(2000) 12 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No. 13111 of 2000

Maheshwari Prasad Yadav APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Citation : (2000) 12 PAT CK 0003

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Judgement

Radha Mohan Prasad, J.—The petitioner is a retired teacher and is father of Vibhuti Kumar. He belongs to Other Backward Class (OBC) category. His son, namely, Vibhuti Kumar is working as Inspector, Central Excise and Custom. His son, namely, Vibhuti Kumar appeared in Civil Services Preliminary examination, 2000 conducted by the Union Public Service Commission and he was declared qualified to appear in Civil Services Main examination, 2000. His son Vibhuti Kumar applied for O.B.C. certificate before respondent no. 3. In the meantime he also appeared in the main examination held in the month of November, 2000. He received a letter dated 23.11.2000 which appears to have been dispatched on 24.11.2000, on 28.11.2000 to produce OBC certificate in prescribed form enclosed with the said letter and in case the certificate does not reach to the office of the Union Public Service Commission within 20 days from the date of issue of letter, the candidature of the son of the petitioner shall be liable to be cancelled. The petitioner approached respondent no. 4 for OBC certificate but no certificate was issued and as such the writ petition has been filed for issue of direction to respondent no. 3 for issuance of certificate without any delay Pursuant to the order dated 15.12.2000 respondent no. 3 appeared in the Court. The counsel for respondent no. 3 contended that the petitioner comes withi6n the category VI of the Resolution of the Government of India, Department of Personnel and Training, O.M. No. 36012/22/93-Estt. (SCT) dated 8.9.1993, Annexure-1 and on clubbing the income of the petitioner from pension who is a retired teacher and income for salary of the son of the petitioner, namely, Vibhuti

Kumar who is Inspector, Central Excise and custom, it comes more than Rs. 1lac and as such he is not entitled to the benefit of reservation. Whereas, learned counsel for the petitioner stated that objection raised by the counsel for respondent no. 3 is misconceived.

2. To resolve the issue involved in this case, it is necessary to consider Annexure-1. Annexure-1 is resolution of Union of India and it deals with exclusion of benefit of reservation of sons and daughters of the person concerned. Item I deals with sons and daughters of the person who is holding constitutional post. Item II deals with sons and daughters of the persons who are in class I service and also class II service of Central Government and the State. Item III deals with sons and daughters of armed forces, item IV deals with professional class engaged in trade and industry. Item V deals with property owners including owner of agricultural land. The petitioner does not come under the aforesaid categories. Item VI deals with income/wealth tax and the petitioner is under this category. The contention of learned counsel for respondent no. 3 is that on clubbing the income of pension of the petitioner and income from salary of the son of the petitioner Vibhuti Kumar the petitioner is not entitled to OBC certificate. The contention of learned counsel appears to be misconceived as Item VI says that persons having gross annual income of Rs. 1lac or possessing wealth above the exemption limit as prescribed in wealth tax shall be excluded, item VI(b) says that the persons in categories I. II, III & V(a) who are not disentitled to the benefit of reservation but having income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above shall be excluded. But the position has been explained in Explanation (i) that income from salaries or agricultural land shall not be clubbed. There is nothing on the record to show that petitioner comes under the professional class i.e. item IV of Annexure-1. The petitioner also does not come under exclusion categories I, II, III and V(a). The income of the petitioner is from pension and son of the petitioner is in service but those income cannot be clubbed for the purpose of bringing the person under category VI of Annexure-1 as the explanation to item VI of Annexure-1 makes it clear that those income shall not be clubbed for the purpose of disentitling the person under category VI of Annexure-1. Therefore, in any view of the matter, the contention of learned counsel for respondent no. 3 cannot be accepted. Therefore, there is no justification for respondent no. 3 for not granting OBC certificate. Thus respondent no. 3 is directed to grant OBC certificate forthwith.

3. It would be pertinent to mention herein that situation as indicated above was such that it was beyond the control of the petitioner/son of the petitioner in obtaining OBC certificate and as such delay has caused. Therefore, the authority concerned is directed to consider the aforesaid aspect of the matter for accepting OBC certificate from the petitioner/son of the petitioner and not debarring the petitioner from the benefit of reservation. The writ application is thus disposed of in the light of observation and direction indicated above.

