
(2011) 03 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 10978 of 2004

Abdur Rauf

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Citation : (2011) 3 PLJR 152

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Najmul Hoda and Md. Qumrul Hoda, for the Appellant; Ramakant Sharma, Ansarul Haque for Resp. No. 8, Ahsanuddin Amanullah and Anuj Kumar for State, for the Respondent

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The Petitioner was having a Fazil degree and was appointed as a Teacher by the Managing Committee of the Madarsa Board. The Petitioner was appointed in the year 1978 on an unsanctioned post. The vacancy occurred in the year 2002. After selection, the Petitioner's name was first in the panel and accordingly he was selected for the said post. The second man in the panel i.e. Respondent No. 8 challenged the appointment of the Petitioner on the ground that he was overage and the maximum age for the purposes of selection was 35 years. The Special Director, Secondary Education, Bihar, Patna allowed the appeal relying on the order of this Court passed in LPA No. 978 of 1999.

2. I may clarify before going any further that on perusal of the orders passed in LPA No. 978 of 1999, it would appear that in the advertisement, 35 years of age was fixed as the eligible age for appointment. The LPA Court after considering this aspect of; the matter found that the concerned person was not entitled for consideration for the purpose of appointment.

3. The LPA arises out of CWJC No. 3641 of 1992, disposed of on 23rd July, 1999. In the writ application, the facts disclose that the Petitioner and the Respondent

No. 5 were both appointed as Assistant Teachers against unsanctioned post, one post became vacant due to the retirement of one of the teachers. An advertisement was issued in which it was specifically stated that the person who will be considered should be 35 years of age. The Court while considering this aspect of the matter come to the conclusion that since both the Petitioners and the Respondents were appointed and were in the school since 1978, the person who fulfils the conditions of being within 35 years of age would be eligible for appointment. The Court while considering this aspect of the matter also observed as follows:

The Board has taken decision for relaxation of upper age limit for 3 years but there is nothing on the record to show that the Managing Committee while appointing writ Petitioner had condoned the upper age limit of the Petitioner. The power of condonation of upper age limit is with the Managing Committee.

4. In the present case, the Managing Committee has condoned the age which has been approved by the Madarsa Board. Therefore, perhaps this aspect of the matter would be considered by the person who will hear this matter.

5. The Petitioner relies on Annexure-1 which is the proceedings of the" Governing Body of the Managing Committee of the Madarsa Board, which has relaxed the age of the Petitioner taking into consideration that he has worked in the Madarsa from 1978 to 2002 i.e. for 24 years and as such has given him preference over Respondent No. 8.

6. Learned Counsel for the Petitioner submits that the Special Director did not have the authority to hear the appeal against the orders of the Madarsa Board in view of the fact that the Special Director is the Ex-officio member of the Board and he cannot sit in appeal against his own orders.

7. Counsel appearing on behalf of Respondent No. 8, on the other hand, submits that the State Government has delegated the power of hearing appeals to the Special Director. In my opinion, such delegation has been made in teeth of the judgment of this Court in the case of Md. Shamir Jung Khan v. The State of Bihar and Ors. 2010 (1) PLJR 149. As such, the order suffers from infirmity to that extent and has to be quashed. The proper procedure would be that the Respondent No. 8 should file an application before the State Government for consideration of his case. If the Respondent No. 8 files an application before the State Government i.e. the Secretary, Secondary Education, the matter should be considered after issuance of notice to the Petitioner and it would be proper to conclude the matter expeditiously within a period of three months from the date of valid service of notice to the Petitioner.

8. This application is thus allowed.