

(2010) 08 PAT CK 0047
In the Patna High Court
Case No : LPA No. 405 of 2006

Dr. Kumkum Kumari Sharma

APPELLANT

Vs

The Bihar State Universities (Constituent Colleges) Service
Commission and Others

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0047

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Kr. Srivastava, JJ.—This Letters Patent Appeal has been preferred under Clause 10 of this Court Rules against the judgment and order dated 27.4.2006 passed by a learned Single Judge of this Court whereby a writ petition bearing C.W.J.C. No. 5823 of 2003 preferred by the Appellant has been dismissed.

2. It may be relevant to note that at the hearing stage no challenge was made to the selection and appointment of Respondent Nos. 9 and 10 who were selected and appointed on the basis of provisions of reservation.

3. Shorn of unnecessary factual details the dispute has finally boiled down between the Appellant, Respondent No. 8 and the Bihar State University (Constituent Colleges) Service Commission (hereinafter referred to as "the Commission") as to whether the Appellant should have been awarded 4 marks more by the Respondent Commission in course of interview on the basis of her claim for publication of her article and for higher degree of Ph.D., 2 marks each on both the heads. The further grievance of the Appellant/Petitioner is against Respondent No. 8 that she should not have been granted 6 marks against paper publication, higher degree and teaching experience.

4. The recruitment process in question was for making large number of appointments on the post of lecturers in various Constituent Colleges in the State of Bihar prior to its bifurcation. The advertisement was issued in the year 1997

by the Commission. Both the contesting parties i.e. the Appellant and Respondent No. 8 applied for appointment as Lecturer in the Department of Home Science. The Commission made its recommendation on 29.11.2002 which included the names of Respondent Nos. 8, 9 and 10 for appointment on the post of Lecturer in the Department of Home Science of Patna University and accordingly those Respondents were appointed by notification of the said University dated 25.6.2003. The Appellant as writ Petitioner has challenged the recommendation as well as the notification of appointment and made a further prayer before the writ Court for a direction to the Commission to place her at serial No. 8 of the merit list for Lecturers in the Department of Home Science and to recommend her name for appointment in Patna University. It is not in dispute that name of the writ Petitioner (Appellant herein) was also recommended by the Commission leading to her appointment and she is working as a Lecturer in Home Science in J.D. Women's College at Patna which is under Magadh University.

5. The learned writ Court considered the entire submissions and the factual back ground of the writ Petitioner and her rival in detail. It also noticed the claim of the Appellant that she should be held entitled for 2 marks for degree of Ph.D. and 2 marks for paper publication. Admittedly, out of 6 marks available for paper publication, higher degree and teaching experience, the writ Petitioner has been awarded 2 marks. The difference between the total marks of the Appellant and Respondent No. 8 is less than 4 marks as the Appellant has been awarded 83.08 marks in total whereas Respondent No. 8 has been awarded 86.62 marks. If her claim for 4 marks more had been accepted by the writ Court she would have been ordered to be placed above the Respondent No. 8 and then according to learned Counsel for the Appellant her preference for Patna University could have been considered prior to preference of Respondent No. 8 for the same University. In the alternative other submission was also considered by the writ Court. The alternative contention was that 4 marks should be deducted from the marks of Respondent No. 8 as marks were wrongly given to her for paper publications.

6. The writ Court noticed the controversy on account of claim for 2 marks for paper publication made by the writ Petitioner and on this issue the stand of the rival parties including the counter affidavit of the Commission were considered. The book "AHAR SEVA PRABANDHAN" was in the name of one Bimla Paul @ Bimla Simon with name of Kum Kum Sharma as co-author. The writ Petitioner claimed that Kum Kum Kumari was her maiden name and for claiming marks for that publication she had filed an affidavit before the Commission that she is the co-author and she has alias name of Kum Kum Sharma. According to the counter-affidavit of the Commission no such affidavit was filed before the Commission. It is relevant to note here that on account of several allegations the Vigilance Department, Government of Bihar also looked into the records of the Commission relating to recruitment in question in connection with a criminal case. It is the stand of the Commission that even from the records seized by the Vigilance Department it appears that no such affidavit was filed by the writ

Petitioner.

7. So far as Appellant's claim for 2 marks on the basis of degree of Ph.D. is concerned, the rival stand is that the Ph.D. was an initial degree relating to eligibility and therefore nobody can be granted additional marks for the degree of Ph.D. There is no averment to deny this stand or to show that any of the applicants was awarded additional marks for the degree of Ph.D. In such circumstances the claim of the Appellant that because she had qualified in B.E.T. she should have been given extra marks for Ph.D. degree is difficult to accept.

8. The alternative submissions on behalf of the Appellant are to order for deducting 4 marks given to Respondent No. 8 as noticed above, under the heading marks for paper publication and higher qualification. The main argument in support of this plea is based upon a factual claim by the Appellant that the paper publication to the credit of Respondent No. 8 was not published by any registered publisher and the Appellant claims that her efforts to verify the truth from office of the publishers at Calcutta could not succeed because the publisher could not be located. The other objection is that the publications were of the period between last date of application and the interview and hence the same could not have been taken into consideration.

9. In reply to the aforesaid alternative submission it is asserted on behalf of Respondent No. 8 that there was no decision by the Commission that the paper published must be from specified registered publisher. Only the Commission, according to learned Counsel for Respondent No. 8, could decide the general norms for testing the validity of claims of all the applicants and such norms included a decision to grant marks for paper publication made and experience gathered till the date of interview. It was submitted that marks for teaching experience given to the Appellant is also on account of such decision because prior to last date of application she had not completed one year of teaching experience which was the minimum experience required for award of marks. In reply it was asserted on behalf of Appellant that she was entitled for counting her experience on the post of Lab Technician towards teaching experience. But such claim stands negative by a clear stand of the Respondent authority that only the teaching experience of lecturer and those working on post of teachers was considered for award of such marks.

10. In the aforesaid factual background the learned writ Court declined to grant relief to the writ Petitioner not only on facts but also taking a view in paragraphs 18 and 19 of the order under appeal that the Petitioner having participated in the selection process cannot challenge the validity of the panel prepared by the Commission and appointment by the University. It was noticed that the said process had also benefited the writ Petitioner leading to her appointment to another University at Patna and in absence of a challenge to the entire selection process, the writ Petitioner could not succeed in challenging the norms adopted by the Commission for uniform evaluation of merits of individual candidates. The writ Court further held that in writ jurisdiction it was not possible, to substitute

the wisdom of the Interview Board by acting as an appellate authority. For this purpose reliance was placed upon a judgment of the Supreme Court in the case of Dr. M.C. Gupta and Others Vs. Dr. Arun Kumar Gupta and Others, The relevant observations were extracted and read as follows:

The selection is made by the Commission and advised by experts having technical experience and high academic qualifications in the specialized field probing teaching/research experience in technical, subjects, the Court should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fide against them.

It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Court generally can be.

The writ Court noted similar view of the Apex Court in the case of State of Andhra Pradesh and Another Vs. V. Sadanandam and Others, On that basis the writ Court held that the marks allotted by the Interview Board during selection process fell within the domain of the Interview Board as well as of the Commission and the same could not be questioned by this Court in writ jurisdiction.

11. Learned Counsel for the Appellant placed reliance upon a judgment of the Apex Court in the case of Raj Kumar and Others Vs. Shakti Raj and Others, to submit that in appropriate cases Courts can interfere with illegalities committed by the authorities in the conduct of selection process. Paragraph-16 of that judgment clarified the legal position. In that case the Apex Court held that where the Government had acted illegally and against the Rules under which the examinations were conducted, the Court could interfere and in such a situation a candidate cannot be told that he is stopped to question the legality of the selection process. In the present case no issue relates to violation of any rules or regulation or even the terms of advertisement.

12. Another judgment of the Apex Court cited by learned Counsel for the Appellant in the case of Krishan Yadav and another Vs. State of Haryana and others, That case related to a process of appointment where the entire selection process was alleged to be vitiated by fraud, nepotism, favoritism and arbitrariness in view of serious allegation. The matter was investigated by the C.B.I, whose report revealed acts of favoritism, nepotism, selections without interview as also on the basis of fake or ghost interviews and tampering with final records. In such a situation interference was appropriate because the challenge was to the entire selection process vitiated by such vices. In the present case as noted above there is no challenge to the entire selection process and there is no allegation of any mala fide against any authority or members of the Commission or of the Interview Board.

13. Considering the relevant facts and the submissions noted above we are not persuaded to interfere in the matter. This appeal is dismissed. In the

circumstances of the case there shall be no order as to costs.