

Amresh Kumar and Ors Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jan-30-2015

Appellant : Amresh Kumar and Ors

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 3737 of 2008 with W. P. (S) No. 3753 of 2008 With W. P. (S) No. 3733 of 2008 With W. P. (S) No. 2666 of 2008 ...

1. Chhote Lal Yadav 2. Umesh Yadav 3. Anil Kumar Sah 4. Md. Akhtar Rasul 5. Hare Ram Kumar Paswan 6. Sanjay Kumar 7. Deepak Kumar (Petitioners in W.P.(s) No. 3737 of 2008) 1. Chandan Kumar 2. Parmod Kumar Ram 3. Abhishekh Kumar Azad 4. Ranjit Kumar 5. Deo Kumar (Petitioners in W.P.(s) No. 3753 of 2008) 1. Amresh Kumar 2. Ajay Kumar 3. Arun Kumar 4. Deo Muni Mandal 5. Sanjay Shaw (Petitioners in W.P.(s) No. 3733 of 2008) Dasharath Paswan(Petitioner in W.P.(s) No. 2666 of 2008) -V e r s u s- 1. The State of Jharkhand 2. Director General of Police, Jharkhand , Ranchi 3. Inspector General, Jharkhand Armed Police, Ranchi 4. Dy. Inspector of Police(Personnel) Jharkhand, Ranchi 5. Dy. Inspector General of Police, Jharkhand Armed Police, Ranchi 6. Commandant, Indian Reserve Bataliyan-1, Jamtara, Jharkhand (All Respondents in W.P.(s) No. 3737 of 2008, 3753 of 2008, 3733 of 2008 and W.P.(s) No. 2666 of 2008) 1. The State of Jharkhand 2. Director General-cum-Inspector General of Police, Ranchi 3. Superintendent of Police, West Singhbhum, Chaibasa

(Respondents in W.P.(s) No. 2666 of 2008) CORAM: - HONBLE MR. JUSTICE SUJIT NARAYAN PRASAD For the Petitioner : - M/s Dr. S. N. Pathak, Sr. Advocate For the Respondents : - JC to A.G CAV ON:

03. 11.2014 Pronounced On:30.01.2015 S.N. Prasad, J.

As the matter in all these writ petitions relates to appointment of constable from the members of scheduled caste and backward class arising out of an advertisement and common question of law being involved, they have been heard altogether and are being disposed of by this common judgment.

2. The main question involved in these cases are (i) whether a candidate belonging to reserve category of the successor State of Bihar has any right to claim reservation in the services of the successor State of Jharkhand, as because it was a part of the erstwhile of the State of Bihar (ii) whether a candidate belonging to reserve category of other State, can claim reservation in the matter of appointment in the service of the another State.

3. The petitioners in W.P.(s) No. 3737 of 2008 have challenged the order dated 16.06.2008 issued by the Commandant, India Reserve Bataliyan-1, Jamtara by which the services of the petitioners has been dismissed on the ground that the petitioners have produced caste certificate issued from the District of Bhagalpur, Siwan, Munger and Jamui (Bihar).

4. The writ petitioner of W.P.(s) No. 2666 of 2008 has challenged the order dated 04.04.2008 by which he has been dismissed from service on the ground that the petitioner has been appointed by giving the benefit of reservation of scheduled caste category on the basis of the caste certificate issued from the District of Rohtas belonging to the jurisdiction of the State of Bihar.

5. The petitioners in W.P.(s) No. 3753 of 2008 have challenged the order dated 16.06.2008 issued by the Commandant, India Reserve Bataliyan-, Jamtara by which the services of the petitioner has been dismissed on the ground that petitioners have produced caste certificate issued from the District of Begusarai, Aurangabad, Banka, Mujaffarpur, Chapra (Bihar).

6. The petitioners in W.P.(s) No. 3733 of 2008 have challenged the order dated 16.06.2008 issued by the Commandant, India Reserve Bataliyan-1, Jamtara by which the services of the petitioners has been dismissed on the ground that the petitioners have produced caste certificate issued from the District of Begusarai, Baksar, Madhepura, Bhagalpur, Siwan.

7. The facts of the case is that the an advertisement was issued for the purpose of fulfilling the post of constable for inviting applications of the original candidates for their appearance in the competitive examination. The petitioners of all the writ petitions made their applications and on the basis of the benefit of reservation of OBC/Scheduled Caste categories petitioners were appointed. The petitioners after being appointed started discharging their duties.

8. Learned Senior counsel for the petitioners submitted that the petitioner after serving the department for the period of three years have received respective show cause notice asking their explanations as to why they be not dismissed from service on the ground that they have submitted caste certificates issued by the State of Bihar since they have been appointed on the basis of the benefit of caste certificate issued by the District Administration of the existing State of Bihar for the purpose of taking benefit of reservation. The petitioners have given their due reply stating their in that the petitioners although have submitted their caste certificates issued by the functionaries of the State of Bihar but they have not made any misrepresentation and have completed three years of service and as such the services cannot be taken away.

9. The learned senior counsel appearing for the petitioner has submitted while assailing the impugned order of dismissal; (I) That the caste certificate which has been submitted by the petitioner for the purpose of getting benefit of reservation has been issued by the successor State of Bihar, the authorities have accepted the same at the time of scrutiny of the application thereafter, they have been permitted to participate in the competitive examination but after rendering for three years of service they could not be dismissed from service. (ii) The further submission of the petitioners is that even assuming that the caste certificate produced by the petitioner would not be considered then also they are fit to be

considered, on the basis of the mark secured in the written examination under unreserved category.

10. On the Other hand, learned counsel for the respondent has submitted that in the advertisement there was specific condition that Caste Certificate issued by the Circle Officer/Sub- Divisional Officer/Deputy Commissioner of the state of Jharkhand of respective district/block/sub-division will only be accepted. But the petitioners have contrary to the terms of advertisement have produced their caste certificate issued by the district authorities of the existing state of Bihar for claiming benefit of reservation. The appointment made contrary to the advertisement cannot sustain in the eyes of law. Learned Counsel for the respondent further submitted that when the illegality regarding appointment of the petitioner, came to the knowledge of the authorities concerned, they rightly set aside the appointment of the petitioners. If the petitioners are allowed to continue in Service it will be violative of Article 14 and Article 16 of the Constitution of India.

11. Heard the parties.

12. So far as the argument of the petitioners regarding the caste certificate, this issue has already been settled by decision of the Hon'ble Supreme Court rendered from time to time. In the case of Marri Chandra Shekhar Rao V. Dean, S.G.S. Medical College, reported in (1990) 3 SCC130 the Supreme Court held that the candidate, recognized as the member of scheduled Tribe/ Scheduled Caste in his original State, on his migration to another State, is not entitled to get the benefits of reservation. In the said judgment, Apex Court at para 10 held that: the Scheduled Castes and Scheduled Tribes, belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to, in order to become equals with others. But equally those, who go to other areas should ensure that they make way for the disadvantage and disabled of that part of the community, who suffers from disabilities in those areas. In the case of Action Committee on issue of Caste Certificates to Scheduled Castes and Scheduled Tribes in the State of Maharashtra V. Union of India, reported in (1994) 5 SCC244 the Supreme Court has been pleased to held that a person, belonging to Scheduled Caste/ Scheduled Tribe in relation to his original State, of which he is

permanent or original resident, cannot be deemed to be so in relation to any other State. In the case of *M.C.D. v. Veena*, reported in (2001) 6 SCC571 which related to reservation under Article 16(4) and (4-A), a question arose regarding the area in which a particular OBC can be treated as such. Having discussed the relevant provisions, the Hon'ble Supreme Court at para 6 held as follows: Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree or disadvantages of various elements which constitute the date for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.

13. The division Bench of this Honble Court in the case of *Kavita Kumari Kandhaw & Ors. Vs. State of Jharkhand and Ors.* reported in 2006(2)JCR512Jhr) has been pleased to held, on the basis of various judgments of Honble Apex Court that the backward class of one State cannot be deemed to be so in relation to other State and the certificate issued by one State, is not valid in the other State. The division Bench of this Honble Court in the judgment referred in the case of *Kavita Kumari Kandhaw(supra)* at para 14 has come to a finding that if any certificate enclosed by one or other petitioner, issued by the District authorities of the State of Jharkhand prior to submission of the application forms, has been enclosed, then the authorities may consider the case of such person for appointment against the reserved categories, if it is found that such persons belongs to the State of

Jharkhand. But those, who have enclosed the certificate issued, by the District Authorities, now fall within the State of Bihar, or the certificates, issued by the District Authorities of Uttar Pradesh or any other State, cannot claim reservation for appointment in the services of the State of Jharkhand.

14. Here in the instant case the petitioners have been appointed on the basis of the caste certificates issued by the District authorities of the Successor State of Bihar. Hence applying the ratio laid down by the division Bench of this Honble Court in the case of Kavita Kumari Kandhaw (supra), ground taken by the respondents in the impugned orders cannot be said to be unjustified ground.

15. Hence, the plea taken by the writ petitioners that since they have been allowed to appear in the written examination, on the basis of caste certificate issued by the district authorities of the existing State of Bihar and as such respondent cannot dismiss the petitioners from service after lapse of three years of service cannot be accepted, in view of the fact that, if the appointment has been made which dehors the rule then it cannot be permitted to be continued.

16. Moreover, in the advertisement there was specific condition that the caste certificates issued by the circle officer/Sub-Divisional Officer/Deputy Commissioner of State of Jharkhand of respective districts/block/sub-division will only be accepted. In that view of the matter also the petitioners since produced their caste certificate issued by the district authorities of the existing State of Bihar cannot claim benefit of the reservation. The authorities after coming to know this fact has issued show cause notice to the petitioners and after applying the principle laid down by the division Bench of this Honble Court in the case of Kavita Kumari Kandhaw has passed the order of dismissal.

17. The second contention of the petitioners is that on the basis of the marks secured by them in the written examination they are even eligible to be appointed, on the basis of the merit list prepared for the unreserved category candidate.

18. For appreciating this argument of the learned senior counsel for the petitioners, Annexure-A annexed to the supplementary counter affidavit filed on behalf of the respondent no. 6 is worth to be seen which is the chart of the

candidates who have got appointment by taking benefit of reservation wherein the name of the petitioners have also been given and on remarks column it has specifically been stated against them that the name of the petitioners is not in the list of finally selected candidates and they have been declared qualified under the backward class caste.

19. Thus, this argument of the petitioners is also not acceptable that they have secured marks which was at par with the unreserved category candidate.

20. In entirety of the facts and circumstances of the case and on the basis of the reasons indicated herein above, I find that there is no need to interfere with the impugned orders.

21. The writ petitions are accordingly dismissed. (Sujit Narayan Prasad, J.)
Jharkhand High Court, Ranchi Dated: January, 2015 Amardeep/N.A.F.R.

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