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(2013) 08 PAT CK 0078

In the Patna High Court

Case No : LPA No. 769 of 2013

Balram Prasad APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2014) 1 PLJR 279

Hon'ble Judges : Vikash Jain, J;Navin Sinha, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Navin Sinha, J.—The present Appeal arises from order dated 9.4.2013 allowing CWJC No. 10148 of 2012. The order sets aside the advertisement dated 10.1.2012 published by the Bihar Public Service Commission [hereinafter referred to as "the Commission"] for the main written examination of the 53rd to 55th Combined Competitive Examination only to the extent that it included one hundred posts of the Bihar Accounts Service. The Appellants had appeared at the examination for these one hundred posts. They are also aggrieved by the fact that the order to their prejudice was passed without impleading or hearing. The Commission published an advertisement on 13.1.2011 inviting applications for a preliminary screening test for 14 services mentioned in the advertisement comprising a total of 257 vacancies. The Bihar Accounts Service was not amongst them. The last date for submission of applications was 14.2.2011. The preliminary examination was held on 17.4.2011. After publication of results, fresh advertisement was published on 10.1.2012 inviting applications from the successful candidates to appear at the main written examination. The respondents now added one hundred posts for appointment in the Bihar Accounts Service to the advertisement.

2. The learned single Judge held that the selection process having commenced on 13.1.2011 for specified departments and vacancies, the respondents could not have added any new service beyond the 14 departments advertised or

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increased the vacancies beyond 257. It was further held that Combined Competitive Examinations were being held since earlier under Rule 4 of the Bihar Civil Service (Executive Branch) and the Bihar Junior Civil Service (Recruitment) Rules, 1951. The Bihar Accounts Service Rules framed on 28.3.2000 did not form part of the Combined Competitive Examination to be held under the 1951 Rules. The Bihar Accounts Service Rules was amended on 22.2.2011 after publication of the advertisement dated 13.1.2011 for filling of posts through a Combined Competitive Examination and could not be given retrospective effect. The residuary clause in the advertisement that subsequent vacancies reported by different departments could be included had to be restricted to the advertised 14 departments only. The eligibility qualification under the original advertisement for the 14 specified departments and identified 257 vacancies was graduation in any discipline or equivalent from any recognized University and there was no compulsion of a restricted choice of optional papers. For the posts in the Bihar Accounts Service, a graduation degree in Commerce, Economics, Mathematics or Statistics was necessary. The candidates appearing for the Bihar Accounts Service were compulsorily required to have Commerce, Economics, Mathematics or Statistics as a compulsory optional paper.

3. I.A. No. 4424 of 2013 has been filed for leave to file the Appeal as the Appellants had not been impleaded as parties to the writ petition and claim to be adversely affected, denied a right of hearing. I.A. No. 4425 of 2013 has been filed to condone the delay of approximately 42 days in the filing of the appeal. The Appellants initially unaware why notification dated 10.4.2013 deleting the one hundred posts of the Bihar Accounts Service was issued filed CWJC No. 9447 of 2013 when they were made aware of the present order. Having heard counsel for the appearing parties, we allow the I.A. applications and proceed to consider the Appeal on merits. In view of the conclusion that we propose to arrive at, it was not considered necessary to issue notice to private respondent No. 6, the writ petitioner.

4. Learned Senior Counsel for the Appellants submitted that approximately 698 persons had applied for the one hundred posts in the Bihar Accounts Service in response to the advertisement. They were not aware and were not expected to be aware of the nuances with regard to the permissibility or impermissibility for inclusion of one hundred posts of the Bihar Accounts Service in the advertisement for the main examination. The Appellants were bona fide candidates who opted for a single service with a separate eligibility. They have also lost out the opportunity for consideration to the other 14 departments and specified vacancies in the same as mentioned in the original advertisement and pursuant to which they appeared and qualified in the preliminary test. Their academic labour and hopes of employment has been shattered which is a set-back in life for them for what was the fault of the authorities alone. Such serious consequences have ensued without impleading them as party respondents in the writ application and an order passed to their prejudice without even an opportunity of hearing.

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5. It was further submitted that the eligibility to appear for the 14 advertised departments and 257 vacancies was only graduation with no compulsion in choice of optional papers. The eligibility for the Bihar Accounts Service was graduate in Economics, Commerce, Mathematics or statistics only with the added compulsion for one of them necessarily to be an optional paper. The appellants were thus denied a level playing field in the selection process. Had they known that inclusion of one hundred posts of the Bihar Accounts Service was done contrary to the law they would also have applied only for the 14 advertised departments comprising 257 vacancies. The other optional papers available to those not competing for the Bihar Accounts Service were more scoring papers for which reason the appellants have been prejudiced. The learned Single Judge had also opined of the prejudice caused to candidates like the appellants. In the circumstances, the entire selection process must be held to have been vitiated requiring fresh advertisement and selection.

6. Learned Principal Additional Advocate General opposing the appeal submitted that the appellants cannot claim to have been applicants for the 100 posts of Bihar Accounts Service only. Such candidates have also been considered in the mainstream for the 14 advertised departments and specified vacancies therein. The Commission has considered all candidates on a common platform after deleting the hundred posts of the Bihar Accounts Service. Based on their performance the appellants have failed to secure the cut-off marks to be called for interview. At this stage there was no question of a candidate exercising option for a particular service which would be available to them only after success in the interview. Out of the 2600 candidates called for interview after being successful in the main examination, 165 candidates had offered one of the four compulsory optional subjects of Commerce/Accounts, Economics, Mathematics and Statistics. Except for a bald statement to that effect no details of the names or roll numbers have been mentioned. The appeal therefore did not merit consideration.

7. We have considered the submissions made by the parties. The publication of the advertisement on 13.1.2011 for preliminary test with regard to 14 advertised departments and the specified vacancies heralded the commencement of the selection process. The residuary clause in the advertisement that the number of vacancies could go up has to be restricted to the 14 advertised departments and cannot be interpreted as including a wholly new service taking the number of departments itself to 15, and that too with completely different eligibility.

8. The recruitment to Bihar Accounts Service regulated by a different set of rules framed in the year 2000, the amendment on 22.2.2011 after publication of the advertisement on 13.1.2011 could not be given retrospective effect permitting recruitment to the same through the Combined Competitive Examination. The initial advertisement dated 13.1.2011 would alone govern the entire process of selection.

9. A graduate in any other general discipline was not eligible to compete for the Bihar Accounts Service. A graduation degree in Commerce, Economics,

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Mathematics or Statistics and opting for one of them compulsorily as an optional paper was an essential eligibility for those desirous to be considered for the Bihar Accounts Service. Those having graduation in Commerce or qualification in Chartered Accountancy/Cost Accountancy were to be given preference. There can be no two opinions that those who opted for the Bihar Accounts Service fulfilling the essential eligibility criteria for the same chose a specific career path and displayed their disinclination for the other 14 specified departments or vacancies in the same. The successful candidates from this category, after interview, could not be put in the general category of 14 departments for inviting of options with regard to a department. The applicants for the Bihar Accounts Service therefore formed a different class and were entitled to be treated differently.

10. The Commission, initially rightly did not accede to the request of the Principal Secretary, Finance, made on 4.2.2011 for adding the posts of Bihar Accounts Service in the 53rd to 55th Combined Competitive Examination. The subsequent concession made by the Commission on the pressure of the Principal Secretary, impinging on the freedom and duties/responsibilities of the Commission for holding of the selection process has rightly been deprecated by the learned single Judge. We may add that we are at a complete loss to understand or appreciate the haste of the respondents in the matter, when a separate advertisement and selection process could easily have been resorted to and expedited even if there was any urgency opined by the Principal Secretary, Finance.

11. The challenge in the writ application was to the policy decision for inclusion of the one hundred posts of Bihar Accounts Service as being contray to the law. The appellants may not have been necessary parties before the learned single Judge, but they were certainly proper parties, and should have been impleaded at least in a representative capacity.

12. Before parting with the case, we must record our displeasure with the manner in which the respondents have conducted themselves, creating and generating litigation by a casual approach to a serious matter playing with the hopes and aspirations for employment of the younger generation in an otherwise extremely competitive yet limited opportunities for employment in the State where the Government is the single largest employer. The have not only lost out on crucial time for their career and employment due to the attitude of the respondents but have also been unwillingly dragged into litigation compelled to incur expenditure to contest from their personal funds while the respondents have the luxury of contesting their wrongs on the taxpayers money.

13. The jurisdiction of the Court under Article 226 has wide reach to access injustice in any form or manner and not only to grant appropriate relief but also to mould the nature of relief in a given case. This pro-active approach to justice is not new but finds reflection as far back as I.T.C. Ltd. and Others Vs. State of Karnataka and Others, observing as:--

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195. Courts of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing something being done. "Thou shall not do it" used to be the previous form of remedy encouraged by courts. But the new attitude is towards positive affirmative actions, directing people or authorities concerned that "thou shall do it" in this manner....

14. More recently in Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., the moulding of appropriate relief on considerations of equity, justice and good conscience in the given facts of a case was noticed in the following terms:--

90. Now, it is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a century, the High Court of Allahabad in the leading case of Jodhey vs. State observed:--

10. ...There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein.

15. The issue for grant of costs as monetary compensation for wrong done was considered in Krishan Yadav and another Vs. State of Haryana and others, observing:--

23. The candidates like the appellants have suffered immensely in view of the arbitrary selection. They have been waging battles relentlessly. They should be compensated adequately. We think the least that we could do, is they should be compensated at least in a small way. Therefore, we impose a cost of Rs. 10,000/- (Rs. Ten thousand only) on each of the Respondents 1 to 4 making it clear that each member of the Selection Board shall pay out of person and the same shall not be debited to the account of the State.... The award of cost is only to express our profound displeasure on this unjust and arbitrary selection.

16. On the question of compensatory costs for arbitrary public action it was observed in Hira Tikkoo Vs. Union Territory, Chandigarh and Others, as follows:--

25. Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a statute and therefore, against general public interest. The question, however, is whether the parties or individuals, who had suffered because of the mistake and negligence on the part of the statutory public authorities, would have any remedy of redressal for the loss they have suffered. The "rules of fairness" by which every public authority is bound, require them to compensate loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public authority......

17. We consider the present case on its facts as appropriate for grant of compensatory costs to the appellants, and which is quantified at Rs. 15,000/- to

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each of the appellants. The costs must be paid to them individually within two weeks from today and proof of payment filed. The State shall then recover the same after enquiry, from the persons concerned whose actions led to this litigation which was wholly avoidable and generated by casual action in haste. Under no circumstances shall the State ultimately bear the costs from the taxpayers money for the wrongs done by its officers with absolutely no semblance of justification. The Appeal stands disposed.

Vikash Jain, J.

I agree.

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