

(2002) 12 PAT CK 0065
In the Patna High Court
Case No : C.W.J.C. No. 926 of 1991

Jagannath Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Bihar Civil Services (Executive Branch) and the Bihar Junior Civil Services (Recruitment) Rules, 1951 — Rule 23H

Citation : (2003) 2 PLJR 521

Hon'ble Judges : S.N. Jha, J; R.S. Garg, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, Ram Vinay Sharma, Ashutosh Singh No. 1 and Ritesh Kumar No. 1, for the Appellant; Ritesh Kumar, for State, for the Respondent

Judgement

S.N. Jha, J.—This writ petition on behalf of four Petitioners was filed for quashing the decision of the State Government contained in letter No. 1 dated 7.1.91 of the Personnel and Administrative Reforms Department directing that resolution No. 133 dated 31.10.90 shall be applicable in all the cases including the cases of promotion where orders have not been issued with effect from 1.11.90.

2. Rule 23(H) (a) of the Bihar Civil Services (Executive Branch) and the Bihar Junior Civil Services (Recruitment) Rules, 1951 provides that 25% vacancies in the Bihar Civil Services (Executive Branch) i.e. Bihar Administrative Service shall be filled from amongst the eligible ministerial staff working in the Secretariat and its attached offices or the Muffasil offices, who have put in 12 years and 10 years of service in the Muffasil offices and Secretariat and attached offices respectively and are below 40 years of age.

3. On 3.7.89 vide letter No. 25-1/89-4 nominations were called for by the Board of Revenue for filling those vacancies against the 32nd, 33rd and 34th batches corresponding to the years 1983, 1984 and 1985. The Petitioners at the relevant time were Selection Grade Assistants in the Personnel and Administrative

Reforms Department or the Forest and Environment Department of the Home (Special) Department in the Patna Secretariat. Their names were forwarded by their respective departments to the Board of Revenue for considering their cases. The case of the Petitioners is that Petitioner Nos. 1, 2 and 3 were considered against the vacancies corresponding to the 33rd batch whereas Petitioner No. 4 was considered against the vacancies of the 34th batch. Sometime in the month of November 1990 the meeting of the Selection Committee was held. While the Petitioners were awaiting favourable decision they came to learn that with respect to vacancies of the 33rd batch 16 candidates of general category had been selected against 38 vacancies out of total 42 vacancies while 11 candidates of the Backward/Most Backward category and 10 candidates of the SC/ST category had been selected, one vacancy was left for the female candidate. 4 vacancies were kept pending on account of non-availability of suitable candidates of the Most Backward category and Economically Backward categories. The Petitioners further came to learn that under resolution No. 133 dated 31.10.90 of the Personnel and Administrative Reforms Department, the State Government had taken decision that the candidates of the reserved category selected on merit will not be counted in the reservation quota with effect from 1.11.90. Later, by letter No. 1 dated 7.1.91 of the Personnel Department clarified that the said decision dated 31.10.90 would be applicable in all cases including cases of promotion where orders had not been issued by 31.10.90. Earlier on 3.4.89 by letter No. 2543 the Personnel Department had clarified that appointment to the Bihar Administrative Service by selection from amongst the government servants of the non-civil service cadre will be treated as cases of direct recruitment and not promotion and as such the reservation policy as applicable to the direct recruitment will be applicable to them.

4. The Petitioners approached this Court for quashing the above said decision of the government contained in letter No. 1 dated 7.1.91. By amendment, later, he also challenged the earlier decision dated 3.4.89.

5. At the time of hearing of the writ petition, Shri Pushkar Narain Shahi, learned Counsel for the Petitioners, fairly did not go into the larger questions as to whether appointment/promotion to the Bihar Administrative Service by selection of the government servants in non-civil service cadres should be treated as direct recruitment or "promotion and whether OBC candidates selected on merit should be treated in the general category or in their own category. Counsel confined the grievance of the Petitioners to the retrospective part of the letter dated 7.1.91. He in this regard placed reliance on a Bench decision of this Court in cases of Harendra Kumar Tiwari and Ors. (CWJC No. 678/91) and Ram Prabodh Singh (CWJC No. 1338/91) decided on 23.5.91. Having gone through the judgment of this Court, copy whereof is enclosed as Annexure-18 to the second supplementary affidavit, we find the question as to whether the decision of the State Government contained in resolution No. 133 dated 31.10.90 could be given retrospective effect by letter No. 1 dated 7.1.91 has already been answered therein.

6. The facts of those cases which were little different may be noticed. On 8.1.88 the Director, Primary Education sent requisition for appointment with respect to 424 vacancies of the year 1986 in the Bihar Subordinate Education Service. In the year 1988, 240 more vacancies occurred. On 7.8.90 the Director, Primary Education sent another requisition with respect to those additional 240 vacancies. Thus, recommendation with respect to 644 vacancies were called for. The writ Petitioners participated in the written test which was the only test prescribed in the advertisement for appointment. Their results were published and they were declared successful on 18.11.90. Date was also fixed for issuance of appointment orders and the successful candidates were directed to appear for verification of their certificates in the meantime. On the appointed day the certificates were verified to be genuine. However, appointment orders were not issued to them. The Petitioners learnt that as per resolution dated 10.11.78 candidate of the reserved category on selection in excess of the vacancies for reserved category were not to be denied appointment, and accordingly 350 candidates of the reserved category were declared successful and recommended for appointment. In continuance of the resolution dated 10.11.78 the State Government had also taken another policy decision under resolution dated 31.10.90 by which candidates coming in the merit list by virtue of merit were not to be counted in the reserved category. The Personnel and Administrative Reforms Department by letter dated 7.1.91 gave the resolution retrospective effect to cover all cases where orders had not been issued.

7. On these facts this Court held that the process of selection/appointment had been initiated and concluded as per terms of the advertisement, and the rules/regulations/resolutions then existing, the same could not be altered retrospectively by an executive instruction. The Court observed that the resolution issued in the name of Governor of Bihar could not be superseded by an executive instruction and accordingly quashed the impugned letter dated 7.1.91 and directed the State Government to issue appointment letters in favour of the Petitioners for their appointment in the Bihar Subordinate Education Service.

8. Shri Pushkar Narain Shahi, after some arguments, fairly stated that the grievance of the Petitioners so far as it relates to the retrospectivity of the impugned letter dated 7.1.91 is covered by the abovesaid decision of this Court. As a matter of fact, he agreed that the letter having been quashed, nothing survives for consideration so far as its validity is concerned. He submitted that the writ petition may be disposed of with a declaration that the letter dated 7.1.91 read with resolution dated 31.10.90 shall have prospective effect and the cases of the Petitioners may be considered. Counsel for the State stated that he has no objection to such a declaration/direction being made.

9. In the above premises, we direct the Respondents to consider the case of the Petitioners in the light of the aforementioned observations without taking into consideration the letter dated 7.1.91 in accordance with law. We make it clear

that in the event of favourable consideration the Petitioners will not be entitled to monetary benefit for the intervening period.

10. The petition stands disposed of accordingly. No order as to costs.

R.S. Garg, J.

11. I agree.