
(2008) 08 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 9683 of 2005

Alok Kumar and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Citation : (2009) 1 PLJR 600

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Petitioners want direction upon the respondents to promote them on the post of the Junior Hindi Translator from the date of their passing of the limited internal competitive examination which was held in February, 2004. They have been appointed to the post on 13th September, 2007 which is not disputed. They also want a direction for payment of salary and other allowances payable on the post from the date indicated above. Both the petitioners are employees of the respondent Bharat Sanchar Nigam Limited (hereinafter to be referred to as BSNL). They have been working under the respondents for quite a while. When in the year 2003 the respondents decided to hold or conduct a limited internal competitive examination for filling up some vacancies on the post of Junior Hindi Translators, petitioners found this as an opportunity for better avenue than the post on which they were working. Applications were invited from the employees and both the petitioners who were otherwise eligible made applications. Examination was held and the two petitioners appeared in the examination on 12.2.2004. They received a communication also from respondent No. 2 vide letter dated 20.5.2004 contained in annexure-4 that they have qualified in the said examination and their case for appointment shall be considered keeping in mind the vacancies, the reservation for SC/ST in terms of the rules etc. In terms of a communication dated 10.8.2004 contained in annexure-5 it has emerged that at the relevant time there was only one vacancy

for Junior Hindi Translator in Bihar Circle at that point of time. But no final decision was taken by the respondents to fill up the post. The matter remained pending for some reasons and a final decision appointing the petitioners on the said post came to be issued only on 13th September, 2007 as would be evident from Annexure-17 to the writ application.

2. In the normal circumstances this development during the pendency of the writ application should have allowed the matter to rest but it is not so. Some development in the meanwhile has irked the petitioners and they filed Interlocutory Application No. 327 of 2008.

3. it seems that during the pendency of consideration of the case of the petitioners for appointment on the lone post certain developments took place at the Headquarters. On the request of private respondent No.7, an employee working under Assam Telecom Circle at Dibrugarh was transferred to Bihar Telecom Circle in terms of Rule 38 of P & T Manual, Vol. IV. Private respondent Brajesh Kumar based on the transfer order dated 9th February, 2005 came and joined the solitary post of Junior Hindi Translator in Bihar Telecom Circle. This has marred their right to be appointed to the post at the appropriate time and has delayed the matter for them by many a years. They want ouster of the private respondent therefore from the said post.

4. Notices had been issued to private respondent who was represented by his counsel and Vakalatnama was filed on his behalf but for reasons best known to him he did not appear at the time of arguments. The Court therefore did not have occasion to hear respondent No. 7 on the issue.

5. A counter affidavit, however, has been filed on behalf of BSNL and they have seriously opposed the relief/prayer made by the petitioners. They urge that merely because the petitioners sat in the examination and cleared the same, it does not mean they have a right for appointment to the post from the date they sat in the examination or even when the result was declared. Passing the examination only meant that the petitioners had gained eligibility for consideration at the time when the appointment was to be made on the post subject to vacancies and that requirement of rules in filling up such vacancies. The petitioners have been appointed to the post as and when the vacancy has arisen and issuance of Annexure-17 dated 13th September, 2007 is the ample proof of the same. After the appointment of the petitioners on the said post which is a substantive appointment petitioners have no case for shifting their date of appointment to the date of their sitting and passing of the examination.

6. Learned counsel appearing on behalf of the respondents relied on a recent decision of the Hon'ble Supreme Court in the case of Union of India vs. S Vinod Kumar, 2007 AIR SCW 5989. Emphasis has been placed by the counsel on paragraph 16 of the judgment which is being reproduced hereunder:-

"16. In view of the matter the respondents appeared in a competitive examination. The posts advertised were public posts. They did not have any

vested right for appointment. It is well known that even selected candidates do not have legal right in this behalf."

7. The principle laid down by the Hon"ble Supreme Court in the above cited decision is well known and settled. The Court therefore has no hesitation in holding that the prayer made on behalf of the petitioners to shift their date of appointment to the date of holding of the examination is totally misplaced and devoid of any merit.

8. Learned counsel for the petitioner, however, tried to rely on the decision of the Hon"ble Supreme Court rendered in the case of A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, . He has put emphasis to some of the paragraphs of the said decision especially paragraphs 11, 14 and 15 in support of their claim. This Court is of the opinion that the decision relied upon by the petitioners has not application to the present case both in facts as well as in law. In the case of A P Aggarwal (supra) the issue before the Hon"ble Supreme Court was claim of the petitioner to be appointed as a Member of the Sales-tax Appellate Tribunal in the background that since other persons empanelled above the petitioner did not accept the responsibility for whatever the reasons, he had a right to claim for appointment on the post. That is not the issue in the present case.

9. The Court would further like to clarify that though private respondent No. 7 has not chosen to make any submission on the issue but it is also a fact that private respondent stood transferred to Bihar Circle on 9th February, 2006 on an available post at the relevant time and this filling up of the post was done by the respondents in exercise of the power under Rule 38. If respondent No. 7 was already holding the post of Junior Hindi Translator in another Telecom Circle and the petitioners were yet to be appointed to the said post, merely because it could have delayed the appointment of the petitioners it does not mean that the Court has to see malice in the said decision of transfer or interfere with the same. Even otherwise that is not the primary relief for which the present application has been filed. The petitioners want shifting of the date of their appointment on the substantive post, to the date of the limited internal competitive examination. There is neither any law nor rule which can beget such a relief to the petitioners. The relief, therefore, prayed by the petitioners has no merit and the Court is of the opinion that neither a mandamus nor any direction can be issued against the respondents in this regard. The writ application is dismissed.