
(2010) 08 PAT CK 0050
In the Patna High Court
Case No : CWJC No. 14481 of 2008

Kaushal Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Bihar State Universities (Amendment) Act, 2007 — Section 57B
Bihar State Universities (Amendment) Act, 2008 — Section 26(3), 26(6)
Constitution of India, 1950 — Article 226, 32

Citation : (2011) 1 PLJR 205

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—Petitioner, who was working on the post of Reader and Head of Department of Philosophy in P.B.S. College, Banka, a Constituent College of Tilka Manjhi Bhagalpur University, had initially filed this application for cancellation of Advertisement No. 2 of 2007, published for the appointment of Principals and other posts, for a direction to initiate the process of appointment afresh in accordance with the revised Statute as contained in Letter No. B.S.O.-23/2007-2187/G.(1) dated 30.6.2008 and also to restrain the Respondents from continuing with the process of appointment under Advertisement No. 2 of 2007 published in daily newspaper in the month of October, 2007.

2. Subsequently, I.A. No. 6370 of 2008 was filed for amending the relief prayed in the writ application on account of certain developments taken during the pendency of the writ application. The amended prayer is for quashing of the Notification No. Appt. 3/2008 dated 29.9.2008 issued under the signature of CCDC Tilka Manjhi Bhagalpur University and for staying operation of said notification during the pendency of the writ application. The prayer was also made to implead such persons as party Respondents, who have already been appointed on the post of Principals, on account of their selection in response to Advertisement No. 2 of 2007. Prayer was for impleading fifteen persons

appointed to the posts of Principals as Respondents.

3. The Interlocutory Application was allowed vide order dated 18.11.2008 and averment in the said LA. was directed to be treated as part of the writ application.

4. Advertisement No. 2 of 2007 was issued under the signature of Registrar of Tilka Manjhi Bhagalpur University for appointment on 29 posts of Principals in Bhagalpur University. Consequent to the advertisement several applications were filed by the intending candidates. Admittedly the Petitioner did not apply and for that an explanation has given in the interlocutory application that under the bona fide belief, he did not apply as in the past only 40% weightage was to be given to the career record and 60% weightage through the interview.

5. Petitioner's case is that despite his working in the University from 1976 with an unblemished career record he did not apply under the bona fide belief as stated above. However, subsequent to the publication of advertisement and during the pendency of the initiation of the selection process new Statute was introduced on 30.6.2008 in which there was a great departure from the earlier rule. Under the amended Rule 80% weightage was given to the career record and only 20% weightage was to be given to the performance in the interview. If this would have been the situation on the date of publication of the advertisement, the Petitioner would have also applied as others, since he was eligible for the post of Principal on the date of the publication of advertisement.

6. Admittedly, the Advertisement No. 2 of 2007 was issued prior to the issuance of the notification bringing amendment in the law relating to appointment to the post of Teachers and Officers in the constituent colleges of the State of Bihar. Earlier appointments used to be made by the Vice-Chancellors of the respective Universities of Bihar on the recommendation of the Bihar State Universities (Constituent College) Service Commission, established under the Act of 1987. The amendment was brought through Bihar University (Constituent College) Service Commission (Repeal) Act, 2007 and also by Bihar State Universities Amendment Act, 2007 and Patna University (Amendment) Act, 2007. Under the amended provisions appointment of Teachers and Officers has to be made by the respective Universities within the State of Bihar on the recommendation of the Selection Committees constituted under the Amendment Act of 2007 by following the procedure of selection as prescribed under the Statute u/s 57(B) of the State Universities Act.

7. The case which has been made by the Petitioner is that just after the repealing Act of 2007 of the Commission, in corresponding amendment was brought by Bihar State University (Amendment) Act, 2007, but prior to framing of the Statute the Registrar of the University, in the last week of September, 2007 itself had initiated the process of recruitment for 29 posts of Principals by publication of Advertisement 2 of 2007. Subsequent to the publication of advertisement another amendment was brought under Bihar State Universities (Amendment) Act, 2008 published in the Gazette dated 23rd of April, 2008, whereby the tenure

of the Principal and Head of Department was fixed u/s 26(iii) and 26(6)(V) of the amended Act.

8. Petitioner's grievance is that since advertisement had been published under the previous Statute as such subsequent to amendment fresh advertisement for the appointment to the post of Principal in the light of revised Statute should have been published. This was not done by the University on the basis of earlier advertisement, taking advantage of amended provision of subsequent Statute; the University fixed the date of interview on 22nd of September, 2008, due to which several persons like Petitioner could not apply for the post, despite having good academic records. Since the revised Statute has brought material changes in the selection process and also with regard to the division of the marks on the basis of the career records and interview in the ratio of 80% and 20% the Petitioner and other similarly situated persons would have also liked to apply for the post but on account of non-publication of fresh advertisement, in consonance with the amended revised statute the prospect of such candidates like Petitioner for being appointed on the post of Principal has been sealed and they could not get an opportunity to apply for the post. The process of selection which was initiated in response to advertisement No. 2 of 2007 continued and the selection process finally concluded, appointment letters were also issued to the selected candidates. They joined at the respective posts and thereafter interlocutory application was filed by the Petitioner.

9. In the interlocutory application the Petitioner has made an effort to make out a case of mala fide on the part of Vice-Chancellor and the Registrar of the University. It has been stated that everything has been done in haste and in flagrant misuse of the power attached with the office of the Vice-Chancellor, the selection process was completed and appointment letters were issued for extraneous considerations.

10. Counsel for the Petitioner submits that the Vice-Chancellor was bent upon in completing the process of recruitment at any cost. This is indicated in the manner in which appointment letters were issued and attempts were made that before closure of the University, all selected candidates must join on or before 30.9.2008. This haste was done in order to create a vested right in favour of such appointees.

11. Counsel appearing for the University has countered the submission made by the Petitioner in its counter affidavit. The first objection has been raised regarding maintainability of the writ application at the instance of the Petitioner on account of delay and also on account of Petitioner having no locus to file this application, himself not being an applicant for appointment for the post of Principal.

12. Counsel for the University has submitted that the writ application has been filed for quashing of the advertisement published in September, 2007 completely after one year in 2008, without explaining the delay, as such the writ application

is fit to be quashed on the ground of delay itself. Further it is stated that the Petitioner did not apply for the post, as such the has no locus to challenge the selection process.

13. In the counter affidavit, it is stated that the ground taken by the Petitioner for not applying the post on account of distribution of 40-60 marks on academic qualification and interview was never been part of any Rule, Act or Statute. It was only with a view to annul confusion and bring transparency and uniformity that new statutes were framed on 30.6.2008, laying down the principle of 80-20 marks allotment on academic qualification and interview. At no point of time in any advertisement by BPSC or Bihar State Universities Commission, distribution of marks as 40% for academic and 60% for interview had been given. In this circumstance, the ground taken by the Petitioner for not applying for the post before coming into force or the amended Statute is without any basis. This will not give any cause of action to the Petitioner for filing the present writ application.

14. Counsel for the Universities has further contended that the Selection Committee constituted in accordance with law, Act and Statute made recommendation following the selection norms and appointment letters were issued in favour of the selected candidates. The appointment of Selection Committee's recommendation did not require that it should be placed before Senate and Syndicate. Since Section 10(17) does not apply in such cases of appointment, as such there is nothing to show that any illegality was committed in the selection and appointment. Since, there is no violation of any statutory provisions or the law, Petitioner has no cause of action for filing this writ application.

15. In reply to the preliminary objection raised by Respondent Nos. 2 and 3 regarding locus for filing writ application, the Petitioner has placed reliance on a decision reported in the case of Fertilizer Corporation Kamgar Union, Sindri and Ors. v. Union of India and Ors. (AIR 1981 SC 344). In this case the Respondent had raised objection, that only if the action on the part of the State would have caused any injury to the fundamental rights of the Petitioner, they could have challenged the same. Since none of the legal fundamental right of the Petitioner was impugned, the Petitioner had no locus to challenge the action of the State. The Apex Court while considering this issue, recorded findings as follows:

But we feel concerned to point out that the maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in watertight compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a

proceeding, be it under Article 226 or under Article 32 of the Constitution.

16. Counsel for the Petitioner submits that since the appointments were made in most illegal and arbitrary manner and that will have affect on the institution itself, even though the Petitioner had not applied for the post, he has locus to challenge such selection and the appointment. I find that the principle which has been decided in the decision of the Apex Court has no applicability to the facts and circumstances of the present case. The facts of the matter before the Apex Court related to sale of assets of a public Enterprise, which would have indirect effect on the citizen despite the fact that none of these fundamental rights have been infringed. But so far applying for the post advertised and selection on the basis of such advertisement is concerned, it is an individual right, only such person who have applied for the posts and their legitimate claims for appointment is not considered in violation of the Rule, Statute and procedure provided under the Statute, can claim to be a person affected on account of such selection. Only such persons can have locus for challenging such appointment and selection.

17. In the present case, admittedly, Petitioner did not apply for the post. This is not his case that despite his eligibility completely in violation of the Statute and statutory provision, he was denied appointment.

18. Since the present writ application is not the public interest litigation and none of the legal or fundamental rights of the Petitioner has been infringed, I am of the view that the Petitioner has no locus for filing this writ application and the writ application filed on behalf of the person having no locus, is not maintainable.

19. Petitioner has raised some other grounds but once it is decided that the writ application is not maintainable, there is no need for further consideration of those objection. The writ application is dismissed as not maintainable.