

(1992) 07 PAT CK 0020

In the Patna High Court

Case No : C.W.J.C. Nos. 1064, 2364 and 3859 of 1991

Gopal Krishna and Others, Arun Prakash and Others and Arun Prakash

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Citation : (1992) 07 PAT CK 0020

Judgement

S.B. Sinha and I.P. Singh, JJ.—All these writ applications involving common questions of fact and law were heard together and are being disposed of by this common judgment.

2. In all these writ applications the petitioners have prayed for issuance of a writ of or in the nature of mandamus directing the respondents to appoint them as Assistant Teachers purported to be in terms of a panel prepared by the Vidhalaya Seva Board (hereinafter referred to as the Board).

3. In CWJC No. 3859/91, the petitioner thereof has made an additional prayer to the effect that the order of the Director Secondary Education Patna whereby the panel of different subjects including "Biology" had been cancelled be directed to be quashed.

4. The fact of the matter lies in a narrow compass. On 29-7-1988 the Board issued an advertisement in the daily news-papers inviting applications for appointment to the post of Assistant Teachers in different subjects including Biology. The petitioners applied for their appointments as Assistant Teachers in the subject of Biology and subsequently interview was held as a result whereof 499 candidates were declared successful. The said result was published on 15-2-1990. The names of the petitioners were recommended by the Board for their appointment in "Biology".

According to the petitioners other panels were also prepared and during the course of last one year appointments have been made from other panels, but the

Government has not yet taken any decision in respect of the appointment of this subject and out of the said panel. Thereafter a letter from the Director Secondary Education Bihar, Patna addressed to the Board indicated was issued wherein it was asserted that the Government has cancelled the said panel including others and directed the Board to prepare a fresh panel.

5. In CWJC No. 2364 of 1991 a counter affidavit was filed wherein inter alia it has been contended that the Vigilance Department had pointed out several irregularities committed by the Board as a result whereof the Chairman and other members have been removed and the State had taken a decision to cancel the panels of different subject like Biology, Geography, Music Bengali etc.

6. In the said counter affidavit, it was further stated that the applicants who submitted their applications against the old vacancies need not give any fresh applications and if they pass upper age-limit that should be condoned and that they would have given chance against the fresh vacancies which may be advertised by the Bihar Vidhalaya Seva Board.

7. The Director Secondary Education of the Human Resources Development Bihar by a letter dated 20-2-1991 addressed to the Chairman of the Bihar Vidhalaya Seva Board had intimated about the said stance of the State of Bihar. The said letter dated 20th February, 1991 contained in Annexure-A to the counter affidavit.

8. In CWJC 2364 of 1991, the petitioner moved for an interim relief which was refused by a Division Bench of this Court stating :

In view of certain allegation made by the Vigilance, the whole process of selection is sought to be challenged including allegations against the Chairman. In that view of the matter, we cannot pass any interim order in favour of the petitioners at this stage. However we direct that it will be open to the petitioners to challenge such cancellation of the panel, if any and this order will not prevent the respondents to act in accordance with law. But, if any fresh empanelment is made, that will be abide by the result of this application and no appointment is to be made without prior leave to this Court.

9. The CWJC No. 3859/91 has been filed in terms of the aforementioned observations made by this Court wherein, as noticed hereinbefore, the aforementioned order of cancellation of panels has been questioned.

10. learned Counsel appearing on behalf of the petitioners has submitted that the order of cancellation of panel is non est in eye of law, since neither the procedures therefore have not been followed nor the order has not been published in the official Gazette-It has further been submitted that even if the order be deemed to have been validly passed by the Government, the Government does not have the authority under the provisions of Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981 to pass such order of cancellation.

11. It has also been submitted that the Board is an autonomous body constituted

under the said Act and the Government does not have any power to interfere with the working of the Board and had no legal right to cancel the panel prepared by the Board. The Government can remove the Chairman and other member of the Board on the grounds mentioned u/s 10 of the Act. It has also been argued that since this question was subjudiced in CWJC No. 933/91 the cancellation of panel was against the principles of natural justice.

12. It has been further submitted that the petitioners have acquired legal right to be appointed as teachers after they have been declared successful by the Board and their names were sent for appointment to the Director Secondary Education Human Resources Development Department, Bihar Patna. The petitioners have a legitimate expectation to be appointed as Assistant teachers in Biology when their names were recommended by this autonomous body. It has also been submitted by the learned Counsel appearing on behalf of the petitioners that the Board has followed all the rules and norms as prescribed by the Government regarding process of selection and not a single irregularity in relation to process of selection has been pointed out in the counter affidavit as contained in Annexure-2 to the writ application.

13. It was further submitted that the State has neither disclosed the authority who had directed cancellation of the said panel nor the purported order of cancellation having been disclosed, the same must be held to be null and void.

14. It was further submitted that the State has also not furnished any details about any irregularities allegedly committed by the Board.

15. The learned Counsel appearing on behalf of the petitioner has also submitted that the action of the State is wholly arbitrary and unfair. It was submitted that although the panel was prepared in February, 1990, nothing was done upto November, 1990 and when the petitioners filed the aforementioned CWJC No. 2364 of 1991 the impugned order had been passed.

16. The learned Counsel appearing on behalf of the State, on the other hand, as drawn our attention to Paragraph 19 of the writ application in CWJC No. 2364/91 and it was submitted that therein petitioner referred to CWJC No. 933 of 1991 and a Division Bench of this Court by an order dated 22-11-1991 has dismissed the said application.

17. According to the learned Counsel the decision is binding upon the petitioners and on this ground alone no relief can be granted to them.

18. In *Ashak Kumar Sharma v. State of Bihar*, CWJC No. 933 of 1991 a Division Bench of this Court had dealt with the self-same matter and upon referring to a decision of the Supreme Court in *Shankarsan Dash Vs. Union of India*, observed :

In view of the ratio laid down by the Supreme Court in the aforementioned case, the petitioners cannot claim that simply because their names have been included in the panel, they have got every right to be appointed.

19. The court thereafter found :

From bare reference to the facts, as stated above, it is apparent that a Vigilance case, referred to above, with respect to large number of allegations of irregularities and favouritism and other allegation is pending against Sri Poddar who was the Chairman of the Board at the relevant time. It appears that, on primary inquiry, the State Government and the Vigilance Department are satisfied that the allegations against Sri Poddar are prima facie correct.

Pursuant to a direction issued in this case, learned lawyer for the Vigilance Department has appeared along with the entire records of the case, he has also supported the stand of the State Government with respect to the allegations against Sri Poddar.

In the aforesaid background, a question arises for consideration as to whether this Court after noticing all the facts indicated above, should direct the State Government to make appointment of the petitioners whose names were included in the panel prepared under the Chairmanship of Sri Poddar. In our view, the answer must be in negative. Therefore, it would not be in interest of justice to issue such direction. Accordingly, I reject the prayer of the petitioners for issuing a writ of mandamus against the respondents to make any appointment out of the panel in which the names of the petitioners were included.

20. In that writ petition a contention was also raised that some persons have been appointed out of the said panel and this Court repelled the said contention holding that the court cannot direct further appointments to be made which would amount to perpetrating of illegality.

21. The aforementioned decision of the Division Bench is binding upon this Court and applies in all fours to the facts and circumstances of the case.

22. It will not be out of place to mention that while the Bench deciding Sankarsan Dash's case (supra) only found a prima facie case against the Chairman and other members of the Board but in the counter affidavit filed in CWJC No. 2364 of 1991 it has categorically been stated that they have been removed from the Board ex facie, therefore, statements of the State to the effect that the aforementioned extreme steps have to be taken as the Board committed many irregularities in the matter of recommendations of the candidates for appointment as Assistant Teachers have to be accepted.

23. The only other contention which is required to be noticed is as to whether the State has any legal authority under the Act to cancel the panel prepared by the Board.

24. Section 10 of the said Act inter alia provides for constitution of the Board as also the powers of the Chairman thereof.

25. The Board is constituted only for the purpose of making recommendations to the State for appointment in the posts of Assistant Teachers.

26. By a notification dated 21st February, 1985, the State had resolved that it shall appoint Teachers only in terms of the recommendations of the Board wherefore the Board would send the names of the successful candidates in different subjects to Director of Secondary Education. Neither Section 10 of the Act nor the aforementioned notification dated 21st February, 1985 put any embargo upon the State to reject the said recommendations. The Board also in its counter affidavit has categorically stated that the duty of the Board is only to send its recommendations and it is for the State to make appointments or not. The State as employer has every right either to make appointment or not to make appointments. The said Act does not contain any provisions whereby imperative upon the State to make appointment only because the Board had recommended some names.

27. The only embargo on the State to exercise its jurisdiction in the matter is that the State cannot make appointment of any person whose name does not appear in the panel prepared by the Board.

28. As noticed hereinbefore, that Division Bench in Ashok Sharma's case (supra) has taken notice of the decision of the High Court in Shankarsan Dash Vs. Union of India, .

Yet recently the Supreme Court in Dr. P.K. Jaiswal Vs. Ms. Debi Mukherjee and others, has categorically that held no person has a vested right for appointment.

29. In all these applications the petitioners have prayed for issuance of a writ of mandamus directing the State to appoint them pursaunt to the recommendations of the Board. It is now well known that a writ of mandamus can be issued only when the petitioner proves existence of a legal right in himself.

The petitioners evidently do not have legal right to be appointed.

30. In the facts and circumstances of the case and particularly in view of the fact that the life of the panel has expired which has also been stated by the petitioners themselves no relief as prayed for, can be granted to the petitioners.

31. However, before parting with this case, it may be observed that the State should take immediate steps for filling up the vacant posts and shall abide by its assertions made in its counter affidavit in CWJC Ro. 2364 of 1991 as mentioned hereinbefore.

32. These writ applications are, therefore, dismissed with the aforementioned observations. In the facts and circumstances of the case, there will be no order as to costs.