
(2006) 08 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 6937 of 2006

Bipin Kumar Singh and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Citation : (2006) 08 PAT CK 0023

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—The petitioners have approached this Court for a direction to the respondents-authorities to amend/delete the condition of examination imposed in selection of Junior Engineer (Civil) in Advertisement No. 1006 published in daily news paper dated 26.5.2006, as contained in Annexure-4 and further to advertise the selection of Junior Engineers in accordance with the rules and norms for apprenticeship trainees as laid down in the order of the Supreme Court and this Court and also to set aside the said advertisement to the extent of the requirement of holding of examination for those, who have received apprenticeship training.

2. The petitioners claim to be Apprenticeship trainees a though no details regarding the institutions from which they had received the said training any other details in that regard are mentioned anywhere in the writ petition. Earlier, both the petitioners had filed C.W.J.C. No. 10477 of 1998 which was dismissed by order dated 16.9.1999 with a direction to the State Government to frame a rule or issue necessary instructions so that in the of appointment to the post of Junior Engineer (Civil) the directive of the apex court in the case of Kripa Shankar Chatterji Vs. Gurudas Chatterjee and others, be strictly adhered to.

3. Learned Counsel or the petitioners submits that one of the directions in the said case was that the trained apprentice shall not be required to appear in written examination for the purpose of his appointment. Subsequently, the petitioners filed a contempt application being M.J.C. No. 3465 of 2000 on the ground that the direction regarding the framing of rules or issuance of

instructions had not been complied with. The said M.J.C. was disposed of by order dated 4.12. 2003 (Annexure-A) in view of the show cause filed on behalf of the State in which copy of the rules framed by the State Government in this behalf was enclosed and the court felt satisfied that the order dated 16.9.1999 stood complied with.

4. Again, the petitioner and others filed C.W.J.C. No. 1179/2004 in which specific direction was sought for incorporating the provision of making 50% reservation for apprenticeship training and for exemption from any type of written test as given in paragraphs 10 and 13 of the Supreme Court judgment in U.P. State Road Transport Corporation and another (supra). The petitioners had also prayed for a direction for making provision for age relaxation since after 1996 no advertisement had been made for selection of Junior Engineer (Civil). During the pendency of the said writ petition, an advertisement was issued for filling up the posts of 1070 Junior Engineers for six months only, which was also challenged by filing interlocutory application. The writ petition was, thereafter disposed of by order dated 17.5.2005 with observation that the rules, which have been framed are required to be followed in its totality, rather the aspect, which is required to be further made clear that if the respondents feel the requirement of such persons and if regular appointment is required to be made, the same should be made only after advertisement following the Rules, which have subsequently been framed in view of the direction of the Supreme Court. It is thus, clear from the said order dated 17.5.2005 that no direction was given by this Court for making any change in the Rules framed as had been sought by the petitioners. The present petitioners were apparently satisfied with the said order of this Court and did not challenge the same but another petitioner who had joined with them in that case filed L.P.A. No. 767 of 2005 which, it is stated, is still pending before this Court. It is further pointed out that a Civil Review No. 206/05 has also been filed by the State-respondents in that case, which is also pending.

5. The petitioners have also brought on record another decision of this Court given in C.W.J.C. No. 10507/99: Sri Surendra Kumar Singh and Anr. v. The State of Bihar and Ors. wherein by order dated 17.2.2005, the writ application was disposed of with the direction that if the State Government is satisfied that the petitioners come under a category of diploma Engineering holder, their cases were required to be considered in accordance with the law laid down by the Supreme Court in the case of U.P. state Road Transport Corporation and another (supra). In that order also this Court considered the judgment of the Against the said order dated 17.2.2005 a Civil Review No. 190/05 has been filed by the State respondents, which is pending.

6. Learned Counsel for the petitioners has based his submission on the decision of the Supreme Court in the case of U.P. State Road Transport Corporation and another (Supra). Learned Counsel relies upon the directions of the court given in paragraph No. 13 of the said judgment, which is in the following terms:

In so far as the cases at hand are concerned we find that the corporation filed an

additional affidavit in C A Nos. 4347-4354 of 1990 (as desired by the court) on 20.10.1992 giving position regarding vacancies in the posts of conductors and clerks. If such posts be still vacant, we direct the Corporation to act in accordance with what has been stated above regarding the entitlement of the trainees. We make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any, provided by the Regulations. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. In so far as the age requirement is concerned, the same shall be relaxed as indicated above.

7. On the basis of the aforesaid directions of the apex court in that case, learned Counsel for the petitioners submits that the Rules, which have been framed in this regard are not in accordance with the directions issued by the apex court in the said judgment and thus in view of the said direction they are entitled to be exempted from appearing in the said examination.

8. In this regard, learned Counsel refers to the letter dated 29.7.2005 written by the Chairman of the Bihar Staff Selection Commission to the Commissioner-cum-secretary, Water Resources Department, Government of Bihar, Patna in which a reference is made to the order dated 17.2.2005 of this Court passed in C.W.J.C. No. 10507/99. The Commission was of the view that this Court had directed that in the matter of appointment of trained apprentice, the examination should not be held and sought necessary directions from the State government in this regard. The reply of the State government in the Water Resources Department to the said letter is contained in letter No. 3160 dated 23.9.2005 (Annexure-B) to the counter-affidavit of respondent Nos. 6 and 7 in which it is stated that against the said decision the State Government has filed review petition and, therefore, the question of trained apprentice not appearing in the examination would be dependent upon the order passed by this Court in the card review petition. Relying on the said documents, learned Counsel for the petitioners submits that the authorities themselves are of the view that in terms of the judgment of this Court by order dated 17.2.2005, the Apprentice trainee is not required to undergo the examination in the process of selection.

9. Learned Advocate-General appearing for Respondent Nos. 6 and 7, i.e., the Bihar Staff Selection Commission has stated that the directions of the Apex Court, so far as the apprenticeship trainees are concerned, is contained in paragraph 12 of the said judgment which is in the following term:

12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:

(1) Other things being equal, a trained apprentice should be given preference

over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in *Union of India v. Hargopal* would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained year-wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.

10. Learned Advocate- General drew my attention to the relevant amendments made in the Public Works Department Code Part-II Appendix, in which a new Rule 2-A has been added in exercise of powers conferred under Article 309 of the Constitution. The said rules have been notified vide notification No. 10214 dated 29.11.2003. Referring to the same, the learned Advocate General pointed out that all the four conditions as laid down in paragraph 2 of the said judgment of the apex court stand incorporated in the amended Rules. With respect to the directions regarding exemption from examination, It is pointed out that the direction relied upon by the petitioners as contained in paragraph 13 of the Apex Court order was not a general direction given by the Supreme Court, as in paragraph 12, but direction specific to the cases of the respondent of that case. It is further pointed out that the said matter relates to appointment on the post of conductors and clerks and such persons had been given training of apprentice by the U.P. Road Transport Corporation itself and under those conditions directions have been given by the Supreme Court that they would not be required to appear in any written examination, if any provided by the regulations, apart from the other general directions, as contained in paragraph 12 of the judgment.

11. It is further submitted by the learned Advocate- General that relying upon the civil review petition filed by the State is of no avail because on a reading of the directions of the Supreme Court and of this Court it does not appear that any specific direction has been given to the State in any of those judgments to exempt, the trained apprentice from appearing in the examination, rather the direction was initially to frame rules or issue directions in accordance with directions of the Apex Court in the case of *U.P. Road Transport Corporation and Anr.* (supra). It is further submitted that the petitioners had specifically sought for the relief of further incorporation in the rules of the provisions regarding exemption from appearance in the examination, but the said relief was not granted by this Court in its order dated 17.5.2005 and in terms of well established proposition of law, the relief not granted has to be treated as having been refused.

12. Mr. J.P. Shukla, learned senior counsel appearing on behalf of the Water Resources Department has reiterated the submissions made by the learned Advocate-General and he further submits that the writ petition is not maintainable as it is barred by the principle of res judicata since the petitioners and similarly situated persons had repeatedly approached this Court for similar relief, which has not been granted to them. It is further submitted by learned Counsel that the decisions of the court cannot be read in isolation and they must be considered in terms of the facts involved. In support of his proposition, learned Counsel relies upon the decision of the Supreme Court in the case of Union of India (UOI) and Another Vs. Major Bahadur Singh, . Learned Counsel relies on the following observations of the court in paragraph Nos. 9 and 11 of the said judgment, which are as follows:

9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* Lord MacDermott observed: (All ER p. 14 C-D).

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge....

11. circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

13. Relying upon the aforesaid observations, it is held that the cases of the petitioners are not at all on the same footing as that of in the case of U.P. Road Transport Corporation (supra) in which appointments were being made on the post of conductors and clerks only and that too the respondents of the said case were persons, who had received apprenticeship training within the Road Transport Corporation itself and in the circumstances, the court had held that they had in fact, undergone the discipline of employees of the Corporation during the period of the said training and should not, therefore, appear in any written, examination, if provided by the regulations.

14. Learned Counsel has in this regard referred to the letter dated 24/3/2000

issued by the Chief Secretary, Government of U.P. in which reference is made to the directions issued by the Government of U.P. on 12.9.1996 by which the directions of the apex court in paragraph No. 12 of the judgment were to be followed strictly. It is further referred therein that subsequently another writ application being C.W.J.C. No. 2409 of 1998: Arun Kumar Singh v. State of U.P. and Ors. was filed and on the basis of an interim order dated 27.7.98, another order dated 10.3.1998 was issued by the Government by which the said order dated 12.9.1996 was kept in abeyance. It is further stated therein that on 27.5.1999 Full Bench of the Allahabad High Court has finally decided the matter and according to it the directions of the apex court as given in the U.P. Road Transport Corporation (Supra) are binding on all the parties so far as paragraph No. 12 of the same is concerned, but paragraph 13 of the directions is binding only with respect to the persons, who had filed the writ petition earlier. On the basis of the said Full Bench decision of the Allahabad High Court it was directed in the said letter dated 24.3.2000 that the earlier order dated 12.9.96 would continue with full force and order dated 10.9.1998 keeping in abeyance the said order was cancelled; accordingly in terms of rules, the apprentice would also be required to appear in the competitive examination or selection test and only if all other conditions are equal then they shall be given preference in appointment.

15. Relying on the aforesaid decision of the Full Bench of the Allahabad High Court and the consequential orders of the Government of U.P. Learned Counsel submits that the Rules framed by the State government in this case are also in accordance with the directions of the Apex Court as given in the U.P. Road Transport Corporation case (supra) and no binding direction has been given by the Supreme Court for general application that as a matter of rule the apprenticeship trainees shall be exempted from appearing at all the competitive examination for selection of candidates.

16. On a consideration of the rival submissions, I find force in the submissions of learned Counsel for the respondents. It is evident that directions having general application are contained only in para 12 of the Supreme Court judgment in U.P. Road Transport Corporation case (supra) whereas the directions given in para 13 related to the specific facts and circumstances of the cases of the respondents of that case. The cases of the present petitioners do not stand on the same footing and, therefore, they are not entitled to a similar direction for exemption from appearing in the competitive examination.

17. The petitioners had themselves approached this Court earlier challenging the present amended rules on the basis of which the present advertisement has been issued with the prayer that the rules must incorporate the condition that they should be exempted from appearing in the examination. However, by order dated 17.5.2005, this Court did not accede to the said prayer of the petitioners and the rules remained as they are. Under the said Rules, the petitioners are obliged to appear in the competitive examination along with other candidates and only in case they stand on equal footing with other selected persons they are entitled to

preference. The said rules having not been set aside or directed to be modified by this Court in the earlier writ petition, no such direction can be given to the respondents to exempt the petitioners from appearing in the competitive examination. The petitioners did not even choose to challenge the said order and only another petitioner of that case has filed L.P.A. No. 767/05 in which there is no interim order in favour of the apprentice trainees.

18. In view of the aforesaid facts and circumstances, this writ application is dismissed but without any order as to costs.