
(2007) 09 PAT CK 0077
In the Patna High Court
Case No : C.W.J.C. No. 6024/04

Amjad Ali and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-09-2007

Acts Referred:

Citation : (2008) 56 BLJR 873 : (2008) 1 PLJR 199

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Ganesh prasad Singh, C.W.J.C. No. 6024/04, Chitranjan Sinha and S.C. Jha, C.W.J.C. No. 6027/04, Nadim Siraj and Ashok Choudhary, for the Appellant; Shyam Kishore Sharma, G.A. 5., for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—As similar question is involved in both the writ applications, they have been heard together and are being disposed of by a common orders.

2. Petitioners in both the writ applications are Gazetted officers. They appeared in 36th Combined Competitive Examination conducted by the Bihar public Service Commission (hereinafter to be referred to as "B.P.S.C.") and succeeded in the written examination and personality test. Their names were recommended for appointment to the post of Deputy Collector/Deputy Superintendent of Police etc. Pursuant to the recommendations they were appointed on different posts and since then they have been working. All on a sudden letter No. 3303 dated 30.4.04, Annexure-1 to C.W.J.C. No. 6027/04, was issued cancelling the appointment of the writ petitioners/similarly situated persons working under the State of Bihar on the basis of the order passed in M.J.C. No. 1938/2000 and L.P.A. No. 692/99. Letter bearing No. 3300 dated 30.4.04.

3. Prayer of the petitioners in C.W.J.C. No. 6024/04 is to quash the Letter No. 12/MU-1006/2002 Ka-3298 dated 30.4.04 (Annexure-1) directing the department concern to change the cadre of the petitioners (Sic) without giving any

opportunity to them. The impugned letters have been issued in both the writ applications under the signature of the Deputy Secretary, Personal and Administrative Reforms Department, Government of Bihar, Patna. Further prayer of the petitioners is not to disturb their peaceful functioning as they were duly selected by the B.P.S.C. in the year 1991, appointed in the year 1992 and since then continuously working on their respective posts with full satisfaction of their higher authorities.

4. During the pendency of the writ application I.A. NO. 4908/06 and I.A. NO. 4909/06 were filed by the interveners for being impleading them as party respondents being necessary parties, interlocutory applications were allowed.

5. Pursuant to an advertisement dated 9.1.89 issued by the B.P.S.C. the petitioners as well as the intervenors and others applied for appointment against the Gazetted posts. They appeared in the written test. They were declared successful, allowed to participate in Viva-Voice test and finally their results were published on 11.8.1991. Petitioners as well as the intervenors respondent were selected for appointment by the B.P.S.C.

6. At the time of issuance of advertisement the reservation policy dated 10.11.1978 was in vogue. On 30th October, 1990 a new reservation policy was introduced in which it was provided that if a candidate belonged to reserve category, qualifies on merit shall be treated as under General Category and shall not be counted in the reserved category. The State Government from its Personnel and Administrative Reforms Department vide letter dated 7th January, 1991 took a decision to make the reservation policy dated 30.10.1990 applicable with retrospective effect and as a result of this, while preparing merit/select list the intervenor respondents and other general category candidates were pushed down in the merit list. The intervenor respondents at this stage filed C.W.J.C. No. 4472/1991 and challenged the validity of decision dated 7th of January, 1971 by which the circular issued with respect to the reservation policy of 31st of October, 1991 was made effective in respect of examination already held. Other writ applications such as C.W.J.C. No. 1678/91 and C.W.J.C. No. 1338/91 were also filed with similar prayer. The writ applications were heard together and by a common Judgment dated 23rd May, 1991 it was held that the order dated 7th January, 1991 is illegal and quashed the same. C.W.J.C. No. 4472/91 was also disposed of in similar terms on 23.4.1992. The direction was to ignore the order dated 7th January, 1991. The authorities were asked to proceed to make appointments ignoring the same. The respondent authorities is instead of ignoring the resolution dated 7th January, 1991, ignored the direction of this Hon"ble Court and proceeded in the matter of publication of result and appointments in the light of the order dated 7th January, 1991 passed by the Personnel and Administrative Reforms Department. The petitioners of the writ applications preferred M.J.C. No. 610/93 and M.J.C. No. 10092/91 which were heard alongwith C.W.J.C. No. 10892/94, C.W.J.C. No. 3699/93 and C.W.J.C. No. 1609/93. The opposite parties filed their show cause in the contempt application

and stated that prior to order dated 23.4.92 passed in C.W.J.C. No. 4472/91 the result of 36th Combined Competitive Examination was published in accordance with the Government Resolution. However, the stand taken by the state was specific that reserved category personal if comes within the Zone of merit was eligible for appointment against general post in pursuance of the guidelines of the reservation as was in vogue dated 10th November, 1978. Considering the submissions of the State Government the writ applications as well as contempt applications were dismissed. The writ petitioners of C.W.J.C. No. 10892 of 1994 preferred L.P.A. No. 692/92 challenging the order dated 14.5.99. L.P.A. was allowed by order dated 22.2.2000. The finding recorded was as follows:

7. Various decisions of the Apex Court as well as this Court had held that selection process which has already been commenced has to be completed on the basis of rules and regulations.

8. At the time when the posts were advertised, rights of the candidates who had made applications pursuant to the advertisement cannot be altered or taken away by giving effect to any new legislation.

9. On such finding the direction was issued to the State Government either to create shadow posts to accommodate the appellants against higher posts/higher pay scale or to take decision to push down the candidates who got appointment on the basis of reservation policy which was already quashed. The State Government was directed to give notice to such candidates who are going to be affected by such decision. Since the direction of this Court was not complied the petitioners, Devendra Kumar Singh & others filed M.J.C. No. 1938/2000. The matter lingered for a very long time and when the Court took a very serious objection for non-implementation of the order passed by the L.P.A. bench two weeks time was allowed by order dated 15.3.04 to the opposite parties contemnors to comply the directions of the L.P.A. bench. In the light of the order, personnel and Administrative Reforms Department requested the B.P.S.C. to send fresh recommendation with regard to the successful candidates of 36th Combined Competitive Examination vide Letter No. 32 dated 16.5.2003, Letter No. 3983, dated 16.3.03 and another letters. The Commission thereafter sent revised recommendation in the light of 1978 Reservation Policy and the Cadre allotted to the petitioners in C.W.J.C. No. 6024/2004 was changed and the service of the petitioners in C.W.J.C. No. 10892/94 were terminated. Intervenor-respondents in the present writ applications were allotted Bihar Education Service vide Letter No. 84 dated 19.6.03 on recommendation of the B.P.S.C.

10. Petitioners' case is that prior to taking such decision they were not given any notice. They came to know about this decision from the News Item published in the Newspaper "Aaj" dated 5.5.04. From this news they came to know that the State Government has decided to terminate the service of nine officers, cadre of 27 officers have been changed and fresh recommendation of 8 candidates have been made by the public Service Commission.

11. Counsel appearing for the petitioners have submitted that in the earlier writ application No. 10892/94, another analogous writ application or in the L.P.A. they were not made party, through the impugned orders directly affected their interest. They were not even issued notice with respect to the Judgment and orders passed in the aforementioned cases and against their interest the orders were passed. The writ Court had passed order in which many fold options were given to the State Government. The first option was to create shadow posts. There was specific direction that any order should be passed after giving notice to those persons who are going to be affected by such orders. The state Government and its officials deliberately violated the directions issued by Writ Court. Before passing the impugned orders, writ petitioners were not noticed in gross violation of, principle of audi altrum partem and rules of natural justice. Impugned orders were passed in clear disobedience of the direction in L.P.A. as such orders are fit to be quashed.

12. Counsel for the petitioners has also submitted that in compliance of the direction of this Court dated 15.3.2004 in the contempt proceeding a meeting was convened under the Chairmanship of the then Chairman of the B.P.S.C. in which one of the officials of the personnel and Administrative Reforms Department had indicated about the chaos and disturbance going to be created in case of passing some orders. This situation was also visualised by the Chairman and the members of the Committee that if action is taken in terms of 1978 Reservation policy, in that case 9 candidates, who have already completed more than ten years of regular service will be terminated from their service and 27 candidates who have completed more than ten years in one cadre their service cadre will be changed. This may create legal problem. The Committee finally came to the conclusion that relief can be given only to 4 writ petitioners and this may be informed to the Hon"ble High Court. Two shadow posts were also created for the petitioners of the L.P.A. but that was not acted upon and ultimately the opposite parties in order to save their face from the regours of the contempt, changed the cadre of the writ petitioners in C.W.J.C. No. 6024/04 and terminated the petitioners of C.W.J.C. No. 6027/04 from their service.

13. The counsel for the petitioners have further contended that when the Letters patent Appeal was pending the State respondents or B.P.S.C. did not bother to clarify before the Court that prior to 1991 reservation Policy the state Government had issued circular dated 10.11.78 and 9.12.78 where there was provision for selection of reserve category candidates on merit as General category candidates. Circulars dated 10.1.78 and 9.12.78, in case would have properly explained in that case the resolution dated 31.10.90 would have not been held to be violative of any settle principle of law. In that case L.P.A. Bench could have passed some other order. The Resolution dated 10.11.78 and 9.12.78 much before 1991 reservation policy or resolution dated 7.11.91, had made this provision that persons who applied as a reserved category candidates and obtained higher marks, such candidates by virtue of their higher marks will be placed in general category. These two circulars if would have been properly

placed and explained then it would have been apparent that prior to the reservation policy of 1991 there was provision under 1978 Reservation policy itself for considering the merits of candidates of reserved category as general category candidates.

14. It has also been submitted that the petitioners after lapse of more than 12 years are going to be adversely affected at this juncture, when they have crossed their upper age limit for any Government job. The impugned orders being in violation of rules of natural justice as well as patently illegal should be quashed.

15. On the other hand, the case of the intervenor respondents is that the petitioners of the present writ applications intentionally did not implead them as party respondent in their writ application though the decisions of these writ applications will certainly affect their interest. The intervenor respondents are being denied benefits of orders passed in their favour on account of order passed in L.P.A. No. 692/92.

16. The State respondents in their counter affidavit have made it clear that the impugned orders have been passed in compliance of the direction in the Letters Patent-Appeal. Respondents got issued fresh recommendations from B.P.S.C., based on the reservation policy dated 11.10.78 and ignoring the Resolution dated 7.10.90.

17. On consideration of the submissions made by the parties I find that there was no direction of the L.P.A. bench to terminate service of any selected candidates who have already been appointed and working for a long time clear options were given to the respondent to create shadow posts to accommodate General category candidates, in whose favour order has been passed in L.P.A. Another direction was to issue notices to such candidates who were going to be affected on account of any decision taken by the respondents, while making fresh recommendation in the light of the reservation policy dated 1978. None of these two directions were properly considered by the respondents. The impugned orders have been passed without exploring other options. However, this Court cannot pass any specific order as the judicial discipline commands and the order passed by the Division Bench being binding on the Court deciding the matter in a Single Bench.

18. The petitioners of both the writ applications have been adversely affected in violation of rules of natural justice, but the stand of the State respondent is that they have passed the impugned orders in compliance of the direction in the L.P.A. as well as the order passed in contempt proceeding. There is no denial to this submissions of the petitioners that the orders have been passed in violation of the Rules of natural justice.

19. Considering all these facts these two writ applications are being dismissed. The impugned orders are not being quashed but the respondents are directed to maintain status-quo as existing on the date of passing of the orders, till the

petitioners got an opportunity to move before an appropriate forum for redressal of their grievance.