

(2003) 08 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 3013 of 2003

Dr. Md. Shahid Jamil Khan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Citation : (2003) 08 PAT CK 0049

Judgement

S.N. Jha, J.—The Petitioner seeks direction upon the Respondents to appoint him on the post of Raj Bhasha Padadhikari (Urdu) pursuant to recommendation of the Bihar Public Service Commission contained in its letter dated 19.10.2002.

2. The Respondents have filed counter affidavit in which the Petitioner's case that he has been recommended by the Commission for appointment on the above said post has not been denied. A plea has been taken that in view of the decision of the Apex Court in I.J. Divakar and Others Vs. Government of Andhra Pradesh and Another, , empanelment does not create any right to the post. On facts it has been stated that after the recommendation of the Commission was received in the Department, procedural mistake was discovered in the upgradation order by which the post of Raj Bhasha Padadhikari (Urdu) had been created. To correct the mistake the file was sent to the Finance Department on 13.5.2003. In view of the advice of the Finance Department the proposal is now to be sent to the Finance Department for approval of the "Prashashi Padvarg Samiti".

3. The Petitioner apart from challenging the relevance of the above decision of the Supreme Court, on the strength of another decision in the case of Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, , contends that where the Commission invites applications, holds written test, conducts interviews and thereafter prepare select list and sends it to the Government, the Government cannot without any good and valid reason nullify the whole exercise. On merit of the case it has been stated in reply, that the "Prashashi Padvarg Samiti" had already approved the creation of the post of Raj Bhasha Padadhikari

(Urdu) at its meeting held on 5.9.95 under the Chairmanship of Chief Secretary. That apart, despite the recent advice of the Finance Department, no follow-up step has been taken by the Raj Bhasha Department till date to send the proposal to the said Committee for the needful.

4. The above assertion of the Petitioner regarding creation of the post of the Prashashi Padvarg Samiti has not been denied by the Respondents in their affidavit and if that is so I fail to appreciate the objection raised by the Finance Department as indicated above. Be that as it may, if the authorities are of the view that approval of Prashashi Padvarg Samiti is required, the matter should have been sent to it. After a long wait the Petitioner's name has been recommended by the Commission, it is high time that the recommendation is given effect to.

5. I may mention here that an intervention application has been filed by an unsuccessful candidate, namely, Shaikh Shamaullah challenging the case of the Petitioner. From the affidavit of the Commission which was added as party Respondent by order dated 30.6.2003, it appears that Shaikh Shamaullah participated in the interview held on 9.9.2002. This fact was suppressed by the intervenor in the intervention application. In fact when the case was taken up on 30.6.2003 an impression was given to the Court that though the interview scheduled to be held on 29.11.2000 had been cancelled, the recommendation was, made on the basis of interview held on that date. The Commission in its affidavit has clarified that mention of "29.11.2000" in the letter dated 19.10.2002, Annexure-7, was a typographical mistake. The fact of the matter is that interview scheduled to be held on 29.11.2000 stood cancelled, and the recommendation has been made on the basis of interviews finally held on 9.9.2002. These facts have been stated to make them part of this order in order to clarify the mistake occurring in the letter dated 19.10.2002.

6. In the facts of the case, I am satisfied that the Petitioner has made out a case for issuance of mandamus and accordingly the Respondents are directed to give effect to the recommendation of the Commission and issue appointment order within two months of receipt of copy of the order. If any procedural formality is required to be observed, this should be done within this period.

7. The petition stands disposed of.