

(2005) 10 PAT CK 0006
In the Patna High Court
Case No : LPA No. 934 of 2003

The State of Bihar and Others	Vs	APPELLANT
Ganpati Singh and Others		RESPONDENT

Date of Decision : 26-10-2005

Acts Referred:

Constitution of India, 1950 — Article 3

Citation : (2006) 1 PLJR 249

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : Rajendra Prasad Singh and Niranjana Kumar, Ravi Ranjan, for the Appellant; Bindhyachal Singh, Prashant Kumar and Prashant Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal, at the instance of the State Government, is preferred against the judgment and order passed by a learned Single Judge of this Court by which the writ petition filed by respondent No. 1 was allowed and the State and its concerned authorities were directed to appoint him on the vacancy that was shown in the advertisement to be reserved for a Scheduled Tribes candidate. Though the appeal is filed by the State," the order of the writ court is mainly opposed by someone who was not even a party in the writ proceedings. He is one Dinesh Kumar and he apprehends that the appointment of the writ petitioner-respondent No. 1 as per the direction of this Court would lead to his ouster from service. The facts are simple and without any controversy. The Bihar Public Service Commission issued an advertisement on 18.12.1998 for filling up 33 vacancies of Junior Engineers in the Department of Animal Husbandry and Fisheries. The number of vacancies coming in the share of the different reserved categories was indicated in the advertisement as follows:

Un-reserved

- 16

Scheduled Castes

- 4

Scheduled Tribes

- 3

Most Backward Class

- 5

Backward Class

- 4

Backward Class women

- 1

Total-

33

2. Here it may be recalled that at that time the Scheduled Tribes enjoyed reservation to the extent of 10% and, hence, three out of the 33 available vacancies was assigned to that category.

3. The selection examination was held on 17.10.2001 and the result of the written test was published on 21.3.2002. The candidates qualifying in the written examination were called for interview and interviews were held during the months of May and June, 2002. The final result was published on 19.6.2002 in which the writ-petitioner occupied first position for the three vacancies reserved for the Scheduled Tribes. The Commission made its recommendation to the State Government on 10.9.2002 and in that recommendation the name of the writ-petitioner respondent No. 1 admittedly figured at serial No. 1 for the vacancies reserved for the Scheduled Tribes candidates.

4. But, in the meanwhile, the State of Bihar was divided to create the new State of Jharkhand under the Bihar Reorganisation Act of the year 2000. Following the State's division an amendment was made in the Bihar Reservation of Vacancies in Posts and Service (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act. The amendment was introduced by the Bihar Act XVII of 2002, that came into force with effect from 27.8.2002. By the amendment the percentage of reservation for the Scheduled Tribes was reduced from 10 to 1. Advancing the plea of the amendment in the Reservation Act and contending that 1% reservation will not give any seat to the Scheduled Tribes in the available 33 vacancies, no appointment was made from the category of Scheduled Tribes and not even the writ petitioner-respondent No. 1 was appointed even though he was the first recommended candidate by the Commission for the vacancies reserved

in the advertisement for the Scheduled Tribes.

5. It may here be noted that as a result of the bifurcation of the State, the total number of vacancies too was reduced and the final appointment position stands as follows:--

Un- reserved

- 13

Scheduled Castes

- 4

Scheduled Tribes

- nil

Most Backward Class

- 5

Backward Class

- 2

Backward Class women

- nil No

one being available.

6. Out of 24 candidates to whom appointment letters were sent, one Scheduled Caste candidate did not join. Later on, two more candidates were appointed, one being the aforesaid Dinesh Kumar who belongs to the Most Backward Class category.

7. In the aforesaid facts and circumstances, the writ petitioner came to this Court seeking a direction for his appointment in the Scheduled Tribes category. The learned Single Judge held that any amendment in the Reservation Act coming into force with effect from 27.8.2002 was only prospective and it would, therefore, have no effect on the selection process for the appointment in question. The writ court, accordingly, allowed the writ petition and issued the direction to appoint the writ petitioner-respondent No. 1.

8. The J.C. to S.C. X being conscious of the legal position that any subsequent prospective change(s) in the rules shall have no effect on a selection process that had commenced earlier and that a selection must be completed on the basis of the rules as were in existence at the time of its commencement and on the basis of the terms of the advertisement did not seriously challenge the order of the writ Court.

9. The main challenge to the decision, however, came from Mr. Rajendra Prasad

Singh, counsel appearing on behalf of Dinesh Kumar who has filed an intervention petition in this appeal. Mr. Singh submitted that the State was divided pursuant to an Act of Parliament made in exercise of the powers under Article 3 of the Constitution and the division of the State had led to re-allocation of reservation percentages. Hence, after the State was divided the Scheduled Tribes cannot be allowed 10% reservation in appointment and the writ petitioner-respondent No. 1 could not be appointed notwithstanding the recommendation of the Commission in his favour.

10. The submission has no sanction in law and it is plainly contrary to the established legal position on the basis of the decisions of the Supreme Court and this Court.

11. See the decisions of the Supreme Court in (i) Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , (ii) A.A. Calton Vs. Director of Education and Another, , (iii) P. Mahendran and others Vs. State of Karnataka and others, and the decisions of this court in (i) Subhas Chandra Yadav & Ors. vs. The State of Bihar & Ors. in C.W.J.C. No. 11491 of 2001, Date of disposal 8.10.2001 (D.B.), (ii) Miss Afshan Azeem and Others Vs. State of Bihar, , (iii) Jonoon Sangi Vs. The State of Bihar and Others, , (iv) Salil Kumar Singh Vs. The State of Bihar and Others, , (v) Sharmila Kumari vs. The B.P.S.C. 1995 (1) P.L.J.R. 275 and (vi) Dr. Surendra Kumar and Anr. vs. The State of Bihar in C.W.J.C. No. 7121 of 2003 Ed.--Reported in 2005 (4) PLJR 478, Date of disposal 24.6.2005 (S.J.).

12. The ratio of all these decisions confirms the legal position that any subsequent alteration of the rules made prospectively shall have no effect on selection process that had commenced earlier and that selection for appointments must be completed on the basis of the rules in existence at the time of its commencement and the terms and conditions of the advertisement.

13. On hearing learned counsel for the parties, I find no merit in this appeal. This appeal is dismissed. The judgment and order passed by the writ Court is affirmed and the concerned authorities in the State Government are directed to issue appointment letter to the writ petitioner-respondent No. 1 forthwith. At this stage, it may be stated that in the end Mr. Singh submitted that the vacancies were still available and Dinesh Kumar may be adjusted against one of the available vacancies. The intervenor Dinesh Kumar may make such a request before the departmental authorities who will consider his request in accordance with the rules and in relation to the claims of other candidates. But the appointment of the writ petitioner-respondent No. 1 is not to be delayed on any pretext, including the one to accommodate Dinesh Kumar or any other person going to be affected by another means.