
(2000) 01 PAT CK 0149
In the Patna High Court
Case No : C.W.J.C. No. 4635/91

Kumar Baban Prasad Singh and Others APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) 3 PLJR 173

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : R.N. Mukhopadhaya and Dhruba Mukherjee, for the Appellant; Hari Shankar Rai, for the Respondent

Judgement

Shiva Kirti Singh, J.—Through this writ application the Petitioners seek quashing of a resolution dated 1st of September, 1990 contained in annexure-1 by which the department of Welfare Government of Bihar has taken a decision, purportedly in the light of guidelines issued by the Government of India, that all the posts of Assistant Child Development Project Officers shall in future be filled up by promotion of Lady Supervisors engaged in Integrated Child Development Service Project. The Petitioners have further prayed for a direction to the Respondent State to create atleast two avenues of promotion with respect to the statistical assistants such as the Petitioners posted in the Welfare Department (Directorate of Social Welfare), as has been provided with regard to other statistical assistants of the State of Bihar in other different departments.

2. For deciding the dispute in this case, it is not necessary to refer to the facts in details. The relevant facts are that the Petitioners are statistical assistants in the department of welfare and from the records of the case it appears that in 1985 through annexure-6 a conscious decision was taken by a Committee of senior officials of the department that members belonging to the cadre of Lady Social Welfare Organisers and those belonging to the cadre of statistical assistants engaged in Integrated Child Development Service Projects (hereinafter referred

to ICDS Projects) did not have appreciable avenues of promotion and hence as per decision of the Committee, by annexure-7, a resolution dated 14th July, 1986 was published by the Welfare department reserving 25 per cent of the total sanctioned posts of Assistant Child Development Project Officers (hereinafter referred to as Assistant CDPO) for being filled up by promotion of statistical assistants and ladies organisers. According to the Petitioners there was absolutely no justification and material to change the policy in annexure-7 and take away the avenues of promotion created for statistical assistants, as has been done by the impugned resolution.

3. According to the Respondents 1 to 3, the State of Bihar and its officials, the impugned resolution is valid and justified by several instructions received from the Ministry of Welfare, Government of India as contained in annexures A, B and C to the counter affidavit. A perusal of said annexure shows that the concerned Ministry of Government of India which meets the expenses of such welfare projects and has policy control over such matters at several time expressed its opinion that generally only ladies should fill up the posts of Assistant CDPO and finally by annexure-C, the letter dated 13th September, 1989 it suggested various avenues of promotion for various cadres of employees connected with Integrated Child Development Service Project. With regard to statistical assistants, clerks and typists as well as drivers and peons an indication was given as to how their cadres should be constituted and for avenues of their promotion it was suggested to create such avenues as may be available to Secretariat employees of the State Government. By a separate clause in the said letter it was suggested to create a separate cadre of supervisors of Integrated Child Development Service Project who should have opportunity of appointment to the post of Assistant CDPO and of further promotion to the post of C.D.P.O.

4. Learned Counsel for the Petitioners first submitted that a direction to generally appoint ladies to the post of Assistant C.D.P.O. cannot mean a direction not to appoint statistical assistants to such posts because there may be ladies employee as statistical assistants. Secondly, it was urged that Annexure-C has been wrongly interpreted by the State of Bihar and its officials. Elaborating this point, it was submitted that clause kh of annexure-C contains a suggestion to provide avenues of promotions for the statistical assistants on the same line as is available to Secretariat employees of the State Government and clause Ga suggests to provide opportunity of appointment for the members belonging to the cadre of supervisors to the post of Assistant C.D.P.O. but these provisions cannot be interpreted to mean that besides supervisors no other cadre can be granted opportunity of promotion to the post of Assistant C.D.P.O.

5. So far as the first point is concerned, in theory, there may be a situation where a lady statistical assistant may be available to meet the suggestion that generally all Assistant C.D.P. Os. should be ladies. Similarly applying strict and technical rules of interpretation of statutes it may be possible to interpret that the suggestions in clause ga of annexure-C does not exclude the possibility of

appointment/promotion of employees other than supervisors to the post of Assistant C.D.P.O. However, in my opinion, since the matter relates to interpretation of letters and administrative communications hence it will not be proper to apply rigidly the usual rules of interpretation applicable to statutes or statutory instruments. It is well settled in law that in the matters of policy no interference should be made by courts of law unless the policy offends some legal or constitutional provisions. Hence, in the facts of the case, I am not persuaded to hold that annexure-1 suffers from any legal infirmity.

6. The next issue that survives for consideration is with regard to the prayer of the Petitioners for affording them at least two promotional avenues as available to the statistical assistants of other departments of the Government of Bihar. In this regard the stand of the Respondents is that in the State of Bihar various pay revision committees considered the matter relating to availability of atleast two avenues of promotions to all government employees and with that purpose in mind recommendations were made to provide atleast two time bound promotions to an employee who does not get opportunity of regular promotion in his department or establishment. Their further stand is that the matter of granting promotion to the Petitioners in Junior Selection Grade is under active consideration of the Government and final decision is likely to be taken soon.

7. Learned Counsel for the Petitioners, on the other hand, submitted that time bound promotions cannot be equated with avenue for actual promotions which have a positive impact on the morale of the employees because it is only a substantive promotion which enhances the status and responsibility of an employee. Hence, he submitted that the Respondents should be directed to create some avenues of substantive promotion for the Petitioners, and not time bound promotions, as are available to statistical assistants in other departments.

8. No doubt avenues of promotions have positive impact upon the performance and morale of the employees and in ideal situation such avenues must be made available to every public employee. However, such avenues of promotion depend upon the peculiar facts of each department or establishment and in my view, it is not possible to accept the contention raised on behalf of the Petitioners that such avenues of promotion can be claimed as a matter of right on the basis of Articles 14 and 16 of the Constitution of India. This matter belongs to the field of law making or policy making authorities and hence I am not persuaded to issue any direction with regard to such demand of the Petitioners. However, it is expected that the concerned Respondents will bestow serious thought to the aforesaid grievance of the Petitioners and shall consider the matter of granting to the Petitioners and other statistical assistants of the Welfare department like them, avenues of substantive promotions in accordance with clause kh of annexure-C, keeping in mind all the relevant facts and circumstances including the fact that they have already accepted part of the suggestions contained in clause ga relating to supervisors which has resulted in issuance of annexure-1. Such consideration should take place at an early date and in any case within six

months from the date of production/communication of a copy of this order to the Secretary, Welfare Department, Government of Bihar, Patna.

9. With the aforesaid observation, this writ application is disposed of and in the facts of the case, there shall be no order as to costs.