
(2013) 05 PAT CK 0009
In the Patna High Court
Case No : CWJC No. 13472 of 2012

Anjita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2014) 1 PLJR 6

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Surendra Kumar Singh in 13860 and Ms. Sudha Chandra in 13472 and Mr. Surendra Kumar Singh in 13860, for the Appellant; Sanjay Kr., Ms. Nilu Agrawal (in 13472), Mr. Sanjay Kr. No. 2 and Pawan Kumar (in 13860), Zakir Haider (in 13472), for the Respondent

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. In CWJC No. 13472 of 2012, the petitioner Anjita Kumari has prayed for the following relief:--

1(i) To issue an appropriate writ, order or direction for quashing the order dated 12.6.2012 passed by Commissioner, Darbhanga Division, Darbhanga, in appeal case no. 3/2012 whereby instead of passing a reasoned order as required under the resolution dated 10.6.2010, the respondent Commissioner remanded the matter before the respondent District Magistrate for seeking the guidelines from the Director, ICDS and doing the needful.

(ii) To issue further appropriate writ order or direction commanding the respondents District Magistrate to give appropriate bonus marks amounting to 5 number for graduation and 10 numbers for post graduation to the petitioner and then prepare a fresh merit list and appoint the petitioner forthwith.

(iii) To issue further appropriate writ order or direction commanding the respondents to revise the merit list after adding the 5 bonus marks for graduation and 10 bonus marks for post graduation and appoint her on the post of lady supervisor.

(iv) This Hon"ble Court may adjudicate and hold that petitioner is entitled to get 5 additional bonus marks for graduation and 10 additional bonus marks for post graduation in terms of provision as contained in clause (IV) 1(Ka) of resolution dated 10.6.2010 issued by respondent Principal Secretary.

(v) This Hon"ble Court may further adjudicate and hold that not admitting 5 additional marks for graduation to the petitioner in terms of provision as contained in clause (IV) 1(Ka) of resolution dated 10.6.2010 by the respondents as an act of mala fide and arbitrary exercise of authority.

(vi) The respondents be directed to revise the merit list after adding the required bonus marks of the petitioner and issue a letter of appointment forthwith to the petitioner.

2. In CWJC No. 13860 of 2012, the petitioner Madhumala Singh more or less has made similar prayer, which reads as follows:-

1(i) To issue an appropriate writ, order or direction commanding the respondents to award/give 15 bonus marks to the petitioner in terms of provisions as contained in clause IV (KA) of the resolution dated 10.6.2010 and prepare a fresh merit list and appoint the petitioner on the post of female supervisor forthwith.

(ii) To issue further appropriate writ order or direction commanding the respondents to revise the merit list after adding the bonus marks for graduation and 10 bonus marks for post graduation and appoint her on the post of lady supervisor.

(iii) This Hon"ble Court may adjudicate and hold that petitioner is entitled to get 5 additional bonus marks for graduation and 10 additional bonus marks for post graduation in terms of provision as contained in clause (IV) 1(Ka) of resolution dated 10.6.2010 issued by respondent Principal Secretary.

(iv) This Hon"ble Court may further adjudicate and hold that not admitting 5 additional marks for graduation to the petitioner in terms of provision as contained in clause (IV) 1(Ka) of resolution dated 10.6.2010 by the respondents as an act of mala fide and arbitrary exercise of authority.

(v) The respondents be directed to revise the merit list after adding the required bonus marks of the petitioner and issue a letter of appointment forthwith to the petitioner.

3. Mr. Surendra Kumar Singh, learned counsel for the petitioners appearing in both the cases, has submitted that the petitioners were entitled for being given bonus point in terms of the guidelines issued by the Principal Secretary of the Welfare Department dated 10.6.2010 as contained in Annexure-3 to CWJC No. 13742 of 2012. In this regard, he has submitted that an advertisement was issued on 16.8.2011 inviting application for the post of Female Supervisor under ICDS scheme vide Annexure-1 to the CWJC No. 13472 of 2012 and in the

advertisement also it had been made clear that the graduate and post graduate in subject of Sociology, Social Work, Home Science, Psychology, Child Development and Nutrition, Food Science (Dietetic Science) and Labour Social Welfare having at least 45% marks shall be entitled for grant of 5 and 10 bonus marks respectively. Mr. Singh has explained that while both the petitioners were having the subject of Home Science in their graduation and done the Post Graduate in the subject of Home Science and yet they were not awarded 15 bonus points contrary to the Government instruction dated 17.9.2010 but, surprisingly the Collector of Darbhanga district did not abide by the Government instruction and the guidelines for the preparation of the panel for the post of Female Supervisor and had wrongly deprived both the petitioners from getting their due place in the panel and in the consequential appointment. He has submitted that if the petitioners are still given their bonus points, they would be higher in panel to many of them who have been appointed despite being inferior in merit. He has also assailed the impugned order passed by the Commissioner of Darbhanga Division dated 12.6.2012 and has submitted that the said authority had failed to exercise his power by only referring the matter to the State Government for seeking clarification.

4. In both these cases, learned counsel for the State on the basis of the counter affidavit filed by the District Programme Officer, Darbhanga has taken a plea that though there was a clear decision of the State Government in the resolution dated 10.6.2010 in Clause 5 for awarding 5 & 10 additional bonus marks for Graduate and Post Graduate but the authority at Darbhanga in view of the subsequent clarification issued on 17.9.2010 had awarded only 10 marks instead of 15 to the Graduate and Post Graduate in the specified subjects. In this regard, reliance has been placed on a letter of the Director, ICDS dated 19.7.2012 wherein it has been stated that any panel which has been prepared prior to 10.1.2012 would abide by the clarification earlier issued by the Director, ICDS on 17.9.2010 and as such, it cannot be said that the petitioners were wrongly deprived of the five extra marks, inasmuch as, they were given 10 marks for the Post Graduate in view of the clarification issued by the Director, ICDS dated 17.9.2010.

5. It has to be noted that this Court in the order dated 18.9.2012 in CWJC No. 13472 of 2012 had specifically directed the District Magistrate, Darbhanga to file a counter affidavit within four weeks as to why five bonus marks has not been given to the petitioner Anjita Kumari like others having given. When the counter affidavit was filed and a plea was taken by the officials of the Darbhanga district that they had acted as per the clarification issued by the Director, ICDS and further they had made reference in compliance of the order of the Divisional Commissioner, Darbhanga to the Director, ICDS for issuing clarification, this Court had directed for filing of the counter affidavit by the State Government and when that was not done, personal appearance of the Principal Secretary of the Social Welfare Department was directed on 7.1.2013. The Principal Secretary of the Social Welfare Department, thereafter, had appeared and had specifically

conceded that the petitioners ought to have been given 5 marks for their Graduation as also 10 marks for the Post Graduation and award of 10 marks only to them for the Post Graduation was contrary to the Government decision. It was in this light that a supplementary counter affidavit was also filed by the Assistant Director, ICDS wherein it was stated as follows:--

5. That at the out set it is stated and submitted that as per Resolution No. 1846 dated 10.6.2010 Clause IV(k), it was provided to give bonus marks to the candidate who has passed in the subject mentioned therein. It has been further envisaged in Clause 5(ga) the manner/process to award the bonus point and it has clearly been clarified by illustration in three different way.

It was further clarified by letter contained in Memo No. 2690 dated 17.9.2010 when the clarification was sought for by the District Magistrate, Siwan from the then Director, ICDS, Bihar.

6. That it has been further stated that vide letter no. 2438 dated 19.7.2012 that the merit list will be prepared in conformity with letter dated 17.9.2010 and Resolution No. 1846 dated 10.6.2010. That by order dated 7.1.2013, the Hon"ble Court has been pleased to direct personal appearance of the Principal Secretary, Social Welfare Department, Government of Bihar, Patna on 8.1.2013 as evident from letter of learned Government Advocate No. 6 dated 7.1.2013.

7. That on 8.1.2013 the Principal Secretary, Social Welfare Department in compliance of order of Hon"ble Court appeared in person, the Hon"ble Court after hearing the learned Counsel has been pleased to granted time to recalculate as to how many candidates will become eligible on fresh calculation of 15 bonus marks and adjourned the matter on 10.1.2013.

8. That on 10.1.2013 the Principal Secretary, Social Welfare Department alongwith Director, ICDS, Bihar appeared in person before Hon"ble Court and the relevant facts were brought before the knowledge of Hon"ble Court.

9. That as per direction of Hon"ble Court, the entire merit list of Lady Supervisor in Darbhanga District was recalculated and merit list was prepared by the concerned District Programme Officer, Darbhanga after adding 10+5 bonus as per resolution dated 10.6.2010 Clause IV (KA).

6. Alongwith the counter affidavit, a chart has been appended showing that there are sanctioned strength of 88 Female Supervisors for Darbhanga district out of which 69 are working and there are clear vacancy on 19 posts. A name wise chart has also been given wherein as per the revised criteria of awarding 15 marks, the petitioner Madhumala Singh in general category will find her place at serial no. 35 in place of her old place at serial no. 55 and the petitioner Anjita Kumari will be at serial no. 107 under category OBC-2. On the basis of the aforesaid chart, Mrs. Nilu Agarwal, learned counsel for the State had stated that there were in all 26 persons alike the petitioners who could also not be appointed and if 15 marks are given to them alike the petitioners, a few of the appointees

will have to make way for appointment of the petitioners and similarly situated 26 persons.

7. It has to be noticed that some of the persons who could be displaced on account of the possibility of appointment of the petitioners and similarly situated persons who were deprived of 5 marks and were given only ten in place of 15 marks had intervened by filing I.A. No. 638 of 2013 in CWJC No. 13860 of 2012 and they have been impleaded as respondent nos. 8 to 15 in CWJC No. 13860 of 2012 by an order of this Court dated 29.1.2013. The newly added Respondents 8 to 15 have also heard through their counsel at length.

8. The main argument on behalf of the newly added interveners respondent nos. 8 to 15 in CWJC No. 13860 of 2012 is that no order should be passed by this Court for removal of any of them because their appointment was made only for a period of one year and since the period of one year had already expired on 25.1.2013, the petitioners cannot be appointed much less by displacing the respondent nos. 8 to 15. Reliance in this regard had also been made on an order of the Division Bench dated 22.2.2012 in LPA No. 844 of 2011.

9. In view of the above stand taken by the learned counsel for the parties the first and foremost question would be as to whether the petitioners could have been denied the award of 5 extra marks for their Graduation. It is not in doubt that for the post of Female Supervisor, the Government had issued guidelines in the form of resolution and while Clause 1(iv) had laid down both compulsory and desirable qualification, it had clearly mentioned that such of the candidates who were having qualification of Post Graduation in the subject of Sociology, Social Work, Home Science, Psychology, Child Development and Nutrition, Food Science and Labour & Sociology will be entitled for bonus marks, in Clause 5(Ga) it was clearly mentioned that five and ten bonus marks separately will be given to the candidates possessing the desired qualification. In fact, the same was also duly explained with giving a specific example. Thus a perusal of the Government resolution dated 10.6.2010 will leave nothing for speculation that any candidate having the degree in the specified subjects was entitled for five marks and also further ten marks if she was having Post Graduate in the subject. Be that as it may, when the advertisement was issued, the same had itself contained the following clause:--

10. In terms of the advertisement, there was no reason for the Collector of the Darbhanga district or the other authority involved in the selection process in Darbhanga district to adopt any other guideline, inasmuch as, even in the letter no. 2690 dated 17.9.2010, it was clearly mentioned that--

11. In fact all these therefore were the matter of past, inasmuch as, when the advertisement had itself clarified the mode and manner of award of bonus marks, the Collector of Darbhanga district was not required to become more wise as he had to strictly abide by the terms and conditions of the advertisement which were issued under the policy decision of the State Government.

12. To that extent, learned counsel for the petitioner is also correct that even the subsequent Government clarification dated 10.1.2012 issued by the Director, ICDS had clarified that separate 5 marks for Graduation and 10 marks for Post Graduation in the specified subject were to be given in course of preparation of panel for selection and appointment on the post of Female Supervisor. The relevant portion of the letter of the Director, ICDS dated 10.1.2012 reads as follows:--

13. The reliance placed by the Collector of Darbhanga district on a letter issued by the Director, ICDS to the Collector of Siwan district should not have been looked into and in fact to that extent, that letter dated 19.7.2012 of the Director, ICDS was also wholly fake and unauthorized, inasmuch as, he could have neither have overreached the Government resolution nor his own earlier clarification issued on 10.1.2012. In that view of the matter, this Court is not going to accept the clarification of the Director, ICDS dated 19.7.2012 as contained in Annexure-"C" to be of any relevance for depriving the petitioners and similarly situated persons from getting their legitimate 5 marks for Graduation and 10 marks for Post Graduation. In fact, the Principal Secretary of the Social Welfare Department had frankly conceded before this Court that the preparation of panel by the Collector of Darbhanga district was contrary to the Government decision and the patch up work done by the Director, ICDS by his letter dated 19.7.2012 was on his own accord without obtaining the approval of the State Government.

14. Faced with this situation, the plea of the respondents 8 to 15 that the appointment was made for a tenure of one year and that had expired on 23.1.2013 and, therefore no direction can be issued by this Court for selection and appointment of the petitioner after awarding them 5 extra marks for the Graduate in the specified subject has to be only noted for its being rejected. Admittedly, all other appointees including Respondents 8 to 15 are still continuing on the post of Female Supervisor. In fact, the advertisement itself had envisaged that such appointment initially being made on contract for a period of one year could be extended on completion of the period of contract subject to satisfactory working and requirement of the post. It is on this basis of Clause-5 of the advertisement that those 88 Supervisors who had been appointed for one year are still continuing in service. Therefore, the petitioners, who have been wrongly denied their appointment, also cannot be deprived of the post of Female Supervisor.

15. As noted above, there are clear 19 vacancies, 7 in general category, 4 in OBC-1, 4 in OBC-2, 3 in SC Category and 1 in ST Category which are still vacant and, therefore, these two petitioners having found their place in their respective category in the revised panel as produced before this Court in Annexure-D Series to the counter affidavit filed on behalf of the respondent no. 3 (CWJC No. 13472 of 2012) sworn by Dr. Chandni, Assistant Director, as quoted above, have to be appointed.

16. The reliance placed by the private respondent nos. 8 to 15 on a judgment of

the Division Bench in LPA No. 844 of 2011 (Fatima Jabeen @ Fatma Jabee vs. The State of Bihar & Ors.) is also wholly misplaced for the following reasons:--

(a) Firstly because in the said judgment, it was mentioned that "We further clarify that this order is made in the peculiar situation discussed hereinabove. This order will not be treated as precedent in any circumstances".

(b) Secondly, the issue before the Division Bench in the case of Fatima Jabeen (supra) was with regard to the appointment on the post of Urdu Teacher in a Gram Panchayat and in course of preparation of merit list, total marks obtained in the examination including the twelve optional papers was taken into consideration. That however was found to be bad by the learned single Judge and he had set aside the merit list being contrary to the circular dated 8.8.2006.

(c) The Division Bench thereafter in the appeal had in fact held that there was conflict in the rule for appointment on the post of Panchayat Teacher and the circular dated 8.8.2006 was contrary to the provisions in the statutory rules and such statutory provision could not have been altered by an executive order. The Division Bench in fact had also taken into account the long passage of time of five years and in that regard, it had held that if there was a confusion created by the State Government by issuing a circular, those who had been appointed should not be disturbed.

(d) Having held so, the Division Bench while saving the earlier appointment had directed for appointment of the writ petitioner Md. Zaki Haider as Panchayat Shikshak on any available vacancy in the district of Sheohar. It was also clearly mentioned in the judgment of Division Bench that if there was no vacancy available in the district of Sheohar, the writ petitioner was to be offered an appointment in any other district in the State of Bihar. It was also clarified that if there was no post available anywhere in the State of Bihar, supernumerary post has to be created for the writ petitioner in any panchayat school in the district of Sheohar.

(e) This Court therefore is of the firm view the aforesaid judgment of the Division Bench in the case of Fatima Jabeen (supra) on account of wholly different facts cannot be made applicable in the facts of the present case.

17. In view of the above discussion this Court having also heard some of the illegal beneficiaries of the wrong selection mode adopted by the Collector of Darbhanga district i.e. Respondents 8 to 15 of C.W.J.C. No. 13860/2012 as also having heard the official respondents in both the cases while allowing both the writ petitions would direct the respondent Collector of Darbhanga district to strictly abide by the revised panel filed by the respondent no. 3 in the supplementary counter affidavit and issue appointment letters also to all those 26 persons apart from the two petitioners on the post of Female Supervisor who have been wrongly deprived of the bonus marks and are more meritorious candidates as per the norms laid down in the advertisement on the basis of their having qualification of Graduation and Post Graduation in the eight specified

subjects. This exercise as with regard to those who are not petitioners before this Court must be completed within a period of three months but so far the petitioners are concerned, they must be appointed within one month from the date of this order.

18. It is, however, made clear that though the petitioners and others so appointed under this order of this Court will not get salary/remuneration for the earlier period but their inter se seniority and all other benefits shall be protected to them as if they were appointed alongwith the 73 others in the month of January, 2012. While this Court for the present would also not make any pronouncement for removal of any of the working Female Supervisors who were appointed in the month of January, 2012, but, then, if the State Government and the Collector of Darbhanga district would fail to accommodate any of the 26 candidates (non-petitioners) in being appointed on the post of Female Supervisors on the ground of absence of post, steps will have to be taken by him for removal of the less meritorious candidates including Respondents 8 to 15 of C.W.J.C. No. 13860 of 2012 as per the revised panel in order to accommodate these 26 persons.

With the aforesaid observations and directions both the writ applications are disposed of.