

(136)  
ANNEXURE-A

(325)

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Date of Order

ORDER WITH SIGNATURE

Office to be as to follow  
(If any taken on order)

IN THE HIGH COURT OF JUDICATURE AT PATNA  
L.P.A.No. 692 of 1999  
Devendra Kumar Singh & ors. -----Appellants  
Vs.  
The State of Bihar & ors. -----Respondents  
For the appellants: Dr. S.N. Jha Sr. Advocate with  
Mr. Rajim Dha, Advocate  
For the State: Mr. K.V.H. Singh, J.O. to G.A.

O R D E R

22.2.2000.

This appeal under Clause 10 of the Letters Patent of the Patna High Court has been directed against the judgment of a learned Single Judge dated 14.5.1999 so far it relates to C.W.J.C.No. 10892 of 1994, which was dismissed along with the analogous cases i.e. M.J.C.No. 610 of 1993 and C.W.J.C.No. 3699 of 1993.

2. Before dealing with the contention of the parties, it would be appropriate to have a brief survey of some of the facts. The Bihar Public Service Commission, in north the Commission, had issued advertisement on 9.1.1989 for appointment at certain gazetted posts. At the time when the advertisement was issued, the resolution of the government dated 10th November, 1978, containing reservation policy of the State, was in vogue. But before the selection process could complete, by a resolution dated 30th October, 1990 reservation policy was changed with retrospective effect. The result of the aforesaid competitive examination was published by the Commission on 11.8.1991.

3. Different writ applications, namely, C.W.J.C. Nos. 578 of 1991 and 1338 of 1991 were filed challenging

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4. Contd.

the resolution of the government dated 30th October, 1990, whereby, it was made effective retrospectively. Both the writ applications were disposed of by a Division Bench on 23.5.1991 quashing the resolution of the government, whereby, reservation policy was made applicable with retrospective effect. In spite of the aforementioned decision, government started making appointments on the basis of the result of the competitive examination, which was published in terms of the resolution of the government dated 30th October, 1990. Therefore, Bihar Lok Seva Ayog Pariksharthi Sangh, (36th Combined Competitive Examination) filed another writ application bearing C.W.J.C.No.4472 of 1991, challenging the retrospective applicability of the government's reservation policy. The said writ application was also disposed of on 23.4.1992 with a direction to the respondent authorities to make appointments after ignoring the government's resolution.

4. There is no dispute that all the posts, which were required to be filled up on the basis of the recommendation of 15th Competitive Examination have been filled up and appellants were also appointed. The only grievance of the appellants is since the resolution of the government dated 30th October, 1990 was quashed by this Court vide judgment dated 23.5.1991 it was not open to the respondent Commission to publish the result of the competitive examination applying the reservation policy of the government with retrospective effect. Because admittedly before publication of the



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Contd. As a result, the resolution of the government was quashed by the Court. The Commission, therefore, was required to publish the result applying the reservation policy, which was notified vide resolution dated 10th November, 1978.

5. That apart, by various decisions, the Apex Court as well as this Court had held that selection process, which had already commenced, has to be completed on the basis of the Rules and regulations available at the time when the posts are advertised. Right of the candidates who had made applications pursuant to the advertisement can not be altered or taken away by giving effect to any new legislation retrospectively. Reference in this regard can be usefully made to the decisions of the Apex Court in the case of A.A. Calton vs. The Director of Education & ors., A.I.R. 1983 SC 1143 and P. Mahendran & ors. vs. State of Karnataka & ors., A.I.R. 1990 SC 105 as also a decision of this Court in the case of Miss Afshan Ansari & ors. vs. State of Bihar & ors., 1993(2) PLJR 745.

6. As would appear from the impugned judgment, this aspect of the matter has also been considered by the learned Judge. But the prayer of the appellants has been rejected basically for the reasons that neither the result of the examination was challenged nor there was any challenge to the appointments, made pursuant to the result which was published as back, as in the month of May, 1971.

7. In our view, perhaps it was not brought to the  
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4. Contd.	<p style="text-align: center;">-4-</p> <p>notice of the learned Judge that the government's resolution dated 30th October, 1990 was already quashed by this Court on 23.5.1991 even before publication of the result by the Commission. The result of the examination was, in fact, published on 11.8.1991. 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 23.5.1991. Because, the said 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 without saying in case it is necessary to push down some of the candidates, who were appointed earlier on the basis of reservation dated 30th October, 1990, the State Government will be required to give notice to such candidates, who may be affected.</p> <p>B. With the above directions/observations, this appeal is disposed of and the impugned order to that extent stands modified.</p>	

Sd/- H. Parshley  
Sd/- P. K. Sinha

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K. J. Singh  
Patna High Court  
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