
(1990) 09 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 2747 of 1988

Devanand Roy and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 19-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1991) 1 BLJR 595 : (1991) 1 PLJR 33

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—The two petitioners aspiring to be appointed as physics teachers in a middle school are aggrieved by an advertisement contained in Annexure-1 to the writ application which tends to exclude them on the threshold. The impugned advertisement issued by the District Superintendent of Education, Bhojpur at Arrah, invites application for the preparation of the waiting list for the year 1988 for appointment to the post of physical teachers in the selected middle schools of the district. The advertisement in question, inter alia, lays down conditions that the applicant must be a resident of Bhojpur district or must have continuously resided in the district for the past ten years and that the candidate must have successfully completed C.P. Ed. course from a physical training college run by the Bihar Government.

2. The first of the aforesaid two conditions though equally arbitrary, does not seem to adversely affect the petitioners inasmuch as they appear to be the permanent residents of Bhojpur district and hence it is only the second condition which comes under attack in this writ application.

3. The impugned advertisement is said to have been issued on the basis of a Circular letter No. 197, dated 17.2.1981 issued by the Special Secretary-cum-Director (Primary), Bihar to all District Education Superintendents. Clause 5 of

this letter directs that a session-wise list of the students should be obtained from the Principals of all Government Physical Training Colleges and a panel for appointment to the post of Physical teachers should be prepared on the basis of the lists thus obtained.

4. The petitioners who are said to be B.Sc. and B.A. respectively claim to have passed the Examination of "Bachelor or Physical Education" from Nagpur University held under the auspices of Maharashtra Government which is said to be recognized by that Government. The petitioners not having done the course in Physical training from any college run by the Bihar Government are thus ineligible and, accordingly, challenge that condition imposed in the advertisement as arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution.

5. It is to be noted that advertisements/orders of the State Government purporting to exclude persons from other districts from being considered to be appointed to the post of teachers in any particular district have been earlier considered by this Court and have been held to be per se violative of Articles 14 and 16 of the Constitution because they discriminate against the residents of other district without any rational basis. Reference in this connection may be made to two Division Bench decisions reported in 1987 PLJR 846 Anil Kumar v. State of Bihar and 1990 PLJR 226 Sushri Priti Biswas v. The State of Bihar and Ors.

6. As regards the 2nd condition, stipulating that the candidate must have completed the course of C.P. Ed. from a college run by the Bihar Government, the learned Counsel for the petitioners, on the analogy of the aforementioned decisions contends that the latter condition is also bad and violative of the constitutional guarantees for the same reasons for which the former condition was held bad. Mr. Radha Mohan Prasad, learned Counsel appearing on behalf of the State, on the other hand sought to defend this latter condition on the strength of what is stated in paragraph-6 of the counter affidavit filed on behalf of the respondents. Paragraph-6 of the counter-affidavit reads as follows:

That it is further stated that 9 months training is essential for obtaining the physical trained certificate from Government recognized institution in Bihar whereas the period of 6 months training required in some of the other institution.

I do not think this statement provides an adequate defence for the impugned condition. The above quoted statement to my mind is a post facto rationalization of a policy actuated by narrow parochial urges. First, admittedly, only some and not all institutions outside Bihar have a six months course whereas the impugned condition in the advertisement puts a blanket ban on all the institutions outside the State of Bihar, it is not the duration but the quality of the course which can be a relevant consideration and it may not be always true that a course of longer duration on that score alone should be of a better quality than a course of shorter duration. The concerned authorities are fully entitled to judge the relative merits and quality of any course and may also take into consideration the

duration of the course as one of the factors in that regard but on that score alone certainly a candidate cannot be shut out of consideration. It is understandable that the procedure contemplated in clause 5 of the Circular letter dated 17.12.1981 (contained in Annexure-2) is administratively convenient. But it is calculated to shut out all those persons who have done Physical Education Course from colleges outside the State of Bihar and thus infringes upon the constitutional right to equality. An individual's right to equality is too valuable to be sacrificed to administrative conveniences.

7. I, therefore, hold and find that the second condition stipulating that the candidate must have successfully passed the D.P. Ed. course from a college run by the Bihar Government is as unsustainable as the condition regarding permanent residence in that district.

8. I, accordingly, direct that the petitioners must be taken into consideration for being included in the waiting list for appointment to the post of Physical teacher in middle schools. I may, however, clarify that the respondent authorities are fully entitled to verify the genuineness or otherwise of the certificates/diplomas/degrees produced by the petitioners and their relative merit vis-a-vis the C.P. Ed. Course conducted by the Government colleges in Bihar.

9. With the observations and directions, this writ application is allowed, but in the circumstances of this case there shall be no order as to costs.