
(2016) 02 JH CK 0111
In the Jharkhand High Court
Case No : L.P.A. No. 143 of 2015.

Shiv Nandan Prasad

APPELLANT

Vs

State of Jharkhand and anr.

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 2 JBCJ 545 : (2016) 3 JCR 196 : (2016) 2 JLJR 433

Hon'ble Judges : Virender Singh, C.J. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Dr. S. N. Pathak, Sr. Advocate Rakesh Kumar Roy, Advocate Mritunjay Kumar, Advocate, for the Appellant; J.C. to A.G, for the Respondent

Final Decision : Dismissed

Judgement

1. Aggrieved by the order handed down in W.P.(S) No. 2242 of 2010, the appellantwrit petitioner has knocked the door of the Court.
2. Heard the learned counsel for the parties and perused the documents on record.
3. Dr. S. N. Pathak, the learned Senior counsel for the appellant referring to the decision in "State of Maharashtra v. Milind and Other" (2001)1 SCC 4 and "Rameshbhai Dabhai Naika v. State of Gujarat and Others" (2012) 3 SCC 400 submits that the appellant who was appointed in the year, 1990 is not seeking any further benefit of the reservation and therefore, he may be continued in service. Contending that caste of the mother of a person can also validly become his caste, the learned Senior counsel submits that the appellant's mother belonged to Garedi caste which is the caste certificate issued by the Mukhiya of the village and the appellant did not produce a forged caste certificate which may warrant termination of his service.
4. Having given our anxious consideration to the submissions raised on behalf of the appellant and after perusing the materials on record, we find ourselves unable to admit the challenge thrown by the appellant to the impugned order

dated 12.11.2014 in W.P.(S) No. 2242 of 2010.

5. The appellant was appointed as Constable on 09.05.1990. At the time of his appointment he disclosed his caste as Garedi and produced a caste certificate for the same. The appellant was granted benefit of reservation and he was appointed on the post of Constable. Subsequently, a complaint was received against the appellant which was sent for enquiry to the Superintendent of Police, Nawadah. The enquiry report dated 07.01.2001 disclosed that the father of the appellant namely, Jogeshwar Yadav @ Tetar Yadav is also employed in Bihar Military Police (BMP) and his caste is "Yadav". A departmental proceeding was initiated against the appellant on the allegation that by suppressing his original caste he availed benefit of reservation and got himself appointed in Bihar Military Police (BMP). During the departmental proceeding the appellant was afforded sufficient opportunity to defend himself. The appellant cross examined the Police Inspector, Warsaliganj who had conducted an enquiry at his village. It appears that during the cross-examination the said witness admitted that some of the villagers informed that mother of the appellant belonged to Garedi caste. The appellant in his defence did not examine any witness to show that he was brought up by his mother and he was treated as member of the community to which his mother belonged. The fact that the appellant's father belongs to Yadav caste, is a matter of record. In the aforesaid facts the reliance placed on "Rameshbhai Dabai Naika v. State of Gujarat and Others" (supra) is completely misplaced.

6. The disciplinary authority has noticed that the appellant was admitted to benefit in height for which a candidate belonging to Yadav caste was not entitled to. The appellate authority has dismissed the appeal by a reasoned order. In "Addl. General Manager Human Resource, Bharat Heavy Electrical Ltd. v. Suresh Ramkrishna Burde" (2007) 5 SCC 336, a case in which appointment to a post reserved for Schedule Tribe candidate was obtained by producing false caste certificate which was detected after 9 long years of appointment and, the enquiry and litigation consumed a further period of 13 years, the Hon"ble Supreme Court held that termination of service even at that stage is justified. It was further held that undertaking given by the employee that in future he would not take any advantage claiming himself to be a member of Schedule Tribe was not a ground to direct his reinstatement in service. In "Union of India v. Dattatray s/o Namdeo Mendhekar and Others" (2008) 4 SCC 612 distinguishing "Milind" case the Hon"ble Supreme Court held that the said case does not lay down a proposition of law that wrongful appointment can be continued. The learned Single Judge has rightly observed that in exercise of jurisdiction under Article 226 of the Constitution of India, High Court cannot re appreciate the evidence. Referring to the decision in "State of U.P. and Others" v. Raj Kishore Yadav and Another" (2006) 5 SCC 673 the learned Single Judge dismissed the writ petition.

7. We also do not find any infirmity in the order handed down to the appellant by the Writ Court. Resultantly, the Letters Patent Appeal stands dismissed.