
(2019) 12 PAT CK 0277

In the Patna High Court

Case No : Letters Patent Appeal No. 770 Of 2019 In Civil Writ Jurisdiction Case
No. 18094 Of 2018

Arti Kumari And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Citation : (2019) 12 PAT CK 0277

Hon'ble Judges : Partha Sarthy, J; Hemant Kumar Srivastava, J

Bench : Division Bench

Advocate : Md. Shakir Ahmad, Gyan Prakash Ojha

Final Decision : Allowed

Judgement

The instant appeal has been preferred against the judgment and order dated 29.1.2019 passed in C.W.J.C. No. 18094 of 2018 by the learned Single Judge whereby he was pleased to dispose of the writ application with certain directions to be considered by the respondents.

The relevant facts in brief are that pursuant to advertisement dated 4.7.2010 along with its corrigendum dated 15.7.2010 issued under the signature of the District Magistrate, Buxar, the writ petitioners besides others made application for appointment on the posts of lady supervisors. A total of 216 candidates were shortlisted in the provisional panel and objections were invited from the applicants. Thereafter, considering all aspects of the matter the selection committee published the final merit list/panel of 42 candidates including the writ petitioners, contained in memo no. 521 dated 28.7.2011. After publication of the final merit list/panel, the empanelled candidates appeared before the Deputy Collector, Establishment on 3.8.2011 and 4.8.2011 for verification of their documents and on findings all the documents to be genuine, they were appointed. Accordingly, they gave their joining at their place of posting and started discharging their duties.

In the meantime, on the complaint of one Bindu Kumari made before the District Magistrate, Buxar and Divisional Commissioner, Patna Division on 30.8.2011, an enquiry was conducted by the District Programme Officer, Buxar and Deputy Collector, Establishment, Buxar who submitted their report before the District Magistrate mentioning therein about lack of transparency in the selection process. Finally, by order contained in memo no. 401 dated 8.8.2018 the Divisional Commissioner, Patna, Division was pleased to cancel all the 42 appointments of lady supervisors as direct recruits, which included the 17 writ petitioners, and directed the District Magistrate to conduct a fresh selection. It is against this order of the Commissioner, Patna Division contained in memo no. 401 dated 8.8.2018 that the writ application being C.W.J.C. no. 18094 of 2018 was preferred. Besides praying for quashing of the order contained in memo no. 401 dated 8.8.2018 issued under the signature of the Commissioner, Patna Division the writ petitioners also prayed for quashing part of the order contained in memo no. 882 dated 13.8.2018 issued under the signature of the District Magistrate, Buxar whereby the selection of the 42 lady supervisors including the selection of petitioners were cancelled being inconsistent to resolution no. 1846 dated 10.6.2010, for quashing the enquiry report submitted by the then District Magistrate, Buxar, for directing for reinstatement of the writ petitioners with all consequential benefits, for staying of the impugned order of termination and for holding that the order of termination of the petitioners' is illegal, unreasonable, in violation of the provisions of principles of natural justice and therefore, unsustainable.

No counter affidavit was filed in the writ application. By judgment and order dated 29.1.2019, after considering the contentions raised on behalf of the writ petitioners as also the respondent State, the learned Single Judge was pleased to dispose off the writ application with certain directions which were to the effect that since the appointment process had begun with the issuance of advertisement, the same was to be completed within a period of four months. The writ petitioners who had served successfully as lady Supervisors were to be allowed to apply and to participate in the selection process. Those petitioners who had not applied and the date of application had ended, they were to be given relaxation with respect to the cut of date for application so that they are not rendered jobless and left high and dry for no fault on their part. Further directions were given for relaxation of age in case they had become over age and also that the government should consider giving some weightage to the experience which the writ petitioners had gained while serving as lady supervisors.

Heard Mr. Ashok Kumar Choudhary, learned counsel for the appellants and learned Government Advocate no. 7 for the respondent State.

It was contended by learned counsel for the appellants that the enquiry on the complaint filed by the unsuccessful candidate was an ex-parte enquiry conducted by the Deputy Collector, Establishment, Buxar and District Programme Officer,

Buxar without considering the relevant records and without giving an opportunity of hearing to the concerned authorities or persons. It was further submitted that the report is vague and full of contradictions and inconsistencies. It was further contended that all the charges/irregularities were found only against 5-6 applicants, however, by the impugned order the entire selection process had been cancelled, which was not sustainable.

Further contention on behalf of the appellants was that the six persons against whom the charges had been found is not the appellants in the instant appeal. The appellants herein were the remaining 11 against whom no materials had come in the enquiry report and no illegality or irregularity had been found in their applications or in their process of selection. It was further contended that ever since their appointment, the appellants have worked for seven years to the satisfaction of all concerned. It was finally contended that the selection and appointment to the post of lady supervisors is not done under the statute but proceeds under the Lady Supervisors Appointment Guidelines, 2010 issued on 10.6.2010 by the Social Welfare Department and as such the jurisdiction and power of the authorities concerned would be guided by the aforesaid guidelines and they would not have the power of superintendence. It was submitted that they would also not have the inherent power to do justice and their power would be limited as per the guidelines to resolve the dispute between the parties as has been held in the case of *Puja vs. State of Bihar* and Ors. reported in 2016 (1) PLJR 836.

It was submitted by learned counsel appearing for the respondent State that pursuant to the irregularities in the process of selection that came to light on the enquiry having been conducted on the direction of the District Magistrate that the Commissioner, Patna Division by his order dated 8.8.2018 took the decision to cancel the entire selection process, to identify the culprit and to proceed with the selection process afresh.

Having heard learned counsel for the parties and having gone through the records of the case, we find that pursuant to the advertisement dated 4.7.2010 followed by its corrigendum dated 15.7.2010, after following the procedure as prescribed, a final merit list was prepared on 28.7.2018 and all the empanelled candidates were asked to appear with their certificates for verification. They appeared before the Deputy Collector, Establishment on 3.8.2011 and 4.8.2011 and on verification their documents were found to be genuine. Thus, the matter of selection had practically come to an end. It is only thereafter, as it appears from the order impugned dated 8.8.2018 passed by the Divisional Commissioner, Patna Division that an objection petition dated 30.8.2011 was preferred by one of the unsuccessful candidates which has ultimately culminated in the order impugned.

During pendency of the instant appeal a supplementary affidavit was filed on behalf of the appellants on 16.8.2019, after service of a copy of the same on the counsel for the respondent State. From perusal of the same it transpires that a

copy of the order dated 29.1.2019 passed by the learned single Judge in the writ application from which the instant appeal arises, was forwarded to the ICDS Directorate and the opinion of the Directorate, ICDS was sought on the representation dated 8.2.2019 of the 17 writ petitioners. Opinion/proposal of the Director, ICDS was received and which was incorporated in the order dated 20.5.2019 issued under the signature of the Additional Chief Secretary, Social Welfare Department, ICDS Directorate, the Government of Bihar and which has been brought on record as Annexure-5 to the said affidavit. From perusal of the proposal of the Director, ICDS it transpires that in his opinion, out of 17 writ petitioners, the irregularities were found only in case of 5 namely, Jotismati Kumari, Rupam Kumari, Usha Kumari, Amrita Kumari and Priti Kumari. His further opinion was that as all the remaining selected lady supervisors were having requisite qualifications/eligibility, it was not proper to fault them for the lacuna/illegality/irregularity found in the case of those five writ petitioners.

Further, from perusal of the said order dated 20.5.2019 it transpires that further steps to be taken in advertisement no. 3/2018-19 had been stayed by letter no. 10 dated 3.1.2019 and as such at least till 20.5.2019, no further steps had been taken pursuant to the said advertisement. From the relevant facts stated herein above, it would transpire that admittedly, from the communications of the respondent authorities as well, no fault had been found so far as the case of the appellants herein are concerned.

As narrated herein above, the objection dated 30.8.2011 by one unsuccessful candidate which is the basis of the enquiry and ultimately the order impugned dated 8.8.2018 setting aside the entire selection process. The objection and the steps thereafter was started much after the publication of the final selection list/merit list on 28.7.2011 and also after the verification of the documents of the finally selected candidates had taken place on 3.8.2011 and 4.8.2011. Even the perusal of the enquiry report shows the same to be vague, cryptic, not having details/ lacking in details and in any case no material had transpired against the appellants herein.

From perusal of the order of the learned Single Judge it transpires that although he took note of the view that 'there was no reason for setting aside the entire list of selected candidates thereby terminating their appointment midway' however, proceeded to dispose off the application with certain directions only for the reason that appointment process had begun after passing of the impugned order dated 8.8.2018 setting aside the entire selection process. It may be stated here that from perusal of Annexure- 5 to the supplementary affidavit filed on behalf of the appellants in the instant appeal, it would transpire that before passing of the order dated 29.1.2019 by the learned single Judge disposing off the writ application, by letter no. 10 dated 3.1.2019 itself the process of selection had been stayed.

In view of the facts and circumstances stated herein above, we respectfully disagree with the decision/observations of the learned Single Judge passed in

order dated 29.1.2019 in C.W.J.C. no. 18094 of 2018 and pass the following orders :

(i) The order contained in memo no. 401 dated 8.8.2018 of the Commissioner, Patna Division, Patna and order contained in memo no. 882 dated 13.8.2018 of the District Magistrate, Buxar impugned in the writ application are quashed so far as the appellants are concerned.

(ii) The appellants are directed to be reinstated in service with effect from the date of their termination with all consequential benefits.

(iii) The authorities concerned in the Social Welfare Department shall proceed with the process of selection for filling up the remaining vacancies after appointment of the appellants herein.

In the facts and circumstances of the case, there shall be no order as to costs.

The appeal stands allowed to the extent as stated above.