

(2012) 06 PAT CK 0061
In the Patna High Court
Case No : CWJC No. 3296 of 2012

Dr. Bibhuti Anand

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Citation : (2013) 2 PLJR 622

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Advocate : Y.V. Giri and Ashish Giri, for the Appellant; K.K. Singh in 3296 and Sanjeev Kumar Mishra in 6855, for the Respondent

Judgement

Jayanandan Singh, J.—In both these writ applications the facts and prayer of the petitioners are identical. The sole petitioner of the first case and the five petitioners of the second case pray for a direction to the respondents to issue them appointment letters, in view of their selection and empanelment for engagement as Specialist Dental Doctors in the district of Rohtas, and for their posting and allowing them to join. Brief facts are that an advertisement was published under the signature of District Magistrate-cum-Chairman, District Health Committee, Rohtas, inviting, applications for employment of Specialist Dental Doctors (Annexure-1). The advertisement showed the vacancies as 21, out of which 10 were for general category and the rest were for reserved category. Petitioners and others applied and a select list was prepared under the signature of the Civil Surgeon-cum-Secretary of the District Health Society, Rohtas (Annexure-2) in which sole petitioner of the first case and first three petitioners of the second case were included under general category and petitioner nos. 4 and 5 of the second case were included under reserved category. The advertisement stipulated that, out of the panel for appointment of 21 such doctors, appointment were to be made as per the availability of dental chairs and no candidate was to have a claim for his appointment only on the basis of being empanelled. Since only five dental chairs were available in the

district, first five candidates from the said select list were appointed by memo no. 584 dated 24.6.2011 (Annexure-3). Later on in its meeting dated 17.9.2011, the Executive Committee of the Society, in the light of the request of the remaining empanelled Dental Doctors, resolved that, if they furnished an affidavit that they would themselves arrange dental chairs, steps be taken for their posting. Petitioners came to know about the said decision and, vide Annexure-5 series of both the writ applications, submitted applications that they were ready to put up their dental chairs. Later on, vide Annexure-6 series of both the writ applications, the petitioners filed their affidavits also, dated 11.1.2012 and 12.1.2012, in this regard. No action having been taken by the respondents, petitioners filed their representation before the Health Minister on 17.1.2012, which was forwarded by the Health Minister to the Executive Director of the State Health Society, vide Annexure-7. By enclosing Annexure-8 series, petitioners claim that, in other districts, dental doctors have been engaged on their furnishing affidavit that they were ready to arrange and put up dental chairs at their own cost. Hence, petitioners claim discrimination and application of doctrine of promissory estoppel against the respondents to pray for a direction to them to issue them appointment letters and post them.

2. Counter affidavit has been filed in the first case which covers the case of the petitioners of both the writ applications. Apart from other averments, some important facts disclosed therein are that though the decision was taken by the District Health Society on 17.9.2011 to post those dental doctors, who were willing to manage dental chairs on their own, but the said resolution was withdrawn by the Executive Committee of the Society later on in its meeting dated 10.1.2012, a copy whereof has been annexed as Annexure-A. A letter of the District Magistrate-cum-Chairman of the District Health Society, addressed to the Principal Secretary of the Department dated 4.2.2012, annexed as Annexure-B, do show that guidelines were sought for from him in respect of joining of the selected dental doctors. Thereafter a letter of the Department, addressed to all Civil Surgeons, dated 23.2.2012, annexed as Annexure-C with the counter affidavit, shows that the State Government has put up a ban in fresh engagement of dental doctors on contract basis or on honorarium, till the posts are sanctioned by the Department.

3. Learned Senior Counsel for the petitioners submits that, once the Society had resolved to engage the selected doctors, if they furnished their affidavits that they were ready to arrange their dental chairs themselves, it was estopped from refusing to engage them, if they had accepted the said terms and furnished their affidavits accordingly. He also submits that, in other districts, in identical circumstances, the selected dental doctors have been engaged on such undertakings on affidavit. In support of his submissions he placed reliance on a judgment of the Apex Court in the case of *Dr. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran*, and particularly placed reliance on paragraphs 13, 14 and 18 thereof.

4. On the face of it, the said judgment was delivered by the Apex Court and judgment of the High Court was upheld in the particular facts and circumstances of the case. Facts of the case show that out of three sanctioned vacancies of security guards two were filled up and the 3rd candidate having refused to join, the writ petitioner being 4th in the panel claimed that he should have been offered appointment on the vacancy, which was refused by the management. The learned single Judge of the High Court did not find flaw in the decision of the management, but the Division Bench reversed the same on the ground that the policy decision, to abolish posts and outsource the function, had come much later on. On facts, the Apex Court did not find case of management as a fit case for interference in the decision of the Division Bench of the High Court. But, merely being empanelled as a 4th candidate did not create any right in the writ petitioner was acknowledged by the Apex Court. The observations of the Apex Court, in this regard, made in paragraphs 11, 16 and 18, operating against the present writ petitioners are as follows:--

11. The law operating in the field in this behalf is neither in doubt nor in dispute. Only because the name of a person appears in the select list, the same by itself may not be a ground for offering him an appointment. A person in the select list does not have any legal right in this behalf. The selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State. We may notice some of the precedents operating in the field.

16. It is, therefore, evident that whereas the selectee as such has no legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. Each case, therefore, must be considered on its own merit.

18. The application of law would, therefore, depend upon the fact situation obtaining in each case. The judgment of the High Court in view of the aforementioned authoritative pronouncements cannot be said to be perverse. The respondent was to be offered with the appointment at a point of time when no policy decision was taken. There was, thus, no reason not to offer any appointment in his favour. Why the select panel was ignored has not been explained. Even the purported policy decision was not in their contemplation. We, therefore, do not see any reason to interfere with the impugned judgment.

5. Thus it is clear that the judgment of the Apex Court, relied upon by learned Senior Counsel for the petitioners, is of no help to the petitioners. The other two paragraphs, relied, upon by learned Senior Counsel for the petitioners, i.e. paragraphs 13 and 14 only contain reference of its earlier judgments.

6. In the present case one singular fact, which demolishes all claims of the petitioners to get employment on the basis of they being included in the select list, is that, though the District Health Society, as far back as on 17.9.2011, had resolved to grant engagement to the doctors, who furnished affidavits in respect

of arranging dental chairs on their own, the petitioners did not file affidavit for more than three months and filed the same ultimately only on 11.1.2012 and on 12.1.2012, when the said resolution dated 17.9.2011 stood recalled by the Executive Committee on 10.1.2012. The applications petitioners submitted on 17.10.2011, does not show that any affidavit was being enclosed therewith, or they were ready to furnish the affidavit in terms of the resolution dated 17.9.2011. Hence, by their conduct petitioners have not shown that they had become entitled for being considered and engaged in terms of the resolution dated 17.9.2011 at any point of time prior to the resolution of the Executive Committee dated 10.1.2012, recalling the said resolution dated 17.9.2011.

7. Since the background facts and circumstances, in respect of engagement of such doctors in other districts has not been made available on record by the petitioners, they cannot derive any benefit from the same also. In the circumstances, this Court does not find any merit in both the writ applications and the same are dismissed.