VI.

6. Category VI deals with Income/Wealth Tax. It lays that sons and daughters--(a) persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exception limit as prescribed in the Wealth Tax Act for a period of three consecutive years, (b) Persons in Categories I. II, III and V-A. who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above, shall be excluded. The explanation appended to Category VI says that income from salaries or agricultural land shall not be clubbed together.

7. In the matter of Maheshwari Prasad Yadav the petitioner had approached to the Court saying that son of the petitioner appeared in Civil Services Preliminary

Examination but OBC certificate was not being issued to him on the ground that, the salaried income already earned by Vibhuti Kumar, if was clubbed with the pension received by the petitioner then the total income of the family was crossing the limits of Rs. 1 lakh. The High Court observed thai if the agricultural income could not be clubbed with the salary then in the case on hands the pension received by the petitioner and the salary received by his son could not be clubbed together. The High Court did never say that if the salaried income is above Rs. 1 lakh then such salaried income is to be excluded from the consideration and the person would be excluded from the reservation only if his income is Rs. 1 lakh or above from any other sources. A fair perusal of Explanation 1 would make it clear that income from salaries or agricultural land shall not be clubbed together.

8. Submissions of the learned counsel for the petitioner that the salaried income should be counted out for the purposes of reservation appears to be an argument of frustration. In a given case the person himself may be gainfully employed somewhere or his parents may be gainfully employed and might be earning more than Rs. 1 lakh, then too if the argument of the learned counsel for the petitioner is accepted, such a person would be entitled to a certificate that hie belongs to OBC. If such interpretation is given to the provisions of the Appendix/Circular then it would run contrary to the very spirit of the Circular which provides to exclude the persons belonging to the creamy layer. The circular dated 3-7-2001 issued by the State Government appears to run contrary to the Judgment of this Court so also the circular issued by the Central Government. I am unable to read even a single word in the judgment of this Court which says that the salaried income, whatever it is, should be excluded from consideration. The statements made in the circular dated 3-7-2001 saying that even if the salary is more than Rs. 1 lakh per year but his income from other sources is less than Rs. 1 lakh then too such a person would be deemed to not falling under the creamy layer category, appears to be bad and runs contrary to the spirit of the Judgment of this Court. In the opinion of this Court the explanation simply says that the income from salaries or agricultural land are not to be clubbed together but that dpes not mean that if the salary is above Rs. 1 lakh then such salary is to be excluded from consideration.

9. Undisputedly in the present case the salaried income of petitioner''s father is above Rs. 1 lakh per year. If that be so, the petitioner would stand excluded from consideration as OBC.

The petition deserves to and is accordingly dismissed.

