
(1989) 05 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 3171 of 1987

Manjulata Kanth

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Public Employment (Requirement as to Residence) Act, 1957 — Section 3

Citation : (1989) 37 BLJR 66 : (1989) PLJR 993

Hon'ble Judges : Birendra Prasad Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Birendra Prasad Sinha, J.—On 15th of May, 1987, an advertisement was published in the "Indian Nation" an English daily published from Patna under the signature of District Magistrate-cum-Collector, Katihar inviting applications to the post of clerks (correspondence cleft) Junior Accounts clerk. The qualifications required were that the candidates must have passed secondary school examination from Board, University recognised by the Government or its equivalent and should have good knowledge of Hindi in Devnagri script. For being eligible for appointment, it was made essential that "candidates must be domicile of Katihar district; persons who have worked as clerks during the last strike will be given preference". The advertisement also mentions that preference will be given to the residents of Katihar district." 221 applications were received. A merit list was prepared of those candidates who were residents of Katihar district. The merit list thus prepared included the names of 84 general candidates including 6 for Scheduled Castes and four for Scheduled Tribes. Since the petitioner belonged to another district, her application was not considered. According to the counter-affidavit filed on behalf of respondent No. 2, the District Magistrate-cum-Collector of Katihar, the Government had issued an instruction under letter No. 1918 dated 28-1-1976, according to which appointments to Class III posts should be filled up by candidates who were residents or domicile of the district

where the appointments had to be made. In the Government letter mentioned above, which is Annexure-I to the counter-affidavit of respondent No. 2, the vacancies should be notified to the nearest Employment Exchange in whose area the office where appointments were going to be made was situate. Thus, local candidates would get preference in employment and there shall be less number of applications. In fact, this does not lay down any criteria as regards districtwise residential qualification of candidates but it was emphatically stated on behalf of the respondents State that this Government instruction was followed in order to give preference to the candidates belonging to Katihar district and the petitioner not being a resident of Katihar district, her application was not considered. This is also evident from the merit list prepared by the District Establishment Committee which is Annexure-V to the counter-affidavit of respondent No. 2. In the end of this merit list, there is a note that petitioner Smt. Manjulata Kanth is not a resident of Katihar District. The admitted position, therefore, is that the petitioner was not considered for being appointed as she was not a resident of Katihar district. The petitioner has stated in one of her affidavits that her husband is a clerk in the Katihar Collectorate and her father-in-law holds and possesses a residential house in Katihar town and thus she is a resident of Katihar. But according to the counter-affidavit of respondent No. 2, the petitioner's husband is a permanent resident of Madhubani district and not Katihar. The stand of respondent-State is that in order to give preference to the sons of the soil, who were conversant with the local problems and situations, this method was adopted. Respondents 3 to 13 were appointed to the post of clerks by the Katihar Collector.

2. The petitioner has filed this writ petition challenging the appointments of respondents 3 to 13 and praying that she should be appointed against one of the posts having secured very high marks. At the time of hearing of the writ petition, the main contention raised on behalf of the petitioner was that the appointments of respondents 3 to 13 based on the ground that they were residents of Katihar district and non-consideration of the petitioner's case on the ground that she was a resident of another district is clearly in violation, of Articles 14 and 16 of the Constitution of India. Learned Counsel submitted that such a restriction as regards residence in the matter of appointment to public posts is not permissible at all and is without any reasonable basis. Thus the question which has fallen for consideration in this case is whether such a restriction can be put and whether the authorities can omit persons of another district from being considered for appointment to public posts.

3. Article 14 of the Constitution guarantees equality of opportunity in matters of public employment. The relevant part of Article 16 of the Constitution reads thus:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in

respect of, any employment or office under the State.

It is well established that the scope of Clause (1) of Article 16 is wider than Clause (2) of that Article. The Government is not prevented from laying down the qualifications for a service, within which term they can include not only educational qualifications but also physical fitness, age, character, sense of discipline etc. The discretion is with the Government but that discretion is confined to what has been laid down in Clause (2) of Article 16 of the Constitution. To that extent a discrimination may be permissible but, discrimination on the grounds other than those mentioned in Clause (2) of Article 16 have to be weighed and judged in the light of general principles laid down in Clause (1) of Article 16. The question, therefore, is whether any preference shown to the residents of the district violates the guarantee of equality of opportunity under Article 16(1) of the Constitution?

Articles 16(3), 16(4) and 16(5) are exceptions to Article 16(2) and 16(1) of the Constitution. In the present case, there has been no discrimination of the kind mentioned in Article 16(2). It is true that the items of discrimination expressly mentioned in Article 16(2) are not exhaustive but still the question that remains is whether the petitioner, in the present case, shall be denied equality of opportunity under Article 16(1) because she did not belong to the district of Katihar. It is well settled that the administrative authorities have a right to make selection from numerous candidates but the selective test must be reasonable and not arbitrary." It should be based on reasonable principles otherwise the principles of equality of opportunity could be infringed. In order that selective test is reasonable, there must be some proximate connection between the selective test and the sufficient performance of the duties and obligation of the particular office. Thus, the authorities can lay down qualifications for the office as regards mental fitness, excellence, physical fitness, sense of discipline, moral integrity etc. So far the present case is concerned, it is difficult to understand how the residential criteria has any material relation or bearing on the efficiency or proper performance of the duties of a clerk in the Collectorate.

4. As stated above, the argument presented on behalf of the State is that the residents of the district are more conversant with the local problems, dialects and situations and it was thought necessary to give preference to the sons of the soil. This argument is, to say the least, fantastic and is not understandable. If I may say so, it is based on an extraneous or collateral consideration which has no relevance in such matters. How can it be said that the residents of Madhubani district are not sons of the soil for the purpose of appointments in another district of the same State. If this argument is stretched further then such a preference will have to be extended to the Blocks or the villages. It is, therefore, clearly violative of Article 16 of the Constitution.

6. Lord Greene, M.R. in *Associated Provincial Picture Houses v. Wednesbury Corporation* (1948) 1 KB 223 stated that the meaning of the word "reasonable" in the following words:--

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of Statutory discretion often use the word "unreasonable" in a rather comprehensive sense. It was frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are extraneous to what he has to consider.

If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person would ever dream that it lay within the powers of the authority. Warrington, L J. in *Short v. Poole Corporation* (1926) 1 Ch. 66 at pp. 90, 91, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters.

7. A similar statement of principle was made by Lord Esher M.R. in *Reg. v. Vestry of St. Pancras* (1890) 24 QBD 375 in the following terms:

I have no doubt that the vestry should take his application into their fair consideration, and do what they think fair to the man under the circumstances, and if they do this, I have equally no doubt that the legislature has entrusted the sole discretion to them, and that no mandamus could go to alter their decision. But they must fairly consider the application and exercise their discretion on it fairly, and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion then in the eye of law they have not exercised their discretion.

8. Although in the Government circular, Annexure-I to the counter-affidavit and the advertisement, Annexure-2 to the writ petition in substance, it is mentioned that "preference shall be given to the candidates of Katihar district". But in fact, the petitioner was not considered at all for appointment. The respondent-State has, in the counter-affidavit, admitted that candidates of districts other than Katihar were not considered for appointment. Giving of preference means that everything being equal, the person having a particular qualification shall be appointed. In the present case, however, the criteria laid down in the advertisement and the Government Circular, referred to above, was also given a go-bye, inasmuch as candidates belonging to other districts were not considered at all. However, in my opinion, even preference on such grounds of districtwise residents is not permissible and shall be violative of Article 16 of the Constitution.

9. While coming to the above conclusions, I am supported by greater authorities in the case of *Minor P. Rajendran Vs. State of Madras and Others*, . The Supreme

Court observed as follows:--

It is true that Article 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges the allocation of seats districtwise has no reasonable relation with the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources.

10. In another case in matters regarding appointment, the Supreme Court in the case of A. V. S. Narasimha Rao and Others Vs. The State of Andhra Pradesh and Another, observed, as follows:--

By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in Clause (3) was made. Even so, that Clause spoke of residence within the State. The claim of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words "any requirement" cannot be read to warrant something which would have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr. Gupta that the Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Taluqas, Cities, Towns or Villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate. We accordingly reject the contention of Mr. Setalvad seeking to put a very wide and liberal construction upon the words "any law" and "any requirement". These words are obviously controlled by the words, "residence within the State or Union Territory" which words mean what they say, neither more nor less. It follows, therefore, that Section 3 of the Public Employment (Requirement as to Residence) Act, 1957, in so far as it relates to Telangana (and we say nothing about the other parties) and Rule 3 of the Rules under it are ultra vires the Constitution.

11. A similar question arose in the case of *Anil Kumar v. State of Bihar* 1987 PLJR 846 when a Bench of this Court held that the advertisement/order of State Government purporting to restrict the persons from other districts from being considered for appointment to the post of teachers in the district of Hazaribagh was violative of Articles 14 and 16 of the Constitution because it discriminates the residents of other districts without any rational basis. So far the present case is concerned, it must be remembered that the residents of Katihar district do not form a separate class from residents of other districts of the State of Bihar nor there is any reasonable object which is sought to be achieved by restricting the appointments to the residents of Katihar district alone.

12. In such a situation, there is no escape from holding that the advertisement, in the present case, restricting the appointments to the residents of Katihar district alone, is per se violative of Articles 14 and 16 of the Constitution. The appointments of respondents 3 to 13 have been made on that basis and the petitioner was left out of consideration only because she was not a resident of Katihar district. Such an action on behalf of the respondents-authorities cannot pass the test of Article 16 of the Constitution and I am left with no option, but to quash the appointments of respondents 3 to 13 as clerks in the Katihar Collectorate. This writ application, therefore, succeeds and the advertisement (Annexure-2) as well as the appointments of respondents 3 to 13 are, accordingly, quashed. There shall, however, be no order as to costs.

13. The respondent authorities may now proceed to make the appointments of clerks after inviting fresh applications in the light of the observations made above and in accordance with law.