
(1990) 11 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 4147 of 1980

Madhu Sudan Bari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-11-1990

Acts Referred:

Citation : (1990) 11 PAT CK 0024

Hon'ble Judges : Sachchidanand Jha, J;N.P. Singh, J

Bench : Division Bench

Judgement

1. This writ application has been filed on behalf of the Petitioner, who appeared at the 34th Combined Competitive Examination conducted by the Bihar Public Service Commission (hereinafter referred to as "the Commission"), for selection of candidates for appointment against different posts, including against the posts of Deputy Superintendent of Police.

2. The advertisement inviting application from different candidates was published on 18.6.1986. Paragraph 21(1) of the advertisement said that the members of the Scheduled Caste and Scheduled Tribe should enclose along with their application forms a caste certificate granted by the District Magistrate or the Sub-divisional Officer or the Block Project Executive Officer or the Assistant Project Executive Officer of the Anchalaohkan or the Block Development Officer or she District Welfare Officer or the Sub-divisional "Welfare Officer or a Magistrate 1st Class in that paragraph, it Was said that, at the time of interview, any candidate claiming to be a member of the Scheduled Caste or Scheduled Tribe must produce a certificate granted by the District Magistrate otherwise they shall not get the bench of such reservation.

3. There is no dispute that the Petitioner is a member of the Scheduled Tube and he applied pursuant to the advertisement aforesaid for the post of Deputy Superintendent of Police. Along with his application, he enclosed a certificate granted on the Additional Deputy commissioner, Singhbhum saying, that he was a member of the Scheduled Tribe. The interview was held on 18.8.1988. On that

day, the Petitioner produced the same certificate granted by the Acld. Deputy Commissioner, Singhbhun. On 21.9.1988, the Petitioner obtained a certificate duly granted by the Deputy Commissioner, Singhbhum, winch he produced before the Commission, on 30th September, 1988.

The result of the candidates, who appeared at the aforesaid competitive examination, was published on 11.10.1988. We are informed that there was only one post of the Deputy Superintendent of Police reserved for a candidate, belonging to the Scheduled Tribe. Against that post, the name of Respondent No. 4 was recommended ingnoring the case of the Petitioner, who had secured higher marks than the said Respondent. the Petitioner had secured 552.5 marks, whereas said Respondent No. 4, had secured 519 marks only. According to the Petitioner, later, he verified from the office Commission as to why his name had not been recommended. He was informed that his name had not been recommended because he had not produced the certificate from the Deputy Commissioner that he was a member of the Scheduled Tribe and had produced the certificate from the Addl. Deputy Commissioner, Singhbhum, at the time of interview.

4. This writ application was filed on 17.4.1989 and thereafter, several attempts were, made to serve notice of this application on Respondent No. 4 who had since joined as Deputy superintendent of Police. from the Office notes it appears that, for one reason Of the oilier, the notice could not be served personally on him. Although it is difficult recorded a categorical finding on the question of service of notice of this application on Respondent No. 4, we have a feeling that he has been avoiding personal service of the notice.

5. On behalf of the Petitioner it was submitted that he is not interested in getting the appointment of Respondent No. 4 quashed by this Court and he will be satisfied if a direction is given to the Respondents to appoint the Petitioner against any existing or future vacancy on the post of Deputy Superintendent of Police and the Petitioner is prepared to forego his seniority in the service.

6. Now coming to the merit of the case as to whether the Commission could have rejected the claim of the Petitioner for being appointed against a post of the Deputy Superintended, of Police on the ground that the Petitioner did not produce the certificate from the Deputy Commissioner, Singhbhum, on the date of interview, our attention was drawn to different order passed by this Court, in different writ applications, more or less, under similar situations.

7. In the case of Shive Narayan San v. State of Bihar and Ors. C.W.J.C. No. 8229 of 1988, which had been filed on behalf of a candidate who had appeared at this very 34th Combined Competitive Examination, under the terms of the advertisement aforesaid, that Petitioner was required submit an income certificate granted by the District Magistrate at the time of interview. It had been stated on behalf of that Petitioner that he had approached the District Magistrate, Purnea for such a certificate but the same was granted by the Sub-divisional

Officer which was countersigned by the Additional District Magistrate. That certificate was produced at the time of interview. When the Commission did not treat that certificate as granted by the District Magistrate, the Petitioner of that writ application produced another certificate granted by the District Magistrate, Purnea, on 29.8.1988.

8. When the result of that Petitioner was not published, he filed the writ application aforesaid. A Bench of this Court, on 22.11.1988, directed that if the Petitioner has produced the income certificate granted by the Sub-divisional Officer countersigned by the Additional District Magistrate, at the time of interview, then it shall be deemed that there had been substantial compliance, especially because before the recommendation was made a certificate granted by the District Magistrate had also been produced.

9. In that very order, there is a reference of another writ application (C.W.J.C. No. 2387 of 1988) disposed of on 11.8.88 in which the same dispute had arisen in connection with appointment of the Assistant Engineers by the Commission. A Bench of this Court observed as follows:

Besides the above, we find as a fact that before the Commission had made recommendations, the Petitioner had produced the certificate granted by the District Magistrate, though produced after the interview it confirmed, the certificate granted to him by the Additional Collector-cum-Additional District Magistrate. The Commission could take notice of the certificate granted by the District Magistrate and, thus, give consideration to the case of the Petitioner.

10. In view of the aforesaid orders passed by this Court, it is now difficult to hold that the Petitioner forfeited his right to be considered for appointment against a post reserved for the members of the Scheduled Tribe merely because he had produced the certificate granted by the Additional Deputy Commissioner instead of the Deputy Commissioner, on the date of interview, although he had produced a certificate duly granted by the Deputy Commissioner before the recommendation was made. The matter would have been different if the Petitioner had failed to produce the certificate granted by the District Magistrate or had produced the same after the recommendation had been made.

11. We are inclined to take a liberal view of the matter because, as noticed above, in the advertisement, along with the application, any applicant claiming to be a member of the Scheduled Caste or Scheduled Tribe could produce a certificate granted by any of the Officers, including a Block Development Officer, Anchal Adhikari, Sub-divisional Welfare Officer or even a Magistrate 1st Class, apart from the District Magistrate.

12. Accordingly, we direct the commission that the name of the Petitioner be recommended to the State Government and the State Government thereafter shall appoint the Petitioner against a post of the Deputy Superintendent of Police, reserved for the members of the Scheduled Tribe which may be existing or which may be available next.

13. We may point out that Mr. S.K. Kutriar, learned Counsel, who has appeared for the Commission, urged that although the Petitioner had produced a certificate granted by the Deputy Commissioner, Singhbhum, on 10th September, 1988, before the recommendation was made by the Commission, but the list of the candidates, who have to be recommended is prepared in advance and as such it was not possible to consider this aspect of the matter. It is not possible to accept this contention, in view of the fact that only one post of the Deputy Superintendent of Police had been reserved for the members of the Scheduled Tribe, as such after the certificate from the Deputy Commissioner, Singhbhum was produced on behalf of the Petitioner, there should not have been any difficulty in including the name of the Petitioner in the recommendation which was submitted on 11.10.1988.

14. With the aforesaid directions, this writ application is, accordingly, disposed of.

15. Before we part with this order, we may observe that, normally, the Commission should not have rejected the case of the Petitioner, if he had produced the certificate granted by the Deputy Commissioner, Singhbhum, on 30th September, 1986, before the recommendation had been made, because this Court, as already mentioned above, had passed a similar order, in C.W.J.C. No. 2387 1998 disposed of on 11.3.88, i.e. before 11.10.88, in which the Commissioner was a Respondent.