
(1999) 04 PAT CK 0074
In the Patna High Court
Case No : C.W.J.C. No. 3413/96 (R)

Kumari Pramila and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Citation : (1999) 3 PLJR 360

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Anil Kumar Sinha and Ajit Kumar, for the Appellant; M.S. Anwar and Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—In both the writ petitions similar question of law and fact are involved. They have been heard together and are being disposed of by this judgment.

2. The writ petitions have been filed for issuance of writ in the nature of mandamus commanding the Respondent, Respondent No. 2, to consider and to give approval for appointment of the Petitioners on the post of Asst. Teachers in Basic school as their names have been included in the panel.

3. The case of the Petitioners is that pursuant to the advertisement of August, 1988, Annexure-1, published in the Newspaper, the Petitioners applied for appointment on the post of Asst. Teacher in Basic school. They were called for interview and they appeared in the interview, A list of successful candidates was prepared and juniors to the Petitioners were appointed. The Petitioners made grievance. Respondent No. 3 wrote letter dated 15.5.1992 to the Spl. Director, Primary Education, Bihar stating therein that due to oversight names of some of the candidates were not included in the list. Respondent No. 3 subsequently prepared supplementary/waiting list and sent the same vide letter dated 29.5.1995, Annexure-3, to Respondent No. 3 for approval. In the said list the

names of the Petitioners were included and is pending before Respondent No. 2 for approval. The Petitioners filed representations but no action was taken. In similar situation one Rameshwar Prasad and Narayan Ram filed C.W.J.C. Nos. 2006/95(R) and 2801 /95(R) respectively and they were, disposed of on 1.4.1996 and 17.9.1996 respectively directing Respondents to consider their case for appointment and they were appointed. The posts of Asst. Teacher are still vacant and as such prayer has been made for issue of direction for appointment.

4. A counter-affidavit has been filed on behalf of Respondents stating therein that advertisement was published on 7.8.1988 in Daily Newspaper, Ranchi Express" for appointment on the post of Asst. Teacher. Requisite qualification was Matriculate trained. After interview a panel was prepared on the basis of merit by Respondent No. 3, the Dy. Director of Education, North Chotanagpur Division, Hazaribagh and it was sent for approval to the Government. The State Government approved the panel and appointment was made. The names of Rameshwar Prasad and Narayan Ram were not included in the panel although they obtained higher marks than the candidates who have been selected and empanelled. They filed writ petitions and pursuant to the order of the Court they were appointed. A supplementary/waiting list was prepared by Respondent No. 3 in which the names of the Petitioners were included and it was sent for approval to the Government. The Director Primary Education-cum-Spl. Secretary vide letter dated 18.12.1996 communicated to the Respondent No. 3 that several irregularities/illegalities were found in the list and as such it was not approved, Annexure-B. The names of Rameshwar Prasad and Narayan Ram were included in the waiting list but they had been selected by Respondent No. 3 and due to inadvertence their names could not be empanelled in the approved panel and as such they filed writ petitions and were appointed. It has also been stated that persons who were appointed but were not matric trained on the relevant date their services have been terminated.

5. Admittedly advertisement was published, in the daily Newspaper on 7.8.1988. A panel was prepared on the basis of merit in which names of the Petitioners were not included. The said panel was approved and appointment was made. The names of the Petitioners were included in the supplementary/waiting list by Respondent No. 3 and it was sent to Respondent No. 2 for approval vide letter dated 29.5.1995, Annexure-3 but it was not approved by the Government and communication was made to the aforesaid effect vide letter dated 18.12.1996, Annexure-B. Therefore, it is manifest that name of the Petitioners were not in the approved panel rather names of the Petitioners were in supplementary/waiting list which was not approved by the Government and as such no writ as prayed for by the Petitioner can be issued. More-over, Petitioners in the writ petitions have not challenged the order, Annexure-B to the counter-affidavit nor have made any prayer for quashing of said annexure and as such no relief can be granted to the Petitioners.

6. Learned Counsel for the Petitioners, however, pointed out that in similar situation Rameshwar Prasad and Narayan Ram have been appointed and as such Petitioners are entitled for issue of writ for consideration of their names for appointment. In this regard it would not be out of place to mention that in the counter-affidavit it has been stated that they obtained higher marks than the candidates who have been selected and empanelled and they filed writ petitions in the year 1995 in which order was passed for consideration of their case for appointment and, accordingly, they were appointed. It has already been stated that advertisement was published on 7.8.1988 and panel was prepared on the basis of merit which was approved by the State Government and the names of the Petitioners were not included in the said panel. The names of the Petitioners were included in the supplementary/waiting list which was not approved by the State Government. More-over, Petitioners have not challenged the order not approving the supplementary/waiting list, Annexure-B in these writ applications. Therefore, delay has become also a question in granting relief to the Petitioners. In similar situation a Division Bench of this Court in the case of Ramji Tiwari and Ors. v. State of Bihar and Ors. 1996(1) All P.L.R. 273 : 1996 (2) PLJR 181 has held as follows:

Admittedly, persons alleged to be junior to the Appellants Ramji Tiwari and others were given appointment in the year 1988, the Appellants of LPA 173/95 never choose to move before this Court nor made any grievance for their appointment. Thereby, the cause of action with regard to these Appellants took place in the year 1988. The writ petition was filed, for the first time, in the year 1994 i.e. after more than six years of such appointment. For the purpose of cause of action, the Appellants cannot stretch it forward in the year 1994 that ultimate panel was prepared in the year 1994. Such ultimate panel was prepared to decide the matter with regard to the Appellants, who are Appellants before the Supreme Court. For the said reason, for all purposes, delay is to be counted since the first date of cause of action i.e. from the year 1988 and not on the basis of the subsequent cause of action of the year 1994. If such interpretation is not given, it will amount to giving fresh cause of action, while passing one or other judgments in favour of one or other persons. For example, the Writ petition of the Appellants Ramji Tiwari and others were filed in the year 1994. If the decision would have been given in 1995 in their favour and appointments would have been made in the year 1995, then there was a possibility that other persons will move before this Court with their claim that their fresh cause of action has started in the year 1995 because the appointment orders have been issued on the basis of the decision of this Court. Thereby, the continuity of giving directions and making appointments out of an advertisement of the year 1985 will continue for years together to come. Admittedly, the advertisement was issued in the year 1985 and it is more than ten years that have passed. In my opinion, it is not desirable to make appointment out of such advertisement.

7. Thus on consideration, in my view the above mentioned decision is fully applicable in the facts and circumstances of this case and no relief can be

granted to the Petitioners even though Rameshwar Prasad and Narayan Ram have been appointed by the order of the Court.

8. Learned Counsel for the Petitioners relied upon a decision in the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, in support of its case but the ratio decided in the said case is not applicable in the facts and circumstances of this case as in the aforesaid case three Banks were amalgamated and service of some of the employees were not taken over. The Apex Court considering the facts and circumstances of the case held that purposes of amalgamation was not under legislative action but it was executive action and as such principle of natural justice will apply which has been denied to the employees whose services were not taken over and accordingly issued direction to the transferee bank to takeover services of such employees. In the instant case no such question is involved as the Petitioners are claiming for issuance of a direction for appointment on the basis of a list which was not approved by the competent authority. Thus on consideration it is held that the above mentioned decision is not applicable in the facts and circumstances of this case.

9. Thus on consideration as discussed above I find no merit in the writ applications. Accordingly both the writ applications are dismissed but without cost.