

(2000) 08 PAT CK 0081

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8778 of 1996

Samarendra Nath Das

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Constitution of India, 1950 — Article 341, 342

Citation : (2001) 1 BLJR 413 : (2001) 1 PLJR 219

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, prayer on behalf of the petitioner is for issuance of a writ of mandamus or any other suitable writ, or order or direction commanding the respondent-authorities to appoint him as Assistant in the respondent-Life Insurance Corporation, hereinafter called as "Corporation" with effect from the date the person next to him in the combined merit list has been appointed.

2. The claim of the petitioner for consideration and appointment is against the reserved category of Scheduled Castes as he is "Namasudra" by caste and stood second in the list of Scheduled Castes. Sixteen posts of Assistant were reserved for the members of the Scheduled Castes.

3. The facts are not much in dispute. Caste "Namasudra" as recognised as Scheduled Caste in West Bengal, but in Bihar, it is recognised as O.B.C.

4. In short, the relevant facts are that the Eastern Zonal Office, Calcutta of respondent-Corporation published an advertisement (Annexure-2) on all-India basis inviting applications from eligible candidates for appointment to the post of Assistant to be selected on the basis of written test followed by viva voce test. As per Sub-clause (3) of Clause 12 of the said advertisement, the candidates claiming consideration as against S.C/S.T. seat was required to produce caste

certificate from the competent authority along with bio data. The advertisement stipulated that there were altogether 121 appointments to be made for Bhagalpur Division of the Corporation, out of which 18 posts were reserved for the members of Scheduled Castes. Petitioner duly submitted/sent his application. It is asserted that petitioner's application was accompanied with caste certificate issued by the Sub-Divisional Officer, Islampur, District-West Dinajpur (West Bengal) certifying that he is "Namasudra" by caste, which is recognised as Scheduled Caste under the Constitution (Scheduled) Order, 1950. A photo copy of the said certificate has been annexed as Annexure-4. Petitioner received admit card and was allowed to appear in the written test which was held at Purnea on 20.3.994. He passed the written test and qualified for the viva voce test, accordingly received call letter dated 6.12.1995 from the Divisional Office of the respondent-Corporation at Bhagalpur for viva voce test on 11.1.1996. He was required to again submit the caste certificate in the prescribed pro forma from the prescribed authority at the time of interview, which he submitted. A photo copy of the said caste certificate has been annexed as Annexure-7. Final result was published in February 1996 and a list of successful candidates was sent by the Zonal Office to the Divisional Manager, Bhagalpur vide Ref. ZO/P & IR dated 12.2.1996, which also accompanied the list of successful candidates belonging to the reserve category of the Scheduled Castes for the Bhagalpur division. Petitioner's name figured at serial No. 2 of the said list. On the basis of the said letter, the Divisional Office at Bhagalpur had to issue appointment letter against the vacancies meant for the reserved category of Scheduled Castes, which was refused by the Senior Divisional Manager (respondent No. 4) on the ground that "Namasudra" caste is recognised as Scheduled Caste in West Bengal, but is recognised as O.B.C. in Bihar. As such, he was denied of the appointment, hence, the present writ application was filed.

5. A counter-affidavit has been filed on behalf of the respondent-Corporation and its officials, in which it is stated that the employment notification was not on All-India basis rather it was only in respect of Indian citizens having knowledge of the respective regional language. However, it is admitted that as per the caste certificate submitted by the petitioner along with his application at the time of interview that he belongs to "Namsudra" sub-caste, which is recognised as S.C. in the State of West Bengal but not recognised as S.C. in the State of Bihar. It is stated that the process of receiving application, etc. were done through external recruitment agency at Mumbai, which issued call letters/admit card for written test to the petitioner without any prejudice to the general instruction specified in the recruitment instruction, which reads as follows:

In case, it is found at any stage that the candidate does not fulfil any of the eligibility criteria, he/she shall be disqualified; if already appointed his/her services are liable to be terminated.

It is stated that the caste certificate dated 27.12.1995 submitted by the petitioner shows him a permanent resident of West Bengal whereas the Bb data

dated 11.12.1993 submitted by him declares him to be a resident of Purnea, i.e., in the State of Bihar and his mailing address is also of Purnea. According to the respondents, he got his education of Matriculation, Intermediate and graduation from Bihar as per the certificate submitted by him. His place of birth declared by him in Column 4 of the application dated 3.1.1994 in Purnea (Bihar). Under such circumstance, it is submitted that he was born and brought up in West Bengal is not true and correct.

6. It appears that the Government of India issued circular dated 12th August, 1994 clarifying the position, photo copy whereof has been annexed as Annexure-9 to the writ petition. In paragraph 12 of the counter-affidavit, it has, however, been stated that the said circular has been received in the office of respondent No. 4 only after the completion of the recruitment process, in the month of June 1996, hence, it cannot be applied retrospectively. If at all it is to be applied with retrospective effect, it would amount to reopening of whole recruitment process. According to the respondents, petitioner is not entitled to claim benefit of reservation as S.C. in the State of Bihar, where he has himself declared as his birth place, and that the caste certificate issued from the State of West Bengal requires a full proof inquiry in the case of the petitioner.

7. A rejoinder has been filed on behalf of the petitioner, in which, it is stated that the petitioner has been allowed to appear in the written and viva voce test only after proper verification of the certificates including the caste certificate, as the petitioner had applied for appointment on reserved quota basis. With respect to advertisement, it is stated that it was announced by the Zonal Office, Calcutta for appointment on the post of Assistant in general and reserved category under various regional office of Calcutta zone and it was open to all citizens of India. According to the petitioner, plain reading of the advertisement shows that it was recruitment on all-India basis. While re-asserting that the petitioner is a permanent resident of West Bengal, it is stated that he obtained his education by residing with his maternal uncle and at the time of advertisement, he was at his Nanihal and, therefore, mentioned Purnea (Bihar) as correspondence address. According to the petitioner, birth place and domicile are two different things and the petitioner's domicile is in West Bengal.

8. The real question involved in the present case is as to whether the person notified as Scheduled Caste in other State by Presidential order can be denied of the benefit of appointment against the said reserved category in Divisional Office of a Public Sector Undertaking lying in different States where the caste which he belongs is not notified as Scheduled Caste.

9. It has been submitted by the learned Counsel for the petitioner that according to the pleading in para 12 of the counter-affidavit, claim of the petitioner though covered by the Government of India circular, contained in Annexure-9, but the same has been denied on the sole ground that the said circular dated 12.6.1994 had been received in the office of respondent No. 4 only after completion of the recruitment process and, hence, it cannot be applied retrospectively. It is

submitted that after issuance of the said circular, the petitioner was called for interview along with caste certificate in the prescribed pro forma, which was produced by him at the time of his interview also and accordingly his name finds place at serial No. 2 in the list of successful candidates. Writ petitioner has been arbitrarily denied of the appointment only on the ground that the caste "Namasudra", though has been notified under the Presidential order as Scheduled Caste in West Bengal, but it is notified under the Presidential order in Bihar as O.B.C. It is submitted that he respondents having not cancelled the candidature and allowed the petitioner to take examination and appear for interview as Scheduled Caste candidate and his final result was also declared in the category of successful candidates belonging to the Scheduled Caste are estopped from denying him with the appointment solely on the ground that the caste "Namsudra" in Bihar is not notified as Scheduled Caste. It is submitted that the entire advertisement and particularly Clause 12 of the advertisement does not mention that the candidature of a person belonging to Scheduled Caste or Scheduled Tribe shall be confined only with respect to the State for which applications for appointment are made. Sub-clause (3) of Clause 12 simply mentions that bio data should accompany the caste certificate in relation to Scheduled Caste and Scheduled Tribe granted by the competent authority with respect to the candidate and that there was no restriction of filing application by the resident of the State concerned only. As such, it is evident that the said advertisement was on All-India basis and the only requirement was that the bio data of a person must accompany the caste certificate for those belonging to Scheduled Castes and Scheduled Tribes from the competent authority. As such, according to the lean led Counsel, the respondents are not legally justified in denying the appointment to the petitioner merely on the said ground.

10. Mr. Singh, earned Counsel appearing for the respondent-Corporation has submitted that the petitioner himself mentioned in his application that he is resident of Pumea and as such, he has rightly been denied appointment on the ground that the caste "Namasudra" in Bihar is O.B.C. and not Scheduled Caste in the Presidential order issued in Bihar. It is submitted that the appointment was not to be made on all-India basis. According to the learned Counsel, the appointing authority in the present case is the Divisional Manager, Bhagalpur under Schedule I of Staff Regulations, 1960 of the Corporation. In the advertisement also under Clause 7, it was clearly mentioned that change asked for with respect to Examination Centre and Divisional Office would not be permitted and that the clerical cadre is Divisional cadre, and selected candidate included in the select list of the Division shall be only candidate for appointment in the said Division. Earned Counsel for the Corporation has also submitted that the present writ petition is fit to be d is missed on the ground that those already appointed from the list of Scheduled Caste's candidates have not been made parties and under such circumstances, the petitioner cannot claim appointment from the retrospective date when the persons below in the list were appointed.

11. This Court is unable to accept the said submission of the earned Counsel for

the Corporation. Petitioner is not aggrieved by the appointment of any other person. He is aggrieved by the denial of appointment to him by the Corporation solely on the ground that his candidature for Scheduled Caste category cannot be considered as the caste "Namasudra" to which he belongs in Bihar is notified as O.B.C. If the petitioner is held to be entitled for consideration of his case as against the reserved category of Scheduled Caste then obviously denial of appointment to him by the Corporation will have to be held to be wholly arbitrary and unjustified, and the petitioner can get relief by a direction to the respondent-Corporation to appoint him against any existing vacant post of Assistant forthwith and give him due seniority from the date since when he has been arbitrarily kept denied of appointment in the light of the decision in the case of *Meenakshi Singla v. State of Punjab and Ors.* 1993 (1) S.L.R. 609 (para 6).

12. This Court finds substance in the submission of the learned Counsel for the petitioner that after the case of the petitioner was considered as against the reserved category of Scheduled Castes without there being any concoction or false claim being raised by the petitioner the principle of estoppel shall come in the way of the respondent-Corporation from denying the appointment to the petitioner on the above said ground. It is not even the case of the respondent-Corporation that there was any mis statement or suppression made by this petitioner. With open eyes, the authority of the Corporation considered his candidature as against the reserved category, thus, they cannot now be permitted to raise the above objection that he does not belong to Scheduled Caste, Moreover, the circular issued by the Government of India, contained in Annexure-9, contends that all Scheduled Castes and Scheduled Tribes irrespective of their State of origin will have to be considered alike against SC/ST vacancies in Public Sector Undertakings/Corporation, etc. and that the ruling of the Supreme Court will apply to the reservation facilities provided by the State Government concerned to their SCs and STs under State's Services, educational institutions, etc. It was made clear that SC/ST candidates are entitled to derive reservation benefits in regard to recruitments in Class III and IV posts irrespective to their State of origin provided they fulfil other conditions stipulated by L.I.C. Further the SC/ST employees of L.I.C. are also entitled to be considered against the reserved promotional vacancies irrespective of their State of origin. Obviously, this circular has been issued as the appointment relating to Public Sector Undertaking Corporations are having its offices all over the country, and candidatures are considered on all-India basis and not confined to any particular State. Mr. Singh has submitted that the Constitution Bench of the apex Court in the case of *Marri Chandra Sekhar Rao v. Dean, Seth G.S. Medical College and Ors.* (1990) 2 SCC 130, while dealing with the scope of Presidential order issued under Articles 341 and 342 of the Constitution has considered the expression "for the purpose of this Constitution" and in relation to that State¹ and held that a person who is recognised as a member of ST/SC in his original State will be entitled to all the benefits under the Constitution in that State alone and not in all parts of the country, wherever he migrates. There cannot be any dispute to

the said proposition, but in the case of *Marri Chandra Sekhar Rao v. Dean Seth G.S. Medical College and Ors.* (supra), the Supreme Court was dealing with the case, where the petitioner who belonged to Scheduled Tribe community in the State of Andhra Pradesh was claiming admission in the Medical College against the seats meant for Scheduled Tribe candidates. It was the case where father of the petitioner had obtained Scheduled Tribe certificate from Tahsildar and on that basis he got employment under ST. quota in Government of India Undertaking and was placed at Bombay in the State of Maharashtra. Petitioner, accordingly, came to live in Bombay and after passing XIIth examination of Maharashtra Board of Higher Secondary examination submitted an application for admission to the respondent-Medical College seeking benefit of reservation in favour of S.T., which was denied to him, and the Supreme Court upheld it. Thus, from the said judgment of the apex Court, it is evident that the case of father of the petitioner was considered as against ST. quota in a Government of India Undertaking for his posting at Bombay in the State of Maharashtra. Petitioner's claim was rejected by the apex Court as he was seeking admission to the Medical College in Maharashtra and not any employment in Public Sector Undertaking/Government of India Undertaking/Corporation.

13. In absence of any condition in the advertisement that the benefit of caste for the purpose of reserved category shall be confined with reference to the employment in a particular State, this Court finds it difficult to hold that the petitioner can be denied of the benefit of his belonging to Scheduled Caste in the State of West Bengal merely on the ground that the said caste in this State has not been notified as Scheduled Caste, whereas admittedly it has been notified as Scheduled Caste in the State of West Bengal, the place of origin of the petitioner. The genuineness of both the certificates contained in Annexure-4 and 7 granted by the competent authority is not disputed. In the counter-affidavit, it has simply been stated that the caste certificate issued from West Bengal requires full proof inquiry in the case of the petitioner, but in absence of any such inquiry or finding that the said certificate does not represent correct facts, the petitioner cannot be denied of the benefit of the same in the matter of appointment, pursuant to the advertisement (Annexure-2).

14. Accordingly, the writ petition is allowed. In the instant case, it is not in dispute that the petitioner was selected, and that he was placed at serial No. 2 in the final select list and the persons below him have already been appointed, this Court in the facts and circumstances considers it expedient to direct that the petitioner should be given appointment against any vacant post of Assistant in the Corporation within a period of one month. However, having regard to the fact that he has not been able to work, he shall not be entitled for any formal order for retrospective appointment and salary since the persons placed below in the select list were appointed, but shall be entitled for all other benefits including the seniority for the said period. In the facts and circumstances, there shall be, however, no order for costs.