
(1997) 07 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 3446 of 1993

Lakshmi Narain and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 148

Citation : (1998) 1 PLJR 106

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Chandrashekhar, Krishna Ballabh Sharma and Shrawan Kumar Singh, for the Appellant; Ashok Kumar Singh, Ranjit Sinha for State, Ajoy Kumar Mathur and Indu Bala Jha for Pvt. Respondents 6 to 13, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—There are five Petitioners in this case who are working on different class IV posts in the Employees State Insurance Scheme, under the Labour, Planning and Training Department, Government of Bihar. They seek to challenge promotions given to Respondents 6 to 13 to class III posts on the basis of a limited selection made from amongst the class IV employees of the Scheme.

2. Before proceeding further to examine the grievance of the Petitioners, it may be noted that during the pendency of this writ petition, promotion given to Respondents 12 and 13 was cancelled retrospectively from the date of the promotion on the basis of some departmental enquiry and a review made by the departmental committee which found that promotion was wrongly given to those two Respondents. They filed C.W.J.C. No. 4272/95 challenging the order dated 5.6.1995 by which the order of their promotion/appointment to class III posts, issued on 12.2.1993, was cancelled from the date of its issuance. By order dated 11.9.1995 passed by a learned Single Judge of this Court that writ petitions was allowed mainly on the ground that before issuing the impugned cancellation order, no show cause notice was given to the concerned employees (Respondents

12 and 13 of this writ petition). While allowing the writ petition and directing their reinstatement, this Court left it open to the Respondents, the State officials, to give show cause notice to them and to any other similarly situated persons and to pass fresh orders in accordance with law after considering their reply to the show cause.

3. Mr. Chandrashekhar, learned Counsel appearing on behalf of the Petitioners in this case stated that despite the liberty given by this Court to the official Respondents, no show cause was given to the concerned employees, Respondents 12 and 13 in this case and after their reinstatement as directed by this Court, they were simply allowed to continue in service. Mr. Chandrashekhar submitted that the omission to give show cause notice to the concerned employees and to take the matter to its logical conclusion clearly amounted to an act of malafide on the part of the official Respondents and it simply indicated that they were favourably inclined towards the Respondents in this case. I am unable to accept the submission and to read any signs of malafide in the aforesaid circumstances.

4. Now coming back to the Petitioners' challenge in this writ petition it may be noted that the selection process leading to the promotion of Respondents 6 to 13 is assailed on the ground that it was not in accordance with the provisions contained in the resolution dated September 16, 1992 issued by the Department of Personnel and Administrative Reforms, Government of Bihar laying down the procedure for promotion to Class III posts on the basis of limited selection from amongst the class IV employees.

5. The case of the Petitioners is entirely founded on this circular, a copy whereof has been annexed as Annexure-1 to the writ petition. A closer scrutiny of the matter at once reveals that the Petitioners' grievance regarding non-observance of the provisions contained in Annexure-1 is wholly misconceived. It is an admitted position and it is also stated by the Petitioners themselves in paragraph 6 of the writ petition that a limited test was held on 21.6.1992 for filling up the 23 vacancies available in class III posts. It is thus obvious that the circular issued in September 16, 1992 would have no application to the selection being made on the basis of a test held in June, 1992.

6. Mr. Chandrashekhar, learned Counsel appearing on behalf of the Petitioners submitted that though the examination was held before the issuance of the circular, by the time the result was finalised the circular had come into existence and in preparing the result the provisions of the circular were followed. In following those circulars certain irregularities were committed by the authorities and that gave rise to the Petitioners' grievances. In support of his submission he relied upon certain statements made in the counter affidavit filed on behalf of the State stating that in making the selection the criteria laid down in the government memo, dated 16.9.1992 were followed. He also relied upon the report of the enquiry committee, a copy of which is at Annexure-C. What is stated in Annexure-C is simply stupid; it is stated that an examination was held

on 21.6.1992 following the provisions of the resolution issued under memo No. 355, dated 16.9.1992. it does not require much imagination to see that no examination could have been possibly held on June 21, 1992 following the provisions contained in a circular issued for the first time in September, 1992.

7. The statement in the counter affidavit filed on behalf of the State has been made equally mindlessly. It appears to me that the manner in which the writ petition was drafted, putting the entire focus on the provisions contained in the circular dated 16.9.1992 got the official Respondents completely carried away and they did not care to see the discrepancy of dates and in their misplaced zeal to controvert the Petitioners' allegation that the selection was made without following the provisions contained in the circular dated September, 1992 they went on to assert that in making the selection the provisions contained in September, 1992 were duly followed.

8. The real light to the controversy comes from the counter affidavit filed on behalf of the contesting Respondents 6 to 13. From this counter affidavit it appears that the Director, Medical Services of the E.S.I. Scheme had issued a circular letter dated 12.3.1992 which was addressed to the Regional Administrative Medical Officers and all other concerned officials in the Scheme. The circular letter dealt with the proposed promotion of class IV employees working in the department to Class III posts and laid down certain criteria on the basis of which the selection was to be made. The criteria relevant for the present are as follows:

- (i) The candidate must have passed matriculation or an equivalent examination;
- (ii) He must have five years' experience in service;
- (iii) He must have a minimum typing speed of 40 W.P.M. in English and 30 W.P.M. in Hindi.

It is also significant to note that according to the criteria fixed in this circular letter, dated 12.3.1992 no additional weightage was to be given for the length of service.

9. The selection test on 21.6.1992 was clearly held on the basis of the criteria laid down in the circular dated 12.3.1992 and it is also clear that the Petitioners participated in this test fully aware of the relevant criteria as contained in the aforesaid circular letter.

10. At this stage, it may be pointed out that from the order dated 11.9.1995 passed in C.W.J.C. No. 4272/95 it further appears that this Court also took note of the circular letter dated 12.3.1992 issued by the Director, Medical Services, E.S.I. Scheme and proceeded on the basis that the selection test that was held on 21.6.1992 was held on the basis of the aforesaid circular letter.

11. As noted above, knowledge of typing in English and Hindi with the prescribed speed was a mandatory requirement in that circular. It is undeniable that none of

the five Petitioners had any knowledge of typing. In the counter affidavit filed on behalf of the State it is stated that Petitioners 1, 2 and 3 miserably failed in the typing test and Petitioners 4 and 5 did not even appear for the typing test. They were, therefore, not selected notwithstanding their relatively longer" length of service and the selection was made as provided in the circular letter dated 12.3.1992 (Annexure-A to the counter affidavit filed by Respondents 6 to 13).

12. Mr. Chandrashekhar, counsel for the Petitioner then contended that the Introduction of typing test, as a necessary qualification, was bad and illegal. Learned Counsel submitted that Rule 148 of the Bihar Board's Miscellaneous Rules, 1958 did not prescribe the knowledge of typing as the necessary qualification for appointment to a class ill post. He further submitted that though the knowledge of typewriting was recognised as additional qualification, it was not an indispensable qualification in terms of Rule 148. He relied upon a Division Bench decision of this Court in (Mrs.) Rekha Prasad v. State of Bihar and Ors. 1984 BBCJ 833 and submitted that the Petitioners could not be excluded only on the ground that they did not possess any knowledge of typewriting.

13. I am unable to accept the submission and in my view the Division Bench decision does not improve the Petitioners" case. The provisions of Rule 148 of the Board's Miscellaneous Rules have no application to this case for the simple reason that rule envisages direct appointment on class III posts on the basis of an open advertisement. The provisions of the Bihar Board's Miscellaneous Rules do not contemplate promotion to Class III posts on the basis of a limited selection from amongst the Class IV employees of that department. The scheme of promotion to class III posts from amongst the class IV employees of the department is a relatively recent scheme and it has come into existence mainly as a result of neogtiations between the Government and the Employees" Association. The provisions of the Bihar Board's Miscellaneous Rules, therefore, would have no application in case of this scheme and it would be open" to the Government to lay down cirteria for promotion in terms of the scheme. What is to be seen is that the criteria fixed by the Government do riot violate the test of reasonableness and they are applied uniformly. Now, it can be hardly said that the requirement of knowledge of typewriting in English and Hindi for promotion to class III posts is unreasonable or arbitrary. It is also undeniable that this criterion was uniformly applied to all candidates and the Petitioners participated in the selection test fully aware of the basis on which the selection was going to be made. They cannot, therefore, be allowed to turn back and contend that the knowledge of typewriting was not obligatory and therefore they could not be excluded on that basis.

14. Mr. Chandrashekhar also referred to certain enquiry reports made by the Departmental Enquiry Committee which had found that the promotions given to Respondents 12 and 13 was not quite regular and it was presumably on that basis that their promotion was cancelled which order was struck down by this Court in C.W.J.C. No. 4272/95.

15. Having heard learned Counsel for the parties, I find that no infirmity has been pointed out in the impugned promotion so as to warrant any interference by this Court. I thus find no merit in this application. It is, accordingly, dismissed. No order as to costs.