

(1989) 04 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7700 of 1988

Sushri Priti Biswas

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-04-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 162, 309

Citation : (1989) 04 PAT CK 0045

Hon'ble Judges : P.S. Mishra, J;B.K. Roy, J

Bench : Division Bench

Advocate : S.J. Mukhopadhyaya, S. Kishore, A.N. Banerjee, K. Mukherjee and S.K. Ghose, for the Appellant; J.N. Pandey, B.N. Mishra and M.K. Singh, for the Respondent

Judgement

P.S. Mishra and B.K. Roy, JJ.—This application has raised a question of some importance, whether there can be a reservation or preference extended to emigrant refugees or not. It has also raised a question whether consideration for appointment to a public service under the State can be confined to the residents of a district or not.

2. An advertisement inviting applications for appointment as Assistant teacher in primary and upper primary schools in the district of East Champaran was issued under the signature of the 4th Respondent (the District Superintendent of Education) The Petitioner qualified under the said advertisement and accordingly applied for consideration of her case in the category of the displaced persons.

3. According to the Petitioner, her father, Kiranchandra Biswas was a resident of the district of Faridpur of the then Bengal (now Bangladesh) from where he entered into India as a refugee in the year 1948. He was so registered by the Government of West Bengal on 28.12.48 and was given registration No. 737000. The Petitioner was called for interview and accordingly she appeared with all her certificates etc. before the 4th Respondent including refugee certificate granted to her father by the West Bengal Government to show that she was a refugee's

daughter. Respondent No. 4 called the Petitioner on several date, and on each occasion she appeared before him and produced relevant certificates. She, however, came to know that no weightage was given to her of being a daughter of refugee on the ground that the Rehabilitation Officer, Bettiah had not issued such certificate.

4. Having come to know of the non-consideration of her case, the Petitioner made several representations. Her representations, however, remained unanswered. In the meanwhile, however, the 4th Respondent made several appointments. Left with no alternative, she has moved this Court.

5. The advertisement and consequent selections and appointments are so evidently unconstitutional that a mere glance to Article 16 of the Constitution of India is enough to declare them ultra vires. The advertisement says - "A wedan patra kewal purbi Champaran kewasi hi ho sakte hain". Clause (2) of Article 16 says--"no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth,, residence or any of them be ineligible for or discriminated against in respect of any employment or office under State". It is not in dispute that the Petitioner is a citizen of India and evidently so were other candidates, because they could not be selected in terms of the advertisement aforementioned, unless they were residents of the district of East Champaran. A discrimination on the ground of residence is specifically forbidden by the Constitution, yet the advertisement invited applications only from the residents of the district of East Champaran. The violation of the constitutional mandate by the said advertisement is such that it cannot be sustained.

6. There is no counter affidavit filed on behalf of the Respondents. There is, thus, nothing on the record to dispute the Petitioner's claim that her father, Kiranchandra Bishwas was a resident of the district of Faridpur in East Bengal forming part of Pakistan when in the year 1948 he emigrated to India and was registered as refugee vide registration No. 737000 on 28.12.48 by the Government of West Bengal.

7. We do not have anything beyond the word "Bisthapit Sharnarathi" used in the advertisement to know as to who according to the Respondents qualified in the said category, and whether "Bisthapit Sharnarathi" could be chosen as a class in the teeth of the equality of opportunity in the matters of public employment guaranteed under Article 16 of the Constitution or not.

8. A reservation for a particular service or class of services is permissible in some cases. A reference to Clause (3) of Article 16 of the Constitution will explain the position which states - "nothing in this Article shall prevent the Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under the Government of or any local or any other authority within a State or Union territory any requirement as to residents within the State or the Union territory prior to such appointment or employment". The State, is permitted to make any provision for the reservation of appointment or

posts in favour of any backward class of citizen which in the opinion of the State is not adequately represented under the service of the State. This has been provided for notwithstanding the guarantee of equality of opportunity by incorporating therefore a specific provision in Clause (4) of Article 16 of the Constitution.

9. No law made by the Parliament has been brought to our notice with respect to the elementary school teachers saying that those who are residents of a particular district of the State alone can be appointed. Nothing has been brought to our notice showing that "Bisthapit Sharnarhi" have been treated as a backward class of citizens and that reservation for them has been created in the service of the State of Bihar.

10. In our effort to find out as to how a displaced person from East Pakistan, as it then was, will be treated, we examined the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and found "displaced persons" defined to mean, any person who, on account of the setting up of the dominions, of India and Pakistan or on account of civil disturbances or fear of such disturbances in any area now forming part of West Pakistan, has after first day of March, 1947, left or been displaced from, his place of residence in such area etc. Even the said law has not recognised any person coming from East Bengal as a displaced person for the purpose of the said Act. A displaced person, as defined in the said Act, however, may include the successor-in-interest of any such person.

11. All citizens of India have been recognised as one irrespective of religion, race, caste, sex or place of birth, residence or any of them for the purpose of appointment in the Government services or under the State as defined, in Article 12 of the Constitution of India State's power to make provision for the reservation of appointment or posts in favour of any backward class of citizen is one method by which any segment can be recognised as backward class and special provision for it may be made. The State for making any such provision may take recourse to its statute making power including the act of the Legislature of the State or a rule framed in exercise of the power under Article 309 of the Constitution of India or in the absence of the rules in exercise of its executive powers under Article 162 of the Constitution of India. However, any such power has to be executed by an instrument of the State Government and not in the shape of an executive act by any officer of the State Government. We are, therefore, satisfied that the Petitioner cannot, on account of the aforementioned reservation, claim any preference over other eligible candidates of general or any other reserved category.

12. Still we have to allow this application for the reason of over inclusiveness on the ground of residence introduced for the candidates belonging to the district of East Champaran only which is violative of Articles 14 and 16 of the Constitution of India.

13. For the reason aforementioned, we hereby quash the advertisement as contained in annexure 1 and direct the Respondents to re-advertise the posts and fill in the posts in accordance with law. It is obvious that the Petitioner, if otherwise eligible, will be entitled to apply in response to the fresh advertisement issued and accordingly entitled to consideration of her case for appointment. There shall be no order as to costs.