
(2000) 03 PAT CK 0167
In the Patna High Court
Case No : C.W.J.C. No. 11965 of 1998

Makeshwar Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-03-2000

Acts Referred:

Citation : (2000) 3 PLJR 109

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The petitioner, a Demonstrator in B.I.T.. Sindri, Dhanbad has preferred this writ petition for direction on the Respondents to consider his case for promotion to the post of Assistant Lecturer/Assistant Professor in terms with Government decision communicated. vice Memo No. 4 73 dated 23rd February, 1938. The Respondents in their counter affidavit took plea that the petitioner is not eligible for promotion/appointment to the post of Assistant Lecturer.

2. On the earlier date, taking into consideration the aforesaid stand of the State, they were directed to file additional affidavit enclosing therein copy of Regulation/Rule/Guideline laying down qualification for appointment to the post of Assistant Lecturer/Assistant Professor.

3. On such direction, a supplementary counter affidavit has been filed on behalf of Respondents 1, 2 and 4 enclosing therein copies of decision of AICTE dated 20th September. 1989, whereby and where under, the qualification for appointment against one or other post including the post of Lecturer, was laid down. The same was accepted by the Slate, vide its letter no. 379 dated 16th February. 1990, as contained in Annexure-B.

4. It is not in dispute that the petitioner passed M.Sc examination with 2nd Class in 1983. In terms with Personal Promotion Scheme, he is untitled for

consideration of his case for appointment/promotion to the post of Lecturer/ Assistant Professor, on completion of 12 years, if he is otherwise eligible for such promotion.

5. From the qualification laid down by the AICTE, which is binding on the State and the qualification laid down by the State, vide Memo dated 16th February, 1990. it will be evident that 1st class in M.Sc. in appropriate branch of study for teaching post in Humanities and Science or 1st class Bachelor's Degree in appropriate branch of Engineering technology, has been prescribed for appointment to the post of lecturer. the petitioner having no such qualification of 1st Class in M.Sc. in the branch of studies in Humanities and Science or 1st class Bachelor's degree in the branch of Engineering/Technology, is not eligible and thereby, his case cannot be considered for such promotion.

6. One of the grounds taken is that other similarly situated persons have been promoted to the higher post of Assistant Lecturer/Assistant Professor and the petitioner cannot be discriminated.

7. Reliance has been placed on a Full Bench decision in Mohd. Nazimuddin and Another and Mohd. Idris and Others Vs. State of Bihar and Others, .

8. However, such decision cannot be made applicable in the case of petitioner, he being not eligible for promotion. If one of other person has/have been promoted, in spite of they being Ineligible, that cannot be a ground to allege discrimination.

9. The counsel for the petitioner submitted that the petitioner passed M.Sc. examination in 1983, while no such qualification was laid down. The guideline issued by the AICTE on 20th September, 1989 or by the State on 16th February, 1990, cannot be made applicable in his case.

10. However, the aforesaid submission cannot be accepted in view of the fact that the petitioner became eligible for consideration of his case for promotion after 1990, in the year 1991, and the State Government protected the interest of those who had already been promoted.

11. There being no merit, his prayer cannot be allowed. The writ petition is, accordingly, dismissed.