
(1996) 03 PAT CK 0005
In the Patna High Court
Case No : L.P.A. No. 1116 of 1995

Abhay Kumar Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 03 PAT CK 0005

Hon'ble Judges : D.P. Wadhwa, C.J.; S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Shyama Prasad Mukherji and Mukul Sinha, for the Appellant;
Sarandhar Upadhyaya for the State, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—Four appellants, namely, Abhay Kumar Rai, Shambhu Kumar, Raj Kumar and Rajesh Kumar Bharti have challenged the order dated 18th of September, 1995 passed in C.W.J.C. No. 6576 of 1995 by which the learned Single Judge has dismissed their writ petition. The brief facts of the case are as follows:

Four posts of Tracer were vacant in the office of Superintending Engineer, Building Construction and Housing Department, South Bihar Circle, New Punaichak, Patna. Vide letter no. 4086 date 23rd of November, 1994 the petitioners sought for roster clearance, which was given by a letter no. 4080 dated 19th of December, 1994. Resolution was made thereafter by letter no. 952 dated 18th of April, 1995, by which names of eligible candidates were called for from the Employment Exchange, Patna for appointment against the four posts of Tracer; One post was shown to be reserved for Scheduled Caste category and another for Most Backward category persons and two posts were shown to be unreserved. Names of appellants were already enrolled with the employment Exchange and they were eligible for appointment against the post of Tracer. List of eligible persons was forwarded by the Employment Exchange, Patna. By letter

no. 832 dated 10th of May, 1995 and letter no. 1216 dated 20th of May, 1995, the names of appellants were also forwarded by the Employment Exchange. All the candidates, including the appellants, whose names were forwarded, they were asked to appear in the interview and test vide different interview letters all dated 8th of May, 1995. They were to appear in such test/interview on 25th of May, 1995. The appellants, along with others appeared in the said test/interview and the Selection Committee considered their names. A select list was prepared by the selection committee recommending the names of the appellants, on the basis of their merit. It was only thereafter four appellants were appointed of the post of Tracers vide different fetters bearing nos. 1732 to 1735 all dated 22nd of June, 1995. The appointment was made by the appointing authority.

2. Thereafter when the appellants were performing their duties the respondents suddenly came out with the impugned order, contained in letter No. 3560 dated 16th of August, 1995. It was alleged that the appointments of appellants were made illegally, as prior to appointment no detail circulation was made nor the retrenched employees were considered. On the basis of the impugned order dated 15th of August, 1995, services of the appellants were terminated vide four orders, contained in Memo Nos. 2412 to 2415, all dated 17th of August, 1995 and their order of termination were all dated 17th of August, 1995.

3. The learned Single Judge has dismissed the writ petition of the appellants on the ground that the Employment Exchange did not notify the vacancy, as was required under Appointment Department's letter No. 8167 dated 21st of June, 1976 and thereby hold that the requirement of aforesaid Government instruction was not complied.

4. The counsel for the appellants submitted that the aforesaid decision of the learned Single Judge is in conflict with another decision of this Court given by the another learned Single Judge vide decision dated 4th of January, 1995 in C.W.J.C. No. 5051 of 1993. While narrating the detail facts, it was contended by the counsel for the appellants that all the formalities relating to appointments were followed, which were completely in consonance with the provisions of Articles 14 and 16 of the Constitution of India. By relying on the Appointment Department's letter No. 8167 dated 21st of June, 1976 it was contended that only in case of five or more vacancies there was a question of notifying the vacancies, but with respect to lesser number of vacancies there was no other requirement. The rest of the requirement list calling for names from the Employment Exchange, to hold test/interview by the Selection Committee after roster clearance and thereby to make appointment on the recommendation of the selection committee, after following the reservation policy, were followed in the case of the Appellants. Thereby he justified the appointments of the appellants. It was further contended that the termination of services of appellants having been made without giving any notice to the appellants, the same was also violative of rules of natural justice.

5. The counsel for the State heavily relied on the Appointment Department's

letter No. 8167 dated 21st of June, 1976 and submitted that the Employment Exchange should have notified and advertised the vacancy in the newspaper and thereby after giving notice to all the eligible candidates recommendation should have been made. It was contended that non-compliance of the aforesaid provisions shows that the appointments of the appellants were made illegally. It was also contended that in the matter of illegal appointment there was no need of giving any notice to the appellant, appointment itself be ab-initio void.

6. Having heard the counsel for the parties, according to me the contention made by the counsel for the appellants is correct. Admittedly in the case of appellants, all general procedures for appointment were followed. The reservation policy was followed, roster clearance has taken, names were called for from the Employment Exchange and persons more than five times vacancies were given opportunity to appear in the test/interview. It was only after the recommendation of the Selection Committee, appointments of appellants were made by the competent authority. I find that the appointment is completely in terms with Articles 14 and 16 of the Constitution of India.

7. So far as the Appointment Department's letter No. 8167 dated 21st of June, 1976 is concerned, it will be evident from paragraph 4 therein that the vacancies are to be notified by the Employment Exchange, whenever number of such vacancies are five or more than five. Thereby it is clear that for vacancies lesser in number than five vacancies there is no need of advertisement to be published by the Employment Exchange in the newspaper. Admittedly in the case of the appellants requisition were made for four vacancies, which were vacant under the respondents. Such being the position it cannot be held that the Appointment Department's letter No. 8167 dated 21st of June, 1976 was violated in the matter of appointment of appellants.

8. For the reasons stated above, I hold that impugned order dated 18th of September, 1995 passed by the learned Single Judge in C.W.J.C. No. 6576 of 1995 is wrong, Accordingly, the same is set aside. The impugned order contained in letter No. 3560 dated 16th of August, 1995 (Annexure-1 to the writ petition) and four impugned orders of termination, all dated 17th of August, 1995 (Annexure 1/A to 1/D to the writ petition) are also set aside.

9. This appeal and the writ petition both are allowed.

10. No cost. D.P. Wadhwa, C.J.

I agree.