
(2006) 07 PAT CK 0039
In the Patna High Court
Case No : C.W.J.C. No. 15417 of 2004

Ganesh Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Citation : (2006) 07 PAT CK 0039

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Both these writ applications involve certain common questions and, therefore, with the consent of the parties, they have been heard together.

2. Heard Mr. Aditya Narain Singh and Mr. Chakrdhari Sharan Singh, learned Counsels for the petitioners in two cases and learned A.A.G.III and learned J.C. to A.A.G.III for the State.

3. The petitioners in both the cases seek their appointment/absorption in the pay scale of Rs. 4000-6000/- instead of Rs. 3050-4590/- which has been granted to them on the ground that through the same process of recruitment against class-III posts similarly placed persons have been given pay scale of Rs. 4000-6000/-. The petitioners were Paid Managers in the Cooperative Societies and they had filed writ petitions in this Court for their absorption in class-III post in the Government service. The writ petition was allowed by this Court in the year 1994 and subsequently the State government took the matter to the Supreme Court by filing Civil Appeal No. 7357 of 1996, which was disposed of by the Supreme Court by order dated 20.8.1998 after modifying the scheme proposed by the State government in regard to the absorption of the petitioners. The said case has been reported in State of Bihar and Others Vs. Bihar Rajya Sahkarita Prabandhak Seva Sangh, Patna, and Others, . Under the directions of the Supreme Court in the said decision, the State government by letter addressed to the Bihar Public Service Commission came up with the Scheme under which 1750 class-III posts were earmarked for various paid Managers. The appointment was

to be made by permitting them to appear in three limited competitive examinations to be held exclusively for them. It was further provided that all such Paid Managers would be eligible for appearing at the said examination, whose age on 1.1.1999 was 50 years and a maximum of three attempts would be available to them. It was further provided that on being successful in the said examination they would be appointed on class-III post in the Government and from the date of appointment only they would be entitled to the benefits of service as are available to a newly appointed Government servant. It was requested by the Government to the B.P.S.C. to ensure that the appointment process was completed within four months in view of the pending contempt petition before the Supreme Court.

4. Pursuant to the same, an advertisement was issued by the Bihar Public Service Commission, which again referred to holding of special limited competitive examination, 2000 under the Cooperative Department in terms of the Supreme Court order dated 20.8.1998 under which 1750 posts had been earmarked. The other terms and conditions referred to therein were in accordance with the Government letter dated 8.3.2000. In terms of the said advertisement it is stated that 110 persons succeeded in the first attempt and they have been appointed in the pay scale of Rs. 4000-6000/-. However, so far as the petitioner, Ram Nath Singh of C.W.J.C. No. 9791/04 is concerned, he was appointed in the pay scale of Rs. 3050-4590/- although he had successfully qualified after the first examination. It appears that all the rest have been appointed in the pay scale of Rs. 4000-6000/-.

5. Thereafter, another advertisement was issued on 29.10.2000 (Annexure-5) in which it was stated that the same was in the light of the Supreme Court decision dated 20.8.1998 and in terms of advertisement No. 1 of 2000 and was the second stage of the examination to be held in December, 2000 on the orders of the Court. It was clearly mentioned therein that those candidates who had already applied pursuant to the advertisement No. 1/2000 (Ist stage), would not be required to submit a fresh application and only those, who had earlier failed to submit an application, may send the same. Pursuant to the said advertisement, the second stage examination was held and in the said examination 679 candidates qualified, including petitioner Nos. 1, 2, 3, 8, 10 and 13. However, the said petitioners were issued appointment letters in the pay scale of Rs. 3050-4590/- (Annexure-6) by order bearing memo No. 1260 dated 5.9.2002 of the District Magistrate, Saran and the order bearing memo No. 942 dated 13.8.2002 of the Collector, Gopalganj. Similarly, petitioner Nos. 4, 5, 6, 7, 8, 9, 11 and 12 appeared at the third phase examination and they were issued appointment letters in the pay scale of Rs. 3050-4590/- vide memo No. 48 dated 10.1.2004 of the District Magistrate, Saran (except petitioner No. 12 whose appointment letter is not annexed).

6. The petitioners have assailed their appointment on a lower pay scale as compared to those who were appointed after the first stage examination. The

stand of the State is that the petitioners have been given the lower scale pursuant to the decision of the State Government contained in memo No. 8825 dated 20.12.2000(Annexure-D) by which there has been a de-merger of the cadre of the Clerks into Lower Division Clerk and Upper Division Clerk and the basic grade of class-III on which direct recruitment is to be made is that of Lower Division Clerk carrying the pay scale of Rs. 3050-4590/- whereas the pay scale of Rs. 4000-6000/- is to be given only to Upper Division Clerk, which is a promotional post of the Lower Division Clerk.

7. At the outset, learned Counsel for the State took a preliminary objection regarding the maintainability of the present writ petition in view of the fact that the petitioners' Association namely, the Bihar Rajya Sahkarita Prabhandh Seva Sangh had filed contempt petitions before the Supreme Court in which all these pleas that have been raised had also been taken and the specific stand of the Sangh apart from other aspects was that the State-respondents committed contempt of the order dated 20.8.1998 of the Supreme Court by issuing appointment letters to the second stage examinees on a lower pay scale. It is stated that after considering the submissions of the petitioners' Sangh in the contempt matter, the Supreme Court by order dated 9.8.2004 had held that no case for contempt is made out and the contempt petition was dismissed. On the basis of the said order of the apex court learned Counsel for the State contends that the issue has been decided against the petitioners and the same stands concluded and cannot be reagitated before this Court in a writ petition.

8. Learned Counsels for the petitioners, however, contend that the writ petitions are maintainable and what was decided in the contempt petition was whether the State-respondents had committed the contempt of the order dated 20.8.1998 of the Supreme Court or not. It is admitted that the issues had been raised in the second contempt petition before the Supreme Court, but those issues had not been decided in the contempt petition as they could not have been so decided since the only matter to be considered in a contempt petition is whether there has been a wilful and deliberate violation of the order of the court or not. In this regard learned Counsel for the petitioners refers to the order dated 3.9.2001 (Annexure-G) passed by the Supreme Court in earlier contempt petition (Civil) No. 408/99 in which these points had also been raised but the Supreme Court had dismissed the contempt petition with observation as follows :

Learned Counsel for the respondents submits that the results have been published by the B.P.S.C. and now fresh steps have to be taken pursuant to the results announced. It is only after that the persons, who have grievances, can seek relief in an appropriate forum. The contempt petition is dismissed accordingly.

9. Relying upon the said order, learned Counsel for the petitioner submits that the apex court had itself made it clear that any grievances, if they remained after the appointments have been made by the State, can be raised in an appropriate forum and although the said pleas were again raised in the subsequent contempt

petition but the same was not in appropriate forum since issues relating to legal rights of the party can only be considered and decided in a writ proceeding and not in contempt proceeding in which there is a limited jurisdiction to consider the question of wilful disobedience or not of the earlier order of the court.

10. On consideration of the rival submissions of the parties, I find force in the submission of learned Counsel for the petitioners. The contempt jurisdiction is only concerned with wilful violation of an order of the court concerned and if any legal rights of the parties remain to be agitated, they cannot be considered in the contempt jurisdiction but the only remedy for the party in such case is to approach this Court or the Supreme Court.

11. In that view of the matter the issues raised in these cases are debatable issues and even though no contempt has been committed by the State government, but the issues will have to be decided whether the petitioners are entitled to the same pay scale as has been given to the persons who were appointed after the first stage of the examination held. The preliminary objection raised by learned State Counsel is accordingly rejected.

12. So far as the case of Ram Nath Singh in C.W.J.C. No. 9791/04 is concerned, the stand taken by the State-respondents is the same that since his appointment letter has been issued after 20.12.2000 when the cadre of clerks had been demerged and bifurcated into that of the L.D.C. and U.D.C. and therefore, he can only be appointed as L.D.C. in the pay scale of Rs. 3050-4590/-.

13. In this case, the petitioner, Ram Nath Singh, was among 110 candidates, who were selected after the first stage examination. Thereafter 7 such candidates, including this petitioner were recommended for appointment in Patna Division by letter dated 1.10.2000 issued by the Registrar, Cooperative Society, Bihar addressed to all the Divisional Commissioners. A list of seven candidates each for 10 Commissioners was enclosed and it was stated that these persons should be appointed in the Regional Office in class-III in the pay scale of Rs. 4000-6000/-. Subsequently, the Commissioner, Patna Division directed the District Magistrates to make appointment vide letter dated 8.11.2000, of all the seven candidates on the post of class-III and the petitioner was allotted to Patna District. However, while other candidates allotted to other districts were appointed in the month of November itself, the case of the petitioner, Ram Nath Singh, was delayed and ultimately the appointment letter was issued to him by memo No. 689 dated 9.4.2001 (Annexure 5) appointing him in the pay scale of Rs. 3050-4590/-.

14. Learned Counsel for the petitioners submits that the said appointment is not only contrary to the directions contained in the letter dated 1.10.2000 of the Registrar, Cooperative Society to make appointment in the pay scale of Rs. 4000-6000/- but it is also discriminatory because only on account of the delay in the appointment by the Collector, Patna, he has been made to suffer discrimination and forced to join on the lower post of L.D.C. carrying lower pay

scale. Various submissions have been made in this regard by the learned Counsel for the petitioners. However, it may not be necessary to refer to them, in view of the fair stand taken by learned A.A.G.III in the matter that the petitioner could not have been appointed on a lower post when all other persons, who have been successful in the same examination of the first stage, have been appointed on the higher post in the higher pay scale of Rs. 4000-6000/-.

15. Apart from the fair stand of learned AAG-III, there can hardly be any doubt that the petitioner was entitled to be appointed in the pay scale of Rs. 4000-6000/- since all other persons, who had appeared in the same examination, have been appointed in the same pay scale and thus the petitioner cannot be made to suffer for the laches of the District Magistrate, Patna. In the said circumstances, it is directed that the respondent authorities shall appoint the petitioner, Ram Nath Singh, on the higher post of clerk in the pay scale of Rs. 4000-6000/- as has been granted to other such employees in stead of Rs. 3050-4590/- with effect from the date of his appointment and he would be entitled to all consequential benefits, including the payment of difference of salary and other allowances for the period in question.

16. C.W.J.C. No. 9791 of 2004 is, accordingly, allowed.

17. So far as the case of the petitioners of C.W.J.C. No. 15417/04 is concerned, the sheet-anchor of the petitioners' case is that although three separate competitive examinations were held for their appointment/absorption but they were all held pursuant to one and the same advertisement, namely, Advertisement No. 01/2000 and, therefore, the entire process of recruitment was one; and it has been done pursuant to Government letter contained in memo No. 800 dated 8.3.2000 in which not only a single cut off date for eligibility has been fixed but also the entire 1750 posts had been kept apart for appointment from amongst the PACS Managers and had been advertised also accordingly and the only requirement was that three chances were given to the candidates in order to qualify for the same. That being the position, learned Counsel for the petitioners submits that it cannot be held that there were separate recruitment processes. It is further submitted that once it is held that single process of recruitment was going on then there can be no discrimination between those who were appointed after the first examination and those who qualified in the second and third examinations, like the petitioners.

18. Learned Counsel for the petitioners also submits that reliance of the State-respondents on the latter memo No. 8825 dated 20.12.2000 is misconceived, since the same has been issued after the recruitment process had started on 8.3.2000 contained in Annexure -1 and it is a well established proposition that any appointment is covered by the rules in existence on the date when the advertisement is made and in this case the advertisement No. 1/2000 had been issued on 19.4.2000 much before the letter dated 20.12.2000. Such changes in the rules of appointment cannot affect the recruitment which is in process and apply only prospectively to any fresh appointment. Learned Counsel refers to

paragraph 5 (ii) of the letter dated 20.12.2000 in which it is clearly stated that if any appointment to the higher pay scale on the post of clerk is in process then it should be cancelled with immediate effect even if the selection process is complete such candidate, without taking a fresh fee for fresh process of recruitment for appointment to the lower post, should be given opportunity for appearing at the said process of recruitment.

19. Learned Counsel for the petitioners submits that no such process for appointment to lower post on lower pay scale had been initiated in the cases, rather they continued to be governed by advertisement No. 01/2000 dated 19.4.2000 and thus they could not have been appointed on a lower post with a lower pay scale.

20. In this connection, learned Counsel for the petitioners also refers to the direction of the Supreme Court contained in order dated 20.8.89 in which it was provided that a reasonable number of posts available, including even in the process of recruitment, be set apart for being filled up by the respondents (i.e. these petitioners). Learned Counsel for the petitioners submits that on that basis, it is the same process of recruitment against the said 1750 posts set apart by the State government under the direction of the Supreme Court that was going on and the same was never cancelled and no fresh process of recruitment was undertaken by the State. The State having not done so, they cannot be permitted now to apply the Circular dated 20.12.2000 in their cases since the same is clearly not retrospective in operation.

21. In support of his contention that the appointment should be made in accordance with the rules in force on the date when the advertisement is issued and not on the basis of any amended rules, learned Counsel relies upon the decision of the Supreme Court in the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, . In the said case the apex court has laid down that it is well established that statutory rules or Government order are prospective in nature unless, it is expressly or by necessary implication given retrospective effect. It was further held that where proceedings were initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules or Government orders and any amendment of the rules or the Government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that the amended Rules shall be applicable to the pending selections.

22. On the basis of the said decision of the Supreme Court, learned Counsel for the petitioners submits that the Government decision dated 20.12.2000 is not applicable to the case of the petitioners and has been wrongly applied by the State respondents in appointing them to the post of L.D.C. in the pay scale of Rs. 3050-4590/-.

23. Learned Counsel for the petitioners submits that all the Paid Managers were before the Supreme Court and their cases had been decided on similar footing and a common direction was issued by the Supreme Court in that regard. Thus, all such persons fall in the same category and no further classification within a class is permissible. By doing so, the State authorities have subjected the petitioners to hostile discrimination which is not permissible under Articles 14 and 16 of the Constitution of India. It is submitted that merely because some of the candidates got selected in the first phase while the petitioners could get selected only in second and third phase cannot be reason for appointing them on a lower post with the lower pay scale. It is also submitted by learned Counsel for the petitioners that as a matter of fact very difficult questions had been set when the first stage examination was held, contrary to the directions of the Apex Court, and a complaint regarding the same was made by the petitioners before the Supreme Court at the stage of the contempt petition and due notice had been taken by the State authorities of the same and accordingly a request had been made by the Secretary, Cooperative Department in his letter No. 4115 dated 30.11.2000 to the Bihar Public Service Commission, wherein a reference was made to the order of the Supreme Court dated 20.8.1998 in which it was stated that the question paper (s) for the eligible respondents must be so prepared bearing in mind, the conditions of the respondents such as age, past service, etc. On the basis of the said observation of the Supreme Court, the Commission was requested that in the subsequent examination, it should be kept in mind while setting the question papers regarding the age, period of service and service rendered in the past in the Cooperative Department. It was further admitted in the said letter that in the first stage examination, regarding question papers, particularly in Arithmetic, it was the general reaction that the question papers were of very high standard. Thus it is admitted by the State authorities that only on account of non-compliance of the order of the Supreme Court only 110 candidates could qualify in the first examination that was held and the petitioners for no fault on their part could not compete successfully in the first examination.

24. Learned Counsel for the State, on the other hand, submits that the three examinations cannot be treated as a continuous process of recruitment because even as a normal practice in recruitment rules relating to Government service, candidates are given three attempts to qualify in an examination. Thus, each examination has to be treated as a separate recruitment process and the candidates, who qualify on the basis of the said examination will form a separate class. It is further submitted that it is nowhere stated in the order of the Supreme Court that despite three examinations the whole process has to be taken as a single recruitment process. Learned Counsel for the respondents has further submitted that nowhere in the Scheme as placed before the Supreme Court and quoted in its order or in Annexure-1 the pay scale has been prescribed and therefore, the pay scale has to be given to a candidate which is prevalent on the date of appointment. The further submission of learned Counsel is that since

the three examination form separate process of recruitment, the candidates, who successfully qualify in each of those examinations will form a separate class for recruitment and there can be no question of any discrimination between the validly classified categories of persons and the provisions of Articles 14 and 16 of the Constitution of India will not come into play. Another submission of learned Counsel for the State is that had the State authorities in fact, given the petitioners the pay scale of Rs. 4000-6000/- then a discrimination would have been practised against other employees of the State government, who would be getting a pay scale of Rs. 3050-4590 alone if recruited during that time.

25. Learned Counsel for the State further points out that a false statement has been made in C.W.J.C. No. 15417/04 that all the petitioners had qualified after the second examination whereas petitioner Nos. 1, 4 to 7, 9, 11 and 12 had qualified after the third examination. It is submitted that on the basis of the said false statement made by the petitioners, this writ petition should be dismissed, because the petitioners have not come with clean hands.

26. Learned Counsel for the petitioners submits that from the relevant annexures, it is clear that some of the petitioners, as named therein, have been appointed after the third examination and some after the second examination. He has stated that the said statement has been made inadvertently and not deliberately because as per the case of the petitioners it makes no difference whether they have been selected after second or third limited competitive examination since all the three examinations were part of the same process of recruitment. I am inclined to accept the submission of learned Counsel for the petitioners since no benefit could be derived by the petitioners by stating that they have qualified after second examination instead of third examination since it is their case in the writ petition that they have been discriminated vis-a-vis the candidates of the first examination and that the entire recruitment process consisting of three examinations was one and the same. Thus, this contention of the learned Counsel for the State is rejected.

27. On consideration of the aforesaid submissions of the parties, I find that there is force in the submission of learned Counsel for the petitioners and the contentions raised on behalf of the State cannot be accepted. This case has to be considered not only on the basis of what was directed by the Supreme Court in its order dated 20.8.1998, but also what was stated by the State Government in its letter dated 8.3.2000 in the requisition sent to the B.P.S.C. as well as in advertisement No. 01/2000. In the said letter dated 8.3.2000 and advertisement No. 01/2000 dated 19.4.2000 for recruitment of 1750 posts a single date of eligibility had been prescribed, namely, 1.1.1999, on which date the candidates should not have been above 50 years of age. Further after the said examination, the second advertisement dated 29.10.2000 also speaks of the continuity of the recruitment process under advertisement No. 01/2000 and it was clearly provided therein that the candidates, who have already applied under the said advertisement need not apply fresh. There cannot be a better example of the

recruitment process being the same when the clear statement is that no fresh application was required, if the candidates applied pursuant to the earlier advertisement. In fact, it was made clear that all the previous terms and conditions as per Advertisement No. 1 of 2000 shall remain as they are.

28. Once it is held that the entire recruitment process was one and the same and in 1750 posts were covered by the same advertisement then it has to be held that letter dated 20.12.2000 has no application to the case of the petitioners. The said letter in its own terms is prospective in operation. The letter also clarifies for the benefit of the appointing authorities that they should not make appointment against the post of clerk even if the selection process is complete but should cancel the same and start a fresh recruitment process in which the appointment should be made against the Lower Division Clerk. No such action has been taken by the authorities in the present case to cancel advertisement No. 1/2000 and issue a fresh advertisement for the post that remained after 110 had been filled up following the first examination, rather the authorities continued to complete the process, which was started pursuant to advertisement No. 1 of 2000 against 1750 posts and thus, it must be held that it is the same recruitment process under which the petitioners, who qualified in the second and third examination, have been selected.

29. In these circumstances the authorities have wrongly applied letter dated 20.12.2000 to the case of the petitioners and appointed them on the post of L.D.C. in the pay scale of Rs. 3050-4590/-. Moreover, it is clear from the letter dated 30.11.2000 of the Secretary, Cooperative Department that the question papers that had been set in the first examination were not in accordance with the directions given by the Supreme Court in its order dated 20.8.1998 and the same were accordingly rectified during the second and third examinations so that more candidates were enabled to qualify in the examination, as was the whole purpose of the Scheme.

30. In the aforesaid facts and circumstances this writ petition being C.W.J.C. No. 15417/04 is also allowed. The authorities are directed to appoint the petitioners on the higher post in the pay scale of Rs. 4000-6000/- with effect from the date of their appointment. It is further directed that the petitioners would be entitled to all the benefits on account of the said higher pay scale from the date of their appointment, including the difference of salary and allowances due to them.