
(1999) 03 PAT CK 0056
In the Patna High Court
Case No : M.J.C. No. 2231 of 1998

Hridyal Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Citation : (1999) 2 PLJR 84

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Sanjay Kumar Singh, for Petition No. 4 and Arvind Kr. Singh, for the Appellant; Ashok Kumar Singh and Anil Kumar Tiwari for the B.P.S.C., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the Petitioners for initiation of proceeding for contempt against the opposites parties alleging wilful disobedience of the directions given by this Court vide judgment and order dated 3rd February" 98, passed in C.W.J.C. No. 1376/97.

The aforesaid case was preferred by successful candidates of 3rd Graduate Level Competitive Examination (for short 3rd Examination) for filling up the Class-III Graduate level posts. This Court by aforesaid judgment directed the opposite parties to make requisition of posts which were vacant upto 31st December" 93 with further direction to recommend and then to appoint the successful candidates against one or other posts as detailed in the judgment.

2. The grievance of the Petitioners is that the posts in pursuance of 3rd Examination were ordered to be filled up and total exercise was to be completed within six months, but because of wilful disobedience of court's order, all the posts have not yet been filled by the opposite parties. Allegations have been raised against one or other opposite parties for not making requisitions relating to posts in terms with Court's order and judgment aforesaid with further allegation against the opposite parties B.P.S.C. and its authorities in not making recommendation of successful candidates to fill up such posts. Separate show

cause have been filed on behalf of one or other opposite parties. While all of them sought for unqualified apology and stated that they cannot think even in dream to disobey or flout the order of this Court, have given details of action already taken from their end.

In the show cause individually filed on behalf of Opposite Party Nos. 2; 7; 8; 10; 11; 13; 15; 16; 17; 18; 19; 21; 23; 27; 28 and 29, while they have given details of action taken, appointments made in some of the cases etc., certain other facts and difficulties have been shown by other opposite parties in their respective show cause.

3. In a separate affidavit filed on behalf of B.P.S.C., it is stated that most of the requisitions from various Departments in pursuance of Court's order have been made with specific subject of the candidates at different level. This Court vide order dated 25th July" 97 passed in C.W.J.C. No. 795/97 has been pleased to hold that the candidates for the 3rd Examination are to be recommended for appointment in order of their merit in the common list. According to the B.P.S.C., in pursuance of the said judgment, subject barrier fixed by the State is to be ignored and against such judgment, L.P.A. No. 1081/97 has been preferred by the Commission (BPSC) before this Court which has been admitted and pending along with some other L.P.A. preferred by aggrieved parties and they are awaiting final disposal. On the above pretext, it has been stated that it was/is not possible for the B.P.S.C. to recommend the names of the successful candidates as per the requisitions of the Department with specific subjects, which may amount to violation of the order passed by this Court in C.W.J.C. No. 795/97. Inability has been shown to recommend the name on the basis of order and judgment passed in C.W.J.C. No. 1376/97.

Further complaint has been made on behalf of the B.P.S.C. that certain requisitions have been made by one or other Departments which are not complete or no recommendations has been made by one or other Department of the State in respect of one or other posts which were subject matter of C.W.J.C. 1376/97.

4. From show cause filed on behalf of opposite party No. 5, Director Health Services, it appears that requisitions for 54 posts of Malaria Inspector has already been made vide letter dated 2nd November" 98. In respect of post of Health Educator, it is stated that vacancy from 43 districts, total 306 in number has been received and forwarded to B.P.S.C. by letter dated 22nd December" 98.

Some of the Civil Surgeons, including those at Vaishali, Gopalganj, Godda, Araria, Hazaribagh, Kodarma, Chatra, Chaibasa, Sheikhpura, Banka, Sahebganj and Garhwa were asked to send the details of vacancies and information immediately by Director's letter dated 20th November" 98, but except Civil Surgeons, Gopalganj, Godda, Kodarma and Chaibasa, the rest of the Civil Surgeons have not yet submitted their vacancies and so explanation has been sought for from them on 15th January" 99, as to why suitable action be not

taken for deliberate disobedience of order of this Court and higher authorities.

5. In the show pause filed on behalf of opposite party No. 3, Secretary, Road Construction Department, it is stated that 15 posts of Research Assistants have already been requisitioned by letter dated 26th August" 98, after report from Personnel and Administrative Reforms Department. On calculation, and enquiry, the total vacancy of the post of Research Assistant has been found to be 45 as on 31st December" 93, but in respect of the rest of the vacancies, the matter has not yet been finally settled as further probe and enquiry are required and going on. After examining the whole matter, on completion of enquiry, it has been entrusted to the Secretary (Technical) to Chief Engineer, Central Design Organisation and further steps, if so required, will be taken.

6. According to opposite party No. 6, Commissioner-cum-Secretary, Welfare Department requisition for 11 posts of B.W.O. has already been made on 27th November" 98, but B.P.S.C. has not made recommendation inspite of reminder given on 25th January" 99. It is stated that 77 posts in the Directorate of Welfare were vacant till 31st December" 93. Those posts cannot be filled up by regular appointment but to be filled up on contract basis as the posts have been created under a temporary scheme known as I.C.D.S.

So far as 14 other posts of Statistical Assistants created at Divisional level which were vacant till 31st December" 93, roster clearance has been sought for and the requisitions to B.P.S.C. will be made immediately.

7. The stand of Opposite Party No. 20, Commissioner-cum-Secretary, Agriculture Department is that, it has already sent requisition on 11th December" 97 for 16 posts of Assistant Research Officer, 7 posts of Inspectors of Weights and Measures and further 14 posts of Inspectors. In respect of 20 posts of Statistical Assistants, it is stated that out of sanctioned posts of 169, 70 posts of Statistical Assistants relate to World Bank Agriculture Extension Project, which has been wound up. There is no vacancy for those posts in the Department. Action has also been taken for clearance of roster relating to two remaining posts of Inspectors of Weights and Measures and requisition will be made to B.P.S.C. immediately on getting such clearance.

8. In separate show cause filed on behalf of Opposite Party No. 26, Director, Department of Agriculture, a similar stand has been taken as taken by opposite part No. 20.

9. From the facts aforesaid, I find that the order and judgment dated 3rd February" 98, passed in C.W.J.C. No. 1376/97, has not yet been complied in its letter and spirit. For one or other reason, either requisition of various posts has not been made to B.P.S.C. in accordance with the judgment aforesaid, nor recommendation has been made by B.P.S.C. inspite of receipt of various requisitions. In fact, the stand of B.P.S.C. as taken in their counter affidavit is liable to be deprecated.

Admittedly, no stay has been granted by this Court in L.P.A. No. 1081/97 nor the said L.P.A. relates to judgment, in question (C.W.J.C. No. 1376/97).

Counsel appearing on behalf of the B.P.S.C. placed the photostat copy of judgment dated 25th July" 97 passed in C.W.J.C. No. 795/97, against which the L.P.A. is pending as well as the photo copy of the advertisement issued in 1990 in respect of 3rd Examination.

From the aforesaid judgment, I find that the result of preliminary examination was published on or about 10th August, 1995 and final result of successful candidates was published on 15th December" 96. However, on change of selection body, at the time of retirement of Ex-Chairman of the B.P.S.C, the final result was revised and revised result was published by B.P.S.C. on 14th January, 1997.

This Court by its judgment dated 25th July" 97 in C.W.J.C. No. 795/97 while took into consideration the marks as shown allotted in the advertisement for one or other compulsory and optional papers, held that the Petitioners of those cases accrued (sic-acquired?) certain right after recommendation of their names on the basis of final result and directed the B.P.S.C. to send recommendation on the basis of final result published on 16th December, 1996. By the said judgment, this Court while took into consideration the Gazette notification, held that there should not be any subject barrier and the B.P.S.C. is bound to follow the notification and it has no power to review/revise the result once published.

10. At this stage, it is pertinent to mention that details of posts were not shown in the Advertisement No. 1/90, which relates to 3rd Examination. However, it was made clear that for certain posts, one or other special subject was essential in the academic career at Graduate and Matriculate level. There was no such subject barrier made for competitive examination. While general Hindi and general knowledge were shown to be the compulsory papers, some other papers were to be opted as optional paper during the competitive examination. It is for the said reason, this Court in C.W.J.C. No. 795/97, held that no subject barrier was made in the competitive examination.

11. The counsel appearing on behalf of the B.P.S.C. fairly accepted that no separate subject barrier was made for appearing in the competitive examination (distinct from academic career) for appointment against one or other posts which were the subject matter of C.W.J.C. No. 1376/97, the judgment in question.

12. Thereby, it can be safely stated that B.P.S.C. cannot sit tight in the matter of implementation of order" and judgment dated 3rd February" 98 passed in C.W.J.C. No. 1376/97 giving reference of the L.P.A. aforesaid. In any case, there being no order of stay having passed by this Court, the B.P.S.C. is bound to comply the order and judgment passed in C.W.J.C. No. 1376/97 as well as in other writ petitions.

Similarly, one or other persons or authorities of the State cannot prolong the

matter in respect of requisition of one or other posts and if there was any difficulty, they should have sought for more time in the connected writ petition.

13. On the facts and circumstances, instead of proceeding against the opposite parties for the present, I give another opportunity to them to comply the order and direction of this Court dated 3rd February" 98 passed in C.W.J.C. No. 1376/97.

14. Accordingly, I dispose of the case with the following observations and directions:

(a) The B.P.S.C. and its authorities are to recommend the names of successful candidates for appointment against one or other posts in respect of which requisition has been received within two months from the date of receipt/production of a copy of this order.

From the chart produced by the counsel for the B.P.S.C., it appears that they have already received requisition in respect of more than 700 posts, showing therein the minimum educational qualification required.

(b) The recommendation is to be made strictly on the basis of merit basis of merit list from amongst eligible candidates. No subject barrier can be made in respect of one or other paper opted during competitive examination. However, academic career restriction, if any, made to fill up for one or other post, is to be followed. The names of such candidates, who are qualified for appointment against one or other post, is to be recommended for such post.

For example, B.Sc. is the minimum qualification laid down for appointment to the post of Malaria Inspector. It is only those who are Graduate in Science, their names can be recommended for appointment to the post of Malaria Inspector, on the basis of merit list. A person though rank above another person, but if not qualified for the post of Malaria Inspector being not Science Graduate, the name of such person cannot be recommended for such post, but the persons below him, if qualified, their names are to be recommended.

Suppose, merit list contains the names of A, B, C in order of merit and A is not qualified for appointment as Malaria Inspector, being Arts Graduate, though B is lower in the merit list, if qualified, being Science Graduate, the name of "B" is to be recommended for such post and not the name of "A".

(c) The opposite parties including the individual authorities of one or other Department of the State of Bihar are directed to issue further requisition in respect of one or other posts immediate within two months from the date of receipt/production of a copy of this order, in respect of which requisition has not yet been made in terms with judgment passed in C.W.J.C. No. 1376/977 and/or pending for roster clearance or enquiry:

(d) The B.P.S.C. in its turn is directed to forward recommendation within one month from the date of receipt of each of further requisition.

(e) In any case, the total process of selection and appointment is to be completed within a total period of three months.

It is needless to say that recommendations are to be made on the basis of merit list, taking into consideration academic barrier and the scale of post. Eligible persons having higher position in the merit list are entitled for recommendation against the post with higher scale. If one or other post is temporary post created for certain period/scheme, such post should be filled up after recommendation against the regular post on the basis of merit.

15. If one or other authorities/persons fail to comply with this order, the Petitioners may bring the same to the notice of this Court for taking appropriate steps against the erring officers/persons.

16. This M.J.C. application stands disposed of.