

(2016) 03 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No. 2635 of 2011

Sanjeev Kumar and another

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2017) AIR(SCW) 1501 : (2017) AIRSC 1501 : (2017) LIC 1982 : (2016) 3 Scale 678 : (2016) 13 SCC 105 : (2017) 1 SCCL 590

Hon'ble Judges : T.S. Thakur, CJI; Uday Umesh Lalit, J.

Bench : Division Bench

Advocate : Pinky Anand, ASG (U.O.I.) Snidha Mehra and Saudamini Sharma, Advocates, Nagendra Rai, Sr. Adv, Smarhar Singh, Prerna Singh, Shashank Saurabh and T. Mahipal, Advocates, Shivam Singh and Gopal Singh, Advocates, Vishnu Sharma, Anupama Sharma, Naman Nayak and Ginnijeet Malhotra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal arises out of a judgment and order dated 5th February, 2009 passed by a Division Bench of the High Court of judicature at Patna whereby C.W.J.C. No.6666 of 2008, filed by the present respondents no.4 and 5 challenging the appointment of the appellants as Civil Judges Junior Division in the Bihar Judicial Service, has been allowed and the appointment of the appellants set aside. The High Court has next directed the Bihar Public Service Commission to recommend the case of persons placed below the appellants in the merit list and belonging to the scheduled caste category for appointment against the vacancies occupied by the appellants. The High Court has further directed that the State Government shall on receipt of any such recommendation make the necessary appointment and that the persons so appointed shall earn their seniority but shall not be entitled to any emoluments for the past period. The High Court has ordered that if respondents no.4 and 5 (writ petitioner and the intervenor) are not placed immediately below the present appellants in the merit list, the Bihar Service Commission shall be at liberty to recommend the

names of those who are so placed.

2. It is, in our opinion, unnecessary to set out in detail the factual matrix in which the controversy arises, partly because the order passed by the High Court has already done so and partly because the question that essentially falls for our determination stands concluded by the judgments of this Court in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and others* - (1990) 3 SCC 130 and *Action Committee on Issue of Caste Certificate to Scheduled Castes and Schedules Tribes in the State of Maharashtra and Another v. Union of India and Another* - (1994) 5 SCC 244. The effect of both these judgments which happen to be Constitution Bench pronouncements, was considered by a Division Bench of this Court in *Melwin Chiras Kujur v. State of Maharashtra and Others*, disposed of on 14th September, 2015, by a Two-Judge Bench of which one of us (Thakur, J.) was a member. The question in *Melwin's* case (*supra*) as in the case before us was whether a person belonging to any Scheduled Caste/Scheduled Tribe in the State of his/her origin can claim the benefit of reservation upon his/her migration to another state. In *Marri Chandra Shekhar Rao* and *Action Committee's* cases (*supra*) this Court has answered the said question in the negative. In *Melwin's* case (*supra*) also while referring to the Constitution Bench pronouncements of this Court, this Court has reiterated that the benefit of reservation for Scheduled Caste and Schedule Tribe candidates, does not enure to candidates upon their migration to another State even in cases where the caste of those migrating from one State to the other is recognised as a Scheduled Caste/Tribe in both the States. In *Melwin's* case (*supra*) this Court observed:

"The legal position as rightly pointed out by learned counsel for the appellant has been firmly settled by the two decisions of the Constitution Bench referred to by us in the earlier paragraphs. Benefits of reservation are not available to those migrating from one State to the other even if such candidates belong to the same caste. That part of the controversy therefore stands concluded and does not require any further elaboration."

3. In the case at hand the High Court has held and in our opinion rightly so that the appellants who are originally from the State of Uttar Pradesh were not entitled to the benefit of reservation as Scheduled Caste candidates in the State of Bihar even when the caste to which they belong was found and recognised as a Schedule Caste in both the states. To that extent, therefore, the judgment of the High Court is legally unexceptionable and does not in our opinion call for any interference.

4. What was strenuously argued by Mr. Huzefa Ahmadi, learned senior counsel for the appellants, is that the appellants have served as Civil Judges (Junior Division) for nearly 8 years since 2006. He also urged that a perusal of the service record, received from the High Court of Judicature at Patna, shows that nothing adverse has been reported against them or their performance as subordinate judges. Relying upon the decisions of this Court in *State of Maharashtra v. Milind and Others* - (2001) 1 SCC 4 and *Kavita Solunke v. State*

of Maharashtra and others - (2012) 8 SCC 430, Mr. Ahmadi argued that the appellants could be allowed to continue in service on account of the long years of service that they have put in and also their performance as is evident from the service record made available by the High Court. Alternatively, it was submitted that this Court could grant to the appellants another opportunity to appear in the competitive examination in the open merit category in relaxation of the age bar stipulated under the Rules. It was urged that even when the appellants may have originally belonged to the State of Uttar Pradesh and hence may not be entitled to the benefit of reservation for Scheduled Castes in the State of Bihar, there was no legal impediment to their appearing for selection and appointment in the State of Bihar as general category candidates. It was urged that the prolonged litigation involving challenge to their appointment had denied to them the opportunity to look for alternative avenues including an opportunity to appear and compete in subsequent examinations conducted by the Public Service Commission for appointment against the vacancies in the Bihar State Judicial Service. Relaxing the age bar in the peculiar circumstances of the case is, according to Mr. Ahmadi, the only way this Court could do complete justice to the appellants who had given the best part of their lives to the service of the people of Bihar as good judicial officers.

5. On behalf of the respondents, original writ petitioner/intervenor, it was argued by Mr. Nagendra Rai, learned senior counsel, that the appellants were not entitled to any concession from this Court, not only because the legal position regarding their right to claim reservation in the State of Bihar stood settled by the Constitution Bench decisions of this Court, referred to earlier, but also because the appellants had not come to the Court with clean hands. It was urged that the appellants had tried to hoodwink the system by claiming to be residents of Bihar while they were actually natives of State of Uttar Pradesh, where too they had appeared in the judicial examination claiming themselves to be Scheduled Castes in that State. He urged that the conduct of the appellants does not entitle them to any discretionary relief from this Court. Alternatively, it was urged by Mr. Rai that if this Court were to grant any relief to the appellants by way of an additional opportunity to compete in the next examination for appointment as judicial officers, a similar concession ought to be extended to the writ petitioner and the intervener, respondents no.4 and 5, also for they were also deprived of an opportunity to compete in the succeeding examination, on account of the pendency of these proceedings at different stages.

6. In Kavita Solunke (*supra*), relied upon by the appellants, this Court was dealing with a fact situation which, in our opinion, is clearly distinguishable. In that case Kavita Solunke had been appointed as a teacher long before the Constitution Bench decision of this Court in Milind's case (*supra*), declared that the Presidential Order could not, by a notification of the State Government or by a process of interpretation, be modified to add or delete anything from the order. This Court had in that case referred to a long prevailing confusion regarding Halbas and Halba-Koshtis being the same for purpose of reservation. While the

Presidential Order mentioned Halbas as a Scheduled Tribe, the Government had from time to time extended that benefit to Halba-Koshtis also by treating them to be Halbas. This extension was disapproved by this Court on the principle that the Presidential Order could not be clarified or amended in the manner in which the Government appeared to be doing. It was on the basis of that pronouncement that the appointment of Kavita came under challenge and was nullified as she was a Halba-Koshtis and not a Halba for purposes of reservation. While upholding that contention and declaring that Solunke was not entitled to reservation as a Scheduled Tribe candidate, this Court relied upon the ratio in Milind's case (supra) and protected her against ouster in the peculiar facts and circumstances of that case.

7. The position in the present case is hardly similar. Unlike Kavita Solunke's case (supra), there has never been any confusion about Scheduled Tribe or Scheduled Caste candidates from one State being entitled to benefit in the other State. The Constitution Bench decisions in Marri Chandra Shekhar Rao and Action Committee on issue of Caste Certificate (supra) came as early as in the year 1990 and 1994 whereas the appointment of the appellants were made in the year 2006 i.e. long after the said pronouncements.

8. The decision in Melwin's case (supra) is also similarly distinguishable inasmuch as like Milind's case (supra), that case was also a case of admission to an educational institution. The question that arose there was whether a candidate who had already secured admission to the college and completed his course but who was subsequently held disentitled to the benefit of such reservation, could be denied the benefit of the course undergone by him. This Court in both Milind and Melwin (supra) held that since the course had already been undertaken by the candidates concerned and since the seats occupied by them can no longer be available to original candidates entitled to such benefits, there was no justification in denying to the candidates the benefit of training undergone by them in the meantime. Milind and Melwin (supra) are also thus distinguishable and do not lend any assistance to the appellants herein.

9. That leaves us with alternative submission made by Mr. Ahmadi that the appellants could be given an opportunity to appear in the next competitive examination to be notified by the Bihar State Public Service Commission, in relaxation of the age bar prescribed under the Rules and subject to their emerging successful and qualifying for appointment on the basis of inter se merit of other candidates competing with them in the general merit category, their appointment already made could be continued.

10. It is true that the initial appointment of the appellants has been found to be legally bad on account of the reasons set out earlier, yet the prolonged litigation on the subject has indeed deprived the appellants of the opportunity to seek employment elsewhere and even to appear in the successive examinations that have been offered by the Public Service Commission to eligible candidates for recruitment in the Bihar State Judicial Service not only in the reserved category

but for the general category candidate like the appellants. The appellants appear to have laboured under the impression that since they have already been appointed they would be entitled to defend their appointments and continue in service. That expectation has not come true in the light of the Constitution Bench decisions. Be that as it may, we see no impediment in the appellants being given a last opportunity to appear in the next examination for recruitment of officers in the State Judicial Service to be notified by the Bihar Public Service Commission hereafter in relaxation of the age bar, if any prescribed. We make it clear that the appellants shall appear in the said examination and shall be treated as general category candidates only. In case they qualify and get selected for appointment as fresh candidates, their appointments already made in the year 2006 would continue uninterrupted with all consequential benefits of seniority etc. In case, however, the appellants fail to qualify for appointment in the next examination, as indicated above, they shall cease to hold the posts currently held by them.

11. On the same analogy, we do not see any reason to deny to respondents no.4 and 5, writ petitioner and intervenor, a similar opportunity whose position is no different. They too appear to have neglected the subsequent examinations hoping that the impugned judgment would entitle them to enter the judicial service. Now that we find it too late for the said respondents to be appointed on the basis of examination held in the year 2006, the only option for them too is to try their luck in the next examination along with the appellants in relaxation of the age bar in the general/reserved category for Scheduled Caste candidates as the case may be.

12. In the result, we dismiss this appeal insofar as the impugned judgment declares that the appellants are not entitled to the benefit of reservation. The remainder of the impugned order is however modified to the effect that the appellants herein and respondents no.4 and 5 (original writ petitioner and intervenor) shall have an opportunity to appear in the next examination for selection of Civil Judge, Junior Division (Munsif Magistrates) in the Bihar Judicial Service, to be notified by the Bihar Public Service Commission. We make it clear that this opportunity shall be the last and final opportunity to both sides to appear in the examination and compete for a fresh appointment. In case the appellants fail to qualify for appointment in the open merit category on the basis of their inter se merit with other candidates in that category, their appointments shall stand terminated with effect from the date the Public Service Commission declares the final result of the examination. In case however they qualify their appointment made in the year 2006 shall continue with all consequential benefits. The appellants shall not however be entitled to any benefit of reservation at any stage of their service in future. We further make it clear that this order has been passed in the peculiar facts and circumstances of the case and is limited to the appellants and respondents no.4 and 5 alone. No other candidate placed anywhere in the merit list of 2006 shall be entitled to claim any such benefit either from this Court or from the Public Service Commission or by the State of Bihar for that matter.

13. With the above observation, this appeal is disposed off leaving the parties to bear their own costs.