

(1992) 02 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 1034 of 1991

Sri Hari Sharan Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-1992

Acts Referred:

Citation : (1992) 2 PLJR 594

Hon'ble Judges : N. Pandey, J; I.P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In this application, the Petitioner has prayed for issuance of a writ commanding the Respondents to give him the benefit in his service which are being given to the members of the Scheduled Tribe in the matters relating to promotion.

2. Facts of the case fall in a narrow compass. The Petitioner was appointed on 10.8.1964 as Lecturer in the Government Polytechnic, Muzaffarpur. Subsequently, he was promoted in the rank of Assistant Professor, Mechanical in the year 1966. Thereafter the Petitioner's name was recommended by the Bihar Public Service Commission for appointment as Assistant Engineer, Mechanical, in the Department of River Valley Project, Government of Bihar. Consequent thereto, the Petitioner was appointed against the said post and joined on 4.1.1967. The Petitioner was ultimately promoted to the rank of Executive Engineer. Thereafter one J. Munda, whose name was recommended by the Bihar Public Service Commission in the year 1966, was promoted to the post of Superintending Engineer ignoring the claim of the Petitioner who belonged to 1965 batch. Subsequently, the Petitioner learnt that as Mr. Munda belonged to a Scheduled Tribe community, he was promoted earlier to the Petitioner.

3. The Petitioner, thereafter, filed representation stating therein, that he belonged to Lohar caste and as per the Presidential notification as contained in Annexure

6, it has been notified that in the State of Bihar, the caste of Lohar or Lohra has been placed in the category of Scheduled Tribe. It is not in dispute that the Petitioner is a Lohar by caste. Rather, there are different letters and certificates granted by the authorities, from time to time, to show that the Petitioner is Lohar by caste. The only controversy is whether persons belonging to Lohar by caste will be entitled for the benefits which are being extended to the members of Scheduled Tribe.

4. A counter affidavit has been filed on behalf of the official Respondents, that is Respondent Nos. 1 to 5; wherein the claim of the Petitioner for his promotion to the post of Superintending Engineer in place of Mr. J. Munda has been denied. It has also been denied that the Petitioner is entitled for the benefit which are being given to the members of the Scheduled Tribes on the ground that he has not been placed under the category of a Scheduled Tribe. It has been stated that the Department of Personnel and Administrative Reforms vide letter No. 756 dated 10.11.1978 has notified Lohar and Karmkar and Kamar in the category of other backward classes. It is stated that in view of the aforesaid notification, as the Petitioner belongs to Lohar caste, he cannot claim the benefits of Scheduled Tribe. Besides the aforesaid, it has been further stated that the Petitioner did not file any application before the department, questioning the promotion of J. Munda as Superintending Engineer.

5. On the basis of the facts stated above, a question arises for adjudication whether the Petitioner who is Lohar by caste is entitled for the benefits which have been extended to the scheduled tribe, as per different notifications issued by the Central Government as also by the State Government? The Petitioner has placed reliance over notification issued by the Government of India, wherein caste Lohar and Lohra have been included in the category of scheduled tribe for the State of Bihar and are placed at serial No. 22 of the list, containing the names of different castes. On the other hand, the Respondents have placed reliance over a notification issued by the Department of Personnel and Administrative Reforms dated 10.11.1978 (Annexure F) in which caste Lohar has been placed in the category of other backward classes. According to the Petitioner, once the name of a particular caste is included in the category of the scheduled tribe vide a notification issued by the President of India, the same cannot be excluded by any other notification or order issued by a particular State Government. It is stated that for exclusion of such name, a Presidential notification or an order, as the case may be, has to be issued. It is urged that in view of the Presidential notification, as aforesaid, the Bihar Public Service Commission has also published hand book therein at serial 20 page 62, Lohar caste has been shown in the category of scheduled tribe. Relevant extract of the aforementioned hand book has been annexed as Annexure 9 to the main writ application.

6. From a bare reference to the facts mentioned above, it appears caste Lohar has been included in the Presidential notification in the category of Scheduled

Tribe. Whether such benefits extended to the persons belonging to Lohar caste can be taken away by a notification issued by the Department of Personnel and Administrative Reforms, placing Lohar in a category of other backward classes and not in the category of Scheduled Tribe? To solve this problem it may be noticed that similar controversy had arisen in a case of Shambhu Nath, an employee of Post and Telegraph Department, who belonged to Lohar caste and was a resident of Bihar. He had claimed all the benefits of Scheduled Tribe after inclusion of the caste Lohar in the category of Scheduled Tribe by the Presidential notification after 1976. Initially, his application for giving the said benefit was rejected by the Central Administrative Tribunal. Thereafter, he filed Civil Appeal No. 4631 of 1990 arising out of L.P. No. 5684 of 1990. The Supreme Court by order dated 12.9.1990 (a copy of which has been annexed as Annexure 14 with the Supplementary Affidavit) has held that it was in dispute that from 1975 onwards, the caste Lohar has been declared as Scheduled Tribe. It would be proper to notice the relevant findings hereunder:

We have looked into the records and have heard counsel for the parties. In view of the accepted position that Lohar community is included in the Scheduled Tribe from the date of amendment of the list in 1976 and the dispute as to whether the community was known as "Lohar" or "Lohra" and if it was the latter, it has been so included from before, we do not think the Tribunal was justified in holding the view it has taken.

7. In view of the aforesaid judgment, now it is clear that the controversy regarding Lohar and Lohra has now come to an end from the date of amendment of the list in 1976 as per the Presidential notification contained in Annexure 6.

8. Taking into consideration the entire facts and circumstances, as mentioned above, we direct the Respondent No. 2 to consider the claim of the Petitioner for promotion in the light of the findings recorded above and issue consequential order/notification in accordance with law.

9. In the result, with the observations and directions mentioned above, this writ application is allowed to the extent indicated above.