

State of Bihar and ors. Vs. Anil Kumar

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Court : Patna

Decided On : Mar-13-2000

Judge : Bisheshwar Prasad Singh and Asok Kumar Ganguly, JJ.

Acts : [Constitution of India](#) - Articles 16 and 226

Appeal No. : Letters Patent Appeal No. 991 of 1999

Appellant : State of Bihar and ors.

Respondent : Anil Kumar

Advocate for Def. : S.K. Verma, Sr. Adv., Surendra Kishore Verma and Rajendra Prasad Singh, Advs.

Advocate for Pet/Ap. : Ashok Kumar Singh, SC III and P.K. Singh, J.C. to SC III

Disposition : Appeal dismissed

Prior history : B.P. Singh and A.K. Ganguly, JJ. 1. This appeal has been preferred by the State of Bihar and is directed against the judgement and order of a learned Judge of this Court dated 11th March, 1998 in CWJC No. 8576 of 1997. The learned Judge allowed the writ petition preferred by the respondent herein and quashed the impugned orders dated 24-5-1997, (Annexure-7), and the subsequent order dated 8th of September, 1997 whereby it was directed that the respondent shall not be allowed to appear in t

Judgement :

B.P. Singh and A.K. Ganguly, JJ.

1. This appeal has been preferred by the State of Bihar and is directed against the judgement and order of a learned Judge of this Court dated 11th March, 1998 in CWJC No. 8576 of 1997. The learned Judge allowed the writ petition preferred by the respondent herein and quashed the impugned orders dated 24-5-1997, (Annexure-7), and the subsequent order dated 8th of September, 1997 whereby it was directed that the respondent shall not be allowed to appear in the final MBBS examination in view of the pendency of inquiry in relation to the caste certificate produced by him. The said admission was later cancelled on the ground that the caste certificate furnished by the respondent had been found to be forged and fabricated. The learned Judge noticed that from the inquiry report it appeared that the authorities were under the impression that the respondent was admitted on the basis of the caste certificate issued by the Sub-divisional Officer, Hilsa on 7th September, 1990 whereas in fact the respondent was admitted on the basis of a caste certificate Issued by the Circle Officer, Hilsa on 4-1-1991. Since the authorities had proceeded on a wrong factual assumption, the Impugned order was quashed.

2. The State of Bihar has preferred this appeal and it was contended on behalf of the State that the respondent was not entitled to the benefit of reservation treating him as a candidate belonging to scheduled caste. It was, therefore, submitted that the respondent was wrongly admitted to the MBBS course on the basis of the certificate produced by him from the Circle Officer dated 4-1-1991 certifying him to be a member of the scheduled caste.

3. It is necessary to notice a few facts which are in the background. The respondent initially applied for admission to the MBBS course and took the Medical Admission Test, 1990. In that connection, he had produced a caste certificate dated 7th September, 1990 Issued by the Sub-divisional officer, Hilsa certifying him to be a member of a scheduled caste. On that basis, he was selected for admission and was granted admission to the MBBS course in the

Nalanda Medical College and Hospital, Patna, It was then detected that the caste certificate produced by him was a forged document and had not at all been issued by the Sub-divisional Officer, Hilsa. The respondent, however, did not take admission in the Nalanda Medical College and Hospital, Patna, though he had furnished the form for admission. Later, it appears that a first information report was lodged against the respondent for having furnished a forged document.

4. Counsel for the respondent disputed these facts, but it is not necessary to go into this question because these facts relate to the Medical Admission test held in the year 1990 with which we are not concerned in the instant writ petition.

5. In the following year, the respondent took the Medical Admission Test, 1991. In connection with that he had furnished a caste certificate dated 4-1-1991 issued by the Circle Officer, Hilsa. Later, when called upon, he had also furnished a caste certificate issued by the Sub-divisional Officer, Hilsa as required by the advertisement. Both the certificates certify the respondent as a member of a scheduled caste. On the basis of the particulars furnished by the respondent, he was selected for admission to the MBBS course. When the admission granted to the respondent was sought to be cancelled, the respondent filed the instant writ petition. Earlier, he had filed another writ petition being CWJC No. 775 of 1992 and that writ petition was decided in favour of the respondent on the basis that the circular of March, 1978, held the field and in terms of the said circular, the respondent was entitled to the benefit of reservation treating him as a member belonging to a scheduled caste.

8. It is not disputed before us that the mother of the respondent is Dusadh by caste which is a scheduled caste. His father was a Kurmi by caste which is a backward class in this State. It is also not disputed that though his parents lived together and the respondent was born of that relationship, they were never married. The question is whether a child born of such relationship between members of two such castes can claim benefit of reservation, treating himself to belong to a scheduled caste.

7. Counsel for the State submitted that no doubt, the circular of March, 1978 did provide that if child was born of a non-scheduled caste father and scheduled caste

mother, he would be considered as belonging to scheduled caste for the purpose of reservation, However, this circular of the Government was superseded in the year 1985 and the later circular provides that such benefit of reservation can be given only to those children whose parents are legally and validly married. Consequently, according to him, the respondent cannot claim that benefit because his parents never married. At this stage, it may be noticed that the circular of 1985 was never brought on record either in the instant writ petition in the earlier writ petition namely CWJC No. 775 of 1992. The judgment pronounced in the earlier writ petition clearly mentions the fact that the application of the circular of March, 1978 was not challenged and that the same had not been superseded by any other circular. In the Instant writ petition which gives rise to this appeal, the State did not plead in its counter-affidavit that the circular of March, 1978 was superseded by the circular Issued in the year 1985. An application was filed before us praying that the appellant be permitted to adduce additional evidence so as to bring on record the aforesaid circular of the year 1985.

8. In our opinion, it is not necessary for this Court to go into the question as to whether the circular of March, 1978 or the circular Issued later in the year 1985 is applicable to the facts of this case. We also do not propose to say anything as to the validity of the aforesaid circulars, and, may be, In an appropriate case this aspect of the matter may be gone into. We say so for the reason that in the absence of a plea based on the circular of theyear 1985. the respondent was permitted to continue his studies and thereafter he passed the MBBS examination. On the basis of the provisional certificate granted he has completed his Internship. He has also furnished no dues certificate, and all that now remains to be done is to grant clearance certificate from the college so that he may secure permanent registration as a medical practitioner.

9. Apart from the fact that the impugned orders proceeded on a factually incorrect basis, we find that so far as Medical Admission Test, 1991 is concerned, the respondent cannot be held guilty of producing a forged certificate, nor is there anything on record to suggest that he had made a misrepresentation and had secured admission by deceitful means. On the contrary, he initially produced a caste certificate granted by the Circle Officer and later produced caste certificate

issued by the competent authority, namely, Sub-divisional Officer. It appears that the circular of the year 1985 was not known to any of the authorities who issued the certificate, nor was it within the knowledge of the State itself, because the same was not brought on record either in the earlier writ petition, namely, CWJC No. 775 of 1992, nor was it brought on record in the instant writ petition. The appellant wants that the said circular be admitted as additional evidence under Order XLI, Rule 27, CPC in this appeal. Having regard to the facts we have noticed above, and the equities that arise in favour of the respondent herein, we do not wish to permit the State now to bring on record additional evidence at this belated stage.

10. In *Krishan v. Kurukshetra University*, Kurukshetra. AIR 1976 SC 376, the Supreme Court held that once the candidate is allowed to take the examination rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. It was observed that it was the duty of the University authorities to scrutinise the admission form filled by the student in order to find out whether it was in order. Equally it was the duty of the Head of the Department before submitting the form to the University to see that the form complied with all the requirements. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then in not disclosing the shortage of percentage in attendance, the question of the candidate committing a fraud did not arise. Similarly, when the candidate was allowed to appear at the Part II Law Examination, the University authorities had no Jurisdiction to cancel his candidature for that examination.

11. The same principle must apply in this case as well. The facts relating to the respondent were not in dispute. He had produced the caste certificate from the competent authority, He was granted admission unconditionally, The authorities did not take care to verify whether in terms of the circular issued by the State Government from time to time, the respondent was entitled to claim reservation on the basis of his belonging to a scheduled caste, These are matters which should have been verified at the threshold. Having granted him admission and having

failed to even bring to the notice of this Court, the revised circular said to have been issued in the year 1985, the University authorities as well as the State permitted the respondent to continue his course and to complete the same. After a lapse of more than five years, it will not be fair to hold that the respondent was not validly or legally admitted to the MBBS course on the basis of the circular of the year 1985, which was not even produced before this Court by the State in the instant writ petition or even in the earlier writ petition.

12. In these circumstances, we do not wish to express any opinion on the legal question raised before us for the first time in appeal. We, however, do not wish to interfere with the order of the learned Judge having regard to the special facts and circumstances of this case. This appeal is, accordingly.

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