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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.889 of 2025
In
Civil Writ Jurisdiction Case No.17892 of 2024
CNR No. BRHC010926242025

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1. Suman Kumar Son of Ramdhani Tanti, Resident of village- Charoun, Nwagarhi, P.S. - Mufassil, Munger District- Munger.
2. Munna Kumar son of Sri Krishnanandan Tanti, Resident of Village- Dharhara, P.S.- Dharhara, District - Munger.
3. Rajnish Prasad, Son of Umeshwar Prasad, Resident of Village- Sikariya, Nawadih, P.S. - Karakat, District- Rohtas.
4. Dhiraj Kumar, Son of Lakhichand Prasad, Resident of Kagzi Mohalla, Ranchi Road, P.S. - Biharsharif, District- Nalanda.
5. Rahul Kumar, S/o Yugal Kishore Prasad, Resident of Mohalla, Manpur Shivcharal Lane Masjid Gali District Gaya.

... ... Appellants

Versus

1. The State of Bihar Through the Secretary, Labour Resources Department, Directorate, Employment and Training, Niyojan Bhawan 4th, Flour, Bailey Road, Patna.
2. The Chairman, Bihar Technical Service Commission, 19 Harding Road, Patna.
3. The Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
4. The In-charge Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
5. The Deputy Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
6. The Director, Employment and Training, Bihar, Patna.

... ... Respondents

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Appearance :

For the Appellants	:	Mr. Ram Shankar Das, Advocate
For the State	:	Mr. Subodh Kumar Jha, AAG-1
		Mr. Sarveshwar Tiwari, AC to AAG-1
For BTSC	:	Mr. Nikesh Kumar, Advocate
		Ms. Jyoti, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-11-2026

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This *intra-court* appeal lays a challenge to an Order dated 11.08.2025 passed by the learned Single Judge in CWJC No. 17892 of 2024, whereby the learned Single Judge has dismissed the aforesaid writ petition filed by the appellants herein by stating in paragraph No. 26 as under:-

> *"26. In view of the mandate of the Hon'ble Supreme Court in the case of* ***Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna*** *(supra), as also the subsequent notification(s) issued by the State Government, this Court does not find any merit in the writ petition; accordingly it is hereby dismissed."*

2. Some of the facts to be noted for the purpose of this judgment are that the appellants herein were the applicants for the post of Trade Instructor (Fitter) applied pursuant to Advertisement No. 10 of 2023. They were aggrieved by the Resolution dated 30.10.2024 of the Bihar Technical Service Commission, the respondent Nos. 2 to 5 (in short 'the Commission'), whereby the Commission excluded the appellants from the zone of consideration.

3. Suffice to state that the appellants herein had applied for the aforesaid post by representing themselves to be Scheduled Caste. It is their case that they have submitted their caste certificates and they had also participated in the

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examination and declared successful, whereupon they have been called for documents verification. It was also their case that the Commission vide letter dated 15.10.2024 directed the candidates to submit their valid caste certificates, failing which the claim of reserved category may be changed or considered appropriately.

4. The case of the appellant Nos. 1 and 2 is that they submitted their online applications under Scheduled Caste category as they have claimed their respective caste category on the basis of their caste “Tanti-Tantwa”.

5. It was the case that while the recruitment process was in progress, the Department of General Administration, Government of Bihar has in compliance with the order of the Hon’ble Supreme Court in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna Vs. The State of Bihar & Ors.** (Civil Appeal No. 18802 of 2017) has issued a Gazette Notification dated 12.08.2024. It is noted that by the aforesaid Gazette Notification, the Labour Resources Department vide letters dated 04.09.2024 and 19.09.2024 has directed the Commission to rectify the merit list in view of the mandate of the judgment of the Hon’ble Supreme Court in the aforesaid Civil Appeal.

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6. It is also noted from the record that the Commission had requested the appellants and other candidates to submit on record, their respective caste certificates/non-creamy layer certificates for grant of reservation benefit in terms of the judgment of the Hon'ble Supreme Court in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra). It was stated that the caste of all the appellants which was "Tanti-Tantwa" prior to 2015, but later on their reservation category was declared to be Extremely Backward Class (EBC) different from Scheduled Caste (SC), the candidature of the appellants was considered, however, they could not get the cut-off marks under EBC category and thus were not selected.

7. The case of the appellants before the learned Single Judge was the caste/category applicable for reservation in the selection process must be based upon the category existing at the time of advertisement or at the time of cut-off date or submission of application and subsequent changes in caste/category will not have any retrospective application. It was also their case that the introduction of new criteria after advertisement would render the selection process vulnerable to challenge.

8. The reliance was placed on behalf of the

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appellants on the judgments of this Court in the case of **Ram Krishna Babloo Vs. The State of Bihar & Ors.** (C.W.J.C. No. 10518 of 2013); **Ashutosh Kumar Vs. The State of Bihar & Ors., 2015 (4) PLJR 609**; **Kusum Kumari Vs. The State of Bihar & Ors., 2021 (1) BLJ 702**; **Registrar, Bihar Animal Sciences University Vs. Md. Aman Hassan & Ors.,** (L.P.A. No. 829 of 2023). It was also contended that the selection process could not have been abandoned in mid-way. In support of the said submission, reliance was placed on the judgment of this Court in the case of **State of Bihar & Ors. Vs. Archana Kumari & Ors., 2024 (2) PLJR 645**.

9. The case of the Commission was primarily that in terms of the judgment in the case of Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna, (supra), the Hon'ble Supreme Court has set aside the Resolution dated 01.07.2015 issued by the General Administration Department, wherein the Court had held all such posts of the Scheduled Castes [reserved quota] which have been extended to the members of "Tanti-Tantwa" community appointed subsequent to the Resolution dated 01.07.2015 be returned to the Scheduled Caste quota and all such members of the "Tanti-Tantwa" community, who have been extended such benefit may be accommodated under their

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original category of Extremely Backward Classes, for which the State was directed to take appropriate measures.

10. It was also the case of the Commission that the Gazette notification dated 12.08.2024 has been issued in deference to the decision of the Hon'ble Supreme Court in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra) and as the recruitment process has not been culminated/finalized, the Gazette notification was made applicable and the appellants were treated as the candidates under the Extremely Backward Class Category.

11. It was the case that the appellants herein did not get the cut-off marks under the EBC category hence they have not been selected. Reliance was placed on the judgment of the Division Bench of this Court in the case of **Ashutosh Kumar Vs. The State of Bihar & Ors.** (L.P.A. No. 399 of 2022) to contend that an identical issue had come up for consideration and the Court had held that in absence of any specific observation made by the Hon'ble Supreme Court, one cannot draw inference that the judgment has prospective effect.

12. The learned Single Judge, after considering all the pleas which have been addressed before him, has in paragraph Nos. 21 to 26 held as under:-

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"*21. Suffice it to observe that the Hon'ble Supreme Court time without number has made it clear that in absence of a declaration that the decision of the Court would operate prospectively, it must be given retrospective effect. The Hon'ble Supreme Court in the case of* ***Directorate Of Revenue Intelligence vs Raj Kumar Arora & Ors****., reported in,* ***2025 (3) PLJR (SC) 124*** *while addressing the issue of retrospective effect of a judicial decision has been pleased to held in paragraph no.94, which is as follows:*

> *94. While addressing the issue of the temporal and retrospective effect of a judicial decision and declaring that a tribunal or court is bound by a higher court's decision on the point in issue, irrespective of whether it is declared either prior to or subsequent to the order which is sought to be called into question by a party, this Court in* ***Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited*** *reported in (2008) 14 SCC 171 stated that a judicial decision acts retrospectively by placing reliance on the Blackstonian theory. According to this theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". Therefore, if the subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively. In other words, if in a given situation an earlier decision of the court operated for quite some time and it is overruled by a subsequent decision,*

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the decision rendered subsequently would have retrospective effect and would serve to clarify the legal position which was not clearly understood earlier. Any transaction would then be covered by the law declared by the overruling decision. The overruling is generally retrospective with the only caveat being that matters that are res judicatae or accounts that have been settled in the meantime would not be disturbed. The relevant observations made by this Court are reproduced hereinbelow:

> *"35. In our judgment, it is also well settled that a judicial decision acts retrospectively.* ***According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.***

36. Salmond in his well-known work states:

> ***"[T]he theory of case law is that a***

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***judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime.*"**

(Emphasis supplied)

22. It would also be pertinent to observe here that identical issue has come up for consideration before the learned Division Bench of this Court in the case of ***Ashutosh Kumar Vs. The State of Bihar & Ors.*** *(L.P.A. No. 399 of 2022) wherein the appellant, who was a candidate for recruitment to the post of Assistant Professor in pursuant to the Advertisement No.52 of 2020 had claimed his candidature under Scheduled Tribes Category. However, despite the recommendation of his name for appointment under the aforementioned category, he could not be appointed and thus on being aggrieved, the petitioner preferred C.W.J.C. No.9632 of 2022, but the same did not get any succor and thus the order of the learned Single Judge has been put to question before the learned Division Bench of this Court. It was the specific contention of the appellant that he had participated in the process of selection in terms of Advertisement No. 52 of 2020 under the category of Scheduled*

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Tribe based upon Gazette Notification issued by the State Government, bearing No.689 of 2016 dated 23.08.2016, wherein the ***'Lohar Caste'*** *was included in the Scheduled Tribes list. Inclusion of '****Lohar Caste'*** *in Scheduled Tribes list dated 23.08.2016 was the subject matter of litigation before the Hon'ble Supreme Court in the Writ Petition (Civil) No.1052 of 2021 (****Sunil Kumar Rai & Ors. Versus The State of Bihar & Ors.****) in which the same was struck down on 21.02.2022.*

23. Notwithstanding the aforesaid position, the appellant had led his submission that on the last date of submission of application, whatever the status of the candidate was required to be taken into consideration and since the Gazette Notification dated 23.08.2016, insofar as inclusion of 'Lohar Caste in Schedule Tribes List', was very much existing in the eye of law. Therefore, exclusion of the petitioner and unsuiting him against the post of Assistant Professor under Scheduled Tribe was wholly illegal. The learned Division Bench of this Court having taken note of undisputed fact that the Hon'ble Supreme Court has struck down the State Government Gazette Notification No.689 of 2016 dated 23.08.2016 in the case of ***Sunil Kumar Rai & Ors. (****supra), held the contention of the appellant is not applicable to the matters like status of a caste. The Court categorically observed that the appellant has no indefeasible right to claim over the post with reference to Scheduled Tribe Category. Referring to the decision rendered in the case of* ***Tej Prakash Pathak and Ors. Vs. Rajasthan High Court and Ors.****, reported in,* ***2024 LiveLaw (SC) 864*** *it has further been observed that no right to be appointed merely because of placement in the*

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select list, but State must justify the exclusion.

24. The Court further clarified that the judgment whether it has retrospective or prospective can very well be looked into by the decision itself; in the absence of any specific observation made by the Hon'ble Supreme Court, one cannot draw inference that it has prospective effect. The Hon'ble Supreme Court in the case of ***Kanishk Sinha & Another Vs. The State of West Bengal and Another,*** *reported in,* ***2025 LiveLaw (SC) 259****, held that if there is no observation made by the Hon'ble Supreme Court to the extent whether any Judgment has prospective or retrospective effect in that event one has to draw inference that it has retrospective effect. The learned Division Bench finally on being found no merit in the appeal, dismissed the same.*

25. In the case in hand, from bare perusal of the ruling in ***Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna*** *(supra), there is no iota of confusion that it has specifically given retrospective effect with a clear mandate, as noted hereinabove.*

26. In view of the mandate of the Hon'ble Supreme Court in the case of ***Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna*** *(supra), as also the subsequent notification(s) issued by the State Government, this Court does not find any merit in the writ petition; accordingly it is hereby dismissed."*

13. The submissions of learned counsel for the appellants are primarily the same as urged before the learned Single Judge, (i) the selection process could not have changed mid-way; (ii) the caste certificates which were in existence

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were issued by the State Caste Scrutiny Committee; (iii) applying new recruitment policy retrospectively to the on-going selection process is impermissible; (iv) it is the caste criteria prevailing at the time of submission of application form should determine the selection process.

14. We are unable to agree with the submissions as advanced by the learned counsel for the appellants. This is for the simple reason that the Hon'ble Supreme Court in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra) was concerned with the Resolution dated 01.07.2015 issued by the General Administration Department, wherein a decision was taken that all such posts of Scheduled Castes reserved quota may be extended to the "Tanti-Tantwa" community. The Court held that all such posts of the Scheduled Caste reserved quota, which have been extended to the members of the "Tanti-Tantwa" community appointed subsequent to the Resolution dated 01.07.2015 be returned to the Scheduled Castes quota and all such members of "Tanti-Tatwa" community who have been extended such benefit, may be accommodated under their original category of Extremely Backward Classes (EBC). For this purpose, the State was required to take appropriate measures. So, it follows that the effect of the judgment of the Hon'ble Supreme Court in

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Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna (supra) is that "Tanti-Tantwa" caste be treated as an Extremely Backward Class category. The appellants were considered, belonging to Extremely Backward Classes Category and their candidature was considered on the basis of the said caste.

15. It is the case of the Commission that none of the appellants meet the cut-off marks as applicable to Extremely Backward Classes category candidates and, as such, were not found successful.

16. An issue arose whether the judgment of the Hon'ble Supreme Court would also govern the advertisement in question. The said issue is answered by the learned Single Judge by stating in paragraph Nos. 21 to 24, which we have already reproduced above. We agree with the above conclusion drawn by the learned Single Judge on that issue.

17. In fact, the issue which fell for consideration before the learned Single Judge was whether the Judgment of the Hon'ble Supreme Court shall have prospective and not retrospective effect is no more *res integra,* as the issue is covered by the judgment in the case of **Ashutosh Kumar** (supra), except that in the said case the caste is "Lohar caste." So the aforesaid shows that the learned Single Judge has rightly

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held that unless specific observation is made by the Hon'ble Supreme Court, one cannot draw inference that the judgment of the Hon'ble Supreme Court has prospective effect.

18. We are of the view that the learned Single Judge has rightly dismissed the petition as the issue which fell for consideration for treating the appellants belonging to Extremely Backward Class was pursuant to the judgment of the Hon'ble Supreme Court in **Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna** (supra). We hold that the learned Single Judge is justified in dismissing the writ petition in the manner, the learned Single Judge has held in paragraph Nos. 21 to 26 which we have reproduced above.

19. The appeal being without any merit stands dismissed.

20. Pending I.A., if any, also stand disposed of.

(V. Kameswar Rao, CJ)

(Partha Sarthy, J):- I Agree.

(Partha Sarthy, J)

Guddukr/-

AFR/NAFR	A.F.R.
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