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Court : Patna

Decided On : Jul-05-1999

Judge : M.Y. Eqbal, J.

Appeal No. : CWJC No. 2600 of 1992(R)

Appellant : Prabhat Kumar Sharma

Respondent : Union Public Service Commission and ors.

Disposition : Application Dismissed

Judgement :

M.Y. Eqbal, J.

1. In this writ application, the petitioner prays for issuance of an appropriate writ in the nature of mandamus calling upon respondents 3 and 4, namely, State of Bihar and the Deputy Commissioner, Dhanbad to issue a caste certificate in the prescribed form to the petitioner as a member of Scheduled Tribe and further for a direction to respondent Nos. 1 and 2, namely, the Union Public Service Commission and its Secretary to consider the case of the petitioner for appointment on reserved quota and recommending the name of the petitioner as member of the Scheduled Tribe for the purpose of filling up the post of civil services.

2. Petitioner's case is that he is by caste lohar and is a matter of Scheduled Tribe and on the basis of the presidential order issued and published in the Extra Ordinary Gazette of India published on 29-11-1979 whereby all the members of Lohar and Lohra have been declared to be the members of Scheduled Tribes. Petitioner's further case is that pursuant to an advertisement to conduct Civil Services (Main Examination) 1991 and Civil Services (Preliminary Examination), 1992, the petitioner applied as a member of Scheduled Tribe and also filed an application before the Deputy Commissioner, Dhanbad to issue an appropriate caste certificate in terms of the Presidential Order. The petitioner was allowed to appear in the Civil Services Main Examination and Preliminary Examination in the years, 1991-92 without any caste certificate and the petitioner's case was considered as a general candidate. It is stated that the petitioner has done fairly well at the aforesaid examinations but he was denied for consideration in the reserved category on the ground that lohar is not a member of Scheduled Tribe.

3. Mr. V. Shivnath, learned Counsel appearing on behalf of the petitioner very fairly submitted that the question involved in this writ application as to whether Lohar is a member of Scheduled Tribe, has been fairly answered by the Supreme Court in the case of Nityanand Sharma and Anr. v. State of Bihar and Ors. reported in : [1996]2SCR1 , and their Lordships held that 'Lohars are Other Backward Class and not Scheduled Tribe'. However, Mr. Shivnath submitted that the decision of the Supreme Court is per-in-curiam, and is not binding inasmuch as the relevant provisions of Official Languages Act, 1963 has not been brought to the notice of the Court. The learned Counsel submitted that according to Section 5 of the said Act a translation in Hindi published under the authority of the President in official Gazette of any Central Act or of any Ordinance promulgated by the President or of any order, rule, regulation or bye-law issued under the Constitution or under any Central Act shall be deemed to be authoritative text thereof in Hindi. Learned Counsel, therefore, submitted that the Presidential Notification in Hindi declaring Lohar as member of Scheduled Tribe shall have to be accepted as authoritative text and, accordingly, the members of Lohar community are the members of Scheduled Tribe.

4. I do not find any force in the submission of the learned Counsel. As a matter of fact, this was the moot question before the Supreme Court in Nityanand Sharma's case (supra). In that case, the argument of the Counsel for the State before the Supreme Court, inter aha, was that the English version of the notification relating to the Schedule for Bihar correctly reflects the position and the Hindi version of the notification is a wrong translation. Their Lordships of the Supreme Court, after considering the notifications, have held that in Hindi version there was a mistake and, as a matter of fact, Loharas are the members of Scheduled Tribe and not Lohars. Their Lordships observed:

8-A. Scheduled Tribes specified in the order is in relation to a State or to a District or other territorial division thereof and shall be construed as a reference to the State, District or other territorial division in that particular State as constituted on the first day of May 1976. The substituted schedule in relation to Bihar is contained in Part II. It consists of 30 Scheduled Tribes. Item No. 22 specifies (1) Lohara/ Lohra. Similarly in relation to West Bengal in Part XVI item No. 24 repeats the same tribes, namely, (1) Lohara/Lohra to be Scheduled Tribes. In Hindi version, as placed before us, relating to the State of West Bengal, is found the same specification . But with regard to Bihar State, Hindi version contains in place of Lohara/Lohar. The silibet 'a' is omitted. The title of the Schedule of Hindi version itself clearly mentions translated version. As stated earlier, in English version, there is no mention of Lohar and Lohara/Lohra only are the specified scheduled Tribes.

5. The law laid down by the Supreme Court is, therefore, binding on this Court and the contention of the learned Counsel that the decision of the Supreme Court is not binding because the relevant provisions of the Official Languages Act, 1963 was not considered, cannot be accepted.

6. In the case of Ballabhdas Mathuradas Lakhani and Ors. v. Municipal Committee Malkapur reported in : AIR 1970 SC1002 , their Lordships held that the decision of the Supreme Court is binding on the High Court and the High Court could not ignore it on the ground that the relevant provisions of law was not brought to the notice of the Supreme Court.

7. In the case of C.N. Rudramurthy v. K. Barkathulla khan and Ors. reported in : (1998)8SCC275 , their Lordships observed:

Indeed, it is a matter of judicial discipline that requires that when this Court states as to what the law on the matter is, the same shall be binding on all the Courts within the territory of India. This mandate of Article 141 of the Constitution is not based on any doctrine of precedents, but it is an imprimature to all Courts that the law declared by this Court is binding on them. If that is so, it was not open to the High Court to consider the effect of the decisions in Rattan Arya case, its scope what was decided therein and whether there could be any distinction between that decision and the decision rendered in D.C. Bhatia case.

8. Having regard to the discussion made above, the judgment rendered by the Supreme Court in Nityanand Sharma's case (supra), is binding on me and I, therefore, think that it would be of no use to look into the Gazette and the glossaries on the caste and tribe of Bihar and other provisions of law to which reference was made at the Bar to find out whether Lohar is a member of Scheduled Tribe. It is not open to this Court to scrutinise any further whether Lohar is a member of Scheduled Tribe. I, therefore, do not find any merit in this writ petition and the contention made by the learned Counsel. This writ application is, therefore, dismissed.

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