
(2003) 01 PAT CK 0029
In the Patna High Court
Case No : L.P.A. No. 708 of 2002

The State of Bihar and Others	Vs	APPELLANT
Madhusudan and Others		RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Citation : (2003) 01 PAT CK 0029

Final Decision : Allowed

Judgement

1. This appeal is barred by limitation.
2. After hearing learned Counsel for the parties and taking into consideration the averments made in the limitation petition, we are satisfied that sufficient ground has been made out to condone the delay. Accordingly, the delay in filing this appeal is condoned.
3. This appeal is directed against the order dated 10.1.2002 passed by the learned single Judge in C.W.J.C. No. 14254 of 2001, whereby he has quashed the order dated 14.9.2001 by which the Home (Police) Department, Government of Bihar after having come to the conclusion that the Appellant has obtained appointment on the post of Deputy Superintendent of Police by wrongly claiming to be the member of Scheduled Caste, sought concurrence of the Bihar Public Service Commission.
4. The facts which are not in dispute are that the writ Petitioner-Respondent No. 1 was one of the candidates in the 37th Combined Competitive Examination held for filling up of the post of Bihar Police Service, Bihar Administrative Service, etc. In the said examination, the writ Petitioner-Respondent No. 1 claimed himself to be member of Scheduled Caste. He secured 583.5 marks. There were four posts vacant in the Bihar Police Service (Deputy Superintendent of Police). Two posts were for general category, one for Scheduled Caste and one for Extremely Backward Class. On the basis of marks obtained by the writ Petitioner-Respondent No. 1 and treating him as Scheduled Caste candidate he was

recommended for appointment on the post of Deputy Superintendent of Police and he was appointed on the said post. Later on, the Government came to know that he has wrongly claimed that he belongs to Scheduled Caste category though he is Baniya by caste which comes under O.B.C. Category. Thereafter, the matter was enquired into at the Government level, show cause was issued to the writ Petitioner and after perusal of the show cause and after taking opinion of the Law Department and Advocate General, the Government came to the conclusion that the writ Petitioner has obtained appointment by falsely claiming member of the Scheduled Caste and accordingly sought for opinion/concurrence of the Bihar Public Service Commission. The writ Petitioner challenged the said decision of the Government by filing writ application.

5. It is admitted position that the writ Petitioner-Respondent No. 1 was born in the family of OBC category. The only controversy is as to whether the writ Petitioner-Respondent No. 1 was adopted by the person belonging to Scheduled Caste category or not and in case it is found that he was adopted by such person, then by virtue of said adoption he will get benefit of reservation under the law or not.

6. So far adoption is concerned, the writ Petitioner-Respondent No. 1 has made averments in the writ application but before the learned single Judge, the learned Counsel appearing for the writ Petitioner did not press the point with regard to adoption. In this connection, learned Judge has observed as follows:

It may be mentioned here that though in the writ petition detailed averments have been made to make out case of adoption by Rameshwar Paswan, Shri Ram Balak Mahto, learned Counsel for the Petitioner, fairly did not press the Petitioner's case in that regard....

7. The materials on the record show that even in the voter list the name of the natural father of the writ Petitioner-Respondent No. 1 was mentioned. The Government has enquired into the matter and found the story of adoption was not correct.

8. This Court in writ jurisdiction will not go into the sufficiency of the material specially when this point was not pressed before the learned single Judge. Even assuming that he was adopted, even then the case of the writ Petitioner-Respondent No. 1 will not improve.

9. In the case of Mrs. Valsamma Paul Vs. Cochin University and others, the Apex Court held that if a member is transplanted into the Dalits, Tribes and OB Cs by adoption, he is not entitled to the benefit of reservation either under Articles 15(4) or 16(4) of the Constitution of India. In this connection, it is relevant to refer to para 34 of the judgment of the Apex Court which runs as follows:

34. In H.B. Usha (Smt) Vs. D.S. Ramachandra, and R. Chandevappa and Others Vs. State of Karnataka and Others, this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under

Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmers the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46 or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings, so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had much of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Articles 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

10. Thus on this score also the writ Petitioner-Respondent No. 1 is not entitled to benefit of reservation in the matter of appointment as a Scheduled Caste candidate.

11. The next question for consideration is as to whether the writ Petitioner-Respondent No. 1 should be allowed to continue on the said post only on the ground that he has remained on that post since 1993. Learned Single Judge having noticed the fact that he would have been appointed to the Bihar Administrative Service by virtue of marks obtained by him because the last candidate recommended for appointment to the said service in the general category had secured less marks than him, allowed him to continue in Bihar Police Service inspired at the fact that the very foundation of the appointment was found to be invalid in the eye of law.

12. We find ourselves unable to agree with the aforesaid conclusion of the learned single Judge. If the writ Petitioner-Respondent No. 1 would not have been treated as Scheduled Caste candidate he would not have been appointed on the post of Deputy Superintendent of Police. He got appointment by virtue of assertion which the State Government found to be incorrect one. In such a situation, allowing him to continue on the post of Deputy Superintendent of Police will amount to giving premium to his own wrongful acts.

13. In the case of *G. Sundarasan Vs. Union of India and another*, a non-Scheduled Caste person got service on the basis of Scheduled Caste Certificate and remained in service for thirty years. The Government having noticed the aforesaid fact initiated departmental proceeding and forfeited his pension after his retirement. The said order was upheld by the Apex Court on the ground that the person not belonging to the Scheduled Caste cannot be allowed to take the benefit of his own wrongful acts.

14. After having considered the matter and giving our thoughtful consideration, we are of the view that the decision taken by the State Government to terminate the services of the writ Petitioner-Respondent No. 1 as Deputy Superintendent of Police does not suffer from any legal infirmity and accordingly the order passed by the learned single judge is set aside.

15. The question as to whether by virtue of his marks, the writ Petitioner-Respondent No. 1 is entitled to any post in the Bihar Administrative Service under any category is for the Government to consider in the light of the conduct of the writ Petitioner-Respondent No. 1. So far that aspect is concerned, we are not inclined to issue any direction.

16. In the result, this appeal is allowed and the order of the learned single Judge is set aside.