

(1991) 12 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 650 of 1988

Amarendra Prasad Srivastava and Others

APPELLANT

Vs

Bihar State Electronics Development Corporation Ltd. and
Others

RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Citation : (1991) 12 PAT CK 0015

Judgement

B.K. Roy, J.—The petitioners pray to quash an office order bearing Memo No. 4355/87, dated 30-12-1987 (as contained in Annexure-1) of the Managing Director of the Bihar State Electronic Development Corporation Limited (Respondent No. 1) by which their tenure of training period with effect from the afternoon of the date shown against their names has been terminated.

The Facts:

2. The petitioners were executive trainees who in Annexure-2, were not found suitable on the basis of written test and interview conducted for selection of executive trainees for regular appointment. An advertisement (as contained in Annexure-2) was published requiring executive trainees on consolidated wages for a period of six months stating, however, that there is no job guarantee. The petitioners applied and were called for their interview and written test on 23rd November, 1986--Vide call letter dated 31st October, 1986 (as contained in Annexure-3). They appeared before the Managing Director of respondent No. 1) Respondent No. 2). Even though in the call letter (Annexure-3) it was intimated that an interview and viva voce test will be taken, Respondent No. 2 conducted a written test in which the petitioners appeared along with others They were also interviewed by a Selection Committee consisting of five persons Petitioners 3 to 8 were appointed as executive trainees vide Annexure-4, the office order dated 29th December, 1986, stating, inter alia that there is probability of absorption against regular post on the basis of their satisfactory performance. Similar letters of appointment, as contained in Annexure-4, were also given to petitioners 1 and

2. Whatever terms the office orders (Annexure-4 and 5) imposed, they fulfilled. It was not stipulated however that they will have to compete or appear in any other written test. The petitioners joined the post, which is evident from the order dated 4th March 1987 (as contained in Annexure-6). The petitioners performed their training without any adverse remark and to the complete satisfaction of their authorities. On 25th September, 1987, Respondent No. 2 suddenly came out with an order dated 25th September, 1987 (as contained in Annexure-7) that it has come to his notice that various executive trainees have been appointed without any advertisement and without any interview through regular Board and even though the training period has already been completed the decision is to be taken as to whether their period is to be extended or not and that the matter was placed before the Board of Directors that all executive trainees will have to give appraisal under the controlling officers of whom will note down their confidential character roll which will be sent to the Managing Director. It was further directed that the Director of Food by the Board of Directors will look into the matter and thereafter executive trainees will be recommended for regularisation against the vacant posts. It appears that a written test was held on 26-27th October, 1987 in which all the executive trainees walked out. It has been stated that thereafter an indirect pressure was made on them through their controlling authorities that their services will be terminated if they do not appear in the said test. Respondent No. 2 came out with an order dated 23rd November, 1987 (as contained in Annexure-8) asking the executive trainees to turn up for written test and interview. The petitioners, along with others, appeared in the test and in the interview and thereafter the impugned order was passed, It has been stated that this order has been passed on completely wrong ground that the written test and interview was to be conducted for the purpose of selection and regular appointment of executive trainees. Respondent No. 2 had never intimated by the letter (Annexure-8) that the written test and interview will be conducted for the purposes of selection and regular appointment. According to the orders of appointment (Annexures-4 and 5) it was only after the training period their performance was to be judged. The controlling authority of the petitioners has given satisfactory reports in their favour one of such reports is Annexure-9. Respondent No, 2 has not published any list of successful candidates nor had he made it public. The petitioners have come to know that only those candidates, who had backing were given higher marks in the interview without looking into the performance of the executive trainees, which was satisfactory. Three persons, like petitioners have not been thrown out, as they are related to one or the other higher officers, namely, Nawal Tiwary brother in-law of Shri B. B. Tiwary, General Manager, Smt. Meena Kumari sister-in-law of Shri R. A. Chaudhary, T. C. I. in the head office of the Corporation and Bijay Kumar Sinha, son of Shri Lakshman Prasad Accounts officer-cum Secretary of the Corporation. Diploma-holder executive trainees, though asked to appear by Annexure-7, were subsequently not asked, but retained in the service without appearing in the written and viva voce tests. It is clear and manifest that Respondent No. 2 adopted an arbitrary and illegal method of written test

interview just to throw out the petitioners who have no pairvi and for extraneous considerations. The impugned order is arbitrary, mala fide and violative of Articles 14 and 16 of the Constitution of India.

3. In their counter affidavit respondent Nos. 1 and 2 state, inter alia, that the management took a decision vide Annexure-7 for regular absorption and decided to take written test and interview by the selection committee for all executive trainees to recommend the names of suitable candidates for their regular absorption. The Selection Committee decided that 60% marks will be allotted for written test and 20% marks for interview and further 20% marks for appraisal of the candidates i.e, their performance. The candidates were allotted separate mark in the written test, interview, appraisal by the Selection Committee after having discussion with the respective Project Officers. A statement showing details of the marks obtained by the Graduate executive trainees has been appended as Annexure-A stating further that the candidates who secured 40% or above altogether were selected for their absorption and those who got less, their services were terminated. In their supplementary counter affidavit it has been stated that some of the petitioners of the present writ petition have filed an application before the Deputy Labour Commissioner Patna Division, Patna (Respondent No. 6) seeking same relief who vide his letter (as contained in Annexure-B) directed respondent No. 2 to appear before him with all relevant documents and since respondent No. 6 was already moved the writ application should be dismissed.

4. In his counter affidavit Respondent No. 6 states that he conducted the enquiry u/s 12(4) of the Industrial Disputes Act, 1947. the report of which is Annexure-A. It has been stated in Annexure-A that (a) the provisions of Section 25F of the Industrial Disputes Act were violated (b) there was no justification for taking written test and interview in view of the term mentioned in the appointment letter that there is probability of regular absorption on the basis of satisfactory performance; (c) Steps should have been taken for absorption on the basis of the work done in 12 calendar months and on the report submitted by their controlling authority. No mark was allotted on that basis; (d) Marks, have been given without any basis; (e) No criteria was fixed to add the marks given in the interview; (f) No criteria was fixed for giving marks towards assessment; (g) Persons whose controlling officer has given excellent assessment have been given 5 marks whereas persons whose controlling officer has given unsatisfactory remarks have been also provided with 5 marks for such assessment.

5. Counter affidavits have also been filed by respondent Nos. 3 to 5 denying the allegations of mala fide etc. which are not needed to be reiterated in my judgment.

The Submissions:

6. Mr. Mukhopadhyay, learned Counsel appearing on behalf of the petitioners, submits as follows:

(i) Annexure-A to the counter affidavit of Respondent No. 6 shows the arbitrariness committed by the authority and for this reason the impugned order as contained in Annexure-1 is liable to be quashed.

(ii) The law declared by the Apex Court vide (a) Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, (b) Ashok Kumar Yadav and Others Vs. State of Haryana and Others, (d), Munindra Kumar and others Vs. Rajiv Govil and others, laying that more than 15% of marks cannot be reserved for interview, have been grossly violated by the authorities.

7. Mr. Shukla learned Counsel appearing on behalf of Respondent Nos. 1 and 2, submits as follows:

(i) Some of the persons who have been retained as executive trainees, pursuant to the decision as contained in Annexure-1, not having been impleaded as party respondents to the writ application it is lad for defect of necessary parties and should be dismissed as such.

(ii) The petitioners were not entitled to any benefit u/s 25F of the Industrial Disputes Act as they were terminated within the period of their appointment.

(iii) Allegation of mala fide is wholly unfounded, besides vague and have been made against the persons who have participated in the interview and other tests. None of the members were related with the executive trainees.

(iv) The decision taken by the Committee cannot be assailed either before the tribunal or before this Court. The marks allotted to the petitioners cannot be assailed before this Court. Reliance is placed on the decisions of Apex Court in the case of Om Prakash Shukla v. Akhilesh Knmar Shukla 1986 (3) SLJ 235 (Paragraph 24) and State of West Bengal and Others Vs. Mohurgong and Gulma Tea Estates and Others, .

(v) If this court pleases to allow the writ petition there will be difficulty for respondent Nos. 1 and 2 in complying with direction firstly for shortage of fund and non-availability of any sanctioned post.

(vi) In this regard he places strong reliance on the decisions of the Apex Court in the case of Satyanarayan Sharma and others Vs. National Mineral Development Corporation Ltd. and others, .

8. Mr. Mukhopadhyay in reply submits as follows:

(i) The writ petition is not bad for defect of necessary parties inasmuch as the petitioners have challenged their termination order and they have not assailed the order of appointment of others which was done subsequently.

(ii) By the impugned order as contained in Annexure-1 the petitioners were not retained in the services on the ground of their failure In the tests and not on the ground of completion of their tenure and thus the application u/s 25E of the Industrial Disputes Act was correctly invoked by them and the findings recorded

by Respondent No. 6 are correct. In view of the stand taken by Respondent Nos. 1 and 2, now before this Court, it would be pro-per to dispose of the writ application on its merit.

(iii) Mala fide procedure was adopted by the authorities which violated the petitioner's fundamental rights as guaranteed under Article 16 of the Constitution of India.

(vi) In view of the tests of arbitrariness laid down by the Apex Court the petitioners can successfully assail the decision of the authorities.

(v) The last submission of Mr. Shukla is not supported by pleadings and thus devoid of any substance.

My Findings:

9. I find substance in the submissions of Mr. Mukhopadhyay except that of mala fide on facts and accordingly I accept them.

10. The course which was required to be followed by the authorities while making appointments by now is well settled by a catena of decisions referred to by Mr. Mukhopadhyay which need no reiteration or any elaborate discussion. More than 15% marks could not be reserved for the interview. On this short ground alone, the impugned order as contained in Annexure-1 is liable to be quashed.

11. At the request of Mr. Shukla, by the order dated 7th July, 1990, after holding it to be fair, the Deputy Labour Commissioner, Patna Division," Patna was impleaded as Respondent No. 6 and was directed to conclude the enquiry and submit a report through affidavit. His report Annexure A to his counter affidavit speaks for itself which shows the illegalities, committed the correctness of which I accept. In this backdrop the petitioners should not be required to take an action under the Industrial Disputes Act.

12. I have also carefully perused the decisions relied upon by Mr. Shukla which do not apply in the facts and circumstances of the case.

13. In the result, I hold the impugned order, as contained in Annexure-1 as illegal and is thus hereby quashed.

14. The writ application is allowed but in the peculiar facts and circumstances, there shall be no order as to cost.

15. Respondent Nos. 1 and 2 are directed to proceed in the matter in accordance with law to take a firm decision in regard to the petitioners within two months from the date of receipt of copy of this order.

16. Let a writ of certiorari issue accordingly.