
(2006) 11 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 1251 of 2003

Kaklesh Kumar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 1 PLJR 145

Hon'ble Judges : S.K. Katriar, J;Aftab Alam, J

Bench : Division Bench

Advocate : Mihir Kumar Jha, Vijay Kumar Verma in 3473, M/s Chitranjan Sinha and Sarva Deo Singh in 1251, 358, for the Appellant; S.K. Ghosh and Nirmal Kumar Sinha For the State, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam

1. These three cases present the two sides of the controversy relating to appointments on the posts of Village Level Worker/Village Extension Worker in the district of Darbhanga on the basis of an advertisement issued on 5.12.1994. In C.W.J.C. No. 358 of 2002, there are six petitioners and in C.W.J.C. No. 1251 of 2003, there is only one. The seven petitioners in the two cases claim that they completed one year training pursuant to their selection on the basis of the 1994 advertisement. They seek a direction to the competent authorities to appoint them by accepting their joining reports as Village Level Worker/Village Extension Worker. On the other hand, the two petitioners in C.W.J.C. No. 3473 of 2000 seek cancellation of the recruitment made on the basis of the 1994 advertisement. According to them the purported selection was invalid and illegal and it suffered from gross irregularities, nepotism, favoritism and exclusion of bona fide candidates satisfying the eligibility criteria.

2. Village Level Worker (V.LW.)/Village Extension Worker (V.E.W.) are matric

level, Class-III, field posts in the districts. At the material time, recruitment to those posts was made under the Bihar Village Level Worker and Village Extension Worker (Recruitment and Conditions of Service) Rules, 1987 by a Selection Committee constituted at the district level. On 5.12.1994, an advertisement was issued for filling up a number of Class-III posts, including those of Village Level Worker/ Village Extension Worker in the district of Darbhanga. In response to the advertisement, applications poured in, but before any material step was taken for selection of the candidates, the State Government passed a resolution on 6.12.1995 in terms of which appointment on all Class-III Government posts was entrusted to the Bihar Public Service Commission. Following the Government resolution, the Bihar Public Service Commission issued an advertisement in the daily Hindustan on 26.1.1998 calling for applications for appointments to different Class-III posts, including those of Village Level Worker/Village Extension Worker in different districts. The latter advertisement issued by the Bihar Public Service Commission also covered the posts in the district of Darbhanga for which the local advertisement was earlier issued on 5.12,1994.

3. This subsequent developments led the district administration of Darbhanga to believe that the appointment process initiated by them on the basis of the previous advertisement dated 5.12.1994 was aborted and in view of the Government resolution and the advertisement issued by the Commission, it was no longer open to them to proceed further and to process the applications received in response to it.

4. At that stage, 18 people, including the 7 petitioners in C.W.J.C. Nos. 358 of 2002 and 1251 of 2003 came to this Court in C.W.J.C. No. 2425 of 1998. They prayed for quashing of the advertisement, dated 26.1.1998 issued by the Commission insofar as it related to appointments to the posts of Village Level Worker/Village Extension Worker and sought a direction to the respondents to complete recruitment on those posts in terms of the provisions of the rules.

5. C.W.J.C. No. 2425 of 1998 was allowed by judgment and order dated 22.9.1998. in that case, the Court took the view that the recruitment process initiated by advertisement dated 5.12.1994 would remain unaffected by the subsequent Government resolution and the appointment process initiated prior to the resolution must be completed on the basis of the rules in existence at that time. It accordingly quashed the advertisement, dated 26.1.1998 issued by the Commission in so far as it related to the posts of Village Level Worker/Village Extension Worker and directed the respondents to consider the case of the petitioners (in that case) and others who had applied in response to the earlier advertisement issued at the district level for appointment to the posts of Village Level Worker/Village Extension Worker and complete the selection process in accordance with the rules within a period of 6 months from the date of receipt/ production of a copy of that order.

6. In compliance with the Court's direction, the concerned authorities in the district of Darbhanga took up the matter. It, however, appears that for different

reasons, the selection process lingered on and the appointments were not made within the period of six months as directed by the Court. This led to the filing of a contempt petition being M.J.C. No. 1730 of 1999. From the order sheet of the case, it appears that in that proceeding, apart from the candidates for Darbhanga district, the candidates for Madhubani district also appeared. From the final order passed in the contempt case on 10.8.2000, it appears that by then the selection process for Darbhanga was over; a total number of 73 candidates were selected and recommended for appointment. They were sent for training before their appointments as Village Level Worker/Village Extension Worker. The order also took note of a letter from the Director, Agriculture, Patna dated 18.7.2000 in which enquiry was directed to be made on certain points before issuing the order of appointment of the selected candidates on completion of their training. The Court closed the contempt proceeding with the observation that the petitioners could approach the Court if they were not provided with orders of appointment on successful completion of training.

7. The seven petitioners alongwith others completed the one year training course but the joining reports submitted by them were not accepted by the concerned authorities and this led the seven petitioners to once again come to this Court in the two writ petitions.

8. In the meanwhile, two other people, namely, Sanjay Prasad Singh and Sanjeet Pandey filed C.W.J.C. No. 3473 of 2000 praying for a direction by the Court to cancel the selection of the candidates for appointment as Village Level Worker/Village Extension Worker. They alleged many serious irregularities in the selection, vitiating the entire process. It was stated on their behalf that they were agriculture graduates but there being no prospects for employment commensurate to their qualification they made applications in response to the advertisement, dated 5.12.1994 even though the posts of Village Level Worker/Village Extension Worker were of matriculation level. They sent their applications through registered posts long before the last date for submission of applications, yet they did not receive any call for interview. When the selection process was started on the direction of the Court, they met the concerned authorities and showed them the postal receipts under which they had sent their applications but they were not allowed to appear in the interview. In the writ petition, they made very serious allegations of favoritism etc. in the selection process.

9. The two writ petitions (C.W.J.C. Nos. 358 of 2002 and 1251 of 2003), seeking the same relief were soon made analogous and proceeded together. The third writ petition seeking reliefs, contrary to the other two writ petitions, proceeded separately till 22.3.2005 when it was noticed that it related to the converse side of the same issue and it too was directed to be heard alongwith the other two cases.

10. Before the three cases were made analogous, counter affidavits on behalf of the State were already filed in the cases. Strangely, the counter affidavits filed in the two sets of cases took a contrary stand on the same issue. The prayer of the

writ petitioners in C.W.J.C. Nos. 358 of 2002 and 1251 of 2003 was resisted on the plea that the selection process suffered from many irregularities. But when the same thing was alleged by the two petitioners in C.W.J.C. No. 3473 of 2000, the counter affidavit filed in that case denied and controverted the allegations and stated that the selection process was perfectly all right and it did not suffer from any irregularities. The anomaly was noticed by the Court while hearing the cases on 22.3.2006 and Mr. Additional Advocate General No. II was directed to get further instructions and to clarify the stand of the State Government in the matter. Then, Mr. Additional Advocate General No. II held further consultations with the District Magistrate, Darbhanga and a revised consolidated counter affidavit was filed in the three cases.

11. From this counter affidavit, it becomes clear that the process of selection for appointment to the posts of Village Level Worker/Village Extension Worker got completely botched up as a result of the confusion created by the Government resolution, dated 6.12.1995, the advertisement issued by the Bihar Public Service Commission on 26.1.1998 and finally the decision of the Court, dated 22.9.1998. In the counter affidavit, it is stated that on 5.12.1994, an advertisement was issued by the Collectorate, Darbhanga for appointment on a large number of posts including those of Village Level Worker/Village Extension Worker. Applications received for different posts were put in different boxes but before any action was taken on those applications, the State Government by resolution, dated 6.12.1995 took away the power of appointment on Class-III posts from the district authorities and gave it over to the Bihar Public Service Commission. Following the resolution, instructions were received from the Administrative Reforms Department vide Wireless Message No. 202, dated 14.12.1995 and letter No. 31, dated 18.12.1995 cancelling the advertisement earlier issued for appointment to the posts. The Government resolution followed by the instructions terminated the selection process before its commencement and all the applications received in response to the district advertisement were reduced to no more than so much useless and waste-paper. Those applications were accordingly put in gunny bags and were dumped somewhere quite carelessly. Those remained forgotten for about three years till the Court by order dated 2.9.1998 directed that the appointments of Village Level Worker/Village Extension Worker in the district of Darbhanga should be made on the basis of the advertisement issued on 5.12.1994 and further directed that the appointment process must be completed within six months from the date of receipt/production of a copy of the Court's order. Then, there was a rush to find out and retrieve the applications for the posts of Village Level Worker/Village Extension Worker. It is stated in the counter affidavit that "after hectic search some applications received were found in some bundles in the godown meant for election use and as such, application relating to the posts of VLW/VEW only were found out (in small number) and brought in the District Establishment Section and were enlisted in the register. The said register was produced before the Selection Committee in which all 468 applications were found enlisted for Village Level Worker/Village

Extension Worker". On screening, it was found that there were 99 valid applications from the residents of Darbhanga district and 119 from the residents of other districts; 250 applications out of 468 were found defective and were rejected. Initially, only the candidates from Darbhanga district (99 in number) were called for interview in light of some Government instructions concerning appointment of Village Level Worker/Village Extension Worker. But writ petitions were filed in the High Court being C.W.J.C. Nos. 7767 and 8666 of 1999 in which the High Court directed that candidates of other districts should also be called for interview. In compliance with the direction of the Court, the remaining candidates of other districts were also called for interview. From the counter affidavit, it becomes clear that the district authorities were acting in a rush to meet the deadline of six months fixed by the High Court and were further under pressure by the filing of the contempt petitions for their failure to meet the deadline. It is also evident from the counter affidavit that all through the selection process, many complaints were made before the District Magistrate and before the Divisional Commissioner with regard to several irregularities, including the exclusion of a large number of people who claimed to have submitted their applications in response to the advertisement. In paragraph 18 of the counter affidavit, it is stated that while the matter of selection was in progress, a number of claimants submitted before the Divisional Commissioner, Darbhanga that 1225 people who had applied in response to the advertisement were not called for the interview. It, however, appears that under the stress of the deadline fixed by the Court and the pendency of the contempt proceeding for failure to meet the deadline, no heed was paid to the recurrent complaints and somehow a list of 73 selected candidates was prepared. In this regard, the statements made in paragraphs 25, 26 and 27 of the counter affidavit are quite revealing. Those are reproduced below:

25. That it appears that as there had been dispute regarding the process of selection, several writ petitions were pending disposal before the Hon"ble High Court, and no direction had been received from the Government regarding the appointment, the then Collector, Darbhanga refused their representation.

26. That it appears that the then Collector, Darbhanga vide his letter No. 6 dated 3.1.2001 sought direction from the Agriculture Production Commissioner, Agriculture Department, Bihar, Patna mentioning the full facts.

27. That from the record it appears that the Additional Collector, Flying Squad, Darbhanga was directed to enquire into the irregularities in selection of VLW/VEW as reported by one Smt. Bhawana Kumari, Kaidrabad, Darbhanga, upon which said Additional Collector enquired into the matter and reported to the Divisional Commissioner vide letter No. 188 dated 16.8.2000 wherein he expressed his finding specifically that there had been irregularities in enlistment of the application filed by the candidates in pursuance of advertisement in 1994 and there had been irregularities in the enlistment of the applications by the employers.

12. It also becomes apparent that the concerned authorities were fully aware with regard to the faults in the selection and accordingly the selected candidates were sent to the training centre subject to the condition that in case the complaints against the selection process were established their selection, training and appointment would be cancelled at any stage without any notice to them. A copy of the memo, dated 3.6.2000 given to the selected candidates is Annexure-B to the counter affidavit.

13. In light of the statements made in the counter affidavit, the selection process appears highly doubtful. But that is only half the story. The two petitioners in the third writ petition being C.W.J.C. No. 3473 of 2000 make serious allegations of nepotism in the selection process. Mr. Mihir Kumar Jha, learned Counsel appearing for the petitioners in this case submitted that it was not conceivable that only 468 applications (out of which 218 were found valid) would be received for a matriculation level post. He submitted that a very large number of applications, including those by agriculture graduates like the petitioners were purposefully thrown away to make room for close relatives of employees working in the Collectorate, in the writ petition, specific instances are given of some such cases. In paragraph 27 of the writ petition (C.W.J.C. No. 3473 of 2000), it is stated that in the list of 73 selected candidates, there were only ten agriculture graduates and all the rest were simply matriculates with Science subjects. In paragraph 28 of the writ petition, it is alleged that 25 people among the selected candidates were related to the employees of the Collectorate. It is further stated that there was one Harihar Prasad who was earlier the Collector's Stenographer. He managed to get his three sons, namely, Raj Kumar Prasad, Narendra Dev and Arun Dev and his daughter-in-law Amrita Darshi and a nephew Rab Ballabh Kumar and another relative Sanjay Kumar Anjana selected, it is further alleged that nepotism was not confined to one case but one Umeshwar Prasad Roy who was himself the Deputy Development Commissioner got six of his close relatives selected and appointed. The names of those six persons are also stated. The sum and substance of the allegations made in paragraphs 27 and 28 of the writ petition is that a majority of the selected candidates were close relatives of someone working or the other in the Collectorate. It is significant to note that the counter affidavit filed on behalf of the State practically confirms the allegation. In paragraph 29 of the counter affidavit, it is stated that one Raj Kumar Prasad at serial No. 27, Narendra Deo at serial No. 45, Arun Deo at serial No. 62 were full brothers and Amrita Darshi at serial No. 31 was the wife of Narendra Dev. Thus, four persons of one family were selected. It is also admitted that there was no candidate belonging to the Scheduled Castes/Scheduled Tribes category in the selected panel. A number of other irregularities in the selection process are plainly admitted in the counter affidavit.

14. Faced with this admitted position by the State, Mr. Chitranjan Sinha, learned Senior Advocate appearing for the petitioners in the other two cases submitted that there was no allegation of any irregularity in so far as the seven petitioners were concerned and those petitioners should, therefore, be allowed to join as

Village Level Worker/Village Extension Worker. Learned Counsel submitted that he was not concerned with the entire selection process and the Court may not approve that but there should be no objection in allowing the seven petitioners to join the posts on the basis of their selection.

15. The submission is unacceptable because the entire selection process is thoroughly discredited. Facts coming to light make it clear that the selection process suffered not from some simple irregularities but it was plainly in violation of the Constitutional mandates under Articles 14 and 16. It is evident that a large number of eligible candidates were arbitrarily excluded from consideration and even the selection made from the limited candidates suffered from nepotism, favoritism and similar other vices. It might be true that the seven petitioners were among those who got selected by chance without being connected with anyone and they were unduly given the hope of a Government employment. All this could have been avoided if the district authorities had made a clean breast of the situation and informed the Court either in the writ petition or in the subsequent contempt proceeding that a large number of applications received in response to the advertisement were lost and it was, therefore, not possible to make a fair and proper selection on the basis of that advertisement but they withheld the information from the Court and this led to the present sorry state of affairs. Be that as it may, in the facts and circumstances coming to light, it is not possible to give any direction for appointment of the petitioners in C.W.J.C. Nos. 358 of 2002 and 1251 of 2003. These two writ petitions are dismissed. C.W.J.C. No. 3473 of 2000 is allowed. There will be no order as to costs.