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(2010) 04 PAT CK 0088

In the Patna High Court

Birendra Prasad Barnwal — APPELLANT

Vs

The Union of India (UOI) and Others — RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0088

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—This writ petition is directed against the order dated 06.07.2005, passed by the Central Administrative Tribunal, Patna Bench, in O.A. No. 748 of 2004 (Birendra Prasad Barnwal v. Union of India and Ors.), whereby the original application preferred by the present petitioner has been dismissed, and the order of the respondent authorities dispensing with his services, and, appointing respondent No. 7 in his place, has been upheld.

2. A brief statement of facts essential for the disposal of the writ petition may be indicated. This litigation has a chequered history and has gone on for too long. The respondent authorities issued advertisement dated 29.04.1992 (Annexure-1), for appointment of Extra Departmental Branch Post Master (for short "EDBPM?). The two conditions relevant in the present context are reproduced herein below:

1? mEehnokj dks bukjko.k dk LFkk;h fuoklh gksuk pkfg,A

4? mEehnojksa dh ''kS{kf.kd ;ksX;rk de ls de vkBok oxZ ikl gksuk vfuok;Z gSA fdUrq eSfV?d ikl ;k mlds lerqY; ikl fd;s gq, mEehnokj dks fo''ks"k rjthg ?otu? nh tk;xh

The petitioner, respondent No. 7 herein, and others, were applicants. After completion of the selection process, the petitioner was appointed as EDBPM by order dated 09.06.1992 (Annexure-3). The petitioner joined as such on 13.06.1992(Annexure 3/1). In view of a complaint that petitioner did not belong to village Inarabaran, his services were dispensed with on 30.06.1993. The petitioner challenged the same by preferring O.A. No. 268 of 1993 (Birendra

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Prasad Barnwal v. Union of India and Ors.), which was allowed by order dated 05.05.1997 (Annexure-4), the order dispensing with the selection/appointment of the petitioner was set aside, and the matter was remitted to the appropriate authority for a fresh decision. The learned Tribunal had held as follows:

We, therefore, direct the respondents to consider the representation of the applicant and also examine the eligibility of the applicant with reference to the residency qualification of the applicant vis-?-vis other candidates including respondent No. 7, on the basis of proper authority or order regarding the eligibility of the villages to be considered as qualifying for residency purpose for the aforesaid post and also on the basis of rules and procedures regarding selection of the eligible candidates.

2.1 In pursuance of the order of the Tribunal, the appropriate authority passed order dated 07.08.1997 (Annexure-5), whereby he upheld the selection and appointment of the petitioner. Respondent No. 7 herein challenged the same by preferring O.A. No. 68 of 1998 (Prabhat Kumar Mandal v. The union of India and Ors.), which was allowed by order dated 09.03.2004 (Annexure-6), with the following direction:

11.That being so, we hereby quash and set aside the order contained in Annexure-A/2 and direct the respondent No. 4 to re-consider the matter afresh and pass a reasoned and speaking order after determining the respective merit of both the claimants of the post particularly, with regard to residency qualification within a period of three months from the date of receipt/ production of a copy of this order. It is also made clear that if respondent No. 4 is satisfied that both the contesting persons are considered deemed to be residents of the Inarabaran cluster of villages then the applicant shall have the rightful claim for the appointment and the appointment of respondent No. 7 will be deemed to be void ab initio.

In other words, the learned Tribunal found that the appropriate authority had not directed his attention to the issues highlighted by the Tribunal in its earlier order dated 05.05.1997, namely, neither the question of residence, nor that of educational qualification, were considered, notwithstanding which selection of the petitioner was upheld on the ground that he had worked for a fairly long length of time.

2.2 In pursuance of the direction of the learned Tribunal, the appropriate authority directed the Superintendent of post offices, Bhagalpur Division, to conduct an enquiry to examine the issue relating to residence of the petitioner and respondent No. 7. He submitted his report which, along with other relevant materials, were considered by respondent No. 3, who passed order dated 30.09.2004 (Annexure-7), whereby he appointed/selected respondent No. 7. He has found that the petitioner is resident of Bhatukura, whereas respondent No. 7 is resident of Damga, both of which are tolas of Inarabaran village. In other words, both the candidates satisfy the residential clause of the advertisement.

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However, respondent No. 7 has been preferred on the ground that he has superior educational qualifications.

2.3 In pursuance of the direction of respondent No. 3, the Superintendent of post Office, Bhagalpur Division (respondent No. 4), issued show- cause notice dated 05.10.2004 (Annexure-8), to the petitioner, calling him upon to show cause as to why his services be not dispensed with. The petitioner had shown cause by his undated communication received in the office of respondent No. 4 on 18.10.2004 (Annexure-9). On consideration of the same, respondent No. 4 passed the order dated 09.05.2005(Annexure-11), whereby the services of the petitioner have been dispensed with on the ground that his selection/appointment was irregular.

3. Aggrieved by this order, the petitioner preferred the present O.A. No 748 of 2004, which has been rejected by the impugned order. Hence this writ petition.

4. While assailing the validity of the impugned action, learned Counsel for the petitioner submits that the aforesaid order dated 30.09.2004 (Annexure-7), was passed without affording an opportunity of presenting his case and hearing to the petitioner. He next submits that the documents relied on by respondent No. 3 in his order dated 30.09.2004 (Annexure-7), have not been supplied to the petitioner. Learned Counsel for the petitioner in his elaborate submissions pleaded that the expression "termination" has to be read in the context of the present proceedings, and not in the context of Rules 6 to 8. He next submits that respondent No. 3 had taken the final decision and, therefore, the show-cause notice (Annexure-8), was an empty formality. With respect to non-supply of documents, learned Counsel for the petitioner relies on the judgment of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . With respect to non-availability of opportunity, learned Counsel for the petitioner relies on the judgment of a Division Bench of this Court in the case of State of Bihar and Ors. v. Mahboob Alam reported in 1995(1) PLR 106 (paragraph 19). With respect to the submission that show cause notice is an empty formality, learned Counsel for the petitioner relies on the judgment in the case of V.K. Ashokan Vs. Asstt. Excise Commnr. and Others, . He next submits that the order dated 09.05.2005 (Annexure-11), passed by respondent No. 4, does not assign reasons and is, therefore, bad in law. He relies on the following reported judgments:

(i) Travancore Rayon Ltd. Vs. Union of India (UOI), .

(ii) Union of India (UOI) and Others Vs. Jai Prakash Singh and Another, .

5. The learned Government counsel has supported the impugned action. He submits that the petitioner''s own case is that he belongs to Bhatukura tola, which is part of village Inarabaran. He next submits that the learned Tribunal has directed the authorities to file eligibility criteria, namely, residential and educational qualification which has been done effectively and conscientiously. He also submits that the issues have been decided on the basis of the representations of both the candidates, and on the direction of the Tribunal. Therefore, in his submission, the principles of natural justice were observed.

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6. We have perused the materials on record and considered the submissions of the learned Counsel for the parties. It appears to us that the primary question for determination in this case on facts is the eligibility criteria with respect to residential and educational qualifications. The matter was really examined by the authorities on the basis of representations filed by the petitioner and respondent No. 7 herein at different stages, and, therefore, it would be incorrect to state that the principles of natural justice were not satisfied. Secondly, the matter was thoroughly considered by the Tribunal in its order dated 05.05.1997 (Annexure-4), and pointed out the errors committed by the authorities in the matter. It was pointed out that it has to be determined whether or not the two candidates belonged to village Inarabaran or not. It had also pointed out that the clause with respect to educational qualification should be accurately applied with respect to the two candidates. Therefore, respondent No. 3 had rightly directed respondent No. 4, the senior- most local functionary to examine the issues on facts. He submitted his report stating therein that the petitioner belongs to Bhatukura tola, and respondent No. 7 belongs to Damga tola, both of which are tolas of Inarabaran village. In other words, Inarabaran village comprises of a cluster of tolas including Bhatukura and Damga. Therefore, both the candidates satisfied the residential clause. The clause with respect to educational qualification has been reproduced herein above. The admitted position is that the petitioner is a non-matriculate, whereas. respondent No. 7 has passed I.A In view of the condition with respect to educational qualification, respondent No. 7 has to be given preference in view of his superior educational qualification.

7. In that view of the matter, we agree with the order dated 30.09.2004 (Annexure-7), passed by respondent No. 3, whereby he has, by a detailed and reasoned order, set aside the selection of the petitioner, and has instead selected respondent No. 7. In fact, this part of the order concludes the matter in so far as the Department is concerned. The further direction in his order to issue a show-cause notice to the petitioner was wholly redundant and has, therefore, to be ignored. The consequent show-cause notice dated 5th October 2004 (Annexure-8), issued by respondent No. 4, was equally redundant and has to be ignored. In that view of the matter, the order dated 09.05.2005 (Annexure-11), completes the formality of conveying the formal order of respondent No. 3 (Annexure-7), to the petitioner. Annexure-7, as stated herein above, assigns detailed reasons in support of their order. There is no requirement to reproduce the same.

8. We are, therefore, of the view, as noted herein above, that the entire matter has been examined and re-examined by the authorities, agitated and re-agitated before the Tribunal, in view of the complaints filed by the petitioner and respondent No. 7. This was followed by a detailed enquiry at the behest of the Tribunal. We are, therefore, convinced that the principles of natural justice were fully observed.

9. We do not wish to consider in any detail the most irrelevant argument

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advanced on behalf of the petitioner. He submitted that detailed show-cause notice was not issued, detailed procedure was not followed, and the procedure prescribed by Article 311 of the Constitution was not followed. This is completely overlooking nature of the proceeding. Article 311, or a provision akin to the same, is required to be followed where major penalty has to be inflicted because of misconduct. Learned Counsel for the petitioner has relied on Rules 6 to 8 of the E.D.A. Conduct and Service Rules. Rule 6 is headed "termination of services", Rule 7 is headed "nature of penalties", and Rule 8 is headed "procedure for imposing a penalty". Rule 6 to 8 combined together prescribe the procedure akin to Article 311 of the Constitution. Therefore, Rule 6 to 8 would be attracted only if termination of service is as a consequence of mis-conduct. Nature of the present proceeding is fundamentally different. In the instant case, the eligibility criteria of the candidates had to be determined as per the terms and conditions of the advertisement. There is no element of punishment or stigma attached to the decision. The question whether or not the petitioner or respondent No. 7, belongs to village Inarabaran, and the issue relating to educational qualifications, in no way involves punishment or stigma. It is a question of recruitment as per the prescribed terms and conditions. The argument advanced on behalf of the petitioner based on Article 311 is wholly irrelevant, and not even fit to be noticed. The contention is rejected.

10. In the result, this writ petition is dismissed. In the circumstances of the case, there shall be no order as to costs.

Kishore K. Mandal, J.

I agree.

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