
(2001) 01 PAT CK 0050
In the Patna High Court
Case No : C.W.J.C. No. 9736 of 1999

Brajesh Kumar Vila

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Citation : (2001) 01 PAT CK 0050

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition was initially filed on behalf of 10 petitioners. The names of 9 of them were subsequently deleted presumably in view of the stamp report relating to payment of separate Court fees by each of them.

2. The dispute in the case relates to appointment of Assistants on the basis of Third Graduate-Level Competitive Examination pursuant to advertisement No. 1/90. The petitioner seeks direction to extend the cut-off date for filling the vacancies. The cut-off date has been fixed by the State Government as 31.12.1993 meaning thereby, that vacancies existing up to 31.12.93, alone had to be filled on the basis of the said competitive examination. The grievance of the petitioner is that though the vacancies were advertised in 1990 itself, the written examination was held only in 1995 and the result thereof published on 16.12.96, the modified result was, in fact, published on 14.1.97; in such a situation treating 31.12.93 as the cut-off date should be held to be arbitrary. The Court should direct the Government to treat at least, the date of publication of the result, i.e., 14.1.97, or 16.12.96 as the cut-off date.

3. At the outset, it may be mentioned that a writ petition, CWJC No. 1376 of 1997 by Hridayal Kumar and Ors., seeking similar direction was dismissed by this Court on 3.12.98. The Court held that in writ jurisdiction, the High Court cannot fix any cut-off date which is to be done by the competent authority. The Court also observed that in the matter of appointment, even persons who have been selected for appointment have no right except when their non-appointment is in contravention of some rule or some person lower in the merit list is appointed.

This writ petition thus is covered by the decision in that case.

4. Shri Ravi Shankar Prasad, who had, incidentally, appeared for the petitioners in the other case also, nonetheless made an attempt to persuade this Court to direct the respondents to fix 15.6.95 as the cut-off date. He pointed out that in the original advertisement the number of vacancies was not mentioned, and this was done only on 15.6.95. In this regard, he urged that inaction on the part of the authorities concerned in holding a recruitment examination on time has resulted in great prejudice to the intending candidates. He submitted that in a case of this nature, on the ground that the examination, etc. had not been held on time, this Court rejected the plea of the State that the panel which normally is valid for a period of one year had lapsed, in the case of *Ranjit Kumar Singh v. State of Bihar* 1997 (1) PLJ 1205. He also placed reliance on *Virender S. Hooda and Others Vs. State of Haryana and Another*, . On behalf of the respondents, reliance was placed on a decision of the Supreme Court in *State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union* 1986 and Others, , besides the decision of this Court in *Hridayal Kumar and Ors. v. State of Bihar* (supra).

5. The case of *State of Bihar v. Secretariat Assistant Successful Examinees Union* (supra) related to appointment of Secretariat Assistants on the basis of an examination held in 1987 pursuant to advertisement issued in 1985. The result of the examination was published only in 1990. This Court by judgment under appeal directed the Bihar State Subordinate Services Selection Board, which had conducted the recruitment test, etc. to recommend the names of the petitioners against the vacancies existing on the date of publication of the result, i.e., July, 1990. The Supreme Court set aside this part of the judgment even though it disapproved the inaction of the respondents in holding the recruitment test regularly. The Supreme Court allowed the vacancies existing up to 31.12.88 to be filled on the basis of the said examination and that too on the plea of the State that there were, large number of vacancies which were required to be filled up. The Court was of the view that the recruitment should not exceed the date when the vacancies were notified, i.e., 25.8.87. However, it does not appear from the judgment that the Court has laid down any rule of law that the cut-off should be fixed with reference to the date of notification of the number of vacancies. The case was decided on facts.

6. In the case of *Virender S. Hooda* (supra), the Court directed the respondents to fill up the vacancies occurring within six months after the recommendation from the waiting list in view of the circular of the Government which envisaged that vacancies arising within six months from the receipt of the recommendation of the Commission be filled up from the waiting list maintained by the Commission. The vacancies arising after expiry of six months only were required to be requisitioned to the Commission. There being no such circular brought to the notice of this Court, I am afraid, no direction can be issued to fill up subsequent vacancies on the basis of the examination.

7. It appears that the First Graduate-Level Recruitment Examination for Assistants was held, in 1982 pursuant to 1981 advertisement and vacancies existing up to June 1985 were taken into account. The Second Graduate-Level Examination was notified vide advertisement No. 6/85 in June 1985 (this explains taking into account vacancies up to June 1985 for appointment on the basis of the First Examination). The result of the Second Examination was published on 10.2.88 and selection was made treating 31.12.89 as the cut-off date. Fixing 31.12.93 as cut-off date for the Third Examination, prima facie does not seem to be arbitrary. The First examination, covered vacancies up to June 1985. The Second Examination covered vacancies from July 1985 to December 1989, i.e., four and half years. If the Third examination was intended to cover the vacancies of the next four years upto 31.12.93, no arbitrariness or motive can be attributed. The problem has arisen on account of the fact that no recruitment examination for the Graduate-Level Assistants has been held thereafter. If such examination had been held on time, it, would have covered the vacancies occurring thereafter, i.e., from 1.1.94 and in that situation possibly the petitioner would have had no grievance. In course of hearing, it transpired that the State Government has since taken decision to hold the Fourth Graduate Level Recruitment Examination with respect to vacancies occurring between 1.1.94 and 1.8.98. Unfortunately, though the decision was communicated on 14.7.98 vide Annexure-C to the State's Counter-affidavit, no follow up step has been taken in the matter for two and half years which indeed is a sad state of affairs for which the authorities concerned deserve to be condemned. In *State of Bihar v. Secretariat Assistant Examinees Union (supra)*, the Supreme Court had castigated the State Government for not filling the vacancies on time. It is unfortunate that even the order of the Supreme Court failed to cut any ice with the Government. It would be apposite to quote the observations as under:

At the same time, the callousness of the State in holding the examination in 1987 for the vacancies advertised in 1985 and declaring the result almost three years later in 1990 has caused great hardship to the successful candidates. The State was expected not to act in such a leisurely manner and treat the matter of selection for appointment to services in such a casual manner. We must record our unhappiness on this state of affairs. There is no justification for holding the examination two years after the publication of advertisement and declaring the result almost three years after the holding of the examination and not issuing any fresh advertisement between 1985 and 1991 or holding examination for making selections. We expect the State Government to act in a better manner, at least, hereinafter and since Mr. Rao, the learned senior Counsel has shared our concern and assured us of advising the State Government accordingly, we say no more on that aspect at this stage.

8. It is indeed a serious matter that the observation of the highest Court have failed to evoke any positive response. But that as it may, though injustice has been done and prejudice cause to the intending candidates, the need of the hour is to issue direction to the respondents to take necessary follow-up steps to hold

the Examination pursuant to the aforesaid decision contained in letter No. 7584 of the Additional Secretary, Personnel and Administrative Reforms Department dated 14.7.98 (supra). In the facts and circumstances, I direct the respondents to complete the formalities in this regard and after doing so, hold the written examination by 30th of June 2001 followed by viva-voce test, etc. as may be required under the rules soon thereafter so that recruitment is made well within this year.

9. The grievance being otherwise covered by decision of this Court in Hridayal Kumar's case (supra), this writ petition must fail which is accordingly dismissed but with the direction and observations noted in the foregoing paragraphs. No costs.