
(1985) 07 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1046 of 1981

Jaikishore Mahto

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-07-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) PLJR 1008

Hon'ble Judges : S. Shamsul Hasan, J

Bench : Single Bench

Advocate : Basant Kumar Choudhary, for the Appellant; V.K. Kantha and P.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

S. Shamsul Hasan, J.—The petitioner was an applicant for the post of Extra Department Sub-Post-Master in village Keota in the district of Samastipur. The post fell vacant due to the death of Ramautar Chaudhary who was holding this post for quite sometime. It is said that Ramautar Choudhary died on 25.1.1980. On his death a petition was filed by Smt. Deosagar Devi, widow of late Ramautar Choudhary stating that respondent no. 3, Nandkishore Choudhary, may be appointed to succeed late Ramautar Chaudhary because he was the brother's son and was being treated like the son by him and used to look after him, and after his death he was looking after the applicant and managing her properties left by Ramautar Choudhary. The post was advertised on 1.2.80 with admirable speed by the postal department. In response to the advertisement the petitioner and respondent no. 3 applied. Since respondent no. 3 was appointed the petitioner being disappointed came to this Court. An advertisement (Annexure-1) set out certain qualifications which a prospective appointee was required to possess. The conditions advertised for the post, in question, were that the applicant must be a resident of the village, must possess a house on a road in which the office can be located, must have knowledge of Hindi and English and

must possess means of livelihood possessing good moral character. He was required to furnish an income certificate by the revenue authority. Interestingly enough it did not contain the requirement that preference will be given to schedule caste, schedule tribe, backward etc. and further that preference will be given to the dependent of a deceased postmaster. Before the appointment was made enquiry was instituted on the respective merit of the parties by the Inspector of Post offices. The Department has annexed the report relating to the petitioner which is Annexure-E to the counter affidavit filed by the Union of India. The contents of this will be required to be considered in deciding the merit of this complication. The petitioner and the Union of India have brought several circular on the record which have a bearing on the issue involved and the points relied by the petitioner.

2. Annexure-3 is a circular relied upon by the petitioner which states that as far as possible preference should be given to (1) Scheduled Caste/Scheduled Tribe, (2) Ex-Army Personnel, (3) backward and weaker section of the society, (4) educated unemployed. This circular was the circular prevalent at the time when the advertisement was issued. Significantly the preferences mentioned in the circular were missing from the advertisement particularly the first requirement as stated above. This was followed by another circular (Annexure-3 filed by respondent no. 3. This circular in some measure modifies the circular as contained in Annexure-3 and has done away with the one criterion i.e. backward class and economically backward. A third circular Annexure-A has been produced by the Union of India, though connected with the other circular, is not relevant in this application. This circular states that while making appointments the concerned authority should keep it in mind that the appointment of reserved classes should not exceed the quota fixed for the purpose i.e. 33 for the total employment.

3. On these materials learned counsel for the petitioner has assailed the appointment of respondent no. 3 primarily on the ground that the petitioner being a scheduled caste should have been given preference. He further submitted that respondent no. 3 did not fulfil the criterion (sic) laid down for appointment of dependents of deceased postmaster because on his own saying and contrary to the affidavit of the Union of India, he was not an adopted son within the meaning of Hindu Law, and the application filed by the respondent, referred to above, did not state that he is a dependent. In fact according to that petition he was treated by Ramautar Choudhary like a son and was treated so for all practical purposes which does not make him a dependent.

4. At the time of hearing respondent no. 3 submitted that since respondent no 3 has fulfilled all criteria laid down in the circulars the merit of the two appointments is no longer justiciable in an application filed under Article 226 of the Constitution and he has submitted that though the respondent is not scheduled caste yet he was definitely a dependent of the deceased postmaster and also possess means of livelihood and is now owning the house or at least

allowed to use the same by the widow of Ramautar Choudhary in watch post office has been installed and was conversant with Hindi and English both, and even though the petitioner may be a graduate that will not detract the qualifications of the respondent for the purposes of his employment. He has further submitted that anything as the preference claimed by the Scheduled Caste in the absence of such a mention in the advertisement will not ensure to the benefit of the petitioner.

5. Coming to the question of inference undoubtedly findings of fact should not be lightly interfered with but if they are contrary to law or appear to be absolutely arbitrary, interference under Article 226 of the Constitution of India is the only efficacious relief. On the basis of the advertisement and reading it with the concerned circulars I have no hesitation in holding that while dealing with the respective merits of the two candidates for the post the criteria laid down in the advertisement will bind the party concerned. This is one aspect of the matter. If the circular relied upon by both the parties for their respective benefits in accordance with the clauses contained in them, then the circular must apply, as a whole, to both the parties. The net result is that if the advertisement is treated as the only basis for testing the qualification of the concerned applicant then the criteria of scheduled caste as well as dependent of deceased postmaster will have to be ignored because they are not found in the advertisement. If we take the circular into consideration then both the criterion become applicable and will have to be considered in testing the merits of the applicants. I feel that the advertisement should be the real basis for making the appointment because if a criteria is not mentioned in the advertisement and used later then there may be other candidates possessing that particular qualification who may not have applied because of the absence of the requirement from the advertisement. Proceeding on the advertisement alone the case of both the parties appear to be substantially similar except for educational qualification.

6. This rings me to the report (Annexure-E) mentioned above relating to the petitioner. The report after setting out various relevant attributes of the petitioner goes on to say that some villagers have informed him that the petitioner is a political activist and he is an active member of the Janata party and is, therefore, not suitable for being given this appointment. He has, however, not stated another there in any one who has said anything contrary to this which, therefore, has to be accepted as something that transpired between some of the villagers and him. The whole question is: will the opinion of the villagers regarding the political affiliation of a man disqualifies him to get a job under the Government. If this is permissible it will be a very sad day. The Inspector had no business to make such a report which was entirely beyond his scope of the enquiry and I have no manner of doubt that when this statement was made, this must have weighed heavily with the departmental authority.

7. In the situation set out by me above I feel that the whole matter deserves to be so considered by the authorities. I therefore, direct the Postmaster General to

reconsider the appointment of respondent no. 3 vis-a-vis the petitioner in all its legal and factual aspects and decide the matter afresh, if he could do so, within three months from the date of production of a copy of this order by the petitioner. Untill he disposes of this application, however, for the convenience of the public of the village respondent no. 3 shall continue to hold the post but will not acquire any weightage or right, whatsoever, for this period, when the matter is being considered for making the appointment as directed above. The fate of Annexure-5 will depend on the fresh decision of the Postmaster General, Bihar. In the result the application is allowed, but without costs.