

MIRZA ALI RAZA & ORS.

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v.

STATE OF BIHAR & ORS.

(Civil Appeal No. 857 of 2016 etc.)

FEBRUARY 03, 2016

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**[FAKKIR MOHAMED IBRAHIM KALIFULLA
AND C. NAGAPPAN, JJ.]**

Service Law – Reservation – Advertisement for recruitment (36th combined examination) when the reservation policy of 1978 was prevailing – Subsequent reservation policy of 1990 – Selection for the 36th combined examination made as per the 1990 reservation policy – Selection challenged by 4 general category candidates – State Government, pursuant to direction of the court, by order dated 30.04.2004 pushed down the candidates who had got appointment on the basis of 1990 reservation policy without giving them opportunity of hearing to the candidates – Two of the general category candidates were benefitted by the order dated 30.04.2004 – The other two general category candidates who were not benefitted by the order dated 30.04.2004, were given liberty by the court to work-out their remedy in accordance with law – The reserved category candidates who were affected by order dated 30.04.2004 challenged the order by filing writ petitions – The same was dismissed by Single Judge of High Court – In LPA the State Government made statement to the effect that the 27 officers including the appellants who were affected by order dated 30.04.2004 shall be allowed in the changed service cadre by creating shadow posts – Division Bench of High Court accepting the statement held that the grievances of the appellants were fully redressed – Appeal by the reserved category candidates – Held: The grievance of the 4 general category candidates who had challenged the selection stands concluded – The appellants/petitioners (reserved category candidates) since have been holding the post since the date of their appointment for about 25 years, their posting should not be interfered with – Their continuance to the post will not prejudice anyone – The matters are disposed of.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.857 of
2016

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A From the Judgment and Order dated 08.09.2008 of the High Court of Judicature at Patna in LPA No. 879 of 2007.

WITH

Transferred Case Nos. 27 and 28 of 2010

B R. Venkataramani, V. A. Mohta, Sr. Advs., Anshuman Sinha, Inam Adam, Nilkanth, Vijay Kumar Pandey, Ms. V. Vijay Laxmi, Ms. Neelam Singh, Sameer Singh, Renjith B. Marar, Kumar Parimal, Yashraj Singh Bundela, Aniruddha P. Mayee, Shantanu Sagar, Smarhar Singh, Anmol, T. Mahipal, Advs. for the Appellants.

C Navin Prakash, Gopi Chand, Shivam Singh, Aditya Awasthi, Gopal Singh, Jayesh Gaurav, Gopal Prasad, Kumar Parimal, Aniruddha P. Mayee, Advs. for the Respondents.

The following Order of the Court was delivered

ORDER

D 1. I.A. No. 17 seeking impleadment of Anil Kumar Singh is allowed. IA Nos. 16 and 20 seeking transposition of respondent Nos. 13 and 14 are also allowed and they are transposed as petitioner Nos. 4 and 5.

2. Cause title be amended accordingly.

E 3. Leave granted.

4. Heard Mr. R. Venkataramani, learned senior counsel for the appellants, Mr. Shivam Singh, learned counsel for the State of Bihar and Mr. Jayesh Gaurav, learned counsel for the State of Jharkhand.

F 5. By this order, we dispose of Civil Appeal arising out of SLP© NO.204 of 2010 as well as Transferred Cases Nos. 27 and 28 of 2010. For passing appropriate orders in these cases, it is necessary to refer to certain facts which necessitated the filing of this appeal by the appellants.

G 6. There was a selection made by the State of Bihar for various common posts in the Gazetted Cadre. An advertisement was made on 9th January, 1989 which was known as 36th Combined Competitive Examination. At the time when the advertisement was issued the issue relating to reservation policy was covered by the Resolution dated 10th November, 1978. Subsequent to the advertisement, there was another Resolution pertaining to reservation policy which came into being on 30th October, 1990. By order dated 7th January, 1991, the State

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Government declared that the policy resolution dated 30th October, 1990 would apply even to the examinations already held for which results were not announced. A

7. The selection which was made pursuant to the said 36th Combined Examination was proceeded with and according to the candidates who belonged to the general merit category, in respect of Government Order dated 7th January, 1991, the Resolution dated 30th October, 1990 was not violated. The said Selection was subject matter of challenge in C.W.J.C. No. 10892/1994 and 3699/1993. The said writ petitions came to be disposed of by the learned Single Judge by order dated 14th May, 1999. The learned Judge took the view that those writ petitioners having not challenged the result published and the appointment made pursuant to the result which was on 11th May, 1991 and the posts having been filled up there was no scope to interfere with the selection. The learned Single Judge also noted that in the absence of the selected candidates having been impleaded as party respondents before the Court there was no scope to interfere with the selection. The learned Single Judge therefore declined to consider the prayer for creating any shadow post to accommodate such of the candidates in the general merit category whose claim according to them was prejudiced by the presence of candidates who otherwise belonged to reserved category. The learned Judge while declining the said prayer made it clear that it was in the domain of the State authorities and not for the Court to give any such directions. B C D E

8. The order of the learned Single Judge was challenged by way of Letters Patent Appeal and in LPA No. 92 of 1999, the Division Bench reversed the order of the learned Single Judge and with a view to, apparently, salvage the situation gave the following directions:- F

"In our view, perhaps it was not brought to the notice of the learned Judge that the Government's resolution dated 30th October, 1990 was already quashed by this Court on 23.05.1991 even before publication of the result by the Commission. The result of the examination was, in fact, published on 11.05.1991. Therefore, undisputedly, the candidates who got higher position in the panel getting the benefit of reservation policy notified vide resolution of the government dated 30th October, 1990, are affected by the judgment of this Court dated 23.05.1991. Because the said G H

A *reservation policy was already quashed, therefore, it is incumbent upon the State Government either to create shadow posts to accommodate the appellants against higher posts or higher pay scale or to take a decision to push down the candidates, who got appointments on the basis of the reservation policy, which was already quashed. It goes*
 B *without saying in case it is necessary to push down some of the candidates, who were appointed earlier on the basis of Resolution dated 30th October, 1990, the State Government will be required to give notice to such candidates, who may be affected."* [underlining is ours]

C 9. The Division Bench passed its order on 22nd February, 2000. Initially, there was no challenge to the order of the Division Bench. A contempt proceedings came to be initiated at the instance of the appellants in Letters Patent Appeal in MJC NO. 1938 of 1999. Notice was initially issued by order dated 15th March, 2004. Thereafter, the State
 D Government appeared to have consulted the State Public Service Commission who opined unanimously that since the contestants in the Letters Patent Appeal were merely four in number even while complying with the order of the Division Bench dated 22nd February, 2000, the same may confined to those four appellants by providing supernumerary posts. However, the State Government passed orders on 30th April,
 E 2004 by which it chose to go in for the second option provided in the order of the Division Bench dated 22nd February, 2000 and the said order resulted in dislocating as many as 27 officers of whom the appellants in this appeal by way of special leave as well as the petitioners in the transferred cases, nine of whom were included.

F 10. Be that as it may, the order dated 22nd February, 2000 of the Division Bench was subject matter of challenge in this Court in SLP (C) No.20589 of 2004 and this Court by order dated 24th September, 2004 declined to entertain the Special Leave Petition and thereby the said order of the Division Bench became final and conclusive.

G 11. After the order of the State Government dated 30th April, 2004, the Division Bench also closed the contempt proceedings in MJC NO. 1938 of 2000 by order dated 5th May, 2004. While concluding the said proceedings, the Division Bench has noted a very relevant factor namely, that two of the aggrieved applicants in the contempt proceedings
 H namely, Devendra Kumar Singh and Deobana Kumar Singh were

benefitted by the said order dated 30th April, 2004 and that insofar as two other applicants namely, Sudhanshu Shekhar Tripathi and Shashi Bhushan Jha were concerned, since the State Government claimed to have complied with the direction of the Division Bench in the order dated 22nd February, 2000, if they were still aggrieved, it will be open for them to workout their remedy in regard to their grievance in the manner known to law. A
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12. It must be noted that barring the above said four persons no other person had any grievance relating to the selection made in the 36th Combined Competitive Examination. Even Special Leave Petition preferred by one of the aggrieved contempt applicant in SLP (C) NO. 20732 of 2004 was also dismissed by this Court by order dated 7th November, 2005. C

13. It was in the above stated background the appellants before us as well as the petitioners in the Transferred Cases approached the High Court challenging the order dated 30th April, 2004 in two writ petitions in W.P.NO.2024 and 2027 of 2004. The writ petitions were initially allowed by the learned Single Judge by order dated 17th September, 2007. In fact while initially entertaining the writ petition, the status of the petitioners along with the others were protected by way of an interim order dated 17th May, 2004. In the final order dated 17th September, 2007, the learned Judge while setting aside the order insofar as the writ petitioners were concerned also directed to maintain their status quo as it existed on the date of passing of the orders till they get an opportunity to move the appropriate forum for redressal of their grievances. However, three days later by order dated 20th September, 2007, the resultant portion of the order was modified to the effect that their writ applications were dismissed and the impugned order was not being quashed but even while maintaining the status quo of the petitioners as it existed on that day for a period of eight weeks, they were given liberty to move the appropriate forum for the redressal of their grievances. D
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14. Aggrieved by the said order of the learned Single Judge, the appellants filed LPA and by the impugned judgment dated 8th September, 2008, the Division Bench recorded the statement made on behalf of the State Government to the effect that it decided to allow eight officers whose service came to be terminated apart from joining the 27 officers who were affected by the order dated 30th April, 2004 in the changed service cadre by creating shadow posts wherever needed. The Division G
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A Bench while accepting the said proposal made on behalf of the State Government, directed that until fresh orders are issued, the appellants before the Division Bench should not be removed from service. The Division Bench also took the view that the grievances of the appellants before it was fully redressed by accepting the statements of the State Government and nothing further need be done in the Letters Patent Appeal.

15. Aggrieved by the said order of the Division Bench, the appellants and the petitioners in the transferred cases are before us.

16. Mr. R. Venkataramani, learned senior counsel in his submissions, submitted that by the proposal submitted before the Division Bench of the High Court namely, by allowing the 27 officers which included the appellants herein in the Changed Service Cadre and by creating shadow posts, the real challenge made by them in the writ petition as well as in the Letters Patent Appeal cannot be said to have been fully redressed. According to the appellants and the petitioners in the transferred cases, when the State Government chose to follow the second option referred to in the order dated 20th February, 2000 there should have been an opportunity extended to them and since they were taken aback unaware by the order dated 30th April, 2004 there was every justification for setting aside the said order. The learned senior counsel submitted that the learned Single Judge while passing the order dated 17th September, 2007 having noted that there was no intrinsic change in the policy of the year 1978 or 1990 in selecting the reserved candidates when they fared well in the open merit category and thereby the reservation policy would not be in any way affected, the interference with the said selection was wholly uncalled for. The learned senior counsel also pointed out that the selection came to be made in the year 1990, appointments came to be issued in the year 1992 and the appellants and the petitioners in the transferred cases were all continuing in their respective posts in which they came to be originally appointed till this date by virtue of the interim orders granted by the Court and in that process 25 years have gone by and it would be harsh to allow the State Government to proceed with the stand expressed before the Division Bench and thereby upset the entire matter of selection initially made which remained in force till this date.

17. Learned senior counsel also pointed out that only four persons were really aggrieved relating to the selection made in the year 1991 and of whom grievances of two of the persons have been safely redressed

while two others were given liberty to work out their remedy who chose not to proceed further and thereby they have accepted the order passed by the Division Bench in the Contempt Petition No. MJC NO.1938/1999 dated 5th May, 2004. The learned senior counsel, therefore, contended that it would be wholly inequitable and inappropriate if the order of the Division Bench is allowed to remain.

18. Mr. Shivam Singh, learned counsel for the respondent State of Bihar and Mr. Jayesh Gaurav, learned counsel appearing for the State of Jharkhand also tried to contend that since the order of the Division Bench dated 20th February, 2000 has become final and conclusive, it was incumbent upon the State Government to comply with the said order especially when the State Government was facing contempt of the said order in MJC NO. 1938 of 1999. The learned counsel for the State of Bihar, therefore, submitted that while exercising its second option as directed in the said order dated 22nd February, 2000, it became inevitable for the State of Bihar to pass the order dated 30th April, 2004 behind the back of the petitioners. Insofar as the State of Jharkhand is concerned, we find that by virtue of the order dated 30th April, 2004, when the dislocation of the appellants and petitioners in the transferred cases, in particular, Mr. Paras Nath Yadav and Jagbandhu Mahto are concerned, as a result of the said order the State of Jharkhand had directed both of them to get themselves repatriated to the State of Bihar.

19. Having heard and having noted the respective submissions and having perused the material papers, we find that having regard to the position that prevails as on date, we can pass orders directing the respective State Governments to continue to allow the appellants and petitioners in the transferred cases who have come before us to hold the respective posts for which they came to be originally appointed and by passing such orders no prejudice can be caused either to the respective State Governments or to those aggrieved officers who initiated the proceedings by filing their writ petitions, namely, Writ Petitions - CWJC NO. 10892/94 and CWJC No.3699/1993 which later on culminated in the order of the Division Bench dated 22nd February, 2000 passed in LPA NO. 692 of 1999. As was noted by us earlier in the order dated 5th May, 2004, two of the appellants Devendra Kumar Singh, Deoband Kumar Singh got their respective posts changed by the order dated 30th April, 2004 in the higher post of Bihar Education Service and thereby their grievances stood redressed. By effecting the said change, none of the appellants and petitioners in the transferred cases were affected.

- A Insofar as two other appellants namely, Sudhanshu Kumar Tripathi and Shashi Bhushan Jha are concerned, though they raised a grievance in the contempt petition namely, MJC NO. 1388 of 1999 as against the order dated 30th April, 2004, the Division Bench while passing its order in contempt petition on 5th May, 2004, made it clear that the compliance reported in the order dated 30th April, 2004 was acceptable to it and it was not inclined to proceed with the contempt application. It, however, gave liberty to those two officers to work out their remedy in accordance with law if they are so advised. The fact remains that both of them have not chosen to make any further challenge. Thereby the grievance of those four officers now stands concluded and no further orders are necessary in their cases.

20. In the said situation, since the appellants and petitioners in transferred cases have been holding the post from the date of their initial appointment and are continuing as such till this date namely for the past more than 25 years and in the absence of any serious challenge to their holding of the respective posts, we are convinced that by allowing them to continue to retain their posts till they reach the age of superannuation no prejudice will be caused to anyone. With that view by holding that the appellants and the petitioners in the transferred cases stands and they shall be allowed to hold their posts in which they came to be initially appointed without reference to the order dated 30th April, 2004 and also making it clear to the State Governments not to interfere with the said posting initially made and the subsequent benefits accrued to them based on such posting and also allow them to retire on their reaching the age of superannuation. The appeal and the transferred cases stand disposed of.

21. The benefit granted under this order should enure to the applicants in IA NOs. 16, 17 and 20 who are identically placed like that of the appellants and who have been pursuing their remedies till this date. Their *status quo ante* should be restored. We hasten to add that this order shall not be and cannot be quoted as a precedent in any other case, inasmuch as this order is being passed in the peculiar facts and circumstances of the cases on hand, as noted by us in detail in the earlier part of our order.