

(2003) 07 PAT CK 0067

In the Patna High Court

Case No : L.P.A. Nos. 184, 199, 230, 236, 239, 240, 247, 323, 332, 478, 481, 538, 584, 1701, of 1995, 817 of 1997 and 268 of 1998

Krishna Bihari Tiwary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Citation : (2003) 07 PAT CK 0067

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—These appeals were heard on different dates but in all these appeals similar questions are involved. Thus they are being disposed of by common judgment and order.

2. These appeals arise out of judgment and order passed in different writ petitions. These appeals relate to the appointment on the post of Asst. Teachers in primary schools. The appellants were empanelled for appointment on the basis of advertisement issued in the year 1985 but they were not appointed. They filed writ petitions the High Court for issue of direction for their appointment as they were empanelled but their claim was rejected and the writ petitions were dismissed. The appellants have challenged the judgment and order passed in the writ petitions in these Letters Patent Appeal.

3. It would be pertinent to mention herein that advertisement was published district wise and one of the conditions for eligibility to apply for appointment on the post of Assistant Teacher in primary school was that the applicant must be resident of the said district. Eligible candidates filed their applications, selection was made district wise and panel for appointment on the post of Asst. Teacher in the primary school was prepared district wise. In the case of Anil Kumar v. State of Bihar 1987 BLJR R 846 such advertisement was challenged on the ground that condition for eligibility to apply for appointment on the post of Assistant Teacher in primary schools i.e. the applicant must be resident of the same district is violative of the provisions of Articles 14 and 16 of the Constitution of India,

discreminatory and without any rational basis. The Division Bench quashed the advertisement and held that advertisement is violative of Articles 14 & 16 of the Constitution of India. But the Court did not quash the appointment already made from the panel, however, restrained the Government from making any appointment from the panel prepared on the basis of such advertisement. The operative portion of the judgment is quoted here-in-below for reference and better appreciation of the case:

In such a situation I am left with no option but to hold that in the advertisement dated 7-5-1985 and the order dated 31-1-1986 putting any condition regarding being resident of the district of Hazaribagh or having received training in the district of Hazaribagh is violative of Articles 14 and 16 of the Constitution and as such liable to be quashed. This writ application is, accordingly, allowed. But, as the persons who have already been appointed are not party to this application, their appointments cannot be held to be invalid in their absence. However, the respondents are restrained from making any appointment from the panel prepared on the basis of the advertisement on the basis of the advertisement and the order aforesaid. In the circumstances of the case, there will be no order as to costs.

4. Thus, it is evident that though the advertisement was quashed on the ground of its being violative of Articles 14 & 16 of the Constitution of India, the Court saved the appointment of all those who had been appointed and were not party to the writ petition. The State Government also issued instruction vide letter dated 2-7-1989 as follow up action pursuant to the aforesaid decision and directed to treat the panel prepared on the basis of residence in a particular district as cancelled and to take steps for preparation of fresh panel. The judgment in the case of Anil Kumar, (supra) was not challenged before the superior Court and as such it acquired finality.

5. However, many of the non-appointed persons from the panel prepared on the basis of residence in a particular district filed writ petitions before the High Court, three of them i.e. C.W.J.C. No. 3048/88, C.W.J.C. No. 4843/88 and C.W.J.C. No. .6595/89 are relevant as the writ petitioners being aggrieved by the judgment and order rejecting their claim for appointment moved the Supreme Court.

6. C.W.J.C. No. 3048/88 was filed by 49 non-appointed persons belonging to Nalanda district. The writ petition was dismissed in the light of the judgment in the case of Anil Kumar (supra) with an observation to consider their cases on priority basis. The aggrieved writ petitioners challenged the order passed in the writ petition before the Supreme Court in two batches, the SLP filed by 16 persons was dismissed and the remaining 33 persons challenged the order of the Court in Civil Appeal No. 2454/91. The said Civil Appeal was allowed on concession of the State Counsel to the effect that the State would consider the cases of all such candidates whose juniors had been appointed leaving them and if found eligible the age bar would be relaxed and appoint them against the

existing vacancies.

7. C.W.J.C. No. 4843/88 was filed by the non-appointed persons belonging to Siwan district. The writ petition was dismissed and the appointments already made from the panel after impleading some of the appointees in representative capacity were quashed in the light of the judgment in the case of Anil Kumar (supra). The aforesaid judgment gave rise to two sets of appeals before the Supreme Court, one at the instance of non-appointed persons being Civil Appeal No. 3217/91 and another by the persons, who were appointed but their appointments were quashed, being Civil Appeal Nos. 3218, 3219 and 3220 of 1991. Civil Appeal No. 3217/91, which was referred by non-appointed writ petitioners, was remitted to this Court for considering the question of their seniority and Civil Appeal No. 3218, 3219 and 3220 of 1991, which were preferred by those whose appointments were quashed but were continuing in service by virtue of stay order passed by the Supreme Court, were allowed as they were appointed prior to 2-7-1989, the date on which the State Government issued letter directing to treat the panel prepared on the basis of residence in the particular district as cancelled.

8. C.W.J.C. No. 6595/89 was filed by non-appointed persons belonging to Gopalganj district. The writ petition was dismissed but the appointments already made were quashed. The aggrieved persons challenged the judgment and order passed in the writ petition before the Supreme Court in two sets, one at the instance of non-appointed persons being Civil Appeal No. 3216/91 which was dismissed and the other by the persons whose appointments already made were quashed being Civil Appeal No. 2082/91. The Supreme Court stayed the order and the appellants were allowed to continue on the post and subsequently the appeal was allowed. Some of the non-appointed persons from the district of Gopalganj preferred writ petition directly before the Supreme Court under Article 32 of the Constitution of India, registered as Writ Petition No. 911/91 which was dismissed and it was held that empanelment does not create any vested right for being appointed.

9. The aforementioned appeals and the writ petition were disposed of by the Supreme Court by common judgment and order referred to as Sabita Prasad's case in 1994(1) BLJR 62 (SC).

10. It would appear from the judgment and order of the Supreme Court in Civil Appeal Nos. 3218, 3219 and 3220 of 1991 that they were filed by the persons belonging to Siwan district who were appointed but their appointments were quashed by the High Court. Similarly Civil Appeal No. 2082/91 was filed by the persons belonging to Gopalganj district who were appointed but their appointments were quashed by the High Court. All these appeals were allowed on the concession made by learned Counsel for the State that the teachers who been appointed till 2-7-1989 before or after Anil Kumar's judgment which was rendered on 14-5-1987 and were continuing in service by virtue of Stay orders issued by the Courts would be retained in service. In the judgment of Anil

Kumar's case (supra) also rights of the persons who were already appointed were protected. Civil Appeal No. 4254/91 filed by non-appointed persons belonging to Nalanda district; whose claim was that junior to them were appointed, and Civil Appeal No. 3217/91 by non-appointed persons belonging to Siwan district were allowed on the concession of learned Counsel for the State to the effect that State would consider the cases of all such candidates whose juniors had been appointed and if found eligible the age bar would be relaxed in their favour and appoint them against the existing vacancy.

11. The claim of the appellants of the appeals in hand was that their names were in the panel but their case for appointment was ignored and some of the persons below them were appointed. They claim that their case is similar to the persons in Civil Appeal Nos. 4254 and 3217 of 1991.

12. In this regard it would be pertinent mention herein that the order was passed in Civil Appeal No. 4254/91 on the concession made by learned Counsel for the State to the effect that State would consider the case of all such candidates whose juniors in the panel were appointed. Similarly, in Civil Appeal No. 3217/91 the claim of learned Counsel for the appellants was that their case be disposed of in view of concession made by the State Counsel in Civil Appeal No. 4254/91. In other words, it can be said that aforesaid appeals were disposed of directing to consider the case of the appellants in view of concession made by learned Counsel for the State. The judgment rendered on the basis of concession cannot be read as laying down law. The effect of such judgment is limited to that case in which the judgment was rendered on concession. On the basis of such judgment the appellants cannot make legal claim. Moreover, the Apex Court dismissed Civil Appeal No. 3216/91 and Writ Petition No. 911/91 which were filed by non-appointed persons.

13. Furthermore, appellants were empanelled pursuant to the advertisement made prior to 1986, in which one of the conditions for eligibility to apply for appointment was that the applicants must be resident of the same district for which they applied. In the case of Anil Kumar (supra) a Division Bench of this Court has held that such advertisement is violative of Articles 14 & 16 of the Constitution of India and as such State-respondents were restrained from making appointment from such panel. The aforesaid judgment was upheld by the Supreme Court in the case of Sabita Prasad and Ors. (supra). The State Government also issued instruction by letter dated 2-7-1989 to treat the panel prepared on the basis of resident of the district as cancelled and to take further steps for preparation of fresh panel. Therefore, on consideration as discussed above, it would be evidence that the claim of the appellants as indicated above has no force of law.

14. On consideration of the case on different angles, the appellants are not entitled to any relief. The advertisement was published in the year 1985 for appointment on the post of Assistant Teacher in the district concerned. The panel was prepared thereafter. Some appointments were made till 1988 on the basis of

said panel. The appellants filed writ petition in the year 1994 or thereafter making grievance for their appointment i.e. after nine years of advertisement. The writ petitions were dismissed and now appellants are claiming for appointments after 18 years of advertisement. In such a situation, the claim of the appellants can safely be said to be old and stale and suffering laches on their part, If in such a situation, the claim of the appellants is allowed it would amount to depriving other persons of the opportunity of appointment who became eligible for appointment in the intervening period. If the appointments continue to be made from the panel prepared long ago there would be no vacancy left for the persons who became eligible for such appointment in the meantime. In the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, the Apex Court has held that in case of delay and laches on the part of the appellant, the High Court would decline to interfere even if the State action complained of is unconstitutional or illegal, The relevant portion is quoted here-in-below:

It is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.

15. Obviously in the instant case there are delay and laches on the part of the appellants as the advertisement was published in the year 1985, the writ petitions were filed by the appellants in the year 1994 or thereafter i.e. after about nine years and now it is 18 years from the date of advertisement. Therefore, in such a situation, no relief can be granted to the appellants as it has become old and stale. In the case of Ramji Tiwary and Ors. v. State of Bihar 1996 (2) BLJR 181, in which similar question was raised by non-appointed persons from the panel, Division Bench of this Court rejected their claim and dismissed the appeal.

16. Thus, on consideration, I find no error in the judgment impugned to interfere. Accordingly, all these appeals are dismissed but without costs.