
(2024) 12 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No(S). 14394 Of 2024 (@ Special Leave Petition (Civil) No. 18985 Of 2023)

Union Of India & Ors

APPELLANT

Vs

Rohit Nandan

RESPONDENT

Date of Decision : 13-12-2024

Acts Referred:

Constitution of India, 1950 — Article 341

Citation : (2024) 12 SC CK 0029

Hon'ble Judges : Pamidighantam Sri Narasimha, J;Manoj Misra, J

Bench : Division Bench

Advocate : K.M.Nataraj, Amrish Kumar, Shradha Deshmukh, R.Bala, Aakanksha Kaul, Sarthak Karol, Rohit Khare, Piyush Beriwal, Anilendra Pandey, Rajeev Kumar, Priya Kashyap, Nadeem Hussain, M/s. Ranjan And Company

Final Decision : Allowed

Judgement

Pamidighantam Sri Narasimha, J

1. Leave granted.

2. The Union of India is in appeal against the judgment of the Division Bench of the High Court of Judicature at Patna 'CWJC No. 12096 of 2022 dated 19.01.2023' allowing the writ petition filed by the respondent challenging the order of the Central Administrative Tribunal dismissing his Original Application filed against the decision of the Government disentitling his claim under the Scheduled Caste category. Following the recent decision of this Court in Dr. Bhim Rao Ambedkar Vichar Manch Bihar v. State of Bihar 2024 INSC 528, we have allowed the appeal and directed that the respondent will continue to be of the OBC Category, belonging to Tanti caste and shall not to be treated as Scheduled Caste as per the notification of State Government dated 02.07.2015.

3. The short facts are that the respondent was appointed as a Postal Assistant in the year 1997 under the Other Backward Caste (OBC) Category on the basis of

his 'Tanti' Caste Certificate.

4. The State Government vide Gazette Notification dated 02.07.2015 deleted 'Tanti' caste from the list of OBCs to enable members of the said community to avail benefits of Scheduled Caste (SC) category by merging it with Pan/Swasi caste which figures in the list of Scheduled Castes.

5. Following the gazette notification, the respondent obtained a Scheduled Caste certificate as member of the Pan/Swasi caste from the office of District Magistrate, Patna on 29.09.2015 and requested the Chief Post Master General, Patna on 23.06.2016 for change of his category from OBC to Scheduled Caste in his Service Book in terms of the new caste certificate and the aforesaid Gazette notification. In the meanwhile, the respondent applied for promotion to the Postal Service Group 'B' through Limited Departmental

Competitive Examination (LDCE) as notified on 07.10.2016, as a Scheduled Caste candidate and appeared in the examination held on 18.12.2016. Though he was declared successful in the examination vide communication dated 16.04.2018, his name was not approved for promotion and his result was put on hold for further consideration vide notification dated 06.09.2018. Meanwhile, the office of the Postmaster General, East Region, Bihar, ordered on 17.08.2018 to change the category of respondent to Scheduled Caste in his Service Book.

6. Finally, the Department of Posts, after consulting the Department of Social Justice and Empowerment, ordered vide communication dated 14.02.2019 that the respondent was not entitled to the benefit of Scheduled Caste category as he does not belong to scheduled caste and deleted his name from the list of candidates successful in the examination. Being aggrieved by the aforesaid order dated 14.02.2019, the respondent filed OA/050/00289/2019 before the Central Administrative Tribunal, which was dismissed on 01.04.2022.

7. The decision of the Tribunal was challenged before the High Court in a Writ Petition and the High Court allowed the same on 19.01.2023 by the order impugned before us. The High Court proceeded on the following premise:

"9. It is not a case that the State Government has amended the Presidential order without any authority of law and has included a particular caste in the category of Scheduled Caste or Scheduled Tribe, but the State Government has only deleted one of the most backward castes from the State list on account of the fact that it is a Scheduled Caste already notified in the Presidential order and, therefore, to enable them to take the benefit of the Presidential order the circular has been issued as a clarification .

10. Moreover, the petitioner has been issued a caste certificate of SC category by a competent authority and the same has not been challenged or cancelled. Hence, for all practical purposes, the petitioner is a person belonging to the SC category.

11. In the light of discussion made hereinabove and under the facts and

circumstances of the case, the present writ petition deserves to be allowed and is accordingly allowed. The order of learned CAT dated 01.04.2022 and the order dated 14.02.2019 issued by the respondent no.3 are quashed and set aside.”

8. During the pendency of the appeal before us and after notice was issued by this Court on 25.08.2023, an important development occurred. The very same question was taken up and decided by this Court on 15.07.2024 in Dr. Bhim Rao Ambedkar (supra). Therein, it has been held that the exercise of taking out 'Tanti' from the EBC ('Extremely Backward Classes') list issued under the Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 and its merger with the Scheduled Caste list is bad, illegal and unsustainable. The relevant

portions of the decision are as follows:

“36. Having considered the submissions advanced, we have no hesitation in holding that the Resolution dated 01.07.2015 was patently illegal, erroneous as the State Government had no competence/ authority/power to tinker with the lists of Scheduled Castes published under Article 341 of the Constitution. The submission of the respondent-State that Resolution dated 01.07.2015 was only clarificatory is not worth considering for a moment and deserves outright rejection. Whether or not it was synonymous or integral part of the Entry-20 of the lists of Schedule Castes, it could not have been added without any law being made by the Parliament. The State knew very well that it had no authority and had accordingly forwarded its request to the Union of India in the year 2011. The said request was not accepted and returned for further comments/justification/ review. Ignoring the same, the State proceeded to issue the Circular dated 01.07.2015. The State may be justified in deleting “Tanti-Tantwa” from the Extremely Backward Classes list on the recommendation of the State Backward Commission, but beyond that to merge “Tanti-Tantwa” with 'Pan, Sawasi, Panr' under Entry 20 of the list of Scheduled Castes was nothing short of mala fide exercise for whatever good, bad or indifferent reasons, the State may have thought at that moment. Whether synonymous or not, any inclusion or exclusion of any caste, race or tribe or part of or group within the castes, races or tribes has to be, by law made by the Parliament, and not by any other mode or manner.

37. The submission that the recommendation of the Commission for Extremely Backward Classes was binding on the State, is not a question to be determined here, inasmuch as, even if we accept the submission, such recommendation could relate only to the Extremely Backward Classes. Whether or not to include or exclude any caste in the list of Extremely Backward Class would be within the domain of the Commission. The Commission would have no jurisdiction to make recommendation with respect to any caste being included in the Scheduled Castes lists and, even if it makes such a recommendation, right or wrong, the State has no authority to proceed to implement the same when it was fully aware that the Constitution does not permit it to do so. The Provisions of Article 341 sub-clause 1 and sub-Clause 2 are very clear and discrete. There is no ambiguity

or vagueness otherwise requiring any interpretation other than what is mentioned therein. The State of Bihar has tried to read something in order to suit its own ends for whatever reason, we are not commenting on the same.

38. The High Court fell in serious error in upholding the said Notification on a completely wrong premise without referring to Article 341 of the Constitution."

9. While the present case deals with the removal of the Tanti caste from the OBC list instead of the EBC List, the decision of this Court in Bhim Rao Ambedkar (supra) covers the issue and the notification of the State Government adding to the list of Scheduled Class is illegal and unlawful. The respondent cannot claim the benefits of the Scheduled Caste Category since the merger of the Tanti caste with the Scheduled Caste list is bad in law in light of Bhim Rao Ambedkar (supra). The learned counsel for the respondent has not even argued this point.

10. However, the learned counsel submitted that despite illegality in the notification, this Court in Bhim Rao Ambedkar (supra) had protected those who had come to occupy the posts. The relevant portion is also reproduced for convenience:

"39. Now comes the question with regard to protecting those Members of "Tanti-Tantwa" community who were extended benefit of Scheduled Castes pursuant to the Resolution dated 01.07.2015. In the present case, the action of the State is found to be mala fide and de hors the constitutional provisions. The State cannot be pardoned for the mischief done by it. Depriving the members of the Scheduled Castes covered by the lists under Article 341 of the Constitution is a serious issue. Any person not deserving and not covered by such list if extended such benefit for deliberate and mischievous reasons by the State, cannot take away the benefit of the members of the Scheduled Castes. Such appointments would under law on the findings recorded would be liable to be set aside. However, as we have found fault with the conduct of the State and not of any individual member of the "Tanti- Tantwa" community, we do not wish to direct that their services may be terminated or that recovery may be made for illegal appointments or withdrawal of other benefits which may have been extended. We are of the view that all such posts of the Scheduled Castes reserved quota which have been extended to the members of the "Tanti-Tantwa" community appointed subsequent to the Resolution dated 01.07.2015 be returned to the Scheduled Castes Quota and all such members of the "Tanti-Tantwa" community, who have been extended such benefit may be accommodated under their original category of Extremely Backward Classes, for which the State may take appropriate measures.

[...]

42. It is further directed that such posts of the Scheduled Castes Quota which had been filled up by members of "Tanti-Tantwa" community availing benefit on the basis of Resolution dated 01.07.2015 may be returned to the Scheduled Castes category and such candidates of "Tanti-Tantwa" community be

accommodated by the State in their original category of Extremely Backward Classes by taking appropriate measures.”

11. Learned counsel has also relied on the decision of this Court in *K. Nirmala v. Canara Bank* 2024 INSC 634 wherein the appellants were granted protection despite the State Government notification treating them as members belonging to Scheduled Caste and Scheduled Tribe was withdrawn by the State Government after the decision of the Supreme Court in a case of *State of Maharashtra v. Milind & Ors*(2001) 1 SCC 4. The relevant portion of the said order is as under:

“35. In wake of the discussion made above, we conclude that the appellants are entitled to protection of their services by virtue of the Government circular dated 29th March, 2003 issued by the Government of Karnataka as ratified by communication dated 17th August, 2005 issued by the Ministry of Finance. The circular dated 29th March, 2003 issued by the Government of Karnataka specifically extended protection to various castes, including those which were excluded in the earlier Government circular dated 11th March, 2002. This subsequent circular covered the castes such as Kotegara, Kotekshathriya, Koteyava, Koteyar, Ramakshathriya, Sherugara and Sarvegara, thus, ensuring that individuals of these castes, holding Scheduled Castes certificates issued prior to de-scheduling, would be entitled to claim protection of their services albeit as unreserved candidates for all future purposes. Additionally, the communication issued by the Ministry of Finance dated 17th August, 2005 reinforced the protective umbrella to the concerned bank employees and also saved them from departmental and criminal action.”

12. Having considered the matter in detail, we are of the opinion that after the decision of this Court in the case of *Bhim Rao Ambedkar* (supra), the issue of the appellant claiming reservation as Scheduled Caste candidate does not subsist. As indicated earlier, it is not even the argument of the respondent that the said judgment will not apply.

13. The decisions of this Court in *Bhim Rao Ambedkar* (supra) and in *K. Nirmala* (supra) exercising equity jurisdiction stand on a different footing and they can be distinguished on facts. Those judgments dealt with long standing appointments, continued over a period of time, because of which court felt, on equitable considerations, not to disturb the employment of the appellants therein. The facts in this case are completely different and the following will clarify the position.

14. The respondent was in service of the Union on the basis of reservation claimed by him as an OBC candidate. It was only on 02.07.2015 that the State Government issued a notification shifting the caste Tanti from the OBC to that of Scheduled Caste and the necessary change in the service record was brought only on 17.08.2018. In the meanwhile, an advertisement was issued on 07.10.2016 for a Limited Departmental Competitive Examination, and the respondent applied as a Scheduled Caste candidate.

15. When the Government refused appointment to the respondent to the post as he does not belong to Scheduled Caste, he approached the Tribunal and filed an Original Application which came to be dismissed on 01.04.2022. However, the respondent's writ petition was allowed by the High Court only on 19.01.2023. We are informed that during the pendency of the matter before this Court, the respondent was appointed to the said promotional post only on 14.12.2023. Even assuming that the respondent was given benefit of his illegal categorisation as a Scheduled Caste candidate, the benefit that accrued to him was for a short period of less than a year and that too during the pendency of this appeal. Therefore, there are no equities in favour of the respondent like that of the candidates in the case of Bhim Rao Ambedkar or K. Nirmala (supra). In view of the clear position of law, coupled with lack of equities based on the facts and circumstances of the case, we cannot direct continuation of the respondent on the basis of the illegal certification as Scheduled Caste.

16. In view of the above, we allow the appeal, set aside the judgment of the High Court in CWJC No. 12096 of 2022 dated 19.01.2023 and restore the judgment and order of the Central Administrative Tribunal dated 01.04.2022 dismissing the Original Application filed by the respondent. There shall be no order as to costs.