
(1999) 09 PAT CK 0073
In the Patna High Court
Case No : C.W.J.C. No. 1664 of 1998

Bipin kumar Singh and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-09-1999

Acts Referred:

Citation : (2000) 2 PLJR 97

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—Both the writ petitions having been grounded on the same facts and for a common cause were heard together and are being disposed of by this order at the stage of admission itself.

2. Prayer of the Petitioners is for a writ of mandamus commanding the Respondents to make a provision in the advertisement No. 195/96 for preference/weightage to the candidates who have already done apprenticeship training apart from other requisite qualifications for appointment to the post of Junior Engineer (Civil).

3. It is stated that the Apex Court while dealing with a similar relief as was raised in the case of U.P. State Road Transport Corporation and Anr. v. U.P. Parivahan Nigam Shishukhs Beroz-gar Sangh and Ors. : (1995)2 SCC 1 while dealing with the object behind the Apprenticeship Act, 1961 read with Apprenticeship Rule, 1991 has held that following circumstances should be kept in mind while examining the claim of the trainees to get employment after successful completion of their training:

(1) Other things 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. N. 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.

But the grievance is that in this case no such provision has been adopted while taking steps of selection process in terms of advertisement No. 195/96.

4. Learned Counsel appearing for the Petitioners contended that after obtaining diploma in Civil Engineers Petitioners also got practical training before a Board Eastern Region, Calcutta on the basis of a recommendation made by the Principal, Government Polytechnic, but no weightage or preference has been prescribed for them in the advertisement, ignoring the directives of the Supreme Court to grant such candidates preference over the direct recruits. It was further contended that as would appear from Annexure 8, that having regard to the judgment of the Supreme Court, the U.P. Government issued a notification on 12.9.1996 for granting preference to the trained candidates in the matter of appointment to the post of Junior Engineer. But no provision has yet been given by the State of Bihar.

5. It would appear from the averments made on behalf of the State Government in the counter affidavit that the appointment of Junior Engineers is made on a recommendation of the Bihar Public Service Commission (hereinafter in short B.P.S.C.). The eligible criteria for appointment against such post is that a candidate must be a diploma holder in Civil Engineering. As per the terms of the instant advertisement a candidate is also required to appear at written and viva-voce test etc. But no rule has yet been prescribed by the State Government to grant preference to an apprenticeship holder in direct recruitments to the posts of Junior Engineers.

6. Apart from what has been stated above, it was further pointed out that all the Petitioners had applied willingly for appointment against such vacancies and they also appeared at the screening test and were called for interview on 14.9.1998. But no objection was ever raised nor the criteria notified in the advertisement was challenged. In fact on being declared unsuccessful they started raising such grievances, which should not be entertained at this stage when the final selection list was also published. Therefore, the Petitioners claim has to be declared barred by principle of estoppel.

7. In my view true it is that having regard to the judgment of the Apex Court in

the matter relating to direct recruitment the preference is required to be given to the candidates who have obtained training of apprenticeship from a recognized institution of the Central Government or the State Government. But in this case as would appear from the materials on record that no such rule was framed by the State Government as was done by the U.P. Government. I also share the views expressed by the learned Advocates that the State of Bihar should have framed a rule or in the alternative issued necessary instructions to the B.P.S.C. to grant relaxation/preference to the candidates who have passed the training of apprenticeship examination in the matter relating to the direct recruitment to the post of Junior Engineers (Civil).

8. But a question may arise whether in view of well settled norms when the Petitioners had already appeared at the written and viva-voce test and having been found unsuccessful will it be proper to allow them to approbate and reapprobate. In this regard I may usefully refer to the case of *Dr. G. Sharan v. University of Lucknow* (1978 LabIC 1546). The Appellants before the Supreme Court in that case having full knowledge of the constitution of the Selection Committee appeared before it without raising any objection regarding constitution of the committee. Rather they appeared but declared unsuccessful. It was held by the Apex Court that Appellants having knowledge of the constitution committee, appeared before it and took a chance, therefore, it was not open to them to challenge at a later stage when they were declared unsuccessful.

Yet a reference can also be made to a decision of the Apex Court in the case of *I.L. Honnegouda v. The State of Karnataka and Ors.* (A.I.R. 1978 S.C. 28) In that case under the relevant rules the candidate appeared before the recruitment committee constituted under the said rule, but later challenged the validity of the rule. It was observed by the Apex Court that the candidate having taken a chance for selection cannot be allowed to challenge the rule.

In the case of *Sardara Singh and others, etc. Vs. State of Punjab and others*, , also the Appellants had taken a chance for selection but they were not selected on the basis of comparative merits. The court held that at such a stage there cannot be any justification to give direction to the Government to consider their cases by relaxing the qualification for appointment.

A reference in this regard can also be made to a decision of this Court in the case of *Ganesh Prasad Yadav and Others Vs. The State of Bihar and Others* . In the instant case also candidates having appeared at preliminary test/examination conducted by the B.P.S.C. challenged the validity and criteria adopted at the preliminary test when they were declared unsuccessful. The court held that such candidates cannot be allowed to challenge the criteria adopted at the preliminary test after getting a chance to appear at the examination.

9. Therefore, having regard to the authoritative pronouncement and the facts of the present case, in my view, any interference with the provisions of in the

advertisement No. 195/96 would unsettle the total selection process of recruitment which was taken as back as in the year 1996.

10. But before parting with these cases, I must hold that having regard to the decision of the Apex Court in the case of "U.P. Road Transport Corporation and Ors." (supra) the State Government is required to frame a rule or issue necessary instruction so that in future appointments to the post of Junior Engineer (Civil) the directive of the Apex Court in the above mentioned case be strictly adhered to.

11. In the result, subject to the above directions both the writ applications are dismissed.