

(2015) 12 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1294 of 2015

Archana Anupam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 12 PAT CK 0044

Hon'ble Judges : Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Ajay Kumar Thakur, Imteyaz Ahmad and Nilesh Kumar, for the Appellant; D.K. Sinha, AAG-2, for the Respondent

Final Decision : Allowed

Judgement

Kishore Kumar Mandal, J.—The writ application under Article 226 of the Constitution of India seeks issuance of appropriate writ(s)/order(s) for setting aside the order dated 01.01.2015 (Annexure-1) issued by the Additional Secretary to the Government in the department of Social Welfare whereby respondent No. 6 was selected as one amongst the Female Social Members on the Juvenile Justice Board (J.J. Board) Muzaffarpur.

2. The petitioner having passed the M.A. examination in Sociology and obtained doctorate degree (Ph.D.) in the same, was actively associated with the social work and finding eligible she was selected as Female Member of the J.J. Board, Muzaffarpur for the previous term which expired recently. In order to fill up the vacancy on expiration of her term and other vacancies, the respondents came out with a fresh advertisement on 03.07.2017 (Annexure-3) inviting applications from the eligible candidates. The writ petitioner as well as respondent No. 6 applied in pursuance thereof. The respondent No. 6 claims to have obtained postgraduate degree in History as also the Bachelor degree in Law. The Selection Committee constituted under Rule 99 of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2012 deliberated over the matter in its meeting

held on 28.11.2014 and the case of the respondent No. 6 (Mrs. Gunjan Kumari), Sri Sanjiv Kumar and Praveen Kumar were only considered and recommendation for appointment of all the aforesaid three persons was made. The State Government vide notification dated 01.01.2015 (Annexure-1) appointed respondent No. 6 under the female category and Sanjiv Kumar as Member of J.J. Board, Muzaffarpur. Aggrieved by such selection of respondent No. 6 and her non selection the writ petition has been filed.

3. Heard Mr. A.K. Thakur for the petitioner, Mr. D.K. Sinha learned AAG 2 for the State and Mr. Sharma for respondent No. 6.

4. Parties have exchanged their pleadings.

5. It has been argued that in making selection the respondents have acted contrary to the provisions of the Juvenile Justice Act as also against the terms of the advertisement. Cryptically, the case of the petitioner was not placed for consideration and selection was made. The State has to act fairly in such consideration of the matter. In order to cover up the legal lacunae, the respondents, after notifying the selection and appointment of respondent No. 6 in the meeting of the Selection Committee subsequently held on 27.02.2015 (Annexure-B) on its own, considered the case of the petitioner and held that against the vacancies of 05 members in different J.J. Boards at Muzaffarpur only two were found eligible who were recommended besides one Md. Abdul Rahim who was also empanelled conditionally. In column No. 4 of the said proceeding of the Selection Committee, it was noted that the case of the petitioner for re-engagement as female member of the J.J. Board, Muzaffarpur was not found fit as there was adverse enquiry report against her submitted by the Principal Member of the J.J. Board, Muzaffarpur regarding her conduct as Member of the J.J. Board during her previous tenure. Such consideration after the notification having been issued is nothing but an attempt to cover up the illegality which the respondent committed by completely ignoring the consideration of the case of the writ petitioner for fresh term as Female Social Member on the JJ Board, Muzaffarpur. The State respondent in making selection of the private respondent No. 6 ignoring the case of the petitioner has acted beyond the terms of the advertisement which is consistent with the rule-provision and therefore selection of respondent No. 6 as Female Member of the J.J. Board Muzaffarpur is fit to be set aside.

6. Mr. D.K. Sinha, AAG 2, while opposing the writ petition, has submitted that on representation the case of the writ petitioner was later re-considered in the meeting of the Selection Committee held on 27.02.2015 and she was not found fit for her engagement/selection as Female Social Member of the J.J. Board, Muzaffarpur as there was adverse enquiry report against her submitted by the Principal Member of the J.J. Board, Muzaffarpur in connection with her previous tenure as such member on the J.J. Board. The said order is not under challenge in this writ petition and, as such, no relief can be granted to the petitioner.

7. Counsel for respondent No. 6 also supported the contention of the State Counsel and pressed for dismissal of the writ petition. It has been submitted that rule 5(3) of the Rules cannot be considered in isolation. Indisputably, the petitioner had served as Social Member of the JJ Board Muzaffarpur before fresh selection process was undertaken by the respondent(s). If her conduct was not found suitable or objectionable, the respondents were entitled to ignore her case for fresh selection.

8. Sub rule 3 of Rule 5 of the Rules provided as under:--

"(3) Any re-appointment of the member of the Board shall be on the basis of his performance appraisal by the District Child Protection Unit or the State Government and on the recommendation of the Selection Committee set up under Rule 99 of these rules and the performance assessment of members of the Board shall necessarily assess their participation in the proceedings of the Board and contribution in case disposal."

9. Rule 6 contains the qualification for Members of the Board and reads as under:--

"6. Qualifications for Member of the Board-(1) The social worker to be appointed as a member of the Board shall be a person not less than 35 years of age and not more than 65 years of age, who has a post-graduate degree in social work/ sociology/health/education/psychology, child development or law and has been actively involved and engaged in planning, implementing and administering measures relating to health, education, child rights and other development activities related to children for at least five years.

(2) In case suitable candidates have minimum qualifications as per (1) are not available in the district, Selection Committee can recommend candidates having graduate degree in subjects mentioned in (1) and experience for at least 3 years.

(3) No person shall be considered for selection as a Member of the board, if he:

(a) has been convicted under any law;

(b) has ever indulged in child abuse or employment of child labour or any other human rights violations or immoral act;

(c) is holding such other occupation that does not allow to give necessary time and attention to the work of the Board;

(d) does not fulfill the qualification and experience prescribed in the Act and these rules and in such a case the Selection Committee shall, after due inquiry and on establishment of such fact, reject his application and recommend the name of the next person from the list of names prepared for filling the vacancies."

10. Rule 100 provides the functions of the Selection Committee. It says that the Selection Committee shall select and recommend a panel of names to the State Child Protection Unit or the State Government for appointment as Members of

the Juvenile Justice Board. It further provides that the panel of names so recommended by the Selection Committee shall be considered by the State Government to fill in any vacancies which may arise during the tenure of the Board, Committee or the Unit. Sub rule 4 thereof provides for inviting applications for appointment in the Board or Committee in pursuance of the advertisement in the prescribed manner. Sub rule 5 thereof enjoins the Selection Committee a duty to take into consideration the applications received in this respect in response to a public advertisement.

11. The advertisement published by the respondent is enclosed as Annexure-3. On going through thereof what appears is that the fresh applications were invited for appointment as Member of the J.J. Board setting out the qualification(s) which in verbatim are the same as provided in rule 6 of the Rules. There is no controversy that on completing her tenure as Female Social Member of the J.J. Board, Muzaffarpur the writ petitioner also applied in pursuance of the advertisement (Annexure-3). Nothing has been shown to this Court that there was any legal bar for the writ petitioner to apply afresh for the second term/tenure. The materials placed on record convincingly show that the process of fresh selection was undergone by the respondent for selecting and appointing the Social Member(s) of the J.J. Board, Muzaffarpur. The proceeding of the Selection Committee which was held on 28.11.2014 (Annexure-A) does not disclose consideration of the case of the writ petitioner and the reasons, if any, for finding her unfit for the post on account of her previous conduct. The Female Social Member of the J.J. Board, Muzaffarpur. Of course, in the subsequent meeting of the Selection Committee held on 27.02.2015 the case of the petitioner was considered under item No. IV as a review case and she was held unfit on account of the enquiry report submitted by the Principal Magistrate of the J.J. Board, Muzaffarpur in regard to her conduct as the Female Social Member of the J.J. Board.

12. Mr. Thakur has urged that it was not a case of reappointment when the Selection Committee was required to appraise/analyze the previous performance of the Member of the Board. Any such appraisal, if any, as per sub rule 3 of the Rule 5, is required to be made by the District Child Protection Unit or the State Government and not by the Principal Magistrate of the JJ Board. The consideration of the enquiry report submitted by the Principal Magistrate of the J.J. Board copy whereof was never served on the petitioner to invite her response thereagainst, has vitiated the entire selection process in which the respondent No. 6 was selected and appointed as Social Member of the JJ Board, Muzaffarpur.

13. In J.N. Ganatra Vs. Morvi Municipality, Morvi, , the Apex Court again reiterating the principle of administrative law observed where the statute prescribes the manner in which a power has to be exercised, the power must be exercised in that manner. Any act done in violation of the procedure laid down in the Act or the Rules framed thereunder cannot be regarded as an act done in

pursuance of or execution or intended execution of the Act. As seen above, the respondents do not seem to have acted in accord with the rule-provision which also forms the terms of the advertisement in selecting the respondent No. 6. At the cost of repetition, this Court would note that the writ petitioner was claiming her appointment afresh in pursuance of the advertisement. In case the writ petitioner was considered and found suitable the respondent could have further considered the mandate provide under rule 5 of the Rules as both the provisions cannot completely be read in isolation. The provisions of rule 5 of the Rules then could have surreptitiously been gone into. This is not the case at hand. The Selection Committee did not consider the case of the petitioner and after notifying selection/appointment of respondent No. 6 reviewed her case to find her unfit on the basis of an enquiry report of an authority not covered by rule 5 of the Rules.

14. As a result of the discussions made above, the application is allowed. The order dated 01.01.2015 contained in annexure-A, insofar as it relates to the selection/appointment of respondent No. 6 as Female Social Member of J.J. Board, Muzaffarpur, is set aside.

15. There shall be no order as to cost(s).