

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19439 of 2012

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Madhusudan Prasad Tanti, Son of Sri Late Feku Prasad Tanti, resident of Village
and P.O.-Harnaut, P.S.-Harnaut, District – Nalanda.

... ... Petitioner/s

Versus

1. Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur-842001 through its Chairman.
2. The Chairman cum Disciplinary Authority, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur-842001.
3. Board of Uttar Bihar Gramin Bank cum Appellate Authority through its General Manager, Head Office, Kalambagh Chowk, Muzaffarpur-842001.
4. General Manager, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur – 842001.

... ... Respondent/s

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Whether the dismissal of the petitioner by Uttar Bihar Gramin Bank violated Articles 14, 16, and 341 of the Constitution of India - Whether ‘Pan’ caste falls under the Scheduled Caste (SC) category in Bihar, as per the Presidential Order under Article 341- held, The Court observed that ‘Pan’ caste is recognized as a Scheduled Caste in Bihar under Articles 341 and 342 of the Constitution (Para 6). - The dismissal of the petitioner based on erroneous classification by the Bank violated constitutional provisions. The reliance on outdated clarifications, superseded by the Bihar Welfare Department's memo, was invalid (Para 9). - The Court quashed the dismissal order, emphasizing the immutability of the Presidential SC/ST list unless amended by Parliament (Paras 7-8).

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Shrivastava, Advocate. Mr. Binod Kumar Sinha, Advocate.
For the Respondent Bank:		Mr.Prabhakar Jha, Advocate. Mr. Amitesh Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-06-2024

Heard Mr. Abhinav Shrivastava, learned counsel along with Mr. Binod Kumar Sinha, learned counsel appearing on behalf of the petitioner and Mr. Prabhakar Jha, learned counsel along with Mr. Amitesh Jha, learned counsel for the Respondent Bank.

2. The petitioner has sought for the following reliefs as prayed for in Para-1 of the writ petition, which are, *inter alia*, reproduced hereinafter:

“That this application is being filed on behalf of the petitioner challenging the order bearing no. 784 dated 23.11.2011 read with Administrative Order bearing No. 785 dated 23.11.2011 (as contained in Annexure-4 & 4/1) passed by the respondent no.2, the Chairman – cum –



Disciplinary Authority, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur, whereby and whereunder the petitioner has been dismissed from service with immediate effect as well as communication contained in Letter bearing No. 389 dated 26.07.2012 (as contained in Annexure-6) whereby the Memo of Appeal preferred by the petitioner for the review of the order dated 23.11.2011 has been rejected by the respondent no.4, General Manager, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur. The petitioner further prays for the grant of all consequential relief which the petitioner is found to be entitled in the facts of the instant case.”

3. Brief facts of the case are that the petitioner being scheduled caste namely ‘Pan’ also called ‘Tanti’ was appointed to the post of Junior Management Grade Scale-1, in the erstwhile Champaran Kshetriya Gramin Bank, Motihari in the year, 1980 and had submitted his joining on 25.08.1980. He was promoted to the post of Junior Management Grade Scale-II in the year 1989 and was posted as Senior Manager, Audit and Inspection Department, Head Office, Motihari. A charge sheet bearing Letter No. 273 dated 10.08.1996 was issued Memorandum to the petitioner by the respondent no.2 containing Article of Charge. Inquiry Authority cum Disciplinary Authority had concluded the inquiry on 11.11.2008 and had submitted his findings to the Chairman cum Disciplinary Authority Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur (respondent no.2) on 09.01.2009 holding that the charges were not proved against the



petitioner. The Chairman cum Disciplinary Authority (respondent no.2) disagreeing with the findings of the inquiry authority dated 09.01.2009 issued show cause to the petitioner vide Letter No. 585 dated 03.10.2011 along with the finding of the inquiring Report dated 09.01.2009. The Chairman cum Disciplinary Authority, Uttar Bihar Gramin Bank, Muzaffarpur (Respondent No.2) passed order of dismissal of the petitioner from bank service with effect from 23.11.2011 vide Order bearing No. 784 dated 23.11.2011 which was also communicated through administrative order bearing no.785 dated 23.11.2011. The petitioner being aggrieved and dissatisfied with aforesaid orders dated 23.11.2011 (as contained in Anneuxre-4 and 4/1), preferred an Appeal against the aforesaid order of the dismissal dated 23.11.2011 before the Appellate Authority i.e. Board of Director of Uttar Bihar Gramin Bank, Muzaffarpur (Respondent No.3) on 08.12.2011. The Appellate Authority has rejected the Appeal vide order bearing no. 389 dated 26.07.2012. Aggrieved by the impugned order, the present writ petition has been filed on behalf of the petitioner.

SUBMISSION ON BEHALF OF THE PETITIONER

4. Learned counsel appearing on behalf of the petitioner, in crux, submitted that in view of the Constitutional (Scheduled Castes) Order, 1950, the petitioner belongs to 'Pan'



caste, which is scheduled caste. The said fact is clarified by the State Welfare Department vide Memo No. 638 dated 31.01.1992 that in the State of Bihar, 'Pan' caste comes under scheduled caste category and it is also commonly called as 'Tanti'. He further submitted that the clarifications which have been relied by the respondent-Bank are orders dated 15.08.2011, 29.06.2011 and 17.06.2011 issued by the Joint Secretary of the General Administration Department' District Magistrate and Block Development Officer respectively and has an overriding effect. The incorrect information so communicated was clarified by the Joint Secretary, General Administration Department, the then Principal Secretary of the department vide order dated 21.04.2014 contained in Memo No. 5374 (Annexure-5 to the supplementary affidavit filed on behalf of the petitioner) that 'Pan' is a scheduled caste and Tanti is also commonly called scheduled caste. In these background, learned counsel submitted that the impugned orders dated 23.11.2011 contained in Annexure-4 and Annexure 4/1 are fit to be set aside and quashed being violative of Articles 341, 14 and 16 of the Constitution.

5. *Per contra*, Mr. Amitesh Jha, learned counsel appearing on behalf of the respondent Bank submitted that the Bank has proceeded on the basis of the clarification provided to



the Bank by the Joint Secretary, General Administration Department, Government of Bihar as contained in Annexure-A to the counter affidavit and following the said information, a decision was taken against the petitioner to impose penalty.

6. Having heard the rival submissions made on behalf of the parties, as per the Constitutional (Scheduled Castes) Order, 1950, 'Pan' caste comes under scheduled caste category. A clarification as to whether 'Pan' and 'Tanti' are same caste has been made by the State Government Welfare Department vide Memo No. 638 dated 31.01.1992 and subsequently realizing that wrong information vide communications dated 15.08.2011, 29.06.2011 and 17.06.2011 was provided to the Bank by the Joint Secretary, General Administration Department, Government of Bihar, the then Principal Secretary, General Administration Department issued a clarificatory order dated 21.04.2014 contained in Memo No. 5374 (Annexure-5 to the supplementary affidavit filed on behalf of the petitioner) that 'Pan' caste comes under Scheduled Caste category and 'Pan' caste is also known as 'Tanti' in the State of Bihar. I find that the impugned order dated 23.11.2011 contained in Annexure-4 and 4/1 are contrary to the constitutional provision contained in Articles 341(1) and 342 of the



Constitution.

7. It is gainful to quote Paragraph Nos. 24, 25, 26 and 27 in this regard to the law laid down by the Apex Court in the case of **Pankaj Kumar Vs. State of Jharkhand & Ors.** (Civil Appeal No. 4864 of 2021), which are, *inter alia*, reproduced hereinafter:

“24. The mandate of affirmative action in favour of Scheduled Castes/Scheduled Tribes indeed has an important place in our constitutional scheme. Articles 341(1) and Article 342(1) of the Constitution of India empowers the President to specify the race or tribes or part of groups within caste, race or tribes with respect to any State or Union Territory for the purpose of the Constitution deemed to be SC/ST in relation to that State or Union Territory, as the case may be. The object of Articles 341(1) and 342(1) of the Constitution is to provide additional protection to the members of the SC/ST having regard to the social and economical backwardness from which they suffer. It is obvious that in specifying castes, race or tribes, the President has been authorised to limit notification to part of groups with the castes, etc. and that must mean that after examination of the disadvantages from which they have suffered and the social and economic backwardness, the President may specify castes/tribes etc. as parts thereof in relation to the entire State or in relation to parts of the State where he is satisfied that after examination of the disadvantages, social and educational hardship and backwardness of the race, caste or tribes justifies such specification.

25. Articles 341 and 342 make it clear that the caste, race or tribe or part of or group within any caste, race or tribe as specified in the Presidential Order under Article 341(1) or a tribal community, as notified in the Presidential Order under Article 342(1) shall be deemed to be Scheduled Castes/Scheduled Tribes for the purpose of the Constitution in relation to that State or Union Territory, as the case may be and this exposition has been made clear from clause (2) of the Constitution(Scheduled Castes)/(Scheduled Tribes) Order, 1950.

26. There are various parameters which have to be taken into consideration to recognize a caste/race as Scheduled Caste/Scheduled Tribe in a State/Union Territory or a particular part thereof. This clearly manifests from the mandate of Article 341(1) and 342(1) of the Constitution



that after elaborate enquiries are made, the Presidential orders are issued. While doing so, the Presidential Orders not only provides that even specified parts or 18 groups of castes, races or tribes/tribal community could be Scheduled castes/Scheduled Tribes in a particular State/Union Territory but also makes it clear that certain castes or tribes or parts/groups thereof could be Scheduled Castes/Scheduled Tribes in specified/particular area/district of a State/Union Territory.

27. The consideration for specifying a Scheduled Caste or Scheduled Tribes or Backward Classes in any given State depends on the nature and extent of the disadvantages and social and educational backwardness/hardships suffered by the members concerned of the class in the State specific but that may be absent in another State to which the person has migrated.

8. 'Pan' caste has been notified as a scheduled caste under the provision of Articles 341(1) and 342 of the Constitution and in this regard I also find it proper to refer the clarification received from the department of Social Justice and Empowerment and the relevant paragraph of the said clarification are, *inter alia*, reproduced hereinafter:

"5.1 Supreme Court through a catena of judgments had held that Presidential Orders under Article 341 of the Constitution of India must be read at it is. It is not even permissible to say that a caste/sub-caste, part of or group of any caste is synonymous to the one mentioned in the Scheduled Castes order if they are not so specifically mentioned in it. Further, it not at all permissible to hold any enquiry or let in any evidence to decide that any caste or part or of group within any caste is not included in the general name even though it is not specifically mentioned in the concerned entry of the Presidential order. A notification once issued by the President under Clause (1) of Article 341 specifying scheduled castes can only be amended by an Act of Parliament as laid down in Clause (2) of Article 341. It is not open to State Governments, Courts or Tribunal or any other authority to modify, amend or alter the list of Scheduled Castes.

5.2. Government of Bihar vide Gazette notification dated 02.07.2015 has deleted Tanti/Tatwa community from the State list of Backward Classes, so that on its inclusion in the



list of Scheduled Castes with Pan, Swasi it may get benefits of Scheduled Castes. As of now Tanti/Tatwa community of Bihar has not been included in the list of Scheduled Castes. Therefore, its members cannot get benefit of SC in the name of Pan, Swasi in terms of Bihar Government's Resolution appearing in Gazette notification. Presently Tanti (Tatwa), Tati, Tatin community appears at Sl. No. 48 in the central list of OBC."

9. The above clarification also confirms that 'Pan' caste is listed in Presidential list of Scheduled Castes in Bihar.

10. Recently, a Division Bench of this Court in the case of **Rohit Nandan Vs. Union of India and others (C.W.J.C. No. 12096 of 2022)** vide its judgment dated 19.01.2023 faced with the question as to whether 'Pan' is a scheduled caste as per the Presidential order under Article 341, upon consideration of materials on record, *inter alia*, has passed the following orders:

"7. Having considered the material available on record and further considering the rival submission, in the present writ petition, the core question which arises is whether the petitioner is entitled to get the benefits under SC category as a member of Pan Caste, in the given facts and circumstances.

8. On a perusal of the Bihar Gazette Notification dated 02.07.2015, it appears that the State Government has only directed for removal of Tanti and Tantwa community from the list of Most Backward Classes as notified for the State of Bihar in view of the fact that it is a sub caste of Pan and Swasi, which is a notified Scheduled Caste, already notified by the Central Government way back in the year 1978 and 1997. It is apparent that finding Pan and Swasi to be already notified as Scheduled Caste in the State of Bihar as per the Constitution Scheduled Caste Order 1950 and Tanti and Tantwa to be erroneously notified as belonging to other Backward Classes in the State of Bihar, it being in the nature of a title and synonymous with the categories Pan and Swasi already notified by the Central Government, keeping in view the recommendation of the EBC Commission, the Circular in question has been issued. It is



a case where the State Government has not amended the list of Scheduled Caste as notified by the Union but it has only deleted a particular entry namely Tanti and Tantwa from the list of other Backward Classes and it has been found that as they are synonymous with Pan and Swasi which is a notified Scheduled Caste, therefore, their name should be deleted from the State list of Extremely Backward Classes so that they could get the benefit of the Scheduled Caste category notified by the Union Government.

9. It is not a case that the State Government has amended the Presidential order without any authority of law and has included a particular caste in the category of Scheduled Caste or Scheduled Tribe, but the State Government has only deleted one of the most backward castes from the State list on account of the fact that it is a Scheduled Caste already notified in the Presidential order and, therefore, to enable them to take the benefit of the Presidential order the circular has been issued as a clarification.

10. Moreover, the petitioner has been issued a caste certificate of SC category by a competent authority and the same has not been challenged or cancelled. Hence, for all practical purposes, the petitioner is a person belonging to the SC category.

11. In the light of discussion made hereinabove and under the facts and circumstances of the case, the present writ petition deserves to be allowed and is accordingly allowed. The order of learned CAT dated 01.04.2022 and the order dated 14.02.2019 issued by the respondent no.3 are quashed and set aside.

12. This Court directs the concerned respondents to consider the case of the petitioner in view of the fact that he belongs to SC category within a period of three months from the date of communication of a copy of this judgment.”

11. For non-compliance of the order passed in C.W.J.C. No. 12096 of 2022 (Rohit Nandan Vs. Union of India and others), a contempt petition was preferred being M.J.C. No. 1572 of 2023 and the same is pending before this Court.

12. In the result, the relief sought for by the petitioner in the present writ petition is allowed. The administrative order dated 23.11.2011 contained in Memo No. 784 (Annexure-4) passed by the respondent no.2 – the Chairman



cum Disciplinary Authority, Uttar Bihar Gramin Bank and the appellate order communicated vide Letter No. 389 dated 26.07.2012 passed by the General Manager, Uttar Bihar Gramin Bank are hereby set aside and quashed. The petitioner who as on date has already superannuated is entitled for payment of entire salary from the date of his removal and consequential benefits and resultant thereto, the last pay drawn has to be calculated in accordance with law and pension, etc. and other retiral dues are also directed to be paid to the petitioner well within a period of three months.

13. Interlocutory application, if any, also stands disposed of.

14. In the circumstances of the case, there shall be no order as to costs.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03.07.2024
Transmission Date	N.A.

