

(2001) 10 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 8827 of 2000

Brajendra Kumar Sinha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Bihar Reservation Act, 1991 — Section 4

Citation : (2002) 1 PLJR 517

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh, Tuhin Shankar, in 8827 and Bhola Prasad, in 4408, for the Appellant; JC to AAG 2, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Both these writ applications have been filed for common relief based on common facts, therefore, they have been heard together and are being disposed of by this order.

2. Heard counsel for the parties.

3. In both these writ applications, the Petitioners have prayed for absorption/regularisation on the vacant/sanctioned post in terms of panel prepared in the year 1999-2000 with relaxation of their age and education qualification as they are working on daily wages as candidate peons in the District of Katihar since more than ten years.

Learned Counsel appearing on behalf of the Petitioners submitted that the Petitioners since were working on daily wages for the last several years, a panel was prepared of the eligible candidates for filling up the sanctioned vacant posts of Class IV employees in the District of Katihar and the names of the Petitioners figure in the panel, as contained in annexure 3, prepared in the year 1999-2000 and the Petitioners belong to all the categories (general scheduled tribe, B.C. and V.B.C). It is further submitted by learned Counsel appearing on behalf of the

Petitioners that pursuant to the advertisement, issued by the Collector, Katihar, as contained in annexure 2, inviting applications from the eligible candidates including the Petitioners for filling up Class IV posts, the Petitioners and others applied for their appointment as such, and, accordingly, District Establishment Committee, headed by the Collector, Katihar, prepared final panel of the year 1999-2000, where the Petitioners have also been empanelled and in this regard, a communication was sent to the Department of Personnel and Administrative Reforms, Government of Bihar, Patna. Pursuant to preparation of the panel, the District Administration thereafter received approval of the Divisional Commissioner for filling up 121 Class IV sanctioned vacant posts and roster clearance was also obtained. However, the Petitioners are not being appointed from the panel aforesaid. Learned Counsel further submitted that in the advertisement, as contained in annexure 2, the minimum qualification of the applicants was fixed as 8 Class passed and not above Praveshika and the same should be relaxed, as the Petitioners are working for more than 10-12 years under the Respondents on daily wages.

4. A counter affidavit has been filed on behalf of the Respondents admitting the claims of the Petitioners. However, it is stated in the counter affidavit that though the Divisional Commissioner, Purnea, vide letter No. 1859 dated 28.12.1999 accorded his approval regarding roster clearance pursuant to the panel prepared by the District Establishment Committee, Katihar, the District Administration how in light of the circular No. 117 dated 30.9.1995 and as per the provision of Section 4 of the Bihar Reservation Act, 1991, a request has been made to Divisional Commissioner, Purnea, vide letter No. 3198 dated 23.11.2000 to arrange for a meeting on roster issue, so that necessary changes as per the Act can be done in the aforesaid roster approval. In light of the statements made in the counter affidavit, learned Counsel appearing on behalf of the State submitted that these applications are premature, as the process of appointment is in progress.

5. From the pleadings of the parties and the submissions advanced at the bar, it appears that a panel has already been prepared for filling up Class IV posts and the names of the Petitioners figure in the panel. It also appears that the Petitioners are already working under the Respondents on daily wages as candidate peons for more than 10-12 years. The process of appointment appears to be at the final stage, as roster clearance has been taken and further clarification has been sought for on this point. Since the Petitioners have been working under the Respondents for several years and, thus, they have been empanelled for appointment on sanctioned/ vacant Class IV posts, in my opinion, they have acquired a right to be considered for their appointment on regular basis.

6. From the advertisement, as contained in annexure 2, it is manifest that due weightage shall be given to the empanelled daily wages workers according to their seniority and at the same time, minimum and maximum qualification have

also been prescribed, as referred to above. Some of the Petitioners do not possess the requisite qualification, though the advertisement makes a provision for giving due weightage to the empanelled daily wages workers irrespective of their qualification. The requisite qualification prescribed, thus, would not strictly be applicable in the case of those Petitioners, who are already working on daily wages having lesser qualification.

7. In the facts and circumstances of the case and for the reasons aforementioned, these applications are allowed and the authorities concerned are directed to appoint the Petitioners on vacant/sanctioned Class IV posts out of the panel prepared in the year 1999-2000 after giving relaxation of age, in case some of the Petitioners have crossed the age limit. This exercise, however, must be completed within a period of three months from the date of receipt/production of a copy of this order. No order as to costs.