

(2017) 08 JH CK 0051
In the Jharkhand High Court
Case No : 346 of 2012

Udit Priye

APPELLANT

Vs

Rina Kumari

RESPONDENT

Date of Decision : 08-08-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 12](#), [Article 16](#), [Article 13\(2\)](#), [Article 13\(3\)](#) - Appointment of Commission to inquire into an

Citation : (2017) 08 JH CK 0051

Hon'ble Judges : Ratnaker Bhengra, D. N. Patel

Bench : DIVISION BENCH

Advocate : Anoop Kr. Mehta

Final Decision : Dismissed

Judgement

1. When the matter is called out, learned counsel for the appellant is absent.
2. We have heard learned counsel for the respondent at length, who has submitted that there cannot be any rule, permitting, as a matter of right, the legal heir of a retired employee to get employment in a Public Sector Undertaking and hence, the reference being Reference No. 04 of 1992, which was made to the Central Government Industrial Tribunal (No. 2), Dhanbad, was itself not tenable in the eyes of law, specially in view of Article 13(2) and Part III of the Constitution of India to be read with the judgment, rendered by Hon'ble Supreme Court of India in the case of Yogender Pal Singh & ors. Vs. Union of India & ors., as reported in AIR 1987 SC 1015 (paragraph nos. 16 and 17 thereof). This aspect of the matter has been properly appreciated by the learned Single Judge, while allowing the writ petition, preferred by the respondent, being W.P. (L) No. 2412 of 2002. It is also submitted by the learned counsel for the respondent that if such type of right of inheritance, in a public employment is given, there will be a direct violation of Article 14 and 16 of the Constitution of

India. It is further submitted that for appointment to a public post, advertisement is must and the public at large must be given an opportunity to compete with each other to get public employment and hence, this Letters Patent Appeal may not be entertained by this Court.

3. Having heard learned counsel for the respondent and looking to the facts and circumstances of the case, it appears that one employee Sri N.K. Banerjee, who was working as Over-man with the respondent- BCCL, retired on 7th June, 1986. His son is claiming employment against Class IV post, because of the scheme floated by the respondent and as per Clause 9.4.4. of National Coal Wage Agreement-III, prevalent at the relevant time, which provides for employment as a matter of right due to inheritance.

4. It further appears from the facts of the case that such type of Clause is absolutely contrary to Articles 14 to be read with Article 16 of the Constitution of India, because the respondent is the "State" within the meaning of Article 12 of the Constitution of India. Public employment cannot be given as a matter of right, to the son or daughter or legal heir of a retired employee. For public employment, public advertisement is must, public at large must be given an opportunity to apply for the said post and to compete with each other, whereupon best suitable candidate will be appointed on a public post. This aspect of the matter has been properly appreciated by the learned Single Judge, while allowing the writ petition, preferred by the respondents being W.P.(L) No. 2412 of 2002, vide judgment and order dated 26th July, 2012.

5. It further appears from the facts of the case that the original employee Sri N.K. Banerjee has already retired on 7 th June, 1986 and thereafter, his son has no right at all to get employment on Class IV post with the respondent nor there is any legal obligation on the part of the respondent to offer this appellant a Class IV post. It has been held by Hon'ble Supreme Court in the case of Yogender Pal Singh & ors. Vs. Union of India & ors., as reported in AIR 1987 SC 1015, at paragraph nos. 16 and 17, as under: "16. We should, however, point out at this stage a fundamental defect in the claim of the appellants, namely, that rule 12.14(3) of the Punjab Police Rules, 1934 which authorised the granting of preference in favour of sons and near relatives of persons serving in the police service became unconstitutional on the coming into force of the Constitution. Clauses (1) and (2) of Article 16 of the Constitution which are material for this case read thus:-

"16.(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) 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 the State."

17. While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the

Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service. In *Gazula Dasaratha Ram Rao V. State of Andhra Pradesh* (1961)2 SCR 931: (AIR 1961 SC 564) the question relating to the constitutional validity of section 6(1) of the Madras Hereditary Village Offices Act, 1895 (3 of 1895) came up for consideration before this Court. That section provided that where two or more villages or portions thereof were grouped together or amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined in section 3, clause (1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new offices which were created for the new village or villages should be filled up by the Collector by selecting the persons whom he considered best qualified from among the families of the last holders of the offices which had been abolished. This Court held that the said provision which required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the constitution. The Court observed in that connection at pages 940-941 and 946-947 (of SCR): (at PP. 569-70 and 572 of AIR) thus:

"Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16, cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and cl. (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Art. 14 guarantees the general right of equality; Art. 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Art. 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 does not mention "descent" as one of the prohibited grounds of discrimination, whereas Art. 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to services or to provisions in the earlier Constitution Acts relating to the same subject.....(pages 940-941) (of SCR): (at p. 569- 70 of AIR).

There can be no doubt that S. 6(1) of the Act does embody a principle of

discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art. 16(2) of the Constitution." (pages 946-947) (of SCR): (at p. 572 of AIR)." (Emphasis supplied)

6. In view of the aforesaid decision, it is, thus, evident that the public post cannot be given, as a matter of right, to the legal heir of a retired employee. This aspect of the matter has been properly appreciated by the learned Single Judge, while allowing the writ petition, preferring by the respondent, being W.P.(L) No. 2412 of 2002 vide judgment and order dated 26th July, 2012. Hence, there being no substance, this Letters Patent Appeal is hereby dismissed.