
(1982) 02 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 2157 of 1982

Jai Prakash Sah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-02-1982

Acts Referred:

Citation : (1982) 30 BLJR 441 : (1982) PLJR 325

Hon'ble Judges : Y.S. Singh, J; Hari Lal Agrawal, J

Bench : Division Bench

Judgement

Hari Lal Agrawal, J.—This writ application has been filed by petitioners for quashing the letter dated 28th September, 1981 (Annexure 12) of the Director Secondary Education cum-Special Secretary, Department of Education, Government of Bihar (Respondent No. 3), which superseded the earlier letter dated 18th July, 1981 (Annexure 10) laying down the standard of evaluation for appointment of teachers in the nationalised schools changing the marks fixed for personality test/interview from 30 to 10 per cent only. A further writ in the nature of mandamus has been prayed restraining the respondents, namely, the State of Bihar and its officers from interfering with decision and criteria already fixed by the School Service Board and revising the penal of selection already made.

2. The relevant facts briefly state are that the Secretary of the School Service Board (for short "Board") issued an advertisement No. 1/81 for filling up certain vacancies in the post of teachers in the pay scale of Us. 415-745, in different subjects including (i) Biology and (ii) Science Mathematics. The applicants with prescribed qualifications and age were required to apply in the prescribed qualifications and age were required to apply in the prescribed form by 31st of March, 1981. We are, however, not concerned with other details of the advertisement.

3. The petitioners, who came within the prescribed eligibility applied for the post of teachers in their respective subjects, namely, petitioner Nos. 1 to 3 for

Sciences, Mathematics and Nos. 4 and 5 for Biology.

Petitioners Nos. 1 to 3 were interviewed on different dates by the Board when, according to Annexure 10 of 30 marks were prescribed for the personality test/interview. Thereafter a final selection list was also published on the Notice Board on 21st September, 1981 showing them as successful candidates, their serial Nos. being 683. 159 and 4/2 respectively, a copy of the selection notice posted on the Notice Board has been filed as Annexure-11.

The two other petitioners were also interviewed for the post of teachers in Biology before the issuance of the impugned letter (Annexure-12) but the selection list of this subject was not published. This letter (Annexure-11) also directed the Board that selection already made should be revised in the light of the said criteria and selection be made in accordance with the same.

The petitioners challenge this letter mainly on two grounds (i) the State of Bihar had no authority in law to issue any such direction to the Board : and (ii) the fixation of 90 per cent marks for the academic qualification and only 10 per cent for the personality test/interview was quite unreasonable and arbitrary in the prevalent chaotic conditions obtaining in the various Universities in the State of Bihar

4. In their counter affidavit respondent Nos. 1 and 2 have, inter alia, taken the pleas that the instruction contained in the letter (Annexure-12) provided a good guideline for ensuring maximum weightage for academic achievement of the candidates and minimising the scope of subjectivity in selections and for that, the State Government had got sufficient power to issue instructions to the School Service Boards. The impugned letter is also sought to be salvaged on the plea of the Special Secretary of the Board having sought instructions from the Government in this regard vide Annexure 3.

5. In order to appreciate the first point viz. as to whether the State of Bihar has had the necessary authority under the statute to issue any such direction it is necessary to notice the legislative history in brief. Before the nationalisation and take over of the non-Government High Schools in the year 1980, the High Schools were managed and controlled under the provisions of the Bihar High Schools Control and Regulation of Administration) Act. 1950 (Bihar Act 13 of 1960 and the rules framed thereunder. Under that Act, the managing committees) of the High Schools were sole appointing authorities for the appointment.

Under the Bihar Ordinance Nos. 112/74, an autonomous Body in the name and style of the Bihar Secondary Education Board was constituted which substantially curtailed the powers of the Managing Committees. This position was maintained by the successive Ordinances until the Bihar Secondary Education Board Act, 1976 (Bihar Act 15 of 1976) came into force on 31st December, 1976.

Under Section 41 of this Act Schools Service Commission was constituted for

recommending and preparing panels of assistant teachers and Headmasters for their appointments which was to be sent to the Board vide Sub-section (a) of Section 41 and out of the said panel the District Education Officer was required to appoint in order of merit district-wise, as provided u/s 44 of the said Act.

6. All the non-Government High Schools were nationalised and taken over by the State Government under the Bihar Ordinance No. 146/80 with effect from 2nd October, 1980. This Ordinance replaced the Schools Service Commission by the Schools Service Board, u/s 10, which makes the Board, an autonomous body being a body corporate having perpetual succession and a common seal etc. This Board has been empowered to make recommendation for appointment and/or promotion of teachers and Headmasters in the nationalised Secondary School to the Director of Education in accordance with the provisions of the Ordinance and the Rules thereunder. Undisputedly, on rules have been framed so far.

For brevity it may be said that the powers and functions of the Service Board and the "Service Commission" constituted under the 1967 Act are very much similar. In the year 1978 the Service Commission had sought for certain directions from the State Government with respect to revision of the evaluation done as for by the predecessor Commission by his letter dated 21st July, 1948 and the State Government by its letter dated 18th August, 1978 (Annexure 2) said that in view of the provision of the statute the Government was vested with no power whatsoever to give any direction or order to the then Commission with respect to the standard of evaluation etc. and the Commission itself was competent to take all the necessary decisions.

7. When the present Board was constituted, its Secretary again vide his letter dated 25th November, 1980 solicited some guide-lines from Respondent No. 3 but only with respect to the qualification, age and the minimum eligibility for appointment/promotion of the teachers and the Headmasters of the taken over and nationalised schools as they had acquired the status of Government servants.

8. In the meanwhile, the Board had constituted a sub-committee for going into the matter and prescribing the mode of evaluation which after making thorough investigation and other Commissions with respect to the standard of evaluation recommended that the candidates should be allotted 70 marks for their academic qualification and 30 marks for their performance at the interview. This recommendation was fully adopted by the Board vide resolution dated 25th June, 1981 (Annexure 8) but when the Government was informed of the decision, the Special Secretary ordered for staying the process of interview till the Government's decision, vide his letter dated 9th July, 1981 (Annexure-9) and ultimately the mist was cleared by the letter dated 28th July, 1981 (Annexure-10) telling Board that the stand of evaluation for the Board would be the same which was being adopted by the Bihar College Service Commission for selection of college teachers. According to the copy of the standard of evaluation adopted by the College Service Commission, 30 marks were given for the personality test and the remaining 70 marks, for other matters. It is thus clear

that ultimately and in any vires of the matter, the Government and the Board both came to unanimous conclusion that 30 marks out of 100 should be fixed for the personality test/interview; and, therefore, no controversy was left in this regard.

9. A question now arises whether the Government had still any authority to issue any direction to Board. Reliance, however, was placed by the learned government Pleader on Section 16 of the taking-over Ordinance, which reads as follows:

16 Power to remove difficulties-If any difficulty arises in giving effects to the provisions of this Ordinance or rules made thereunder, the State Government may take such action or pass such order as appears to it necessary for the purposes of removing the difficulties.

On the basis of the above provision, it was contended that the State-respondent did possess sufficient authority to issue directions to the Board. This argument of the learned Government Pleader is entirely erroneous and must be rejected. Firstly on the preliminary ground that after the writing of Annexure 10 no difficulty existed in the mode of evaluation as the Board's decision of fixing 30 per cent marks was found to be quite reasonable and in accordance with the standard prescribed by other bodies. Apart from this aspects the powers for any action or passing any such order as may appear necessary for the purpose of removing any difficulty as contemplated u/s 16 is confined for the purpose of giving effect to the provisions of the Ordinance or Rules made thereunder.

Once the Schools Service Bond was constituted in accordance with the described procedure the duty of the Government came to an end in this regard and the contents of the impugned letter (Annexure-12), by any stretch of imagination, cannot be said to be issued for the purpose of giving effect to the provision of the Ordinance. And on the fact of it, it purports to interfere with the decision of the Board an autonomous body which was created for the purpose of exercising its duty without in any way being influenced from the vagaries of the executive power of the State Government (if I may say so).

10. At this stage reference may be usefully made to two decisions of the Supreme Court *Ajay Hasia v. Khalid Majid Suharvardi and Ors.* AIR 1981 S.C. 387 and *Lila Dhar Vs. State of Rajasthan and Others*, . In the previous case, no doubt, allocation of as high a percentage 33 1/3 of the total marks for the oral interview was held to be suffering from the vice of arbitrariness and allocation of any mark beyond 15% of the total marks was held to be arbitrary and unreasonable liable to be struck down as constitutionally invalid, in the second case, the Supreme Court itself distinguished the said observation on the ground that the marks for interview test need not and cannot be same for admission to colleges and entry into the public service. The observation relating to public employment in *Ajay Hasia's* case (supra) was held to be *as per incuriam*.

Learned Government Pleader, however, contended that issuance of direction contained in the letter (Annexure-12) was necessitated on account of the various

irregularities committed by the Service Board and candidates having high academic qualifications on that account were brought down very low. The Supreme Court in *Ajay Hasia's* case (supra) itself has expressly given caution in this regard that great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification. In my opinion the remedy for the calamity which induced respondent No. 3 to issue the letter (Annexure-12) is not to reduce the oral test to such a lower level to make it almost redundant. The adoption of "free hand" unfair means at the examinations almost at all levels as well as gross inadequacies in the standard of marking of the answer books by the different Universities in the Bihar is well known. In that view of the matter, in my opinion, allotting only 10 marks for the personality test/interview would be too low and unreasonable, unless and until the pattern of examination by the different Universities is standardised and discipline is restored in the examinations. The Supreme Court in the latter case has also referred to the report of the Kothari Committee on Recruitment Policy and Selection Methods where it has been pointed out that as a general rule it is easier to evaluate objectively, and the technical proficiency demanded in rating is usually, although not always less. The oral test has long served as a basic selection tool in private employment. I am tempted to borrow again from the said judgment practice from the United Nations Hand-Book on Civil Service Laws action.

.. the written papers permit an assessment of culture and intellectual competence. The interview permits an assessment of qualities of character which written papers ignored it attempts to assess the man himself and not his intellectual abilities.

11. It is thus obvious that the written examination as well as the personality test are both equally relevant for a proper selection and "in the case of services to which recruitment has necessarily to be made from persons of nature personality, interview test may be the only way, subject to basic essential academic and professional requirements being satisfied, although there cannot be any universal rule regarding the precise weight to be given for selection of candidates but it must vary from service to service according to its requirements, which is a matter to be determined by the expert and it is for the Courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives, as observed by the Supreme Court in *Dhar's* case. In my view, therefore, on the facts and circumstances prevailing at the examinations the decision of the Service Board which was slow chapter by the State Government, as already stated above, giving to marks for the personality test/interview for the employment in question was quite reasonable and proper and even assuming that it was little higher, than its reduction to only 10 marks would be too low and arbitrary as already discussed above, apart from the fact that the State Government had no authority under the Ordinance to issue any such direction or prescribe any guideline in this regard to the Service Board.

12. Then there is yet another aspect of the matter on the basis of which account the petitioner must succeed and that is that at the time of the advertisement was issued, the interview of the petitioner took place the rule of 30 marks for the personality test was occupying field and the petitioners appeared at the interview with that understanding and impression. The issuance of any further direction changing the mode of evaluation even it could i.e. legal and binding, in that event as well as, it could have only applied in future and the fact that the material of the service commission were persons of high calibre and integrity the proper move of the State Government should have been to replace them by proper competent person or persons instead of making the personality test/ interview mere a formal affairs.

13. From the above discussions this application must succeed and the letter (Annexure-12) must be quashed. I would accordingly quashed the said letter and direct the respondents by a rule of mandamus not to interfere with the decision and criteria fixed by the Schools Service Board or revise the penal of selection already made on the basis of interview held by them. In the circumstance, however, I shall make no order as to costs.

Yadunath Sharan Singh, J.

14. I agree.