
(2001) 02 PAT CK 0036
In the Patna High Court
Case No : Civil Review No. 96 of 2000

Bina Kumari

APPELLANT

Vs

Bihar College Service Commission and Others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Citation : (2001) 1 BLJR 784 : (2001) 2 PLJR 572

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Deb, J.—This Review Petition has been preferred by the above-named petitioner, Bina Kumari against the conjoint order passed by Hon"ble Mr. Justice S.J. Mukhopadhyaya in C.W.J.C Nos. 4799/1998 and 882/2000.

2. The challenge in both the writ petitions were in respect of appointment to the post of Lecturer in Hindi in Akshaybat College, Mahua in the District of Vaishali. After the order was passed, this Civil Review Petition was submitted before Hon"ble Mr. Justice S.J. Mukhopadhyaya and it appears that after giving notice to the opposite parties, the matter was heard by His Lordship but then he was transferred to the Jharkhand High Court and no order was passed and as such, the same has again been put up before this Bench and again the matter was heard.

3. As per the orders passed, the claim of the petitioner, Bina Kumari was rejected while that of Respondent No. 8, Laxmi Prasad has been upheld. The admitted position remains that there were two advertisements; one advertisement was in the year 1989 being Advertisement No. 935 which was published in a newspaper on 10.1.1990. As per that advertisement only one post of Lecturer in Hindi was advertised and the Petitioner, Bina Kumari was not an applicant against that advertisement. For some reason of other, the previous advertisement was not acted upon and then second advertisement was made in the year 1994 in which

two posts of Lecturer in Hindi were again advertised and against that advertisement the petitioner, Bina Kumari was the applicant while Respondent No. 8, Laxmi Prasad, who was applicant against the previous advertisement did not apply. But once his selection was upheld by the Bihar Public Service Commission then again on the prayer being made by the Petitioner, the said appointment and selection of Laxmi Prasad was recalled, then again the B.P.S.C. held that they had no power of review and the earlier selection was upheld and in such circumstances, both the writ petitions were filed consecutively.

4. The crux of dispute at the very first instance was whether entertaining of the application of Respondent No. 8, Laxmi Prasad against 1989 Advertisement was being legally maintainable against the Advertisement of 1994. Various papers were filed from the side of the Respondent No. 8 to show that although he was not a formal applicant against the latter advertisement but as he fulfilled the requirements of latter advertisement by paying more postal order, his application was rightly entertained. On the other hand, it was the contention of the Petitioner, Bina Kumari that nowhere at any point of time Respondent No. 8, Laxmi Prasad had applied against 1994 Advertisement and by manipulation only he managed to get himself interviewed and selected. There were other grounds also as to how marks were being manipulated at the time of interview, etc. etc. It appears that other grounds regarding the selection process, the learned Single Judge had upheld in favour of Respondent No. 8 in the impugned order but the very genesis and foundation of the grievance of the Petitioner, Bina Kumari was not at all considered by the learned Single Judge as to whether the Respondent No. 8, could be considered as an applicant against the second advertisement of 1994 when as per the advertisement, there were no liberty given regarding consideration of the applications of the candidates against the prior advertisement of 1989.

5. It appears that the learned Counsel of both the parties and also of the B.P.S.C. had filed counter-affidavits on that point and there were definite arguments on that point but the learned Single Judge while passing the order has taken it for granted that both the Petitioner and the Respondent No. 8 were, applicants in respect of Advertisement of 1994. It was an error on the face of records itself and in view of the crux of dispute between the parties. In that way definitely, the Review Petition is maintainable on this single point alone by recalling the earlier order and to put the matters again for hearing.

6. It further appears that in respect of the counter-affidavit filed by the B.D.S.C. some incorrect observations have been made in the impugned order (Paragraph 3).

7. Learned Counsel for the Petitioner has submitted that it is a fit case where Review Petition could be allowed when on the face of the records, there are errors apparent. At the very first instance, Mr. Ganesh Prasad Singh, Senior Counsel submitted that the writ petition is not maintainable as the Writ Court cannot sit as an appellate Court. It is submitted that the learned Single Judge

although has not given reasonings but has held Respondent No. 8 to be also an applicant in respect of the latter advertisement, meaning thereby there by the arguments and documents placed in favour Respondent No. 8 had been found sufficient to hold Respondent No. 8 as an applicant for the latter advertisement of 1994 as Respondent No. 8 had fulfilled the requirements of latter advertisement at the option of the authorities by submitting further postal order etc. It is the submission of the Senior Counsel that only because reasonings have not been given the findings of the learned Single Judge in this respect cannot said to be an error apparent on the face of the records and in that way, the Review Petition is not maintainable. It might be that the respondent No. 8's earlier application had been allowed to be construed as an application against the latter advertisement by the authorities but whether that was a legal one or not is a matter which has been challenged and the same cannot be construed by not giving any reasons while holding the Respondent No. 8 to be an applicant against the latter advertisement of 1994.

8. It appears from the approach of the impugned order that the learned Single Judge took it for granted that both the Petitioner, Bina Kumari and the Respondent No. 8, Laxmi Prasad had applied against the latter advertisement of 1994 and such approach is definitely an error on the face of the records. Nowhere it has been held by the learned Single Judge that after considering the records and documents he was satisfied that the Respondent No. 8 should also be considered as an applicant along with the petitioner against the latter advertisement. So the very approach to the case which is the foundation of the decision of the learned Single Judge is based on errors and erroneous approach. Perhaps the arguments were heard on an earlier occasion and the order was passed after the same was reserved and for that reason such error has erupted but the fact remains that error is there on the face of the records and in that way the impugned order cannot be sustained and as such, this Review Petition is not only maintainable rather it requires to be allowed on this single point alone. I have also mentioned that there is some misreading in respect of the counter-affidavit filed by the B.P.S.C. in one of the writ petitions as referred in the impugned order itself which also gives support to the findings of the learned Single Judge when such contentions were not there in the counter-affidavit itself. There are various contentions on both the sides and also on the B.P.S.C. and all the points raised from the parties require to be decided point by point to come to a just decision in the writ petitions but unfortunately on a wrong notion and wrong approach the writ petitions were decided as per the discussions above.

9. In this view of the matter, this Review Petition is hereby allowed. The impugned order passed by Hon'ble Mr. Justice, S.J. Mukhopadhyaya on 1.3.2000 is hereby recalled and both the writ petitions, namely C.W.J.C. No. 4799/1998 and C.W.J.C. No. 882/2000 may be placed conjointly before the appropriate Bench for rehearing at admission stage. The record of Civil Review No. 164/1998 be sent back to the Office.