
(1986) 02 PAT CK 0027

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 686 of 1984

Kaushal Kishore Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-02-1986

Acts Referred:

Citation : (1986) PLJR 1019

Hon'ble Judges : S Ali Ahmad, J

Bench : Single Bench

Advocate : Sarojendu Mukherjee, Kamalendu Mukherjee and Sudhansu Jyoti Mukhopadhyaya in C.W.J.C. 686/84 and M/s Kamal Nayan Choubey, Mohan Choubey, Subash Chandra Dubey and Harendra Kr. Tiwary in C.W.J.C.No. 3408/84, for the Appellant; R.B. Mahto, A.G. Jagannath Jha, S.C. I and Anil Kumar . (in C.W.J.C.No. 686/84), M/s. J.N. Pandey, G.P. II and Mithilesh Kumar Singh G.P. II. (In C.W.J.C.No. 3408/84), for the State, for the Respondent

Final Decision : Allowed

Judgement

S. Ali Ahmad, J.—These two writ applications have been heard together and are being disposed of by this common order. These applications were heard on 9th December 1985 and again on 10th December, 1985. Mr. Advocate General who" intervened in the case on that date, made certain submissions but those could not be substantiated for want of facts. He, therefore, asked for some time to enable him to file a counter affidavit. I acceded to the request and adjourned the case for 3rd of January, 1986. The case was thereafter heard on 6th January, 1986 when arguments were concluded. I started dictating judgment in Court on 8.1.1985 and when I was in the midst of dictating judgment Mr. Advocate General came and again made submissions. I then on hit request directed the case to be heard further on 23rd January, 1986. On 22nd January an application on behalf of four persons was filed praying to add them as petitioners in C.W.J.C.No. 686 of 1984. Another application on behalf of 21 persons was filed on 24.1.1985 in C.W.J.C.No. 3408 of 1984. The prayer in this application was also to add these applicants as petitioners to the writ application and grant them

reliefs claimed therein. At the request of learned counsel for the parties two writ applications adjourned on 23rd January, 1986, 29th January, 198(sic) and again on 5th February, 1986. Today I heard learned counsel for the parties.

2. The prayer in the two writ applications is to direct the respondents to publish a merit list of the successful candidates appeared in the Graduate Standard Non-gagettied Examination held by respondent no. 2-Bihar State Subordinate Service Selection Board. Further their prayer is that the successful candidates should be allotted departments taking in to consideration their choice and preference on the basis of the merit list prepared by the Board. Some facts necessary for the decision of the points raised in these two applications have to be borne in mind. They are as follows :--

An advertisement was published on 10th of September 1981 (Annexure 1) for appointment to the post of (i) Assistant Probation Officers (ii) Labour inspectors (iii) Investigators and (iv) Industries Extension Officers.

The petitioners of the two cases applied for the appointments to the post referred above in the advertisement. There was another advertisement on 20th December, 1981 (Annexure 2), By this advertisement six more posts were added, they were : (i) Senior Auditor Clause" II (ii) Junior Statician Block Statistics Supervisor (iii) Numerator in Industries Department (iv) Commercial Taxes Inspector (v) Welfare Inspectors and (vi) Industrial Extension Officer. It was also indicated that there may be more vacancies in other departments which will be filled up from the successful candidates. In this advertisement there was specific mention that those who had applied in response to the first advertisement dated 10.9.1981, need not apply and that those who had applied in response to the advertisement dated 10.9.81, will be considered for these posts also.

3. The petitioners along with others appeared in the written test that was held on 1st of March, 1982 and the results were announced on 11th of March, 1983. It further appears that in the meantime some vacancies occurred for the post of Supply Inspectors and those were sent to the Subordinate Service Selection Board vide letter no. 44621 dated 7.5.1983. In terms of the second advertisement these posts were also to be filled up on the basis of the result of the examination that was held on 11th of March, 1983. The grievance of the petitioners is that without any guideline respondent no. 2 in an arbitrary manner allotted departments to the successful candidate. It is said that all the petitioners excepting petitioner no. 2 of C.W.J.C.No. 586 of 1984 were assigned to Labour Department where they have been appointed as Labour Inspectors. Petitioner no. 2 of C.W.J.C.No. 686 of 1984 Was allotted the Department of Grampanchayat where he has been appointed as Grampanchayat Supervisor. The grievances of these petitioners is that the persons who had obtained less marks than them were given Supply Department where they have been appointed as Supply Inspectors. The petitioner say that since there was no guideline nor any norms were fixed for allotment of the department, the authorities acted arbitrarily. It is said that the petitioners having obtained higher marks should have been allotted

the Supply Department where they could be appointed as Supply Inspectors C.W.J.C. No. 686 of 1984 was filed on 8th of February, 1984. The matter came for admission on 14th of February, 1984 and again on 2nd March, 1984 and on both these occasions the case was adjourned to enable the State counsel to get instruction. As the order-sheet of 23rd of March, 1984 shows the State counsel failed to receive instruction and the application was admitted and it was directed that if any appointment is made then that will be subject to the decision of the writ application. Undisputedly some appointments of Supply Inspectors have been made after this order. These appointments will naturally be therefore subject to the result of those two applications. A perusal of the counter affidavits shows that while allotting departments to successful candidates respondent no. 2 had no fixed norms neither they had asked the candidates to give their choice. Only relevant thing that has been said is that all the posts carry the same scale of pay. Therefore, he is said as to whether a particular person is allotted to their department or that department should be of no consideration. In paragraph 9 of the counter affidavit filed on 5th February, 1985 it has been said as follows :

That, the Board never adopted pick and choose method and recommended the names of successful candidates in accordance with the pay scale of the post and in accordance with the requisite for the specific posts It is necessary to mention that highest grade for non-gazetted employee is Rs. 850-1360/-

Then in paragraph 10 it has been said that all the posts of non-gazetted cadre have equal promotional avenues which are equal and time bound. Further it is said "only criteria for determining the merit while recommending the names of the successful candidates is pay-scale.

I do not wish to comment upon the statement that all the posts have got equal promotional avenues. But I do not fully appreciate the stand taken by the respondent that the criteria for determining the merit while recommending the names of the successful candidates is the pay scale." It is difficult to understand what is sought to be conveyed by the above quoted sentence. I, therefore, asked Mr. Jha to explain as to what it means. He also is not in a position to say as to what is the actual meaning by this sentence. I along with Mr. Jha, therefore, together surmised and as a result of that I think what is sought to be conveyed is that since the pay scale of the different services was the same, successful candidates could be sent to any department. I do not think this stand can defeat the petitioners. Different persons may have aptitude in different spheres of services. Instances are not lacking where people have preferred to take up inferior post because of aptitude for particular kind of work and/or place of posting. So that as it may, in this case there was absolutely no rule as to how and on what basis the successful candidates will be allotted different departments of the State. Respondent no. 2 was, therefore free to allot any department to any successful candidate ignoring others. The question that now arises is as to whether this was permissible. The case of the State of Mysore versus S.R. Jayaram (AIR 1968 S.C. 346) is quite close to the facts of these two

writ applications. It appears that in that case the State of Mysore invited applications for appointment of certain posts. The applicants were asked to indicate their preference as to the cadres they wished to join. It was mentioned in that advertisement itself that the Government reserves the right of appointing to any particular cadre, any candidate whom it considers to be more suitable for such cadre. This reservation of appointing any particular person to any particular cadre was challenged in the Supreme Court and the learned Judges said :--

The principle of recruitment by open competition aims at ensuring equality of opportunity in the matter of employment and obtaining the services of the most meritorious candidates.....

According to the learned Judges, the last part of Rule 9(2) destroys the basic objects. It was therefore held that the reservation by the Government to appoint any particular person to any particular cadre was arbitrary which vested the Government with power to ignore the just claim for successful candidates. It was, therefore, held to be violative of Articles 14 and 16(1) of the Constitution and was, therefore, struck down. Here the position is worse. There was no merit list, No options were asked by the petitioners and as I have indicated above there was no guide line for allotting different departments or cadres to the successful candidates. Mr. Advocate General who had appeared in the case, at one stage had accepted the position. But his argument was that since no options have been taken from the successful candidates and there has been no guide line for allotment of departments, it will be futile to issue writ because even after issuance of writs respondent no. 2 will have no guide line to make recommendation for appointment of successful candidates to different cadres. He, therefore, said that since the writ will be futile, therefore, those cases should be dismissed. He also said that in future examinations the Commission will consider the options which could be asked for from the candidates. On a serious consideration of the matter regarding futility I am of the opinion that the writ cannot be totally futile or that any one appointed on the basis of the recommendations made by respondent no. 2 will be thrown out of employment. The only consequence that may follow is the change of cadres. Having considered the matter, therefore, I quash all the re-recommendations and subsequent appointments of supply Inspectors made after the interim order was passed on 23rd of March, 1984 and also the appointments of these petitioners. The commission will now ask for options of department from the petitioner and also from the persons whose appointments have been quashed and will thereafter re-allot departments to the affected persons keeping in view their position in the merit list and the options claimed. It is needless to say that for future the Commission will have a model for allotment of departments so that there may not be any scope for any arbitrariness in the matter of allotment of department while stating the facts of these two applications. I have stated that two applications one on behalf of 4 persons and another on behalf of 21 persons were filed for impleading them as petitioners. At this stage Mr. Subhas Chandra Dubey who had filed the application on behalf of 21 persons in C.W.J.C.No. 3408

of 1984 seeks permission to withdraw the same. The prayer is allowed and that application is permitted to be withdrawn. So far as the another application on behalf of 4 persons is concerned, that has to be rejected because the same was filed after the case was virtually over. Those 4 petitioners were allotted different departments under the State Government and they were working there for about two years. Now having come to know of the possible success of the "writ petitioners they want to take the advantage that I think is not permissible. Their application is, therefore, rejected. The two writ applications are accordingly allowed in the manner indicated above. Parties will bear their own costs.