
(1992) 12 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8718 of 1991

Birendra Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1993) 2 PLJR 317

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh, Ashim Kant Dubey and Mithilesh Kumar Rai, for the Appellant; R.N.P. Yadav and Rajendra Prasad Singh for the State, for the Respondent

Judgement

S.B. Sinha & G.C. Bharuka, JJ.—In this application the petitioners have prayed for issuance of a writ of mandamus directing the respondents and in particular the respondent No. 4 to appoint the petitioners to the posts of Assistant Teacher. The fact of the matter lies in a very narrow compass.

2. An advertisement had been issued in the year 1988 from the officer of the Director Primary Education-Cum-Additional Secretary, Bihar, Patna inviting application from the eligible candidates for appointment to the post of Assistant Teachers in the scale of pay of trained matriculate.

3. Admittedly at the relevant time the petitioners were not trained teachers.

4. It is admitted that applications were invited only from persons having the qualification of matric trained which was minimum qualifications for appointment to the said posts. Despite the fact that the petitioners at that point of time were not trained, they filed applications for their appointment stating that they had appeared at the Training examination. The petitioners, however, were directed to appear at the interview on 17.3.1989 and to submit their educational certificates.

5. The petitioner Nos. 3 and 4 submitted their training certificates as by that time

their results have been published. So far as petitioner Nos. 1, 2, 5 and 6 are concerned, they requested for grant of sometime for producing the said documents as even at that point of time they had not obtained their mark-sheets.

6. According to the petitioners, the time asked for by them had been granted. The petitioners have stated that thereafter a merit list was prepared, wherein petitioner No. 1 was placed at serial No. 1, petitioner No. 3 at serial No. 44, petitioner No. 4 at serial No. 53 and petitioner No. 6 at Serial No. 3 of the general category list and petitioner No. 2 and 5 were placed at serial No. 1 and 2 in the Scheduled Caste category list.

7. According to the petitioners, they were thereafter directed to appear on 10.1.1991 with all certificates for verification, by a letter dated 31.12.1990 a copy whereof is contained in Annexure-3 to the writ application.

8. However, no appointment letter had been issued in favour of the petitioners. It is the case of the petitioners that on 31.1.1991, 80 to 90 persons were appointed in the Chapra Division and they were posted in different schools but the petitioners have not been appointed. Upon enquiry made in this regard, the petitioners came to learn that various irregularities had been committed in the matter of appointment.

9. The petitioners in this connection have stated thus :

That after being not appointed the petitioners inquired from the office of R. D. D. E. Saran division Chapra about the reasons for their non-appointment. During the course of inquiry the petitioners came to know that several persons have been appointed by the R. D. D. E. namely Shri Gopal Krishna Prasad with the conspiracy of his official staffs who had even not applied as per advertisement and who had not appeared in the interview. The petitioners have been able to search one person namely Shri Baleshwar Prasad Singh who has been posted in Doila Basic School Chapra.

That not only this, during the course of inquiry the petitioners came to know that several persons have been appointed on forged marks sheet. The petitioners have been able to collect the names of some such type of persons who have been appointed on forged marks sheets by the R. D. D. E. by taking huge amount of illegal gratification. They are :

Name

Place of posting.

1. PunyKall Singh

?

Govt. Basic School, Mohammadpur

2. Dinesh Kr. Singh

?

Govt. Basic School, Mohammadpur

3. Arun Prasad

—

Farsa Fulwaria Basic School

4. Pradip Kr. Yadav

?

Rasulpur Chatti Basic School.

6. Suresh Singh

?

Doela Basic School

7. Ajay Singh

Bansonhi Basic School.

8. Ram Pukar Singh

?

Aghadan Basic School.

9. Harendra Singh

?

Dihi Basic School

That petitioners have also come to know about the appointment of the persons who have been given appointment letter on the name of another persons, meaning thereby they have not been appointed on their original name and qualification. The name of such type of person who have been appointed on the name of another persons are being given here under :

Name Place of Posting.

Name

Place of Posting.

1. Anand Kumar Singh

?

Fersha Fulwaria Basic School.

2. Ashok Kumar Rai

?

Govt. Basic School, Karcholia

3. AmarNath Singh

?

Aughadin Basic School.

4. Bhuneshwar Prasad

?

Bhagwanpur Basic School.

5. Chandra Bhushan Singh

?

Bhagwanpur Basic School.

6. Arti Kumari

?

Augahandan Basic School

7. AshaOjha

?

Augahadan Basic School.

That the person who is working on the name of Anand Kumar Singh as given in aforesaid paragraph is actually Parshuram Singh but he is working on the fake name and has been appointed by the R. D. D. E. Saran by taking illegal consideration.

That the petitioners also came to know that some persons of a individual family have been appointed. They are :

1. Dinesh Kumar Singh

2. Baban Singh

3. Sakal Singh

4. Ram Pukar Singh

5. Baleshwar Prasad Singh.

All above stated persons are from the family of Dinesh Kumar Singh who are mediating during the appointment and collecting money for the R. D. D. E. The said Dinesh Kumar Singh is resident of Village-Saragaraike Tola, P. O. Goura, district-Saran.

That about five persons who are close relative of one Parsuram Singh have been appointed by the R. D. D. E. who has also working as a mediator for collection of money for the R. D. D. E. They are : (1) Parsuram Singh (2) Kameshwar Singh (3) Wife of Parsuram Singh (4) sister of Parsuram Singh's Wife and (5) Sarhaj of Parsuram Singh. Parsuram Singh is resident of village-Tanua, Post-Khaira, District-Saran.

9A. According to the petitioners a representation had been submitted by the petitioner No. 1 before the Regional Deputy Director of Education which is contained in Annexure-4 to the writ application, a copy whereof had also been sent to various authorities including the Human Resources Development Department and the Minister of Education. The State Minister of Primary Education, Bihar Patna (sic) dated 6.3.1991 called for a report from the Regional Deputy Director of Education in terms of letter as contained in Annexure-5 to the writ application.

The Regional Deputy Director of Education by a letter dated 8.3.1991 addressed to the Minister of State for Education as contained in Annexure-6 to the writ application, contended that as the petitioner No. 1 did not obtain the training certificate on the last date of his filing application or his result had been published, he had not been appointed.

10. In this case a counter affidavit has been filed on behalf of the respondent No. 4. In the said counter affidavit, it has been contended that the petitioner were called for an interview by oversight as they were not eligible for consideration for appointment in the said post.

It has further been stated that during the course of his examination of the documents, as it was found that none of the petitioners were possessing minimum qualifications for appointment as Assistant Teachers in Basic Schools even on the last date for submission, they were not appointed as they were not fulfilling the requisite qualifications of matric trained as on 30th of August, 1988.

It has further been stated that even the State Government examined the matter in details, but the contention of the petitioner has been rejected.

11. With regard to the statements made in paragraph 15 to 19 of the writ application as quoted hereinbefore, it has been stated as follows :

That with regard to the statement made in paragraph 15 to 19 of the writ application under reply it is stated that the respondents do not have any information about the forged marks or change of name of any of the appointee. All the appointments have been made from the approved list. Extra care has been taken in issuing appointment letter and it has been incorporated in their appointment letter that their salary will be paid only after verification of their certificates from the concerned places. It has also been incorporated in their appointment letter that whenever any error or mistake will be found on verification their services will be terminated and the legal action will be taken.

12. A supplementary counter affidavit has also been filed on behalf of the respondent Nos. 1 to 4, wherein it has been, inter alia, contended :

That with regard to the statement made in paragraph 15 of the writ application it is stated that in the appointment letter itself it was clearly stated that the payment of person concerned shall be made only after verification of their certificates. The certificate of Punya Kal Singh, Dines Kumar Singh, Pradip Kumar Yadav, Rajendra Singh, Suresh Singh, Ajay Singh and Ram Pukar Singh have been sent for verification. After receipt of the verification report from the Board and after knowing the fact that they had submitted forged or fabricated certificates immediately action will be taken for removal of them from service. It is stated that no person like Arun Prasad was appointed as Assistant Teacher in Ferusa Phulwaria Basic School. No person like Harendra Singh was appointed in Dihi Basic School.

That with regard to statement made in paragraph 16 of the writ application it is stated that it is not correct. The fact is that no person in the name of Anand Kumar Singh has been appointed as teacher Ferusa Phulwaria Basic School. Similarly no person in the name of Ashok Kumar Rai, Bhuneshwar Prasad and Chandra Bhushan Singh have been appointed either in Govt. Basic School Karchaulia and Bhagawanpur Basic School. So far Amar Nath Singh is concerned, he was appointed in the year 1983 by the District Supdt. of Education. No such person has been appointed in pursuance of 1988 Advertisement Regarding Arti Kumari and Asha Ojha are concerned, they have been appointed in their names and not in any other names.

13. So far as Ram Pukar Singh is concerned, it has been stated that he passed training examination in the year 1987 and he secured 1st Division.

14. A caveat application has also been filed on behalf of Ram Pukar Singh (Respondent No. 7) wherein it has been stated that he was admitted in 1983-85 sessions of training and he completed the said training and the result was published in the year 1987 wherein he secured first division.

15. Mr. Ganesh Prasad Singh Learned Counsel appearing on behalf of the petitioner has principally raised two contentions in support of this application.

The Learned Counsel firstly submitted that in view of the phraseology used in the advertisement as contained in Annexure-1 to the writ application equivalent to Annexure-A to the counter affidavit, it would appear that basic qualifications of being a matric trained was not the condition precedent for filling an application for appointment to the said posts and in any event as the petitioners were interviewed and they passed the training examination before offer of appointment could be issued to them, and further in view of the fact that they had earlier been impaneled, they could not have been denied the offers of appointment.

16. The Learned Counsel next contended that it would appear from the

statements made in the writ application which at least has been found to partially correct by the respondents, that several persons had been appointed by production of forged mark-sheets.

17. The learned Government Advocates, on the other hand, submitted that the allegations made by the petitioners in paragraphs 14 and 19 of the writ application had been explained in paragraphs 4 and 5 of the supplementary counter affidavit and thus it must be held that the grievances of the petitioners in this regard have been considered and are being considered at the appropriate level.

18. Mr. Rajendra Prasad Singh, Learned Counsel appearing on behalf of the respondent No. 7, however, submitted that the petitioners have no locus standi to maintain this application.

19. According to the Learned Counsel the State itself committed an illegality in entertaining the application for appointment filed on behalf of the petitioner inasmuch as admittedly they did not fulfill the conditions precedent for filing such application in terms of the advertisement as contained in Annexure-1 to the writ application.

20. The Learned Counsel submitted that in the event it is directed by this Court that the petitioners should also be appointed, the same would be violative of Articles 14 and 16 of the Constitution of India, as various Other candidates who also might have appeared at the training examination could have filed such application for appointment.

It has further been stated that the petitioners cannot have any grievance with regard to the so-called illegal appointment of some teachers as has categorically been stated by the State that salary would be paid to all teachers only after verification of the testimonials.

So far as respondent No. 7, is concerned, Mr. Rajendra Prasad Singh, Learned Counsel for the respondent No. 7 have produced before us the xeroxed copies of the relevant documents including the mark-sheet for the purpose of showing that the said respondent possesses requisite qualifications.

21. So far as first contention raised by Mr. Ganesh Prasad Singh is concerned, the same cannot be accepted.

From a plain reading of advertisement as contained in Annexure-1 to the writ application, it is evident that the petitioners did not fulfill the minimum requisite qualifications for being appointed as matric trained teacher. The said advertisement as contained in Annexure-1 to the writ application did not contain any provision for relaxation of the qualification. The said advertisement is absolutely clear and unambiguous and thereby it has clearly been stipulated that, only those persons who were matric trained may apply for the said posts. Even the scale of pay was that of matric trained teacher.

22. It has further been clarified therein that those who possesses a higher qualification, but were agreeable to work in the scale of pay admissible to a matric trained teacher, may also apply therefor.

23. It is, therefore, clear that the minimum eligibility clause for filing application for appointment to the posts in terms of the aforementioned advertisement was matric trained. Only because the petitioner's application had been entertained, they had been interviewed and their names have been included in the panel does not clothe them with any legal right inasmuch as they could have been considered for appointment alongwith all other eligible candidates, who fulfilled the criteria laid down therefor. As evidently the petitioners were not matric trained on the last date of filing of the application, their applications could not have been entertained.

24. Mr. Rajendra Prasad Singh, Learned Counsel appearing on behalf of the respondent No. 7, in our opinion, is correct in his submission that if the State had appointed the petitioners the same could have been questioned by others as being violative of Articles 14 and 16 of the Constitution of India.

Reference in this connection may be made to R. D. Shetty reported in AIR 1979 S. C. 1628. In that case tenders were invited from Class I contractors but the tender of a class II contractor was entertained and he was given the contract. The Supreme Court held that the acceptance of tender of a class II contractor was violative of Article 14 of the Constitution of India. If it was the intention of the State to entertain the application, of all such persons who had appeared at the training examination, plainly it was its duty to provide for the same in the advertisement so that other candidates who had also appeared at the training examination could have applied therefor.

25. As the petitioners, thus did not fulfill the eligibility criteria, in our opinion, they did not derive any legal right to be appointed.

26. In this view of the matter, this Court cannot issue a writ of mandamus directing the respondent to appoint the petitioners.

27. So far as second contention raised by the petitioner is concerned, the same prima facie appears to have some substance.

It is true that in the counter filed on behalf of the State it has been contended that the testimonials of all such persons had been appointed under the process of verification and their salaries would be paid only after the same are verified. We, however, direct the Director Primary Education to consider the matter with all seriousness it deserved inasmuch as the allegations made by the petitioner have been found to be correct to some extent.

The other allegation made by the petitioners that some persons have impersonated others also merits a serious consideration and in the event the Director Primary Education finds evidence in support thereof, in our opinion, he should take all steps to see that all such persons are brought to book. In such an

event, in our opinion, even a criminal case should be instituted against the concerned persons as also the erring officers if any. We have no doubt in our mind that the Director Primary Education shall bestow his serious consideration in the matter and take all such steps not only to see that the guilty persons are punished but also to find out ways and means so that the same may not recur in future.

28. Before parting with this case, we may however mention that we have not applied our mind with regard to genuineness of the testimonials and the mark-sheets produced by the respondent No. 7 although the same prima-facie appear to us to be genuine documents. This application is disposed of with the aforementioned observations and directions but without any order as to costs.