
(2002) 09 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 4799 of 1998

Bina Kumari

APPELLANT

Vs

Bihar College Service Commission and Others

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Bihar College Service Commission Act, 1976 — Section 2, 2(10), 2(11)

Citation : (2003) 2 PLJR 165

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Jayanandan Singh, in C.W.J.C. No. 4799 of 1998, Ganesh Prasad Singh, Pramod Kumar and Rana Vikram Singh, in C.W.J.C. No. 882 of 2000, for the Appellant; Ganesh Prasad Singh, Pramod Kumar, Rana Vikram Singh for Respondent No. 8 in C.W.J.C. No. 4799 of 1998, Jayanandan Singh, in C.W.J.C. No. 882 of 2000, Yugal Kishore and Birendra Narayan Sharma for College Service Commission, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The dispute in these two cases which have been heard together relates to appointment on the post of lecturer in Hindi in Akshaivat College, Mahua. The contestants are the two Petitioners herein, namely, Bina Kumari and Lakshmi Prasad. They figure as Respondents in the cases filed by the other of them. For the sake of convenience, hereinafter, Bina Kumari will be referred to as the Petitioner and Lakshmi Prasad as the Respondent.

2. C.W.J.C. No. 4799/98 was filed by the Petitioner in effect and substance for a direction upon the concerned Respondents to appoint her as lecturer in Hindi on the second post from the panel dated 9.7.97 sent by the Bihar College Service Commission (for short, the Commission). A few days earlier the Commission had sent revised panel in favour of the Respondent on 13.6.98. The Petitioner challenged the same by amendment. During pendency of the case on 14.10.99 the Commission cancelled the revised panel dated 13.6.98 and restored the

earlier one. It was the turn of the Respondent to challenge the cancellation in C.W.J.C. No. 882/2000.

3. The case of the Petitioner, Bina Kumari, briefly stated, is as follows. On 29.8.94 the Commission invited applications for appointment of lecturers in various subjects and colleges numbering about 2000. This included two posts of lecturer in Hindi in Akshaivat College, Mahua, District-Vaishali (hereinafter referred to as the College), vide Advt. No. 479/94. The applications were to be submitted along with fee of Rs. 50/- (Rs. 25 in the case of SCI ST candidates). The Petitioner applied for the post. On 25.11.96 interview was held in which 31 candidates including the Petitioner appeared. On 9.7.97 for the first post, the Commission recommended the names of Dr. Dharendra Prasad Rai and Dr. Ram Naresh Rai; for the second post it recommended the names of Dr. Ram Naresh Rai and the Petitioner as the first and second nominees, respectively. Mean while Dr. Ram Naresh Rai had been appointed in Jagdam College, Chapra, a constituent College under the Jai Prakash University. In the circumstances, the Petitioner represented her case for appointment on the second post. She sent reminders enclosing the certificate of the authorities of Jagdam College, Chapra to the effect that Ram Naresh Rai had already joined as lecturer in the college, and he being thus out of reckoning, she may be appointed on the post. On 30.4.98 the Governing Body of the College requested the Chairman of the Commission to recommend another candidate in place of Dr. Ram Naresh Rai, he had already joined a constituent College. Nothing was said about the second nominee i.e. the Petitioner as to why she could not be appointed. The Petitioner represented her case before the authorities including the Chancellor but finding no response, she approached this Court in the present writ petition i.e. CWJC No. 4799/98. In the meantime, on 13.6.98 the Commission sent a revised panel recommending the name of the Respondent as the first nominee for the second post in place of Dr. Ram Naresh Rai. The case of the Petitioner, inter alia, in sum and substance is that the Respondent had applied for appointment pursuant to an earlier advertisement, Advt. No. 935/89, which was not acted upon, he never applied pursuant to Advt. No. 479/94 and therefore, he could not be considered for appointment.

4. The case of the Respondent may be noticed at this stage. The college advertised the post of lecturer in Hindi. He applied and was selected by the selection committee vide appointment letter dated 14.11.89. On 1.12.89 he joined the post. On 30.1.90 the Commission advertised various posts of lecturer in different colleges. The advertisement included one post of lecturer in Hindi in Akshaivat College, Mahua, which had been granted permanent affiliation in the meantime on 10.1.90-vide advt. No. 935/89. The Respondent applied for the post. In the year 1994 another advertisement was issued by the Commission on 29.8.94 whereby two posts of lecturer in Hindi in the college were advertised. On 4.11.95 call letter was issued to him for interview on 21.11.95. He appeared at the interview on said date. On 9.7.97 the Commission recommended a panel of candidates for appointment in which his name was not there. He came to learn

that his case was not considered as his application was misplaced. The Respondent represented his case before the Secretary of the Commission who asked him to furnish evidence of his submitting the application. He produced receipt to the effect that his application along with postal order of Rs. 10/- had been received in the office of the Commission. On 9.6.98 the Secretary after scrutiny came to the conclusion that the grievance of the Respondent was genuine, and accordingly, asked him to submit second/duplicate application within three days. He accordingly submitted duplicate application on 13.6.98. On the same day, after screening the Commission amending the earlier panel dated 9.7.97 recommended the name of the Respondent as first nominee for appointment against the second post. Since he was already working in the college from before on the same very post since 1989, on receipt of the said recommendation the Governing Body of the College in its meeting dated 6.8.98 confirmed the appointment on the post. However, after CWJC No. 4799/98 was filed by the Petitioner wherein the Commission was directed to file counter affidavit, "with a view to save their skin" the Commission arbitrarily cancelled the revised recommendation dated 13.6.98 on 14.10.99. The claim of the Respondent in sum and substance, inter alia, is that he was not recommended earlier because his application was reportedly missing which was not the fault of the Respondent, and therefore, he cannot be made to suffer.

5. Before examining the rival claims of the contestants, it may be mentioned that the writ petitions were heard and disposed of by a learned Judge of this Court on 1.3.2000. While the writ petition of Petitioner i.e. CWJC No. 4799/98 was dismissed, that of Respondent Lakshmi Prasad i.e. CWJC 882/2000 was allowed. However, later on petition of the Petitioner for review of the judgment, vide order dated 20.2.2001 in Civil Review No. 96/2000, the judgment was recalled and the petitions were directed to be listed for fresh hearing. The learned judge observed in the order that there were errors of record in the earlier judgment dated 1.3.2000. That is now these cases were listed before this Bench.

6. Shri Jayanandan Singh, learned Counsel for the Petitioner submitted that it is not in dispute that the Respondent did not apply pursuant to advt. No. 479/94 and therefore, he could not be recommended for appointment on the basis of his application submitted pursuant to the earlier advertisement i.e. Advt. No. 935/89. He stated that the post advertised by Advt. No. 935/89 was included in the second advertisement as the earlier advertisement was not acted upon. He contended that the application submitted pursuant to the earlier advertisement cannot be treated as valid for the purpose of second advertisement. Firstly, there was no such provision in the second advertisement, and secondly, the applications were required to deposit fee of Rs. 50/- (Rs. 25 in the case of SC/ST) as against fee of Rs. 10/- payable earlier. He submitted that Respondent has pleaded inconsistent case. Whereas in paragraph 13 of the counter affidavit in CWJC No. 4799/98 he stated that call letter was not issued for interview as his application was misplaced in the office of the Commission, in para-2 of the supplementary counter affidavit, he stated that the earlier statement in

paragraph 13 of the counter affidavit was a mistake. The fact is that he had received the interview letter dated 4.11.95 and had also appeared at the interview on 21.11.95. It was after the interview that he learnt that the application was misplaced and for that reason his case was not considered. Counsel referred to interview chart of the candidates who had appeared for interview on 25.11.95 in which the names of the Petitioner and Dr. Ram Naresh Rai amongst others are mentioned but the name of the Respondent is not there. He submitted that the case of the Respondent about his appearing at the interview on 21.11.95 does not appear to be correct. According to the counsel, interview was supposedly held on that date for only 3 candidates when as many as 31 candidates were to be interviewed on 25.11.95. He submitted that where the number of candidates is more, the interview of the spilling over candidates may be held on the next date but this could not be done earlier. He submitted that the recommendation of Respondent was result of manipulation. According to the counsel, the first nominee for the second post i.e. Dr. Ram Naresh Rai not being interested in the appointment after his appointment in a constituent college, the Governing Body had no choice but to appoint the second nominee i.e. the Petitioner, but in order to show favour to the Respondent for extraneous considerations, the Governing Body requested the Commission on 30.4.98 to send fresh recommendation for the second post without assigning any reason whatsoever why the Petitioner could not be appointed. In any case, the Commission had no power to review its earlier recommendation.

7. Shri Ganesh Prasad Singh, learned Counsel for the Respondent, submitted that the question for consideration is whether the Respondent applied for appointment pursuant to second advertisement. So far as the allegations of manipulation is concerned, this can be verified from the records. He submitted that admittedly the Respondent was an applicant pursuant to the 1989 advertisement. Though the said advertisement was not acted upon and the single post advertised was included in the posts advertised in 1994, the Commission was not precluded from considering the claim of the Respondent. Both the Commission and the Respondent acted under a bona fide belief that applicant of the first advertisement could also be interviewed. He submitted that bona fide of the Respondent will be evident from the fact that when he was called upon to produce the proof of submitting application, he produced the receipt with respect to the 1989 advertisement and likewise when asked to file duplicate application, he submitted duplicate of the application pursuant to the 1989 advertisement. In any case, the Respondent has been working since 1989 and his appointment should not be disturbed.

8. Shri Yugal Kishore, learned Counsel for the Commission, submitted that it is a fact that the recommendation dated 9.7.97 was pursuant to the Advt. No. 479/94. However, on representation by the Respondent that his case was not considered, his name was included as the first nominee for the second post on the basis of his interview held on 21.11.95. The records show that the Respondent had in fact appeared at the interview on 21.11.95. However, the

revised recommendation was advisedly withdrawn as the Commission did not have power to review its earlier recommendation and as the Respondent was not an applicant against the second advertisement. His application pursuant to the 1989 advertisement has since been traced. Counsel produced the records.

9. In view of the pleadings and submissions of the parties, there is no dispute that Respondent did not submit application pursuant to the later advertisement i.e. Advt. No. 479/94. There also does not appear to be any dispute that the earlier Advt. No. 935/89 was not acted upon and the single post advertised thereby was included in the second advertisement i.e. Advt. No. 479/94. There further does not appear to be any dispute that the Respondent was not recommended earlier while the Petitioner was recommended as second nominee for the second post. Thus after the first nominee, i.e. Dr. Ram Naresh Rai was appointed in a constituent college, she remained as the sole candidate for appointment on the post. The case of the Respondent is that while finalising the recommendation dated 9.7.97, his case was not considered on the ground that his application was not available in the office. His further case is that he had appeared at the interview on 21.11.95 and therefore, on the basis of his performance etc. he was subsequently recommended. As seen above, case of the Respondent vide paragraph 13 of the counter affidavit in CWJC No. 4799/98 initially was that call letter was not issued for interview since the application was misplaced in the office, on his representation he was asked by the Secretary to prove his case which he did and on being asked, submitted the duplicate application. In paragraph 2 of the supplementary counter affidavit, however, he stated that these statements were made "by mistake". It is not understandable as to how he could commit mistake of that nature which was so vital to his case. Be that as it may, from the records of the Commission it appears that Respondent had appeared and therefore I proceed to examine his case treating him to have appeared in the interview on that date.

10. Perusal of the Commission's records further shows that on the representations of the Governing Body of the College and the Respondent, on 16.5.98 the office put up note before the Secretary on which on 18.5.98 the Secretary directed issuance of duplicate application. Regarding missing of the original application he called for an explanation from the then Incharge. Thereafter on 19.5.98 the full Commission decided to amend the earlier-decision dated 24.6.97 (pursuant to which the recommendations were sent on 9.7.97) substituting the name of the Respondent in place of Dr. Ram Naresh Rai as second nominee against the first post and first nominee for the second post. Curiously, the case of Respondent is that on 9.6.98 the Secretary by Annexure 8 (in CWJC No. 882/2000) asked him to submit duplicate application and after he filed the same on 13.6.98 he was called for "screening" and "on the basis of screening the Commission found the deponent more eligible and appropriate candidate amended the earlier panel dated 9.7.1997, issued another panel list bearing letter No. 425 dated 13.6.1998 and recommended the name of the Petitioner for appointment as Lecturer" (vide para 16 of writ petition-CWJC No.

882/2000).

11. It is clear that the stand of the Respondent is not borne out by the records. As a matter of fact, the Commission had already taken the decision to amend the panel on 19.5.98. On 2.6.98, in fact, the Chairman appended a "note" showing that the case of the Respondent was not considered earlier as his application was not available. It states, in Hindi, "After seeing the merit Chart his name had been placed above Bina Kumari and thus he has been recommended". If the Respondent's application was not available and on his saying he submitted its duplicate on or about 13.6.98, it is not understandable as to how the Commission included his name in the panel. In any view, the decision having already been taken on 19.5.98, filing of duplicate and the so called "screening" on 13.6.98 was a mere formality, in fact, an eye wash.

12. The stand of the Commission may be noticed at this stage. In paragraph 12 of its counter affidavit the Commission has stated "subsequently the Commission reviewed its earlier recommendation in pursuance of the request of the Governing Body and sent its revised recommendation vide Memo No. 425 dated 13.6.98." The request letter is Annexure 14 already referred to above. The above stand of the Commission is at a tangent with the case of the Respondent regarding the circumstances in which the Commission recommended him for appointment.

13. It is significant that though the earlier panel was prepared on the basis of comparative merit chart with respect to 8 candidates, name of the Respondent was added at SI. No. 9 on 19.5.98. It is relevant to mention here that the comparative chart refers to the interview held on 25.11.95 and therefore, it is not understandable as to how the name of Respondent could be added. What is more disturbing is that some interpolation appears to have been made in the marks of the Respondent. As per the chart, Dr. Dharendra Prasad Rai (first nominee for the first post) had secured total of 82 marks while Dr. Ram Naresh Rai (second nominee for the first post and first nominee for the second post) had secured 75 marks. The Petitioner had secured 73.50 marks. This comprised of 30 marks for the academic qualification and 17.50 marks awarded by the experts. So far as the Respondent is concerned he got 31 marks for his academic qualifications and 17.50 marks from the experts. However, in column No. 14, meant for the marks by the Commission (apparently on the basis of interview), there is an apparent interpolation in the marks of the Respondent. The marks originally recorded has been made "26"-same as the Petitioner and thereby he was shown to have secured total 74.50 marks as against 73.50 marks secured by the Petitioner. In this manner he was shown to have secured one mark more than the Petitioner and he thus ranked number 3 after Dr. Dharendra Prasad Rai and Dr. Ram Naresh Rai but above the Petitioner.

14. There is record of marks, kept in an envelope, awarded by the experts. The experts, it may be mentioned, awarded 20 and 15 marks respectively to both the Petitioners and thus mean of the two i.e. 17.50 was shown in the relevant

column of the chart. There is however, no such record as to how the Commission awarded mark to the candidates. It is therefore not possible to ascertain the correctness or otherwise of the marks shown in column-14.

15. Thus even if it is accepted that the Respondent appeared at the interview on 21.11.85 the records of the Commission and the manner in which the Respondent was recommended do not inspire confidence. Besides it is not in dispute that he did not apply pursuant to second advertisement. The Commission having recommended the Petitioner on 9.7.97 it could not have reviewed the recommendation except for correcting some apparent error. The Commission reviewed its earlier decision on the request of the Governing Body without considering the case of the Petitioner or giving her any opportunity of hearing. Under Sub-section (10) of Section 2 of the Bihar College Service Commission Act, 1976, the Governing Body of the College is obliged to make selection "out of the names recommended by the Commission". Thus Dr. Ram Naresh Rai, the first nominee not available for appointment, the Petitioner being the sole candidate left, should have been appointed. It is to be kept in mind that in its request letter dated 13.4.98, Annexure-14, the Governing Body did not disclose any reason why the Petitioner could not be appointed. It is clear that because the Respondent was working in the College from before, the Governing Body wanted to favour him.

16. The only point which survives for consideration and which may be said to be in favour of the Respondent, is that he has been working in the College since 1989. The College is said to have been granted permanent affiliation on 10.1.90 and thus became amenable to the provisions of the College Service Commission Act 1976. In terms of Sub-section (11) of Section 2 of that Act, as it then stood prior to its deletion by Bihar Act 14 of 1996, temporary appointment could be made by the Governing Body for a period not exceeding six months. And therefore, continuance of the Respondent on the post can be of little avail to him in the eye of law.

17. Section 57A of the Universities Act provides,

Appointment of teacher of affiliated Colleges not maintained by the State Government shall be made by the Governing Body on the recommendation of the College Service Commission....

Section 2 of the Bihar College Service Commission Act so far as relevant, provides,

(9) The Commission shall recommend for appointment to every post of teacher names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefor. The recommendation shall be valid for one year from the date of the recommendation by the Commission. (10) In making any such appointment the Governing Body of the college shall, within three months from the date of the receipt of the recommendation under Sub-section (9), make its selection out of the names recommended by the

Commission, and in no case shall Governing Body appoint a person who is not recommended by the Commission. From conjoint reading of the above provisions it is manifest that the Governing Body of affiliated college can make appointment only on the recommendation of the Commission. Besides that the Respondent did not apply pursuant to the 1994 advertisement the circumstances in which his name was recommended on 13.6.98 are far from satisfactory. In any case the recommendation was withdrawn on 14.10.99 with the withdrawal of the recommendation, his appointment by the Governing Body on 6.8.98, pursuant to the impugned recommendation dated 13.6.98, must be said to have come to an end. If he has continued on the post it was clearly subject to result of the petitions which he had filed or the Petitioner had filed earlier. I, therefore, do not think that on the ground of his working, the case of the Respondent can be upheld.

18. In the result, CWJC No. 4799/98 is allowed while CWJC No. 882/2000 is dismissed. The Governing Body of the College is directed to consider the case of the Petitioner in accordance with the recommendation of the Commission dated 9.7.97 restored by letter dated 14.10.99. There will be no order as to costs.