
(2012) 03 PAT CK 0032
In the Patna High Court
Case No : CWJC No. 8280 of 2007

Sarvesh Chandra Choudhary and Another APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 — Section 4(1), 4(2), 4(3)

Citation : (2012) 2 PLJR 535

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Chittaranjan Sinha, Shailesh Kumar and Satish Kumar Sinha, for the Appellant; P.K. Verma, S.K. Saraf, for the State, M/s Ashok Kumar Chaudhary and Anil Kumar Tiwary for the BPSC, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioners, the State, Bihar Public Service Commission (hereinafter referred to as the BPSC). Petitioners appeared for 46th Combined Competitive Examination 2005 conducted by the BPSC. They belong to Backward Class and Most Backward Class category. This writ petition has been filed questioning the applicability of the Reservation Policy of the State as enshrined in the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (hereinafter referred to as the Act) to the select list drawn after conclusion of the selection process conducted pursuant to 46th Combined Competitive Examination 2005, as while permitting 10 reserved category candidates selected in general category named in paragraph 8 of the writ petition to opt for the vacancies earmarked for the Reserved category, equal number of vacancy of the general category was not made available to the concerned reserved category as is required in the light of sub-section (3) of Section 4 of the Act. For ready reference sub-sections (1), (2) and (3) of Section 4 of the Act are quoted hereinbelow:-

4. Reservation for direct recruitment--All appointments to services and posts in

an establishment which are to be filled by direct recruitment shall be regulated in the following manner, namely:-

(1) The available vacancies shall be filled up--

(a) from open merit category..... 50%

(b) from reserved category..... 50%

(2) The vacancies from different categories of reserved candidates from amongst the 50% reserved categories shall, subject to other provisions of the Act, be as follows:--

(a) Scheduled Castes.... 16%

(b) Scheduled Tribes.....01%

(c) Extremely Backward Class..... 18%

(d) Backward Class... 12%

(e) Woman of Backward Classes... 03% Total... 50%

(3) A reserved category candidate who is selected on the basis of his merit shall be counted against 50% vacancies of open merit category and not against the reserved category vacancies.

2. With reference to the abovequoted sub-section (3) of Section 4 of the Act, it is submitted that 10 of the reserved category candidates named in paragraph 8 of the writ petition were selected against general vacancy but appointed against reserved vacancy without making available equal number of general vacancy to the concerned reserved category thereby candidates named in paragraph 8 were counted as reserved category candidate contrary to the mandate of sub-section (3) of Section 4 of the Act which, inter alia, require that a reserve category candidate selected on the basis of his merit against general vacancy be counted against the 50% general vacancy.

3. Counsel for the State opposed the aforesaid submission and submitted that petitioners having not been included in the select list, they do not have any indefeasible right to seek appointment as they are not included in the select list. Further it is submitted that pursuant to the recommendations made by the BPSC, appointments having already been made, as such, this Court should be slow in entertaining the writ petition.

4. Counsel for the BPSC also opposed the submission, but without disputing in the counter affidavit the averments made in paragraphs 8, 9 of the writ petition that reserved category candidates named in paragraph 8 of the writ petition were selected as general category candidate but granted appointment against reserved vacancies. He has also not stated in the counter affidavit that the vacancies of the general category against which the reserved category candidate named in paragraph 8 were selected/recommended were made available to the

reserved category for appointment of reserved category candidate after appointment of reserved category candidate named in paragraph 8 against reserved vacancy. He, however, states that BPSC prepared the select list and made recommendation for appointment following its resolution which was signed by the Secretary of the Commission on 12.1.2007, Annexure-7 to the writ petition, which has also been approved by this Court under order dated 1.3.2007 passed in C.W.J.C. No. 321 of 2006, Annexure-C to the counter affidavit.

5. From perusal of the orders of this Court dated 1.3.2007, Annexure-C it is evident that this Court approved the resolution of the BPSC dated 12.1.2007, Annexure-7 that reserved category candidate selected/recommended against general category vacancy on the basis of his merit shall be treated as general category candidate and appointed against general vacancy. He would not eat up the reserved post.

6. In the instant case, 10 reserved category candidates named in paragraph 8 of the writ petition were selected against general category vacancy but considering their better merit position amongst the reserved category candidates of their class were appointed against the post available to their reserved category without making available equal number of post of the general category to the concerned reserved category thereby infracting sub-section (3) of Section 4 of the Act, which, inter alia, require reserved category candidate securing recommendation/appointment as general category candidate to be counted as general category candidate. In the instant case the ten reserved candidates who were selected as general candidate and named in paragraph 8 of the writ petition were not counted as general category candidate by making available equal number of general vacancy to the concerned reserved category. Considering sub-section (6) of Section 3 of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 which is akin to sub-section (3) of Section 4 of the Act Hon"ble Supreme Court in the case of Jitendra Kumar Singh and Another Vs. State of U.P. and Others, placing reliance on its earlier observations made in the case of Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., held that if a reserved category candidate gets selected on the basis of merit he cannot be treated as a reserved candidate.

7. Accordingly, I direct the BPSC to reconsider its recommendation in the light of sub-section (3) of Section 4 of the Act and to make available equal number of vacancies to accommodate 10 number of reserved category candidates, as 10 reserved category candidates were selected in the general category. In the light of my order, if any of the recommended candidate is to be affected, it goes without saying that BPSC will necessarily hear the concerned recommended candidate before submitting fresh recommendation.

8. Necessary compliance of this order be made by the BPSC as early as possible, in any case within three months from the date of receipt/production of a copy of this order before the Secretary of the BPSC. The writ petition is, accordingly,

disposed of.