
(2016) 07 PAT CK 0132

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2861 of 2015

Dr. Anil Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Citation : (2016) 4 PLJR 980

Hon'ble Judges : Mr. Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Mr. AJAY, GA-12, for the Respondent; Mr. Sanjeev Kumar Mishra and Mr. Ugranath Mallik, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Kishore Kumar Mandal, J.(Oral) - Both the applications raise common issues inasmuch as foundational facts are common and as such they have been heard together. The present order will govern them.

2. To appraise the controversy relevant facts, shall be noticed from CWJC No. 2861 of 2015.

3. The writ application is filed to command the respondents to consider the petitioner(s) for the post of State Commissioner Disability on contract basis in the light of the provisions contained in the Rehabilitation Council of India Act, 1992 (for short "the 1992 Act") as well as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the 1995 Act"). During the pendency of the application, the respondents completed the screening of the applicants and found the petitioners ineligible for interview vide a proceeding of the Selection Committee headed by the Development Commissioner, Government of Bihar. The said decision of the respondents has been challenged by filing I.A. No. 9759 of 2015. Similar application, being I.A. No. 7726 of 2014 has been filed in CWJC No. 15221 of 2014.

4. The State Government, in exercise of power under sub Sections (1) and (2) of Section 73 of the 1995 Act framed Rules called the Bihar Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (Amendment) Rules, 2013 (for short "the Rules"), a copy whereof is annexed at Annexure A to the counter affidavit. Such appointment of the post is to be made on contract basis. The State respondents published the advertisement (part of Annexure-B to the counter affidavit) inviting applications from the eligible candidates/applicants. Clauses 5 and 6 thereof, set out the "Educational Qualification" and the "Experience" required for the post. Applications were invited on line. As many as 41 persons applied on line. After scrutiny, only 23 applications were found in order which includes the writ petitioner(s) who figured at Sl. Nos. 12 and 18 of the list a copy whereof is enclosed at Annexure-D to the counter affidavit.

5. Before dealing further, it is essential to note the relevant provisions of the Rules. Rule 45 of the Rules, enables the State respondents in the Department of Social Welfare to appoint State Commissioner, Disability on contract basis or in case of vacancy on deputation basis. Sub Rule 3 of Rule 45 provides the eligibility for appointment of the State Commissioner Disability and reads as under:-

"(3). Eligibility for appointment of State Commissioner Disability - In order to be eligible for the appointment as State Commissioner Disability, a person must satisfy the following conditions, namely:-

(i) He should have special knowledge or practical experience in respect of matters relating to rehabilitation of persons with disabilities;

(ii) He should not have attained the age of 62 (sixty two) years on the 1st January of the year in which the last date for receipt of applications, as specified in the advertisement issued under rule 45 falls;

(iii) He must possess the following educational qualification and experience, namely

A. Educational qualifications - 1. Essential: Graduate from a recognised university.

II. Desirable: Recognized degree/diploma in Social Work/Law/Management/ Human Rights /Rehabilitation/Education of Disabled Persons.

B Experience - Should have at least 20 (twenty) years experience in one or more of the following types of organizations at specified levels:-

(I) In a group "A" level post in Central/State Government/Public Sector Undertaking/Semi Government of Autonomous Bodies dealing with disability related matters and/or social sector (Health/Education/Poverty alleviation/ Women and Child Development); or

(II) A senior level functionary in a registered national or international level voluntary organisation working in the field of disability/social development; or

(III) Senior Executive position in a leading private sector organization, involved in

social work and in charge of handling social development activities of the organisation :

(iv) Provided that out of the total twenty years experience mentioned above, at least three years of experience in the recent past should have been in the field of empowerment of persons with disabilities."

6. In accord with the Rules, the advertisement provided for Educational Qualification and work experience for the post in question.

7. It has been submitted on behalf of the petitioner(s) that no one should have been considered for the post who was not registered with the Rehabilitation Council of India constituted under the 1992 Act. Petitioner of CWJC No. 2861 of 2015 is duly registered professional. The work experience enclosed in support thereof is at Annexure-7 wherefrom it appears that Secretary of Gita Mahila Utthan Samity certified that the petitioner was instrumental in providing information regarding disabled females in relation to their education and rehabilitation. On the basis thereof, he claims the requisite experience as required under the Rules and the terms of the advertisement. It has been pointed out that the petitioners have been arbitrarily left out in the screening by the Selection Committee under the Chairmanship of the Development Commissioner assigning vague reasons. Further, the reason assigned for not considering his case, is not compatible with the Rule provisions as well as the conditions spelt out in the advertisement. The Rule provisions do not provide for mini selection before selection. The reasons having not been set forth in the proceedings of the Selection Committee cannot be supplemented by affidavit. In order to support his contention the petitioner has relied on an order passed by the learned Single Judge of the Delhi High Court in WP(c) no. 196 of 2007. The petitioner has asserted that he has requisite experience for the post as is evident from the list prepared by the respondent after initial scrutiny (Annexure-8).

8. Per contra, the respondents, while opposing the writ petition, has submitted that pursuant to the advertisement dated 24.1.2014 issued by the Social Security and Disability Directorate, Department of Social Welfare, Govt. of Bihar, applications were invited for appointment on contract basis. The petitioners filed their applications on line. The eligibility criteria for the post was clearly indicated in the advertisement. Sub Rule-3 of Rule-45 provides the eligibility for the appointment on the post in-question. Clause-B of sub-Rule (iii) provides the required experience. There is proviso to this Rule which states that out of the total 21 years experience mentioned above, at least three years of experience in the recent past should have been in the field of empowerment of persons with disabilities. The petitioners, on scanning, were found lacking the aforesaid experience and as such they were not further short listed for interview. According to the Rule provisions, a panel of three persons is to be recommended after interview. Having sifted the eligible applicants out of the remaining 23 the selection committee prepared a list of 06 applicants who were found otherwise eligible in all respects. The petitioners was found lacking requisite experience in

the specified field and hence, their names were not included in the list of 06 applicants/candidates. No fault can be found with the impugned proceeding of the Selection Committee consisting of the experts. What shall be the requisite experience and what is the actual experience of the petitioners or the other applicants is a matter to be considered/examined by the Selection Committee. The same not being wholly arbitrary should not be interfered with. It is not a case where no reason or vague reason has been assigned.

9. I have heard Mr. Sanjeev Kumar Mishra in support of CWJC No. 2861 of 2015, Mr. Gyanand Roy in support of CWJC No. 15221 of 2014 as well as the counsel for the State appearing in both the writ petitions and perused the materials on record.

10. The contention of the petitioners is that only those who have been registered under the 1992 Act ought to have been considered has no legs to stand. Neither the Rule provisions nor the terms and conditions of the advertisement contemplates such registration with Rehabilitation Council of India under the 1992 Act. In fact, in making appointment, the provisions of the 1992 Act shall have no role to play. The 1992 Act provides for constitution of a Rehabilitation Council of India for regulating the training of the rehabilitation professionals. It is not the case of the petitioners that the process of the appointment on the post in question was carried out under the 1992 Act. The 1995 Act and the Rules framed thereunder provides for appointment of the Rehabilitation Commissioner Disability and the process to be adopted therefor including laying down the requisite Educational Qualification and the Work experience. The order of learned Single Judge relied upon by the petitioner was rendered in entirely different factual matrix. The said case relates to appointment on the post of Ear Mould Technicians. The process of appointment was undertaken in terms of the 1992 Act. Learned Single Judge found the selection and appointment of the respondents contrary to the statutory provisions of the Rehabilitation Council of India Act and, thus, interfered with. Moreover, said order is passed by a learned Single Judge of the Delhi High Court which has no binding force. According to the experience/work certificate of the petitioner of CWJC No. 2861 of 2015 he was instrumental in providing the information(s) to the Mahila Utthan Samiti. Petitioner of CWJC No.15221 of 2014 has, however, not enclosed the work/experience certificate. According to the Rules and the terms of the advertisement which govern the field the applicant(s) should have the following experience in one or more of the following types of organisation as specified levels:-

(I) In a group "A" level post in Central/State Government/Public Sector Undertaking/Semi Government of Autonomous Bodies dealing with disability related matters and/or social sector (Health/Education/Poverty alleviation/ Women and Child Development); or

(II) A senior level functionary in a registered national or international level voluntary organisation working in the field of disability/social development; or

(III) Senior Executive position in a leading private sector organization, involved in social work and in charge of handling social development activities of the organization

(IV) However, according to proviso under clause IV thereof out of the total twenty years experience mentioned above, at least three years of experience in the recent past should have been in the field of empowerment of persons with disabilities.

11. The respondents have stated that the selection committee after making further scrutiny found only 06 candidates qualified as per the norms and decided to allow those candidates for interview and the remaining applications of the candidates including the petitioners were rejected on the ground that they do not fulfill the requisite criteria. The Selection Committee found the petitioners lacking in experience and qualification in the arena/field of disabled persons. This is a matter which can be better appreciated by the Selection Committee consisting of the experts.

12. I have already dealt with the works/experience submitted by the petitioner of the CWJC No. 2861 of 2015 which appears to be not commensurate with the requirements of the post. The Selection Committee has clearly set out reasons for not considering the case of the petitioner(s). The Court is in agreement with the submission of the State respondent that what is the work experience required for the post in terms of the advertisement can be well appreciated by the Selection Committee consisting of the experts. On the basis of the materials placed by the petitioner(s), it would be difficult for this Court to substitute its own view on this aspect of the matter.

13. It has strenuously been argued by Mr. Roy, the counsel representing the petitioner of CWJC No.15221 of 2014 that the respondents have acted arbitrarily in effecting a mini selection before the actual selection. The argument may be attractive but, on deeper scrutiny, appears hollow. The Selection Committee is empowered to scrutinise the eligibility of the candidates in accord with the Rules and the terms and conditions of the advertisement and thereafter on completion of the selection process recommend a panel of three eligible persons for appointment on the post. The selection process itself, therefore, contemplates scrutiny at different levels. Firstly, those applications which were defecting were put aside. The experience and other qualifications of the remaining 23 candidates were thereafter scrutinized. These are the process of selection which is provided under the Rule. It is, thus, incorrect to say that a mini selection has been undertaken before the final selection. Actually, the Rules provide for such scrutiny /scanning by the Selection Committee. The said contention of the petitioner(s) is not sustainable in law.

14. In the light of the discussions made above, this Court is unable to find any merit in this writ application. Dismissed.

15. No order as to cost(s).