

Subhash Chandra Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-05-2008

Judge : Navin Sinha, J.

Acts : The Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and other Backward classes) (Amendment) Act, 2003 - Sections 1, 2, 3 and 4; The Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and other Backward classes) Act, 1992 - Sections 4(2)

Appeal No. : CWJC No. 5166 of 2007

Appellant : Subhash Chandra Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : J.C. to A.A.G. 7

Advocate for Pet/Ap. : S.P. Mukherjee and Shanti Pratap, Advs.

Disposition : Application dismissed

Judgement :

Navin Sinha, J.

1. Heard learned Counsel for the petitioner, learned Counsel for the State and learned Counsel appearing on behalf of Bihar Public Service Commission.
2. The petitioner challenges the order dated 22.1.2007 at Annexure-1 issued by the Labour, Employment and Training Department, Government of Bihar. It rejects the claim of the petitioner for appointment on the post of Principal, I.T.I. in pursuance of the Government decision not to grant the benefit of reservation to those in the reserved category from other States in pursuance of a Government decision dated 11.6.1996 vide letter No. 70.
3. Learned Counsel for the petitioner submits that the petitioner came to this Court earlier in CWJC No. 5469 of 1999 which directed his case to be considered by appropriately taking into consideration his qualification of diploma in view of the provisions of the training manual when the advertisement stipulated as a qualification of a degree only. At this stage, no objection of the present nature was taken on behalf of the Respondents.
4. It is next urged that The Bihar Reservation of Vacancies in Posts and Services(For Scheduled Castes, Scheduled Tribes and other Backward classes) (Amendment) Act, 2003 was published in the gazette on 10.9.2003. The appointment of the petitioner pertains to an advertisement issued on 17.3.1998, prior to the promulgation of the Act and in absence of any such objection on the previous occasion, the petitioner was entitled to be considered for appointment in the reserved category after ascertainment of his merit position in the same as existing in law on the date of the advertisement.
5. The petitioner had produced a valid certificate of being a Scheduled caste from the appropriate authority in Uttar Pradesh and, therefore, there was no justification to place him in the category of general candidate and deny him appointment on the basis of his performance as assessed vis-a-vis a general candidate.
6. Learned Counsel for the State submitted from the amendment Act itself that it had been made retrospective in its operation with effect from 11.6.1996 and that the Act also saved action taken under executive instruction vide letter No. 70 dated 11.6.1996.

7. The amendment Act of 2003 in sub-paragraph (3) of Section 1 provides as follows:

(3) Section -2 of this Act shall come into force with effect from 1st April, 1990 and Section 3 and 4 with effect from 11th June, 1996.

Thereafter, the Amendment Act incorporates Section 3 in the following language:

3. Amendment of Section-4 of Bihar Act, 3, 1992 - The following third proviso shall be added to Sub-section (2) of Section-4 of the said Act.

Provided further that the candidates residing out of the State of Bihar shall not claim for benefits of reservation under this Act.

Sub-clause (2) of paragraph 4 reads as follows:

(2) Notwithstanding such repeal under Sub-section (1) of this section, anything done or any action taken according to Letter No. 70, dated the 11th June, 1996 shall be deemed legal, as if this Act were in force on the day which letter No. 70, dated the 11th June, 1996 was in force.

8. It is, therefore, apparent that the legislature gave retrospective effect to the amendment and validated action taken under the executive instruction vide letter No. 70 dated 11.6.1996. The advertisement in question has been issued on 17.3.1998. Once the legislature has decided to give retrospective effect to the amendment, by operation of law, the restriction shall be deemed to have been incorporated in the advertisement itself.

9. This Court finds it very difficult to grant relief to the petitioner based on the premise that though the amendment may be retrospective in nature it has been published belatedly in 2003 after the selection process was over. To do so shall be beyond the purview and the powers of the writ Court in view of the legislative mandate.

The writ application is dismissed.