
(2000) 06 PAT CK 0024

In the Patna High Court

Case No : C.W.J.C. No's. 2780 of 1998 and 3628 of 2000

Jawahar Lal Ram and Another

APPELLANT

Vs

Bihar College Service Commission and Others

RESPONDENT

Date of Decision : 26-06-2000

Acts Referred:

Citation : (2000) 3 BLJR 1735 : (2000) 4 PLJR 478

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—As both the cases related to appointment to the post of Lecturer (Zoology) in Akshaywat College, Mahua, Vaishali (College for short), they were heard together and are being disposed of by this common order/judgment.

2. The petitioner, Jawahar Lal Ram (of C.W.J.C. No. 2780 of 1998) applied for appointment to the post of Lecturer (Zoology) of the College in pursuance of Advertisement No. 942/1989. He, along with others, was interviewed by the Bihar College Service Commission (Commission for short) and his name was recommended, vide letter No. 1156 dated 13th March, 1997. No formal order of appointment having issued, C.W.J.C. No. 2780/98 was preferred by petitioner, Jawahar Lal Ram for his appointment.

3. The Respondents, including Managing Committee of the College and its Secretary, appeared on notice in the said case and took plea that the said post (2nd post) of Lecturer (Zoology) of College has already been filled up by appointment of one Dr. Nand Kishore Prasad Yadav (petitioner of C.W.J.C. No. 3628 of 2000). In pursuance of subsequent revised recommendation made vide letter dated 8th January, 1998, Dr. Nand Kishore Prasad Yadav was shown to be the first choice for the 2nd post of Lecturer (Zoology).

4. Dr. Nand Kishore Prasad Yadav was impleaded as party Respondent No. 5 and

on notice he appeared and filed counter-affidavit.

5. The Commission while produced revised recommendation dated 8th January, 1998, which was found to have been made in pursuance of Advertisement No. 490/94 and not in pursuance of Advertisement No. 942/89. The case was adjourned.

6. On 14th February, 2000, when C.W.J.C. No. 2780/98 was taken up, the Commission produced a revised Memo No. 1601 dated 5th February, 2000, whereby and whereunder, the Secretary of the Managing Committee of the College was informed by the Commission that the revised recommendation earlier made on 8th January, 1998 was not correct and on reconsideration the same has been cancelled, meaning thereby revival of earlier recommendation made on 13th March, 1997.

7. It was in the aforesaid background, Dr. Nand Kishore Pd. Yadav (5th Respondent of C.W.J.C. No. 2780/98) preferred separate writ petition, C.W.J.C. No. 3628/2000 and challenged the revised recommendation made, vide Memo No. 1601 dated 5th February, 2000, whereby earlier recommendation made on 8th January, 1998 was cancelled.

8. This Court called for the original record, which was produced and I have gone through the same. From the affidavits filed by the parties and records produced, the following fact emerges.

9. The College was a temporary affiliated College under the B.R.A. Bihar University, Muzaffarpur, wherein petitioner, Dr. Nand Kishore Prasad Yadav was appointed as Lecturer (Zoology) on temporary basis and joined on 17th November, 1986. It was ad hoc arrangement, which continued when the College was granted permanent affiliation by the University in 1990.

10. Two posts of Lecturer (Zoology) including 2nd post, in question, were advertised, vide Advertisement No. 942/89. In pursuance of said Advertisement of 1989, petitioner Jawahar Lal Ram; one Gita Tiwary and others applied. However, no selection made, but subsequently Advertisement No. 490/94 was published, advertising two posts of Lecturer (Zoology) of the College. This time, petitioner, Dr. Nand Kishore Pd. Yadav applied in pursuance of 1994 Advertisement along with others, including one Ashok Kumar.

11. It appears that those applied in pursuance of 1989 Advertisement, including petitioner, Jawahar Lal Ram, they were interviewed in between 21st August, 1995 and 28th August, 1995. The petitioner, Jawahar Lal Ram was interviewed by the Selection Committee of Commission on 22nd August, 1995.

12. Those who applied in pursuance of 1994 Advertisement, including petitioner, Dr. Nand Kishore Prasad Yadav, they were interviewed by Selection Committee of Commission on 26th August, 1995. A panel was prepared out of Advertisement No. 942/1989 and another out of Advertisement No. 490/1994 and both were issued simultaneously on 10th March, 1997. The position of persons was

indicated therein on the basis of marks obtained by individual,

13. The Commission initially recommended the name of Petitioner, Jawahar Lal Ram out of 1989 Advertisement. The first post of Lecturer (Zoology) was shown to have been kept in abeyance as the candidate working against the said post, her case was pending for consideration for regularisation of service, in terms with statute of regularisation. For the 2nd post shown to have been advertised vide Advertisement No. 942/1989, the name of petitioner, Jawahar Lal Ram was recommended on 11th March, 1997 as first choice and that of one Smt. Renu Kumari as 2nd choice for the said 2nd post. The third post was shown to have been advertised in pursuance of Advertisement No. 490/1994 showing the name of petitioner Dr. Nand Kishore Prasad Yadav as first choice for the third post and one Shri Ashok Kumar as 2nd choice for the said third post.

14. It appears that subsequently it came to the notice of the Commission that only two posts of Lecturer (Zoology) were sanctioned. Those two posts were initially advertised, vide Advertisement No. 942/1989 and without making any selection, 2nd time Advertisement No. 490/1994 was issued for those very two posts. In fact, for those two posts, both the selection took place in pursuance of Advertisement No. 942/1989, as also Advertisement No. 490/1994 and two separate charts/merit lists were prepared on the same day, i.e., 10th March, 1997. Treating the first Advertisement No. 942/89 as cancelled, revised recommendation was made vide memo dated 8th January, 1998 showing one Smt. Gita Tiwary as first choice for the first post; Dr. Nand Kishore Prasad Yadav as 2nd choice for the first post; again Dr. Nand Kishore Prasad Yadav as 1st choice for the 2nd post; and one Shri Ashok Kr. as the 2nd choice for the 2nd post.

15. In the meantime, the first writ petition was preferred by petitioner, Jawahar Lal Ram and during the pendency of the said writ petition, the Managing Committee decided to permanently appoint petitioner, Dr. Nand Kishore Prasad Yadav as lecturer (Zoology) against 2nd post, vide its meeting dated 6th August, 1998.

16. When it came to the notice of the Commission that, in fact, the first Advertisement No. 942/1989 was never cancelled and persons who applied in pursuance of said advertisement were interviewed in August 1995 simultaneously with those applied in pursuance of Advertisement No. 49/94, they issued impugned recommendation dated 5th February, 2000, correcting the mistake made earlier.

17. One of the ground taken by the Counsel appearing on before of Dr. Nand Kishore Prasad Yadav is that the petitioner, Jawahar Lal Ram never applied in pursuance of Advertisement No. 490/94, thereby there was no occasion to recommend his name for appointment as Lecturer (Zoology) against the 2nd post. It was also submitted that the Commission had no jurisdiction to review its earlier decision.

18. Admittedly, two posts of Lecturer (Zoology) were sanctioned for the College, same very posts were advertised in pursuance of two advertisements; one vide Advertisement No. 942/89 and another vide Advertisement No. 490/94. Those who applied for appointment in pursuance of 1989 Advertisement and those applied in pursuance of 1994 Advertisement, they were interviewed simultaneously in August 1995 by same Expert Committee of the Commission. Marks were allotted taking into consideration their academic career and performance before the Selection Committee.

19. From the marks obtained by the candidates, I find that the petitioner, Jawahar Lal Ram, a Scheduled Caste candidate stood first having obtained 68.34 marks, whereas petitioner, Dr. Nand Kishore Prasad Yadav obtained merely 64 marks. The only other candidate is Smt. Sita Tiwary who was allowed much higher marks of 74 and had accrued a right for consideration of her case for regularisation of her service against first post of Lecturer (Zoology), as she has been working since 16th July, 1981.

20. Thus petitioner, Jawahar Lal Ram having obtained higher marks than Dr. Nand Kishore Prasad Yadav, he having applied in pursuance of Advertisement No. 942/89, I find no illegality if his name was recommended on 11th March, 1997 for appointment against 2nd post of Lecturer (Zoology) of the College. In fact, the subsequent revised recommendation made on 8th January, 1998 was a mistake and if such mistake is rectified, vide Memo No. 1601 dated 5th February, 2000, I find no illegality in the same.

21. In fact, the marks granted by the Selection Committee/Expert Body having not revised, it cannot be stated that the Commission reviewed its earlier decision, but it is to be construed that the mistake committed by the Commission was merely rectified.

22. Thereby, I hold the appointment of Dr. Nand Kishore Prasad Yadav, as made by the Managing Committee by its decision dated 6th August, 1998 on the basis of mistaken recommendation dated 8th January, 1998, during the pendency of C.W.J.C. No. 2780/98 as illegal.

23. Further, I hold that the Respondents including the Governing Body Managing Committee, of the College are bound to consider the case of the petitioner Jawahar Lal Ram for appointment against the 2nd post of Lecturer (Zoology) in pursuance of earlier recommendation dated 11th March, 1997, as reiterated, vide Memo No. 1601 Dated 5th February, 2000.

24. Accordingly, I direct the Respondents including the Governing Body Managing Committee of the College to consider the case of petitioner Jawahar Lal Ram for appointment to the 2nd post of Lecturer (Zoology) of the College on the basis of recommendation aforesaid and to communicate the decision to the said petitioner within two months from the date of receipt/production of copy of this order/judgment.

25. The University is directed to ensure compliance and if the College authorities fail to consider the matter, it will be open to the University to take appropriate action against the College authorities. If so necessary, by dissolving the Governing Body Managing Committee by constituting an ad hoc Committee for the College to ensure implementation of the Court's decision.

26. In the result, the writ petition, C.W.J.C. No. 2780 of 1998 is allowed and the C.W.J.C. No. 3628 of 2000 is dismissed. Petition allowed.