
(1995) 02 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 5203 of 1994

Binod Kumar Tiwary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0027

Final Decision : Dismissed

Judgement

S.N. Jha, J.—These writ petitions have been heard after notice to the advocates at large inviting them to give particulars of the cases, which according to them are covered by the judgment of the Supreme Court in Sabita Prasad and Ors. v. The State of Bihar [1994 (1) PLJR 62 (S.C.)] and to participate in the hearing making it clear that the cases will be heard as representative cases on the point. The facts of the cases are not the same. However, I propose to dispose of the same on a common point. As such, it is not necessary to notice the facts of the individual cases.

2. The writ petitions relate to appointment of Assistant Teachers in the primary schools in the State. The genesis of the dispute has been noticed in the aforesaid judgment of the Supreme Court. I need not refer to the same over and again in this order. Suffice it to say that following the decision of this Court in Anil Kumar v. Chief Secretary (1988 PLJR 846) which held that no appointment can be made from the panel prepared on the basis of residence in a particular district, the State Government issued certain instructions by letter dated July, 2, 1989 to treat the panels prepared on the basis of residence as cancelled and to take steps for preparation of fresh panels. Many of the non-appointed persons from the aforesaid panels filed writ petitions in this Court, three of them have been noticed in the judgment of the Supreme Court aforesaid being C.W.J.C. No. 3048 of 1988, C.W.J.C. No. 4843 of 1988 and C.W.J.C. No. 6595 of 1989.

C.W.J.C. No. 3048 of 1988 was filed by 49 non-appointed persons belonging to Nalanda district. The writ petition was dismissed in the light of the judgment in

the case of Anil Kumar (*supra*) but with an observation to consider their cases on priority basis. The said unsuccessful writ Petitioners preferred Special Leave Petitions in the Supreme Court in two batches. While the SLP on behalf of 16 of them was summarily dismissed, the S.L.R on behalf of the rest 33, giving rise to Civil Appeal No. 4254 of 1991, was ultimately allowed in part. I shall refer to the details of the order passed in the said appeal soon hereinafter.

C.W.J.C. 4843 of 1988 arising out of district of Siwan was also dismissed (judgment reported in 1991 (2) PLJR 18). This Court, however, quashed the appointments already made from the panel after impleading some of the appointees in the representative capacity. The judgment gave rise to the two sets of appeals in the Supreme Court, one at the instance of the unsuccessful writ-Petitioners being Civil Appeal No. 3217 of 1991, and the other by those whose appointments had been quashed being C.A. Nos. 3218, 3219 and 3320 of 1991. Both the sets of appeals were allowed in part. I shall refer to the details later in this order.

C.W.J.C. No. 6595 of 1989 which had been filed by the non-appointed persons from the district of Gopalganj too was dismissed. However, as was done in C.W.J.C. No. 4843 of 1988 (*supra*), in that case also this Court quashed the appointments. The judgment gave rise to, again, two sets of appeals, C.A. No. 3216 of 1991 by the unsuccessful non-appointed writ-Petitioners and C.A. No. 2082 of 1991 by the appointed but ousted teachers.

Some of the non-appointed persons from the district of Gopalganj preferred a writ petition directly in the Supreme Court under Article 32 of the Constitution, registered as writ petition No. 911 of 1991.

3. The aforementioned appeals and the writ petition were disposed of by the common judgment, referred to as Sabita Prasad's case, in the following manner:

C.A. No. 3216 of 1991 and writ petition No. 911 of 1991 by the non-appointed persons were dismissed. It was held that mere empanelment does not create any indefeasible right in favour of the empanelists for being appointed.

C.A. Nos. 3218, 3219 and 3220 of 1991 by the teachers from the district of Siwan who already stood appointed but whose appointments had been quashed by this Court, were allowed in part on concession of the State Counsel that the teachers who had been appointed till 2.7.1989, before or after Anil Kumar's judgment which was rendered on 14.5.1987 and were continuing in service by virtue of stay orders issued by the Court, would be retained in service. It may be mentioned here that the rights of those already appointed had been protected in Anil Kumar's (*supra*) judgment also.

In C.A. 3217 of 1991, which had been preferred by the unsuccessful non-appointed writ Petitioners of C.W.J.C. 4843 of 1988, the Counsel wanted the appeal to be disposed of in terms of similar concession as in C.A. 3218-3220 of 1991. However, in view of the stand of the State Counsel that there was no

material to establish conclusively that the concerned Appellants were senior to those already appointed or placed above them in the panels or even otherwise fully qualified to be appointed as teachers, the matter was remitted to this Court for considering the question of their seniority vis-a-vis those who stood appointed and those whose appointments were not disturbed in view of the concession made in C.A. Nos. 3218-3220 of 1991.

C.A. No. 2082 of 1991 by those whose appointments had been quashed was allowed in part in view of similar concession as given in C.A. 3218-3220 of 1991 to the effect that the teachers who had been appointed prior to 2.7.89 before or after Anil Kumar's judgment and were continuing in service by virtue of stay order passed by the Supreme Court or this Court would not be disturbed.

Lastly, C.A. No. 4252 of 1991 by the 33 out of 49 unsuccessful writ Petitioners of C.W.J.C. 3048 of 1988 was also allowed on concession of the State Counsel to the effect that the State would consider the cases of all such candidates whose juniors had been appointed by leaving them out and if found eligible would be prepared to relax the age bar in their favour and appoint them against the existing vacancies.

4. The orders passed by the Supreme Court, it would appear, can be broadly classified in three categories - (a) The claims of such teachers who already stood appointed prior to 2.7.89 and who were continuing in service by virtue of interim orders passed either by the Supreme Court or the High Court were allowed, on concession; (b) Claims of the 33 out of 49 unsuccessful writ-Petitioners of C.W.J.C. No. 3048 of 1988 of Nalanda district and unsuccessful writ-Petitioners of C.W.J.C. 4843 of 1988 of Siwan district were allowed, again on concession; (c) Claim of the non-appointed empanelists of Gopalganj district was rejected.

5. The Petitioners in each of these writ petitions allege suppression of their claims. According to some of them persons placed below them in the panel were appointed ignoring their case. According to some, the panel itself was not correctly prepared. Had this been done, they would have found place in the panel and appointed. In other words, it is their case that they are covered by the order of the Supreme Court in the cases of group (b) (*supra*), namely, C.A. No. 4252 of 1991 and C.A. No. 3217 of 1991. While considering their case it should be kept in mind that the claim of the non-appointed persons has already been rejected in C.A. No. 3216 of 1991 and writ petition No. 911 of 1991. It should also be kept in mind that the panels prepared on the basis of district-wise residence was held to be illegal in Anil Kumar's case (*supra*), which has been approved by the Supreme Court in Sabita Prasad's judgment.

6. It would be relevant at this stage to notice the background in which the order in C.A. Nos. 4252 and 3217 of 1991 was passed.

In C.A. No. 4252 of 1991, as would appear from paragraph 34 of the judgment, appointments were made for the first time in January, 1993. The concerned Appellants were not appointed although some of the appointed teachers figured

below them in the panel. The ground for non-appointment was generally stated to be overage or not passing the matriculation examination (they had instead passed Praveshika Examination from Deoghar Vidyapeeth, said to be an equivalent qualification). Appointments were again made in February, 1988. Some of those who had been earlier excluded on the ground of being overage were this time included in the list. Some more appointments were made in March, 1988. The concerned Appellants were left out on each occasion. It was on these facts that the claim was allowed on concession that the State would consider the cases of "such candidates".

Similarly in C.A. No. 3217 of 1991 the Court held that the claim of the concerned Appellants vis-a-vis those already appointed was not considered by the High Court. The High Court also, in the opinion of the Supreme Court, had not addressed itself to the question of preparation of the combined waiting list for the purpose of considering the inter se claims. However, as the Supreme Court was given to understand, that there was no material on the record to establish conclusively that the concerned Appellants were "senior" to those already appointed or placed above them in the panels, the matter was remitted to this Court "for the limited purpose to render a judgment on the question of seniority of the Appellants vis-a-vis those, who stood appointed and whose appointments have not been disturbed in view of the concession" made in the other appeals (Paragraph 36 of the judgment). It may be stated here that the persons concerned have already been appointed pursuant to direction of this Court.

7. The question for consideration is whether direction of the Supreme Court in the case of the Appellants of C.A. Nos. 4252 and 3217 of 1991 can be made applicable to the Petitioners herein or Ors. who may be similarly situate as them. The direction, as noticed above, has been rendered on concession of the Counsel. The concession as recorded in the judgment itself was made only in regard to the cases of "such candidates" (vide paragraph 34 of the judgment while dealing with C.A. No. 4252 of 1991) and "the Appellants", meaning thereby the Appellants of C.A. No. 3217 of 1991 (vide paragraph 36 of the judgment dealing with that appeal). The judgment cannot be read as laying down the law that the persons borne on a panel prepared about a decade ago should be considered and appointed, notwithstanding the inaction or laches on their part. It cannot also be read as a blanket direction to go on considering the claims of persons, who may be similarly situated ad infinitum. It may be reiterated and kept in mind that the claim of the empanelists was rejected after a detailed discussion holding that mere empanelment does not confer any indefeasible right for being appointed.

8. I need not cite authorities on the point that the appointments made from panel which has become old and stale by efflux of time will be violative of Articles 14 and 16 of the Constitution. Reference may be made only to the case of State of U.P. v. Ram Gopal Shukla (AIR 1981 SC 1041) in which case statutory rule framed under Article 309 of the Constitution providing for appointment from the same panel until it is exhausted was held to be unjust and violative of Articles 14

and 16 of the Constitution as it would deprive other persons in same or similar situation of the opportunity of being considered. If appointments continue to be made from the panels prepared years ago, it may well be that for years to come there will be no vacancy left for persons who become eligible for such appointments in the meantime and by the time steps are taken for fresh empanelments/appointments become over age. Preparation of panel must, therefore, be ongoing process. If it is not possible to prepare panels every year, this ought to be done at least periodically so that the persons at large who become eligible during the intervening period get a chance of consideration for such empanelment/appointments. I have been given to understand that a very large number of writ petitions on behalf of non-appointed empanelists, in thousands, have been filed in this Court, some of which have already been disposed of with direction to the authorities to consider their claim. In my opinion, it is neither permissible to the authorities to consider the claims of such persons nor the same is warranted by judgment in Sabita Prasad's case. As stated above, the judgment was rendered on concession and must be interpreted as confined to the persons who were Appellants before the Supreme Court and to none else.

9. There may be cases where persons placed higher in the panel were not appointed while those placed below them were appointed. The question is whether it would be proper to consider their claim at this stage. In Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, while considering more or less the same question the Apex Court observed.-

Learned Counsel appearing on behalf of the State of Karnataka pointed out that there are many other candidates who had secured much higher marks than the Appellants in case the above criteria is applied for selection. In view of the fact that the appointments under the impugned Rules were made as back as in 1987 and only the present Appellants had approached the Tribunal for relief, the case of other candidates cannot be considered as they never approached for redress within reasonable time. We are thus inclined to grant relief only to the present Appellants who were vigilant in making grievance and approaching the Tribunal in time.

On the point of delay and laches on the part of the Petitioners, reference may be made to decision reported in Union of India (UOI) Vs. T.R. Varma, ; Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, ; State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others,

10. In view of the un-explained long delay as also in view of the fact that the panels in question were prepared a long time back, and further in view of the fact that the judgment in Sabita Prasad's case rendered on concession is applicable inter-parte alone, it is not possible to consider the claim of the Petitioners in these writ petitions. The writ petitions are, accordingly, dismissed.

11. The Director, Primary Education, is directed to dispose of all pending claims in the light of this order except those which are covered by specific orders of either this Court or the Supreme Court. He is further directed to advertise the vacancies, get fresh panels prepared in accordance with law and make the appointment. The claim of the Petitioners and Ors. shall be considered in accordance with rules.

Let copy of this order be sent to the Director, Primary Education, for the needful.