

(1999) 04 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 11761/96

Dineshwar Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Citation : (1999) 3 PLJR 381

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : J.P. Shukla and Bindhyachal Singh, for the Appellant; S.N. Jha and Anil Kr. Upadhyaya, for the Respondent

Judgement

Nagendra Rai, J.—Heard the counsel for the Petitioner, the State and the Respondent No. 11. This writ application is being disposed of at the stage of admission itself.

2. The Petitioner has challenged the order passed by the Joint Secretary, State Election Commission, Bihar Patna (Respondent No. 5) by which Respondent No. 11 Rajeshwar Dayal has been appointed on the temporary basis on the post of Computer Operator.

3. It appears that the Election Commission took steps for appointment to the two vacant posts of Computer Operator and called for names from the employment exchange. The eligibility criteria for appointment as mentioned in the said letter, as copy of which has been annexed a Annexure-1 to the writ application, is that the candidate should be the post graduate in Physics/Mathematics/ Statistics/ Economics/Research work/Computer Science with 50% marks. The candidate were also required to have knowledge of Computer Programme and in the alternative the qualification required for the said post was that the candidate should be the graduate in Physics/Mathematics/ Statistics/Economics/Computer Science from the recognised institution. The candidate should possess the 50% marks in graduation as well as diploma in computer. Apart from this qualification

the candidate was also required to have two years experience of computer programme. The employment exchange sent the name of eighteen candidates. A selection committee was constituted under the Chairmanship of Special Secretary, Science and Technology, namely, A.K. Pandey. Thirteen persons appeared before the Selection Committee. In its meeting held on 6.4.96 the committee recommended the name of Respondent No. 11 as first name, the Petitioner as second name and one Smt. Vidha Kusum as third name, a copy of which has been annexed as Annexure-R/11-C to the counter affidavit on behalf of Respondent No. 11. In pursuance of that recommendation the Election Commissioner appointed Respondent No. 11 on the said post by order dated 15th April, 96 contained in Annexure-2, which has been impugned in this case.

4. Admittedly, neither the Petitioner is post graduate nor the Respondent No. 11 is the post graduate and as such both of them claim to have applied for appointment on the ground of fulfilling the alternative criteria or qualification i.e. having secured 50% marks in graduation and diploma in computer science having knowledge of two years in computer programme. The alternative qualification as mentioned was that minimum 50% marks were required in the subjects of Physics/Mathematics/Statistics/Economics/Computer Science. Both the Petitioner and the Respondent No. 11 are B.Sc. in mathematics. The Petitioner has secured 45.33% marks in B.Sc. math and Respondent No. 11 has secured 11.44% marks in B.Sc. math. In other words, neither the Petitioner nor the Respondent No. 11 possess the qualification as prescribed.

5. Learned Counsel for the Petitioner submitted that the Respondent No. 11 has no post graduate diploma in Computer Science whereas he has post Graduate Diploma only in Computer Science.

6. Learned Counsel for the Respondent No. 11 on the other hand submitted that the Petitioner's qualification in Computer Science is not from the recognised institution whereas the Respondent No. 11 has diploma in computer science from a recognised institution. In my view, it is not necessary to go into the said question as admittedly the Petitioner and the Respondent No. 11 did not possess the minimum qualification of 50% marks in B.Sc. As such both of them were not eligible to be called for interview for selection and the selection committee was wholly unjustified to relax the requirement of 50% marks so far graduation course is concerned.

7. It is well settled that if a particular qualification is prescribed for selection then the selection committee or even the appointing authority in absence of any Rule has no power to relax the graduation course in selection process. Reference in this connection is made to decisions of the Supreme Court in the cases of Miss Shainda Hasan Vs. State of Uttar Pradesh and others, and Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions .

8. It is to be mentioned that the Apex Court in those cases after cancelling the appointment allowed them to continue as they had continued for 16 years or

more period. This is not a case here. The appointment of Respondent No. 11 was made in 1996 and immediately the same has been challenged by the Petitioner.

9. As the appointment of the Respondent No. 11 was made against the terms of the notice prescribing the qualification the appointment of the Respondent No. 11 is wholly illegal.

10. It was submitted by the council for the Respondent No. 11 that the Petitioner is also not eligible to be selected for the aforesaid post, as such writ application filed by him is not maintainable. In this connection it is to be stated that when it has come to the notice of this Court that the appointment is illegal as the same has been made in breach of the requirement for selection to the said post then this Court will interfere otherwise non interference will result in miscarriage of justice for the reason that the person not eligible for the post is being appointed by the selection committee. In this connection reference may be made to the decision of the Apex Court in the case of Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd., , wherein the Apex Court has held that when the application is made by a party or by a person aggrieved the Court will intervene ex debito justitiae, in justice to the applicant and when it is made by a stranger the Court considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the Court.

11. This is a fit case where appointment of Respondent No. 11 should be quashed and accordingly, the same is quashed. It will be open for the authority concerned to take afresh steps for appointment on the said post according to law.

12. With the aforesaid observation this application stands disposed of.