
(1999) 12 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 7495 and 7924 of 1993 and 10057 of 1994

Bibha Kumari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 309

Citation : (1999) 1 BLJR 505 : (1999) 1 PLJR 695

Hon'ble Judges : Shashank Kumar Singh, J; Narbadeshwar Pandey, J; B.N. Agrawal, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Narbadeshwar Pandey, J.—In these three Writ Petitions, primal challenge is with regard to the validity of the panel prepared on the basis of re-interview for appointment of Assistant Teachers in Government Basic Schools, as was held in between 16.9.1991 to 20.9.1991. and also the order of the Director, Primary Education, Government of Bihar, dated 6th December, 1993, issued under Memo No. 964 and the consequential order of the Regional Deputy Director of Education dated 18th December, 1993 vide Memo No. 5167, whereby and whereunder, petitioner's services were terminated.

2. From the somewhat voluminous pleadings of the parties as well as the judgment of this Court in CWJC No. 6029 of 1991 and analogous cases, it emerges that on 7.6.1989 under the orders of the Director, Primary Education, advertisements were published in daily newspaper for appointment to the posts of Assistant Teachers in Government Basic Schools from amongst the candidates, holding minimum qualification of Matric trained. Undisputedly, petitioners including contesting respondents and large number of other candidates applied for such posts. The interview was conducted by a duly constituted Selection Committee in between 28.11.1989 to 30.11.1989 and in total 1286 candidates

appeared. Thereupon under the orders of the Director, Primary Education, the panel prepared by the Selection Committee was approved and letters of appointment were issued in favour of 259 candidates, including the petitioners sometime in the month of February, 1990.

3. On 19.5.1990, Special Director, Primary Education, having received complaint regarding large scale of bunging and irregularities in preparation of the panel and appointment to the posts of Assistant Teachers, by his order dated 19.5.1990 stopped payment of salary until the allegations were finally enquired into. Some of the petitioners feeling aggrieved by the decision of the Special Director, filed CWJC No. 8238 of 1990 for a direction to the authorities to make payment of salary. The Writ Petition was ultimately disposed of on 27.6.1991 with an observation that representation filed on behalf of the petitioners with regard to their grievances regarding non-payment of salary, be finally considered within a period of two months from the date of receipt of the order. A liberty was of course given to the petitioners to move another Writ Petition in case the representations were not considered favourably. It is stated while the representations of the petitioners were still under consideration, by the order of the Director, Primary Education, contained in Memo No. 709 dated 30.8.1991, a decision was taken to cancel the panel and consequent thereto, on 5.9.1991 a notice was published in the daily newspapers, calling upon only those candidates, who had initially appeared at the interview held in the month of November, 1989, to appear before the Selection Committee for re-interview with their educational certificates and other papers, as detailed in the notice.

4. The aforesaid notice was challenged by the petitioners in CWJC No. 6029 of 1991 with a prayer that respondents be restrained from holding the re-interview. A Bench of this Court after hearing the concerned parties by order dated 13.9.1991 declined to stay the interview with a direction to the authorities to proceed to conduct the re-interview strictly in terms of the notice dated 5.9.1991 and only those candidates be permitted to appear, who had already appeared before the Selection Committee at the initial stage. Undisputedly, the respondents in compliance to the said order, prepared Fresh panel in order of merit and out of 259 candidates, previously appointed, only 155 could get place in the fresh panel in order of merit.

5. The candidates, who had not passed the training examination until 30.8.1988, which was the last date for making applications in terms of the first advertisement, were not included in the new panel as they were found not eligible. Likewise there were certain candidates, who were either under-age or did not choose to participate at the re-Interview, were also kept out of the second panel.

6. Undisputedly as would appear from a copy of the final Judgment in CWJC No. 6029 of 1991 and analogous cases that the matter relating to preparation of a fresh panel, including previous decision of the Director to cancel the first panel and to terminate services of the teachers was scrutinised in detail and after

hearing the parties, by the judgment dated 22nd June, 1993 direction was Issued to the respondents to publish the panel which was prepared afresh on the basis of re-interview held in the month of September, 1991 and to complete all the process of appointment within a period of five weeks from the date of receipt of the judgment. Thereafter, as would appear from Memo No. 964 dated 6th December, 1993 the Director, Primary Education, terminated the services of the petitioners since their names were not included in the panel and issued necessary direction for appointment of 155 Assistant Teachers in accordance with the merit list. Admittedly, in compliance thereof, the Regional Deputy Director of Education vide his Memo No. 5167 dated 18th December, 1993 took steps for appointment etc.

7. Before averting further to the facts of the case, it would be relevant to notice that feeling aggrieved against the final Judgment in CWJC No. 6029 of 1991 and analogous cases, some of the petitioners and other candidates had moved the Supreme Court in SLP Nos. 12681-84/93, which was however, permitted to be withdrawn on 6.10.1994 with a liberty to the petitioners to file review petition before the High Court. The relevant order of the Supreme Court can usefully be noticed as under-

It is stated by the Counsel for the petitioners that the arrears have already been paid. As regards the point of law raised in the S.L.P., it is stated that by order dated April 29, 1994 another Division Bench appears to have made a reference to the Full Bench in view of the seeing conflict between two Division Benches on the point. Therefore, he seeks permission to withdraw the petitions with liberty to file the review petition in the High Court. Liberty is accordingly granted. The SLP are accordingly dismissed as withdrawn.

8. There appears dispute that in terms of the observation of the Supreme Court some of the petitioners had filed Review Petition No. 178 of 1994, but a Bench of this Court disposed of the review petition on 14.2.1995 with a permission to raise their grievances in the Writ Petitions.

9. Undisputedly at the very outset from a bare look of the order of this Court dated 29.4.1994 in CWJC No. 7495 of 1993, whereby these cases were referred to a Larger Bench, and a comparative study of the order, contained in Annexure-12 (CWJC No. 8238/90) and judgment, contained in Annexure-20 (CWJC No. 6029/91 and analogous cases), there appears no conflict. The parties before us also have rightly not chosen to raise any contention in this regard. But since these cases are pending with effect from 1993, we thought in the interest of justice to dispose of on merit itself.

10. But at the outset before coming to the core contention raised in these cases. I must mention that from a bare look to the final judgment In CWJC No. 6029 of 1991 and analogous cases, it would appear that most of such grievances were considered at the threshold.

11. The first grievance as raised on behalf of the petitioners is that at the time of

re-interview which was conducted in terms of the notice dated 5.9.1991, the respondents had allowed nearly about 105 outsiders to appear at the re-interview and got them Included in the panel, although they had not appeared at the first interview.

12. On behalf of the respondent-authorities and contesting respondents separate counter affidavits have been filed to controvert the facts, alleged above. It is stated in fact, all such candidates had appeared at the interview, but at the time of re-interview the relevant interview-register was missing. In that view of the matter, all such candidates were asked to produce documentary proof like letters of interview and receipts etc. In support of the claim that at the time of first interview they had appeared. Therefore, the Director, Primary Education being satisfied, allowed them to appear at the re-interview. It has been further pointed out that even at the time of the first interview they had higher marks than the candidates, who were illegally appointed having lesser marks in the respective examinations, ignoring their genuine claim.

13. It would appear from the judgment in CWJC No. 6029 of 1991 and analogous cases that similar question was also raised at that stage, but rejected, therefore, having regard to a positive finding including approval of the second panel by the Court as also the affidavits of the higher authorities like Director, Primary Education and Special Director, there appears no further scope to take a contrary view.

14. Somewhat half-heartedly, Mr. Prasad then attempted to challenge the decision taken by the Selection Committee whereby procedure adopted by the 1st Selection Committee to allocate 50 per cent of the vacancies to the woman candidates was changed. He contended since the previous decision of the Selection Committee was in conformity with the decision of the State Government, as contained in letter dated 17th April, 1974 and the other dated 2.6.1988 (Annexures 6 & 7 respectively to CWJC No. 7495 of 1995), it was not open to the new Selection Committee to take a contrary decision.

15. On the other hand, learned Counsel appearing for the State as well as contesting respondents contended that none of the decisions contained in Annexures 6 or 7 referred by Mr. Prasad is with respect to the Basic Government School. Rather they are only with regard to the teachers of Primary Schools. That apart, the criteria adopted at the re-interview by the Selection Committee was also approved by the Director, Primary Education, the same authority who had also approved the previous criteria. Therefore, having regard to the facts, noticed above, even such a condition was waived, no irregularity can be alleged.

16. Undisputedly the question raised above stands conclusively concluded against the petitioners by several binding decisions. What calls for prominent notice is whether a policy either adopted by the State Government or Director, Primary Education with regard to elementary Schools can also be relevant while making appointment to the teachers of Basic Government Schools. It would be

relevant to mention that a question more or less similar to it, fell for consideration before a Full Bench of this Court in the case of Bandhu Prasad Singh and Ors. v. The State of Bihar and Ors. 1994 (2) PLR 279, when a benefit of raising the age of superannuation of the teachers of Nationalised Elementary Schools and Nationalised Secondary Schools was also claimed by the teachers of the Government Basic Schools. Upon consideration of relevant materials and some of the decisions of the Apex Court, it was held that Government's decision/resolution extending benefits to the teachers of Government Elementary Schools and/or Nationalised Schools can not be available to the teachers of Government Basic Schools. Therefore, having regard to the facts noticed above, in my view, in absence of any such decision of the Government to allot 50 per cent of the vacancies of the Assistant Teachers of Govt. Basic Schools to woman candidates, it would not be open to the petitioners to claim such relief.

17. That apart, in view of long-line decisions of the Apex Court as well as this Court, a question may further arise for consideration whether at the time of initial appointment or promotion in a Government Service more than 50 per cent of posts can be reserved. As would appear from the initial decision of the Selection Committee that 50% of the posts were reserved for woman candidates, 14% to the Scheduled Castes and 8% in favour of the handicappeds. In my view, if such a decision is approved, it would certainly be against the mandate of the Apex Court as well as this Court through various cases, including M.R. Balaji and Others Vs. State of Mysore, ; Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, ; Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., ; Shri Lalit Kumar and Another Vs. The State of Bihar and Others .

18. Mr. Prasad then contented that at the time of first interview several candidates, including some of the petitioners, though had not passed the training examinations until last date of making applications, were allowed to appear at the interview and ultimately included in the penal, as they could acquire the requisition qualification before the finalization of the penal was ultimately they were also appointed. The grievance is that at the time of re-interview such candidates have been completely excluded since they were not eligible until the last date of making applications.

19. In my view, at the very outset a bare reference to the judgment in CWJC No. 6029 of 1991 and analogous cases would show that somewhat a similar argument advanced on behalf of the petitioners was rendered in the negative. Apparently, therefore, faced with the uphill task to cross the hurdle on this issue. Mr. Prasad while placing reliance on the decisions of the Apex Court in the case of P. Mahendran and others Vs. State of Karnataka and others, and yet another, holding the same views in the case of Arunaben T. Bhojak Vs. Secretary, Ahmedabad Education Society and Others, , contended since admittedly the petitioners had acquired the requisite qualification even before the final decision

for appointment, it was not open to the authorities to cancel their appointment or to debar them from appearing at the re-interview. In my view a bare glance to the facts of those cases it would appear that no law appears to have been laid down mandating under Article 141 of the Constitution to apply universally to the facts of each case to hold that applications of all such candidates, who even did not possess requisite qualification on the cutoff date, have to be entertained, ignoring the requirement of advertisement. In the instant case, as would appear from the advertisement that a candidate on the day of making application must have the minimum qualification of matric trained. There was no such clause that applications of the candidates who had only appeared at the training examination would also be entertained. Therefore, in my view any attempt to entertain applications of such candidates, who had not passed the training examination, until the last date of making applications, would certainly be against the spirit of Articles 14 and 16 of the Constitution. Reference in this regard can be usefully made to a decision of the Apex Court in the case *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . In that case tenders were invited only from class I contractors, but tender of a class II contractor was entertained while allotting contract. It has held that acceptance of tender of Class II contractor was not valid as it was violative of Article 14 of the Constitution.

20. Equally supporting the aforesaid views, a reference can also be made to a Division Bench decision of this very Court in the case of *Birendra Prasad Singh and Ors. v. The State of Bihar and Ors.* 1993 (1) PLJR 206. In this case a question akin to the present one had also cropped up. Admittedly at the relevant time the petitioners of the said case¹ had not passed the training examinations, but were allowed to appear at the interview and submit educational certificates and got included in the panel. But as no letter of appointment was issued, a writ of mandamus was prayed for appointment to the posts. During the hearing of the case, it transpired that application of those candidates were illegally entertained, as they did not have the requisite qualification at the time of filling applications in terms of the advertisement. It was held that in absence of the intention of the State authorities to entertain applications of such persons, who had only appeared at the training examinations, no direction was possible. Because in such a circumstance it would be essential to specify in the advertisement itself so that others who had appeared at the training examination may also apply. Hence it was held since the petitioners did not fulfil the eligibility criteria on the day of making applications, they did not derive any legal right for appointment. Therefore, taking into consideration the facts stated above, this question has also to be summed up in the negative to the submission of Mr. Prasad.

21. Now averting to the question about the jurisdiction of the Director, Primary Education, in the matter relating to constitution of the Selection Committee for re-interview of the candidates and the mode of evaluation, it would not be out of context to mention that this Court at the time of disposing of CWJC No. 6029 of 1991 and analogous cases had also an occasion to examine a similar grievance

and ultimately held that the constitution of the committee In question, which had scrutinised and identified the specific irregularities was already approved by the Government. Similar was the views expressed with regard to the constitution of the committee which had taken part at the re-interview. That apart, the Director, Primary Education, who had constituted the first committee had also constituted the second committee handed by the Special Director. It is well settled that in absence of any Rule of the State Government under Article 309 of the Constitution or any executive instruction as such. It will be the prerogative of the Director, Primary Education, to constitute a committee to his satisfaction.

22. The last question that new falls for consideration whether the mode adopted by the respondents to evaluate the merit of the candidates can be held justified and rational. It was contended that as per the decision of the first committee, the total marks secured at the matriculation examination and the training examination were added for the purpose of preparing the merit list. In other words, those who had secured higher marks were entitled to be placed above in the panel. But at the time of re-interview the said criteria was practically changed.

23. Different counter affidavits have been filed by the respondent-authorities including the Director, Primary Education and contesting respondents, denying the allegations that such a change was made with a malafide intention. It has been pointed out that graciously gross irregularities were committed while selecting candidates on the basis of the total marks obtained at the matriculation plus training examination. Because for the matriculation examination or its equivalent examinations like Madhyama, Foquania and certain other examinations conducted by the Central Board of Secondary Education or Indian School Certificate Examinations different aggregates have been prescribed. On the same line some of the Universities holding B.Ed., examination have got aggregate of 1000 marks whereas there are certain Universities where only aggregates of 700 to 800 marks are prescribed. Therefore, to arrange the candidates of different categories referred to above, in accordance with their interse merit. The percentage of marks obtained at the matriculation examination or its equivalent examinations were taken out and added to the percentage of marks calculated in respect of the training examination. In this way after adding both the percentage, the mean was deciphered and deduced and accordingly, candidates were placed in order of merit in the panel category wise.

24. From a bare analysis of the facts, stated above, it would appear that the criteria adopted by the committee for preparation of the merit list appears more logical and/rational, to what was adopted previously. That apart, since the previous criteria was also considered as one of the irregularities along with several others, giving rise to the cancellation of panel, it would not be open to the petitioners to question the validity of the impugned criteria, which has been found more rational and logical.

25. Apart from what has been noticed above, having regard to the well settled views that in order to maintain a writ for mandamus it would be essential for the petitions to establish their right for the posts in question. In this regard a bare reference to some of the paragraphs of the writ petitions would indicate that most of the petitioners had either not appeared at the time of re-interview or has not even passed the training examination till the last date or making applications. On the other hand those who had appeared at the re-interview, have not come forward to allege that any candidate having secured lesser percentage of marks was appointed.

26. For the reasons stated above, I have no option but to sum up all the question raised on behalf of the petitioners in the negative. Accordingly, therefore, all the writ applications are dismissed as devoid of any merit but in facts and circumstances of the case, there shall be no order as to costs.

B.N. Agrawal and S.K. Singh, J.

27. I agree.