
(2011) 07 PAT CK 0240
In the Patna High Court
Case No : CWJC No. 14085 of 2008

Dayanand Paswan and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 1 PLJR 443

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Ashok Kumar Singh and S.S. Mishra, for the Appellant; S.S. Shabbar Hussain and R.K. Sinha for the State, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Learned Counsel for the petitioners is permitted to correct the averments made in paragraph 5 of the writ petition. Heard Learned Counsel for the petitioners and the State.

2. Petitioners are serving as candidate peon in the Collectorate, Nalanda and its attached offices. They were empanelled in the year 1992-93 for being appointed against Class-IV post in the Collectorate, Nalanda and its attached offices. Later they were again empanelled in 2001 and 2002, but could not be appointed, as in the year 2003 those panels were abandoned. Such statement has been made in paragraphs 4, 5, 6 and 7 of the writ petition.

3. This writ petition has been filed praying, inter alia, to quash the order bearing Memo No. 327 dated 1.3.2008, Annexure-5 whereunder panel of candidate peon(s) prepared for appointment on Class-IV post in the Collectorate, Nalanda and its attached offices was abandoned. During the pendency of the writ petition, the authorities issued General Notice for appointment on Class-IV post in the Collectorate, Nalanda dated 6.4.2011, Annexure-10 asking only those candidate peon who served the Collectorate" Nalanda and attached offices until 11.12.1990

to apply for appointment in the Collectorate and attached offices on Class-IV post, provided the applicant had served as candidate peon in the Collectorate and its attached offices for 240 days in each of the preceding 5 years. Aforesaid General Notice is being challenged by filing I.A. No. 2819 of 2011 on the ground that the said General Notice dated 6.4.2011, Annexure-10 is contrary to the rules notified by the Government under notification dated 26.3.2010, Annexure-9 for appointment on Class-IV post, as in terms of the rules anyone above 18 years of age and fulfilling other qualification required for Class-IV post is eligible to apply but in the General Notice dated 6.4.2011, Annexure-10 only those candidate peons who were engaged to serve as candidate peon prior to 11.12.1990 and actually served as such for at least 240 days in each of the preceding 5 years has been asked to apply and thus according to the Learned Counsel, petitioners and others have been disqualified from making application for being considered for appointment against Class-IV post in the Collectorate. They have challenged the General Notice on the ground that the same is contrary to the provisions contained in Articles 14 and 16 of the Constitution of India. It is further submitted that Government having notified the rules permitting the individual of more than 18 years of age to be eligible for being considered for appointment against Class-IV post by publishing the General Notice, the District Magistrate, Nalanda has violated the provisions of the rules and for such violation of the rules, the advertisement is required to be quashed. In this connection, Learned Counsel for the petitioner has relied on the judgment of the Hon''ble Supreme Court in the case of Post Master General, Kolkata and Others Vs. Tutu Das (Dutta), and submitted that no appointment should be made contrary to the rules. Learned Counsel has also relied on another judgment of the Hon''ble Supreme Court in the case of Virender Singh Hooda and Others Vs. State of Haryana and Another, and submitted that even vested right can be taken away by retrospective legislation by removing the basis of the judgment.

4. Counsel for the State has opposed the aforesaid submission. He states that General Notice for appointment on Class-IV post from amongst the candidate peon, who served the Collectorate prior to 11.12.1990, is not violative of the rules as rules having been notified on 26.3.2010 could not have taken away the right of the candidate peon(s) engaged earlier for being considered on priority basis. In this connection, he referred to the earlier three circulars of the State Government dated 3.12.1980, 26.5.1987 and 25.4.1997, Annexures-A & B to the counter affidavit of Respondent No. 4 in terms whereof the seniority of the candidate peon(s) included in the earlier panel is required to be maintained for appointment against Class-IV post in the Collectorate and its attached offices and further submitted that once the candidate peon(s) serving the Collectorate, Nalanda and its attached offices from before 11.12.1990 are considered and accommodated against Class-IV post, the case of the petitioners and others who have been serving as candidate peon after 11.12.1990 shall also be considered. He further pointed out that candidate peon(s) have been serving the Collectorate and its attached offices for very many years but on account of paucity of fund

their services could not be regularized earlier but now their case is being considered for regularization and General Notice dated 6.4.2011, Annexure-10 is issued for such purpose. For the present the case of those candidate peon(s) who were engaged as candidate peon prior to 11.12.1990 is being considered. He further pointed out that after the case of those who have been serving the Collectorate as candidate peon from a date prior to 11.12.1990 is considered, the case of other candidate peon engaged thereafter shall be considered subject to availability of the vacancy.

5. Having heard counsel for the parties and having perused the General Notice dated 6.4.2011, Annexure-10 as also the notification dated 26.3.2010, Annexure-9 notifying the rules for appointment on Class-IV post, it is quite evident that by considering the case of candidate peon(s), who are serving as candidate peon prior to 11.12.1990, the authorities of the Collectorate, Nalanda are not violating the rules. The rights of the candidate peons are to be considered in the light of the circulars of the State Government issued from time to time i.e. circular dated 3.12.1980, 26.5.1987 and 25.4.1997, which clearly provide for maintaining the seniority amongst the candidate peons included in the earlier panel(s). Rules repealing the earlier circulars and instructions of the Government having been notified on 26.3.2010 could not have taken away the vested right of the candidate peon serving prior to 11.12.1990 i.e. earlier to coming into force of the rules. In terms of the General Notice dated 6.4.2011, Annexure-10, the case of the candidate peon engaged prior to 11.12.1990 is required to be considered earlier to those who have been engaged to serve as candidate peon thereafter including the petitioners who began serving the Collectorate, Nalanda as candidate peon from 1992-93. In my opinion, therefore, the contents of the General Notice dated 6.4.2011, Annexure-10 is not contrary to the rules notified under notification dated 26.3.2010, Annexure-9, as the General Notice, in my opinion, is protecting the rights of the candidate peon who began serving the Collectorate prior to 11.12.1990. I do not see any illegality in the General Notice dated 6.4.2011, Annexure-10 contents whereof are read down directing the authorities to consider the cases of all such candidate peons who were engaged to serve as candidate peon prior to 11.12.1990 and were included in any panel irrespective of the fact whether they completed 240 days of engagement in each of the preceding 5 years as no such stipulation is to be found in any of the circular(s) dated 3.12.1980, 26.5.1987 and 25.4.1997. The writ petition is, accordingly, dismissed.