
(1990) 01 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4832 of 1989

Kumari Kumud Sinha

APPELLANT

Vs

The Bihar Public Service Commission and Others

RESPONDENT

Date of Decision : 03-01-1990

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1990) 1 PLJR 273

Hon'ble Judges : Uday Sinha, J;S.C. Mookherji, J

Bench : Division Bench

Advocate : V.N. Sinha, for the Appellant; Kamlapati Singh, G.P. 5, for the Respondent

Final Decision : Allowed

Judgement

Uday Sinha, J.—This application has been heard at length. It is, therefore, being disposed of finally at the admission stage itself.

2. The Petitioner has prayed for issuance of a writ of mandamus directing the Bihar Public Service Commission and its functionaries to publish the result of the Petitioner who had competed in the 34th Combined Examination held in the month of September, 1986. By letter dated 25-8-1986, she was informed by the Under Secretary to the Commission, Respondent No. 3, that she has been found ineligible to appear in the competitive examination for the reason that her fee for the said examination had not been paid. The Petitioner, in response thereto, appeared before the Commission and stated that she had remitted the requisite fee of Rs. 55/- by Postal Order bearing number 367185 for rupees 50/- and number 580358 for Rupees 5/-. The Under Secretary to the Commission, thereupon, issued duplicate provisional admit card bearing number (Sic) dated 18-9-1936. She was told that she had been permitted to appear at the examination subject to her production of counter-foils of the Indian Postal Order by 21st September, 1986. On 21st September, 1986, the Petitioner produced the necessary Postal Older but the concerned authority was out under some official

business. On 23rd September, 1986, the Petitioner approached the concerned authority and produced the counter-foils of the aforesaid Indian Postal orders. On the production of the counter-foils of the Indian Postal Orders, the concerned authority noted in the provisional admit card that the Petitioner had produced the counterfoils. In the series of papers re-examination was held of general science paper on 21st December, 1986. The Petitioner was issued a fresh admit card (annexure 3) dated 20-12-1986 permitting her to appear in the cancelled paper of general science. The Petitioner appeared in the said paper on 21st December, 1986. When the results were published the Petitioner not finding her roll number among successful candidates, came to Patna. On inquiry in the Commission office, she was told that her result had not been published as she had not deposited the requisite fee for the examination. The Petitioner filed representation before the Chairman and Secretary of the Commission on 26-6-1988. The representation of the Petitioner did not bear fruit. Hence the present application for direction upon the Commission to issue her marks sheet and to publish her result as her position in the merit list may indicate.

3. The crucial matter is whether the Petitioner had paid the examination fee or not. If she had paid it the non-publication of her result would be arbitrary and violative of Article 16 of the Constitution. We, therefore, called upon the counsel for the Public Service Commission to produce the original application form of the Petitioner. The application form bears the endorsement "FEE NOT PAID". On the third page of the printed form is noted Indian Postal Order and numbers thereof. The figure 55/- is mentioned in the column meant for mentioning the amount paid. The fact that her application form had been rejected is noted on the declaration form accompanying the application.

4. Learned Counsel for the Petitioner has contended that it is true that there was some mistake or slip in the Patna office of the Commission in regard to the fee paid by her that is why on the representation of the Petitioner a duplicate admit card (annexure 2) was issued. The duplicate admit card bears an endorsement as follows:

She is permitted to appear at the examination subject to production of counter-foil of I.P.O. (Indian Postal Order) deposited as examination fee by 21st September, 1986. In case she failed to produce the same, her candidature will stand rejected.

In the margin of the said document there is the endorsement as follows:

Produced counterfoils. The I.P.O. is properly filled up in the application form.

Illegible 26-9-86

On basis bass of annexure 2, it has been contended that annexure 2 was unimpeachable evidence indicating that the Petitioner had remitted the necessary examination fee. Learned Counsel for the Petitioner also drew our attention to annexure 6, which is a notice published by the Bihar Public Service Commission

in news paper "Indian Nation" dated 15th September, 1986. In that notice it was stated that examinations were to be held at seven centres mentioned in the notice. The detail programme had been published in different news papers. Admit cards/rejection cards had been issued to candidates. In case any candidate had not received the admit card or rejection card, or if there may be some shortcomings they should contact the concerned Camp Officer and obtain duplicate admit card. It is not in controversy that a duplicate admit card was issued to the Petitioner. The facts thus stated, make out a clear case in favour of the Petitioner. She had done all that was required for appearing at the examination.

5. The stand of the Public Service Commission, however, is that the endorsement on annexure 2 had been made by the Section Officer unauthorisedly and that the Section Officer had no jurisdiction to make endorsements on annexure 2. He over stepped his bounds and, therefore, a departmental proceeding had been initiated against him for not informing the Commission for admitting a candidate rejected by the Commission. The Commission's stand further is that the candidates whose application forms had been rejected by the Commission, would not be heard at any office.

6. The matter thus put, would throw out the Petitioner above board but we find that the duplicate admit card was issued not by the office but by the Head Office at Patna itself. The Petitioner had no means of knowing that the section Officer had no jurisdiction to permit her to appear at the examination subject to the conditions laid down in the endorsement on annexure 2. There was no fault on the part of the Petitioner. Further, in a supplementary affidavit filed by the Petitioner, the Petitioner has annexed annexure 7 which is a letter written by the Petitioner to Post Master G.P.O. Dhanbad wherein she prayed that the Postal Orders mentioned earlier had been purchased from Dhanbad office and a certificate of purchase may be issued to her. On that application there is an endorsement of Assistant Post Master M. O. (Issue) Dhanbad. The endorsement of the Post Office reads as follows:

This is to certify that the above mentioned denomination of I.P.O. for Rs. 50/- DD/3 367185 and Rs. 5/- K/43 580358 had been sold to by this office.

Leaving aside the mistake in English, it is obvious that the Petitioner has purchased the necessary Postal Orders much before she had sent her application. Of course, the certificate is of 11-11-1989 which was obtained by the Petitioner after the observation of this Bench that she had to establish tint she had purchased the Postal Order before 18-9-1986. From annexure 7 we are satisfied that she had paid the necessary fee. Whatever may have been the failing of the section Officer, we have no doubt that the Petitioner had done all that she was required to do. We therefore, do not see any reason why she (Sic) suffer on account of some lapse in the office of the Bihar Public Service Commission. No one has attributed any motive or bias against the Petitioner on the part of any officer of the Commission but it appears to be a case of mistake or slip.

7. Taking all the circumstances into account, we are of the view that the Petitioner's result had been unjustifiably withheld. We therefore, direct the Commission to issue her marks sheet. The Commission should publish her result and make necessary recommendation for her appointment, in case she has competed, for any of the services. This application is thus allowed. There shall, however, be no order as to costs.

S.C. Mookherji, J.

8. I agree.