
(1999) 04 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 723 of 1995

Guljari Lal Nanda and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1999) 2 BLJR 1241

Hon'ble Judges : Ashok Kumar Ganguly, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Ganguly, J.—This writ petition has been filed by one Gulzari Lal Nanda and three others for a direction upon the respondents to consider their cases for appointment on the post of Ayurvedic Medical Officer in accordance with the reservation policy existing at the time of advertisement.

2. The facts of the case are that these petitioners applied for appointment to the post of Ayurvedic Medical Officer pursuant to advertisement No. 24/89 with the requisite fees and caste certificate and so on. The petitioners claim that they belong to the most backward class category. The further case of the petitioners is that the advertisement was for a total vacancy of 195 posts. The petitioners further case is that they received call letters as eligible candidates to appear in the Screening Test and they also received admit cards.

3. On 10.1.1993, the Screening Test was held by the Bihar Public Service Commission (hereinafter called the said Commission) in which the petitioners along with all the eligible candidates numbering about 3,000 appeared for the Screening Test and the results of the said Screening Test held on 10.1.1993 were declared by the said Commission on 24.2.1993 and published in the daily "Hindustan", Patna edition on 25.2. 1993.

4. It is not in dispute that the result of the said Screening Test was challenged by

some persons who failed in the said Screening Test by filing two writ petitions being C.W.J.C. Nos. 2512 of 1993 and 2646 of 1993. Both the writ petitions were heard together and by a common judgment this Court allowed the writ petitions filed by the petitioners of these cases and set aside the Screening Test held on 10.1.1993. The learned Judges of this Court held that the said Commission should issue a fresh advertisement and pursuant to such advertisement appointments were to be made.

5. Being aggrieved by the said decision of this Court, some successful candidates challenged the same by filing SLP before the Hon"ble Supreme Court and thereafter on a contested hearing, the Hon"ble Supreme Court set aside the said judgment of this Court and upheld the Screening Test.

6. The petitioners' case, is that they have come to know that there are still some vacant posts of backward class out of total of 195 posts and as such the petitioners are challenging the said Screening Test held by the said Commission, inter alia, on the ground that the said Commission at the time of preparing the result of the said Screening Test did not follow the reservation policy. Therefore, the case of the petitioners should be reconsidered against the vacancies which have not been filled up as yet. The further case of the petitioners is that the said Commission declared the final result of only 144 candidates against 195 vacancies without holding any main examination and the petitioners came to know on the basis of the annual report of 1992-93 published by the said Commission in the year 1995 that the reservation policy has not been followed at the screening stage.

7. The main question which is troubling this Court is that after the Screening Test was challenged and the Hon"ble Supreme Court has affirmed the same as valid, will it be open to the petitioners to challenge the said Screening Test once again by filing this writ petition ?

8. The answer to this question is very vital inasmuch as if the Court finds that such challenge is not possible because of the bar of res judicata or constructive res judicata and principles analogous thereto, in that case the challenge of the petitioner filed in this writ petition cannot be examined on merits.

9. When this question was specifically put by the Court to the learned Counsel for the petitioners, learned Counsel tried to get over this difficulty by urging two points, firstly that the petitioners are not parties to the previous proceeding at any stage either before the High Court or before the Supreme Court. Therefore, they are not bound by the said decision of the Supreme Court. Secondly, this point that the respondent Commission did not follow the reservation policy was not urged before the Supreme Court and this point could not have been urged by the parties as the fact that the reservation policy was not followed was not known to the petitioners.

10. Since this question is closely related with the entire adjudication of the dispute in this case, this Court is answering this question first.

11. Before doing so, this Court proceeds to take into consideration the judgment of the Supreme Court in this matter in the case of Subhash Chandra Verma v. State of Bihar reported in 1995(2) P.L.J.R. page 39 (SC). In the said judgment, the Hon''ble Supreme Court took into consideration various aspects of the said Screening Test held by the said Commission and the result of the said Screening Test which was declared on 24.2.1993. It goes without saying that the result of the same Screening Test which was the subject-matter of adjudication before the Supreme Court has also been challenged in this writ petition.

12. In paragraph 45 of the judgment in Subhash Chandra Verma (Supra), the Hon''ble Supreme Court after detailed adjudication held thus:

The selection made by the B.P.S.C. to the post of Medical Officer (Ayurvedic) are upheld.

13. Now by filing this writ petition, the petitioners are virtually questioning the said finding of the Supreme Court namely, the selection by the Commission for the post of Medical Officer, Ayurvedic. It may be that challenge is on a ground which was not urged before the Supreme Court. But, this Court cannot accept that the grounds which are urged here could not have been urged in the previous proceedings which went up to Supreme Court.

14. It was well-known to the petitioners from the advertisement itself that the Screening Test will be held. So at the time of Screening Test of the petitioners, if the reservation policy was not followed at all, the petitioners who are claiming such reservation will come to know about it. But if they have not protested there or even after the results were out. Can they challenge it now? That also after a complete adjudication on merits of the selection process which has taken place. And the Hon''ble Supreme Court has certified it as valid. The answer has to be in the negative.

15. The facts of the case would show that the petitioners continued as just fence-sitters and allowed the aforesaid proceeding to reach its finality and only after the aforesaid proceeding reached finality in the Supreme Court and the judgment in the case of Subhash Chandra Verma (Supra), was delivered on 13.12.1994, this writ petition with the aforesaid ground was filed by them some-time in the month of January 1995 as according to them, it was a new ground on which they claim that there should be fresh adjudication. Therefore, in the background of this fact, the Court is to consider whether it is permissible at all to encourage such a limitative exercise by the petitioners.

16. The principles of res judicata are based on sound public policy. Public Interest demands that a finality should be attached to a litigation, These principles which are very old and can be traced even in Hindu Jurisprudence have been recognised u/s 11 of the Code of Civil Procedure. The principles are viewed with such importance that it has been specifically provided u/s 11 of the CPC read with Explanation IV that any point or principle which could have been argued or ought to have been argued but have not been argued shall be deemed to have

been raised and it will be deemed to be a matter directly and substantially in issue in the previous proceedings. There fore, the principles of res judicata have been given an extended operation and are known as the principles of constructive res judicata and the principles analogous thereto. Therefore, on the basis of those principles which are very well established in the administration of justice, the present application filed by the petitioners cannot be entertained. The principles of Constructive res judicata are attracted to writ proceedings as well, reference in this connection may be made to the decision of the Supreme Court in the case of T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, .

17. The question that the petitioners were not parties to the previous proceeding is of no consequence. In several decisions of the Supreme Court, it has been held that when the Supreme Court decides an issue and gives a declaration, such a declaration operates as a judgment in rem. In the instant case, the finding given by the Supreme Court in the case of Subhash Chandra Verma (supra), has the character of a declaration of which can be called a judgment in rem and which is good against the whole world. This Court in this connection has in mind the declaration given by the Supreme Court in paragraph 45 of the said judgment that the "selection made by the B.P.S.C. for the post of Medical Officer (Ayurvedic) are upheld." This declaration is not only binding on the parties to the proceedings but is also binding on all those parties who have participated in such selections process including the petitioners.

18. This can be better explained, if it is considered from a different angle. If for instance, the Hon"ble Supreme Court had, instead of setting aside, upheld the judgment of this Hon"ble Court whereby the same selection proceedings were quashed and a fresh advertisement and selections were ordered. The petitioners, without being parties to these proceedings, would have got the benefit of such a judgment in-rem. But as the Supreme Court held otherwise and upheld the selection proceedings by a judgment in-rem, they have suddenly woken up immediately after the Supreme Court judgment and filed this writ petition. That is why the Court thinks that they, as fence-sitters, have missed the bus.

19. A judgment in-rem may be defined as a judgment of a Court of a competent jurisdiction determining the status or the disposition of the thing, as distinct from the particular person interested in it from the parties to the litigation (See Halsbury's Laws of England, 14th Edition Vol. 26 para 523). In the instant case, the status of the said selection procedure conducted by the said Commission has been upheld as valid by the Supreme Court. This declaration also binds the petitioners.

20. The concept of judgment in rem has been explained more comprehensively in Corpus Juris Secundum (See Vol. 50 para 907) where it has been explained that "a judgment in rem, as distinguished from a judgment in personem...is an adjudication pronounced on and affecting the status of some particular things or subject-matter, which is the subject of controversy, by a competent Tribunal, and

having the effect of binding all persons, having interest, whether or not joined as parties to the proceeding in so far as their interest in the Res is concerned.

(underlined for emphasis)

21. Therefore, going by those principles, this Court cannot but hold that the aforesaid declaration given by the Supreme Court in the case of Subhash Chandra Verma (supra), also binds the petitioners.

22. Apart from that, this Court in order to satisfy its conscience whether the principles of reservation was followed at the Screening Test looked into the stand taken in affidavits filed by the said Commission.

23. In the counter-affidavit filed on behalf of the said Commission in this proceeding, it has been asserted that on receipt of Annexure-R-3/D the revised Roster Clearance approved by the Department and which was communicated to the Commission vide letter dated 23.11.1994 was followed. The Commission sent the recommendation vide its Annexure-R3/C.

24. In this connection this Court refers to paragraph 12 of the supplementary counter affidavit filed by the said Commission on 16.12.1998 pursuant to the direction of this Court. It has been stated that according to the new reservation policy as per the Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and other Backward Classes) Amendment Act, 1993, the reservation policy was followed by the said Commission at the time of Screening Test. In paragraph 12 of the said affidavit it has been stated that none of the four petitioners could qualify in the Screening Test. As such their names did not find place in the combined merit list prepared by the said Commission pursuant to advertisement No. 24/89. The same thing has also been stated about the intervenors whose name was at serial No. 309 of the combined Merit List and he had secured 43.55 marks in academics and 38 marks in the interview for his performance and in all secured 81.55 marks. It has been stated that the last candidate recommended in the backward category was at serial No. 187 in the combined merit list who had secured a total of 93.12 marks. Therefore, there is prima facie evidence in this proceeding that the result of the Screening Test was prepared in accordance with the new reservation policy and the names of the petitioners and the intervenor could not be recommended because they did not fare well in the interview and having regard to the marks obtained by them in their academic qualification.

25. For the reasons aforesaid this Court is of the opinion that this writ petition cannot be entertained for a fresh adjudication on the question whether the said Screening Test was validity held. This writ petition is, therefore, dismissed. There will be no order as to cost.