
(1994) 04 PAT CK 0018
In the Patna High Court
Case No : M.J.C. No. 370 of 1991

Jyoti Kumar Tripathi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0018

Judgement

N. Pandey and R.N. Prasad, JJ.—The Petitioner has prayed for initiation of a proceeding of contempt of this Court's order dated 3.7.1990 passed in C.W.J.C. No. 9285 of 1989, against the Respondents.

2. The Petitioner had filed C.W.J.C. No. 9285 of 1989 along with the Petitioner of C.W.J.C. No. 9257 of 1989. In the aforesaid writ applications, a prayer was made for a direction to the Bihar Public Service Commission (hereinafter referred to as the "Commission") to recommend more names from amongst the successful candidates who had appeared at the 23rd Bihar Judicial Service Examination.

3. In the said writ petition, the State Government, the Commission and this High Court filed their respective counter-affidavits. The claim of the Petitioners was examined in the light of the principle laid down by this Court that the vacancies occurring till the last date of interview, i.e. 16.5.1989 should be filled from amongst the successful candidates of the 23rd Judicial Service Examination in order of merit. At that time, the exact number of the vacancies could not be calculated but on the basis of the materials on the record, it was found that at least 14 vacancies were available.

4. Accordingly, by order dated 3.7.1990, the Respondent-Commission as well as the State of Bihar were directed that the vacancies of the 22nd Judicial Service Examination, which are lying unfilled up on account of certain reasons, be filled up from amongst the successful candidates of the 23rd Judicial Service Examination, in order of merit. However, it was made clear that the number of vacancies was calculated on the basis of the affidavits and the counter-affidavits filed in the writ petitions but it was left open to the Commission and the State

Government to recalculate the vacancies on the basis of the material available on the records. Accordingly, both the writ petitions were disposed of by a common order.

5. It appears from the counter-affidavit filed on behalf of the Respondent-Commission that by letter No. 73 dated 5.10.1990, names of 14 candidates were recommended before the State Government to be filled up from the successful candidates of the 23rd Judicial Service Examination. The Commission further stated that remaining vacancies, if any, have to be filled up out of the successful candidates of the 24th Judicial Service Examination which has already been held.

6. Thereafter, by letter no, 13538 dated 5.11.1990, the Joint Secretary, Government of Bihar, in the Department of Personnel and Administrative Reforms, informed the Commission that the number of vacancies as on 16.5.1989 was 110 against which the Commission had recommended only 106 names and thus there was a shortfall of four names, in the recommendation of the Commission. It was also stated that out of 106 names, one Sri Surendera Kumar Singh could not be appointed as he refused to join the Bihar Judicial Service. Therefore, in the aforesaid background, the commission was requested to send $4 + 1 = 5$ more names for appointment in the Bihar Judicial Service from the 23rd Judicial Service Examination batch.

Learned Counsel for the State, on the basis of the relevant materials on the record, accepted that the letters were sent to the Commission to recommend five more names to be filled up by the successful candidates of the 23rd Judicial Service Examination.

7. The Commission has taken a stand in the counter affidavit that 14 names as calculated by the High Court have already been recommended to be filled up by the candidates of the 23rd Bihar Judicial Service Examination. Since the 24th Bihar Judicial Service Examination has already been held, the remaining vacancies would be filled up on the basis of the result of the aforesaid examination. However, the stand of the State Government that on the basis of the principle laid down by the Court, five more vacancies are available to be filled up by the successful candidates of the 23rd Judicial Service Examination, has not been denied by the Commission.

8. We have already noticed the direction of this Court issued in the writ petitions. From a bare reference to the order, it is apparent that the number of vacancies as 14, calculated by the High Court, was not final. It was made clear that it would be open to the State Government as well as the Commission to recalculate the number of vacancies on the basis of the materials available on the record. We fail to understand when the State Government after recalculation, informed the Commission that still there were five vacancies to be filled up from amongst the successful candidates of the 23rd Judicial Service Examination as per the order of this Court, why the Commission took a stand that these vacancies will be filled up from amongst the successful candidates of the 24th Judicial Service

Examination.

9. From the interpretation of the order of this Court as also other materials on the record, it is clear that remaining five vacancies also were to be filled up from amongst the successful candidates of the 23rd Bihar Judicial Service Examination.

10. We have noticed that instead of recommending all the vacancies, i.e. $14 + 5 = 19$, the Commission has recommended only 14 names. The stand of the Commission is quite inconsistent with the direction of this Court. However, it may be possible that on account of some misunderstanding and wrong interpretation of the order, the remaining five vacancies might not have been recommended. Therefore, we do not propose to initiate any proceeding for contempt. But it is made clear that under the facts and circumstances mentioned above, the Commission has no alternative but to recommend five more names as per the directions of this Court issued in the aforesaid writ petitions.

11. Accordingly, even if in the connected writ petition there was no specific direction with respect to recommending five vacancies, this Court in view of the judgment of the Supreme Court in the case of R.M. Ramaul Vs. State of Himachal Pradesh and Others, can issue such direction in a proceeding for contempt also. Therefore, we issue such direction here and now and direct the Respondent-Commission to recommend five more vacancies in order of merit within a period of two months from today.

12. The contempt petition is disposed of with the foregoing directions.