

(2005) 05 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 1522 of 2000

Benita Tigga

APPELLANT

Vs

The Vice-Chancellor and Others

RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Citation : (2005) 2 BLJR 1540 : (2005) 3 PLJR 678

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Sanjay Kumar Mishra, for the Appellant; R.K. Dutta, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kumar Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the respondents to appoint the petitioner to the post of Sweeper.

2. It seems that the casual employees holding Class III and Class IV posts working in the Rajendra Agriculture University (hereinafter referred to as the University) filed applications for regularisation of their services. Ultimately, the matter travelled to the Supreme Court, giving rise to the SLP (Civil) No. 18694 of 1994. The Supreme Court by its order dated 18.2.1998 gave the following direction :

"So far as Class IV posts are concerned regular appointment against available vacancies for regular sanctioned post under the Bihar State Agricultural Universities Act should be made by appointing the casual employees who have worked in the Rajendra Agricultural University for more than 15 years against 35% of available vacancies provided such employees have requisite qualification for regular appointment and they are also physically fit for permanent absorption. In respect of balance 65% vacancies, invitation of applications by advertisement by following the usual procedure for filling up the vacancy in the

University services should be made. The casual employees of the Rajendra Agricultural University who will not be absorbed against 35% reserved quota as indicated hereinbefore will be entitled to apply for the said 65% posts. The following criteria will be followed for selection against the 65% posts. For each year of completed service of the casual employees, 2% marks will be given for their experience upto the maximum of 30%. For educational and others qualifications as laid down in the advertisement, 50% marks would be given and 20% marks will be allotted on the basis of performance in the interview. It is clarified that for the casual employees year of completed service will mean, by ignoring artificial break, 240 days of service in a year. There will be relaxation of age upto 50 years in the case of casual employees serving the Rajendra Agricultural University in the State of Bihar and appointment will be given provided such employees are physically fit for regular absorption.

The same principle will also be followed for filling up the Class III posts after giving the same relaxation of age. The casual employees who will not be absorbed either against 35% of reserved quota or balance 65% vacancies as indicated above will be disengaged from the services after exercise of selection process is completed. Such exercise should be taken up as early as practicable and the selection process should be completed within a period of six months from today."

3. According to the petitioner, in the light of the aforesaid direction of the Supreme Court, the University published Advertisement No. 2 of 1998 (Annexure 1) inviting application from open market for filling up 65% vacant post including the post of sweeper. The number of vacancies advertised for the post of sweeper were two and were reserved one each for the members of Scheduled Caste and Scheduled Tribe. It is the stand of the petitioner that although her name finds place in the select list for appointment to the post of Sweeper reserved for the member of the Scheduled Tribe, but she has not been appointed. Her assertion is that another post of Sweeper which was reserved for the member of the Scheduled Caste has been filled up, but the petitioner has not been appointed for no fault on her part.

4. In the counter affidavit filed on behalf of respondent Nos. 1 to 4, the assertions of the petitioner that she belongs to the Scheduled Tribe and her name finds place in the select list have not been disputed. But the relief sought for by the petitioner is sought to be denied only on the ground that in view of the order of the Supreme Court, the appointments could have been made by the University only from its casual staff, i.e. from amongst person working in the University from before. It has been stated that the petitioner was never a casual employee of the University from before and as such the respondents did not appoint her as Sweeper on the basis of the recommendation of the Review Committee appointed by the Vice Chancellor. It is not in dispute and the petitioner does not assert that she was ever a casual employee of the respondent University.

5. Mr. Sanjay Kumar Mishra, appearing on behalf of the petitioner contends that in view of the order of the Supreme Court, applications were to be invited from open market and the plea taken by the respondent University that 65% of the vacancies have to be filled up from the casual employee only is not borne out from the order of the Supreme Court.

6. Mr. R.K. Dutta, however, appearing on behalf of the respondent University submits that the balance 65% of the vacancies were to be filled from the casual employees of the University and undisputedly, petitioner not being the casual employee of the respondent University, respondents did not err in not appointing the petitioner.

7. Having appreciated that rival submission. I find substance in the submission of Mr. Mishra. True it is that empanelment of a person in the select list does not confer indefeasible right, but in case in which appointment is denied on a ground, not sustainable in law or is arbitrary, the Court in exercise of its power of judicial review, can direct for consideration of appointment ignoring the plea which is illegal. The judgment of the Supreme Court, which led the advertisement has been quoted in extenso in the preceding paragraph of this judgment. From a reading of the aforesaid judgment, it is crystal clear that 35% of the available vacancies in Class IV post were to be filled from the casual employees, who have worked in the university for more than 15 years and 65% from the open market. Further in respect of 65% vacancies, the casual employees of the University were given some weightage and also relaxation to some extent in regard to the upper age limit, but it cannot be said that the balance 65% of the vacancies were to be filled up from amongst the casual employees of the University only. Had that been so, there was no occasion for the Supreme Court to use the expression that "in respect of balance 65% vacancies invitation of application by advertisement by following the usual procedure for filling up the vacancy in the University services should be made." It is not the case of the answering respondents that in pursuance of advertisement No. 2 of 1998, no persons who are not the casual employees, have been appointed. I gather an impression that the respondent have taken this plea to defeat the petitioner's right which is not at all justifiable.

8. As the petitioner has been denied appointment on the ground not sustainable in law, it is a fit case in which respondents consider her case for appointment, bearing in mind the observation aforesaid. I order accordingly. The aforesaid exercise be concluded within a period of eight weeks from the date of receipt/production of a copy of this order.

9. In the result, the application is allowed. Let a writ in the nature of mandamus be issued, accordingly.

No cost.