

(1993) 07 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1001 of 1989

Brahm Deo Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:

Citation : (1993) 07 PAT CK 0009

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—There are 8 Petitioners in this writ application. Their prayer is for issuance of a writ of mandamus directing the Respondents that till all the 242 persons empanelled for filling up of the posts of Stenographers (Personal Assistants) pursuant to 1982 Competitive test Examination held in this regard are absorbed, no appointment on the said posts should be made through any other source.

2. According to the Petitioners they alongwith others had appeared at the aforesaid Competitive Examination and were selected as is apparent from the list of successful candidates published in the Bihar gazette dated 26.10.1983. Out of the 242 successful candidates, 121 have already been appointed at different intervals. The grievance of the Petitioners is that though sufficient vacancies exist on the posts for which they had been selected but they are being arbitrarily denied their right of being appointed to such posts. The Petitioners complain that Government has arbitrarily sought to fill up the vacant posts by upgrading the posts of Steno-Typist to Personal Assistants by practising mala fide.

3. I do not propose to enter into the allegation of malafides or validity of upgradation of the post of Steno-Typist to Personal Assistant because the beneficiaries of such upgradation have not been made Respondents in the present writ application and in their absence the validity of upgradation or promotion, accorded to them cannot be adjudged.

4. Keeping in view the rival contention made at the Bar the questions that fall for

my consideration are:

- (i) Whether the panel prepared in 1983 still survives?
- (ii) Whether the inclusion of the name of a person in the panel vests a right of appointment in him; and,
- (iii) Whether an empanelled person can claim a right of being appointed in respect of even future vacancies?

5. Coming to the first question, now it is well settled that a panel prepared for filling up the post in a cadre can be kept alive only for a reasonable period otherwise it may lead to unjust exercise of executive power offending Articles 14 and 16 of the Constitution of India. This matter has been dealt with by the Supreme Court in the case of *State of Uttar Pradesh v. Ram Gopal* AIR 1981 S.C. 1041, paragraph 15 whereof reads as under:

There is no denying the fact that the rules regulating the conditions of service are within the executive power of the State or its legislative power under the proviso to Art 309 but even so, such rules have to be reasonable, fair and not grossly unjust, if they are to survive the test of Articles 14 and 16 of the Constitution. A rule which contemplates that unless the list of 300 persons is exhausted no other person can be selected, obviously is unjust and it deprives other persons in the same situation of the opportunity of being considered for promotion.

6. Keeping in view the law laid down by the Supreme Court in the case of *State of Uttar Pradesh v. Ram Gopal* (Supra) this Court in the case of *Dr. Sheo Shander Jha and Others Vs. The State of Bihar and Others*, has held that a panel prepared for appointment can be used even after expiry of 12 months for making appointment only under some very exceptional circumstances. This matter has also been considered again by this Court in C.W.J.C. No. 2296 of 1991 (*Nilima Verma v. State of Bihar and Ors.*) disposed of on 5.3.1993 wherein Hon"ble S.B. Sinha, J. after taking into account the Government instructions in this regard has specifically held that the life of the panel expires on completion of one year from the date of its publication. In this view of the matter, in my opinion, no writ of mandamus can be issued directing the Respondents to consider the case of the Petitioners for appointment against any existing vacant post from the expired panel.

7. The second question relating to right of a person already selected has been dealt with by Constitution Bench of the Supreme Court in the case of *Shankarsan Dash Vs. Union of India*, . In paragraph 7 it has been held as follows:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire

any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by the Court, and we do not find any discordant note in the decisions in *The State of Haryana Vs. Subash Chander Marwaha and Others*, *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, , or *Jatinder Kumar and Others Vs. State of Punjab and Others*,

8. In the present case the Petitioners have nowhere stated that any person ranking below them in the panel has been appointed. Therefore, no relief can be granted to the Petitioners on this ground as well.

9. Similarly, in respect of the right of a person empanelled for appointment to certain post in respect of vacancies accruing in future it has been held by the Apex Court in the case of *Rakesh Ranjan Verma and others Vs. State of Bihar and others*, that mere existence of vacancies alone is not sufficient to create a right in favour of empanelled persons, unless Government considers it necessary as to how many posts were required to be filled in any year in order to carry out its functions and duties.

10. For the reasons aforesaid I find no merit in this application which accordingly, is, dismissed but without cost.